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: July 08, 2022
Docket #: 22-1426
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: 22-1426. 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.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 7/7/2022

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
2022 JUL -7

Criminal Notice of Appeal - Form A

NOTICE OF APPEAL

United States District Court

Southern District of New York

Caption:

United States of America,

v.

Ghislaine Maxwell

Docket No. S2 20 Cr. 330

Alison J. Nathan (SBD)

(District Court Judge)

Notice is hereby given that Ghislaine Maxwell appeals to the United States Court of Appeals for the Second Circuit from the judgment [✓], other [ ] (specify)

entered in this action on 6/29/2022 (date).

This appeal concerns: Conviction only [ ] Sentence only [ ] Conviction & Sentence [✓] Other [ ]

Defendant found guilty by plea [ ] trial [✓] N/A [ ].

Offense occurred after November 1, 1987? Yes [✓] No [ ] N/A [ ]

Date of sentence: 6/28/2022 N/A [ ]

Bail/Jail Disposition: Committed [✓] Not committed [ ] N/A [ ]

Appellant is represented by counsel? Yes [✓*] No [✓**] If yes, provide the following information:

Defendant's Counsel: Bobbi C. Sternheim, Law Offices of Bobbi C. Sternheim

Counsel's Address: 225 Broadway, Suite 715
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Counsel's Phone: 212-243-1100

Assistant U.S. Attorney: Maurene Comey

AUSA's Address: One Saint Andrew's Plaza
New York, NY 10007

AUSA's Phone: 212-637-2324

Bobbi C. Sternheim

* FOR FILING OF NOTICE OF APPEAL *ONLY*

** *NOT RETAINED* FOR REPRESENTATION ON APPEAL

Signature

ST

7/7/22

$505.00

2280

CLOSED,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

Date Terminated: 06/29/2022

Movant

Jordana H. Feldman

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Assigned to: Judge Alison J. Nathan

Appeals court case number: 21−0058 U.S. Court of Appeals, 2nd Circ.

Defendant (1)

Ghislaine Maxwell
TERMINATED: 06/29/2022
also known as
Sealed Defendant 1
TERMINATED: 06/29/2022

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Pending Counts	**Disposition**
18:371.F CONSPIRACY TO ENTICE MINORS TO TRAVEL TO ENGAGE IN ILLEGAL SEX ACTS (1ss)	Judgment not entered on 1 & 5 as multiplicitous, Dkt. No. 657.
18:371.F CONSPIRACY TO TRANSPORT MINORS WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY (3ss)	IMPRISONMENT: The Defendant is sentenced to a term of 240 Months. Count 3 a sentence of 60 Months. Count 4 a sentence of 120 Months. Count 6 a sentence of 240 Months. All Counts to run concurrently. SUPERVISED RELEASE: 3 Years on Counts 3 and 4. 5 Years on Count 6 to run concurrently. FINE: $750,000.00
18:2423.F COERCION OR ENTICEMENT OF MINOR FEMALE (TRANSPORTATION OF A MINOR WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY) (4ss)	IMPRISONMENT: The Defendant is sentenced to a term of 240 Months. Count 3 a sentence of 60 Months. Count 4 a sentence of 120 Months. Count 6 a sentence of 240 Months. All Counts to run concurrently. SUPERVISED RELEASE: 3 Years on Counts 3 and 4. 5 Years on Count 6 to run concurrently. FINE: $750,000.00
18:371.F SEX TRAFFICKING CONSPIRACY (5ss)	Judgment not entered on 1 & 5 as multiplicitous, Dkt. No. 657.
18:1591.F SEX TRAFFICKING OF CHILDREN OR BY FORCE, FRAUD OR COERCION (6ss)	IMPRISONMENT: The Defendant is sentenced to a term of 240 Months. Count 3 a sentence of 60 Months. Count 4 a sentence of 120 Months. Count 6 a sentence of 240 Months. All Counts to run concurrently. SUPERVISED RELEASE: 3 Years on Counts 3 and 4. 5 Years on Count 6 to run concurrently. FINE: $750,000.00

Highest Offense Level (Opening)

Felony

Terminated Counts	**Disposition**
18:371.F CONSPIRACY TO ENTICE MINORS TO TRAVEL TO ENGAGE IN ILLEGAL SEX	Dismissed

ACTS (1)	
18:371.F CONSPIRACY TO ENTICE MINORS TO TRAVEL TO ENGAGE IN ILLEGAL SEX ACTS (1s)	Dismissed
18:2422.F COERCION OR ENTICEMENT OFA MINOT TO TRAVEL TO ENGAGE IN ILLEGAL SEX ACTS (2)	Dismissed
18:2422.F COERCION OR ENTICEMENT OF MINOR TO ENGAGE IN ILLEGAL SEX ACTS (2s)	Dismissed
18:2422.F COERCION OR ENTICEMENT OF FEMALE (ENTICEMENT OF A MONOR TO TRAVEL TO ENGAGE IN ILLEGAL SEX ACTS) (2ss)	Acquitted by Jury
18:371.F CONSPIRACY TO TRANSPORT MINORS WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY (3)	Dismissed
18:371.F 18:371.F CONSPIRACY TO TRANSPORT MINORS WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY (3s)	Dismissed
18:2423.F COERCION OR ENTICEMENT OF MINOR FEMALE (TRANSPORTATION OF A MINOR WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY) (4)	Dismissed
18:2423.F TRANSPORTATION OF A MINOR WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY (4s)	Dismissed
18:1623.F FALSE DECLARATIONS BEFORE GRAND JURY/COURT (PERJURY) (5−6)	Dismissed
18:1623.F FALSE DECLARATIONS BEFORE GRAND JURY/COURT (5s−6s)	Dismissed
18:1623.F FALSE DECLARATIONS BEFORE GRAND JURY/COURT (PERJURY) (7ss−8ss)	Dismissed

Highest Offense Level (Terminated)

Felony

Complaints **Disposition**

None

Interested Party

Reporters Committee for Freedom of the Press

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And the Victims it Represents

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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)
09/24/2020	58	SEALED DOCUMENT placed in vault. (mhe) (Entered: 09/24/2020)
10/05/2020	59	NOTICE OF ATTORNEY APPEARANCE: Bobbi C Sternheim appearing for Ghislaine Maxwell. Appearance Type: Retained. (Sternheim, Bobbi) (Entered: 10/05/2020)
10/06/2020	60	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated October 6, 2020 re: Request to Delay Disclosure Document filed by USA. (Comey, Maurene) (Entered: 10/06/2020)
10/06/2020	61	AFFIDAVIT of Maurene Comey by USA as to Ghislaine Maxwell. (Comey, Maurene) (Entered: 10/06/2020)

10/07/2020	62	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 60 Accordingly, the Government respectfully requests that the Court approve the Government's request to delay disclosure of these Materials...ENDORSEMENT...The Defendant shall file any opposition to the Government's request by October 14, 2020. The Government's reply, if any, is due by October 20, 2020. SO ORDERED. (Government Replies due by 10/20/2020., Defendant Responses due by 10/14/2020) (Signed by Judge Alison J. Nathan on 10/7/20)(jw) (Entered: 10/07/2020)
10/07/2020	63	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated October 7, 2020 re: Review of Investigative Files from Other Offices and Agencies Document filed by USA. (Comey, Maurene) (Entered: 10/07/2020)
10/14/2020	64	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated October 14, 2020 re: Response to 60 LETTER addressed to Judge Alison J. Nathan from USA dated October 6, 2020 re: Request to Delay Disclosure. (Everdell, Christian) (Entered: 10/14/2020)
10/20/2020	65	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated October 20, 2020 re: Reply Letter in Further Support of Request to Delay Disclosure Document filed by USA. (Comey, Maurene) (Entered: 10/20/2020)
10/23/2020	66	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated October 23, 2020 re: Response to the Governments October 7, 2020 letter (Pagliuca, Jeffrey) (Entered: 10/23/2020)
10/30/2020	67	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated October 30, 2020 re: Reply to Defense's October 23, 2020 Letter Document filed by USA. (Comey, Maurene) (Entered: 10/30/2020)
11/05/2020	68	ORDER as to Ghislaine Maxwell: This Order is entered, pursuant to Federal Rule of Criminal Procedure 5(f) and the Due Process Protections Act, Pub. L. No 116182, 134 Stat. 894 (Oct. 21, 2020), to confirm the Government's disclosure obligations under Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, and to summarize the possible consequences of violating those obligations. (Signed by Judge Alison J. Nathan on 11/5/2020) (See ORDER set forth) (ap) (Entered: 11/05/2020)
11/06/2020	69	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated November 6, 2020 re: Request to Extend Discovery Deadline for Portion of Electronic Discovery Document filed by USA. (Comey, Maurene) (Entered: 11/06/2020)
11/06/2020	70	AFFIDAVIT of Maurene Comey by USA as to Ghislaine Maxwell. (Comey, Maurene) (Entered: 11/06/2020)
11/09/2020	71	MANDATE of USCA (Certified Copy) as to Ghislaine Maxwell re: 55 Notice of Appeal. USCA Case Number 20−3061−cr. 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.. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 11/09/2020. (nd) (Entered: 11/09/2020)
11/09/2020	72	MEMO ENDORSEMENT as to Ghislaine Maxwell on 69 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated November 6, 2020 re: Request to Extend Discovery Deadline for Portion of Electronic Discovery. ENDORSEMENT: The Court hereby extends the deadline for the Government's production of electronic discovery from November 9, 2020 to November 23, 2020. The Court also grants the parties' request for an extension of the motions deadlines as follows: the Defendant's motions are due by January 11, 2021, the Government's responses are due by February 12, 2021, and any replies are due by February 19, 2021. SO ORDERED. (Discovery due by 11/23/2020. Motions due by 1/11/2021. Responses due by 2/12/2021. Replies due by 2/19/2021.) (Signed by Judge Alison J. Nathan on 11/9/2020) (lnl) (Entered: 11/10/2020)

11/18/2020	73	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 60 Letter filed by USA as to Ghislaine Maxwell re: The Government respectfully requests that the Court approve the Government's request to delay disclosure of these Materials...ENDORSEMENT...There is no dispute that the materials referenced in the Government's letter will be turned over to the defense. The Government has indicated that it will do so. The only dispute, then, relates to the timing of such disclosure. See Dkt. Nos. 64, 65. Because the Government has articulated plausible reasons for some delay of disclosure, see Dkt. No. 65 at 4, the Court grants the Government's request to delay disclosure. However, the Governments proposal to delay disclosure until 8 weeks in advance of trial is insufficient. In order to ensure that the defense can adequately prepare for trial, the Government shall produce the referenced materials, which are not voluminous, to the defense by March 12, 2021. Disclosure of the materials will of course be subject to the protective order entered by the Court, see Dkt. No. 36. (Government Responses due by 3/12/2021) (Signed by Judge Alison J. Nathan on 11/18/20)(jw) (Entered: 11/18/2020)
11/23/2020	74	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated November 23, 2020 re: Update Regarding Conditions of Confinement Document filed by USA. (Comey, Maurene) (Entered: 11/23/2020)
11/24/2020	75	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/24/2020 re: Response to 90−day MDC conditions report (Sternheim, Bobbi) (Entered: 11/24/2020)
11/24/2020	76	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 75 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/24/2020 re: Response to 90−day MDC conditions report. ENDORSEMENT: The parties are hereby ORDERED to meet and confer regarding Defendant's request that Warden Heriberto Tellez directly address Defendant's concerns regarding the conditions of her detention. The parties shall jointly submit a status update within one week of this Order. (Signed by Judge Alison J. Nathan on 11/24/2020) (ap) (Entered: 11/24/2020)
12/01/2020	77	ORDER as to Ghislaine Maxwell. On November 25, 2020, the Defendant filed a letter request under seal. On November 30, 2020, she filed a second letter request in which she proposed redactions on both letters. The Government is hereby ORDERED to respond to the Defendant's November 25, 2020 letter request and to the request for proposed redactions by no later than December 2, 2020. The letters shall be temporarily sealed while the Court resolves the redaction request. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/1/2020)(bw) (Entered: 12/01/2020)
12/01/2020	78	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated December 1, 2020 re: Joint Letter regarding Conditions of Confinement Document filed by USA. (Pomerantz, Lara) (Entered: 12/01/2020)
12/02/2020	79	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 78 LETTER by USA addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated December 1, 2020 re: Joint Letter regarding Conditions of Confinement. ENDORSEMENT: MDC legal counsel shall submit their letter to the Court by December 4, 2020. Upon review of that letter, the Court will determine whether any additional information is required, either orally or in writing. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/2/2020)(bw) (Entered: 12/02/2020)
12/02/2020	80	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated December 2, 2020 re: Defense Requests for Sealing Document filed by USA. (Comey, Maurene) (Entered: 12/02/2020)
12/03/2020	81	ORDER as to Ghislaine Maxwell. On November 25, 2020, counsel for Defendant Ghislaine Maxwell filed a letter request seeking an in camera conference for the presentation of a renewed motion for release on bail and a request to seal the November 25, 2020 letter in its entirety. The Court required justification for the sealing request. On November 30, 2020, the defense counsel filed a second letter no longer fully pressing the unsupported request to file the letter entirely under seal and

		instead proposing redactions to both the November 25th and November 30th letters. The Government has indicated that it does not oppose the redactions. Dkt. No. 80. After due consideration, the Court will adopt the Defendant's proposed redactions, which are consented to by the Government. The Court's decision 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 11920. "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, 1050 (2d Cir. 1995) ("Amodeo II")). The proposed redactions satisfy this test. First, the Court finds that the Defendant's letter motions are "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). And while the Court assumes that the common law presumption of access attaches, in balancing competing considerations against the presumption of access, the Court finds that the arguments the Defendant has put forthincluding, most notably, the privacy interests of the individuals referenced in the lettersfavor her proposed and tailored redactions. The Defendant is hereby ORDERED to docket the redacted versions of the two letters by December 4, 2020. For the reasons outlined in the Government's letter dated December 2, 2020, Dkt. No. 80, the Court DENIES the Defendant's request for an in camera conference. In order to protect the privacy interests referenced in the Defendant's November 25, 2020 letter, the Court will permit the Defendant to make her submission in writing and to propose narrowly tailored redactions. The parties are hereby ORDERED to meet and confer and to jointly prepare a briefing schedule for the Defendant's forthcoming renewed motion for release on bail. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/3/2020)(bw) (Entered: 12/03/2020)
12/03/2020	82	SEALED DOCUMENT placed in vault. (jus) (Entered: 12/03/2020)
12/03/2020	83	SEALED DOCUMENT placed in vault. (jus) (Entered: 12/03/2020)
12/03/2020	84	SEALED DOCUMENT placed in vault. (jus) (Entered: 12/03/2020)
12/04/2020	85	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated December 4, 2020 re: Briefing Schedule (Everdell, Christian) (Entered: 12/04/2020)
12/04/2020	86	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 11/25/2020 re: Sealing (Everdell, Christian) (Entered: 12/04/2020)
12/04/2020	87	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 11/30/2020 re: Sealing (Everdell, Christian) (Entered: 12/04/2020)
12/07/2020	88	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sophia Papapetru and John Wallace dated 12/4/20 re: This letter is written in response to your order dated December 2, 2020, concerning Ghislaine Maxwell, Reg. 02879−509., an inmate currently confined at the Metropolitan Detention center in Brooklyn, New York. You expressed various concerns regarding Ms. Maxwells confinement and well−being. (jw) (Entered: 12/07/2020)
12/07/2020	89	ORDER as to Ghislaine Maxwell re: 85 Letter filed by Ghislaine Maxwell. The Court is in receipt of the Defendant's December 4, 2020 letter, Dkt. No. 85, and hereby sets the following schedule: The Defendants submission is due December 8, 2020; The Government's response is due December 16, 2020; The Defendant's reply is due December 18, 2020. After reviewing these submissions, the Court will determine whether a hearing on the renewed bail motion is necessary. The Court grants the Defendants request that the Government shall file its submission under seal with proposed redactions. Any objections to proposed redactions are due within 24 hours after any brief has been filed. Finally, the Defendant is granted leave to file a motion not to exceed 40 pages. The Governments response shall also be limited to 40 pages. The Defendant's reply shall not exceed 10 pages (Defendant submission due by 12/8/2020., Defendant Replies due by 12/18/2020., Government Responses due by 12/16/2020) (Signed by Judge Alison J. Nathan on 12/7/20)(jw) (Entered: 12/07/2020)

12/07/2020	90	ENDORSED LETTER as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Mark S. Cohen and Christian R. Everdell dated 11/25/20 re: On behalf of my client, Ghislaine Maxwell, we plan to file a Renewed Motion for Release on Bail (the "Motion") and respectfully request an in camera conference, with all counsel present, to address the appropriate procedures for the filing and consideration of the Motion. For the reasons explained below, we intend to request, pursuant to Fed. R. Crim. P. 49.l(d), that the Court permit the filing of portions of the Motion and certain supporting materials under seal and require that any responsive materials be filed under seal....ENDORSEMENT: The Court sees no basis for the sealing of this letter. On or before December 2, 2020, Defendant shall justify why this letter should be sealed (or redacted). Alternatively, the Defendant may file the letter on the public docket by that date. The Court will take no action on the request pending resolution of the initial sealing question. The Defendant's letter and this memorandum endorsement will be temporarily sealed pending resolution of the sealing request. (Signed by Judge Alison J. Nathan on 11/25/20)(jw) (Entered: 12/07/2020)
12/07/2020	91	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 12/07/2020 re: Response to MDC Report to Court re: conditions (Sternheim, Bobbi) (Entered: 12/07/2020)
12/08/2020	92	ORDER as to Ghislaine Maxwell: On December 4, 2020, the Court received a letter from MDC legal counsel responding to the concerns that the Defendant raised in her November 24, 2020 letter. See Dkt. Nos. 75, 88; see also Dkt. No. 78. The Defendant responded to the MDC legal counsel's letter on December 7, 2020, reiterating her request that the Court summon Warden Heriberto Tellez to personally respond to questions from the Court regarding the Defendant's conditions of confinement. See Dkt. No. 91. Having carefully reviewed the parties' submissions, along with the MDC legal counsel's December 4, 2020 letter, the Court DENIES the Defendant's request to summon the Warden to personally appear and respond to questions. This resolves Dkt. No. 75. Notwithstanding this, as originally provided in Dkt. No. 49, the Government shall continue to submit written status updates detailing any material changes to the conditions of Ms. Maxwell's confinement, with particular emphasis on her access to legal materials, including legal mail and email, and her ability to communicate with defense counsel. The updates shall also include information on the frequency of searches of the Defendant. The Court hereby ORDERS the Government to submit these written updates every 60 days. Furthermore, the Government shall take all necessary steps to ensure that the Defendant continues to receive adequate access to her legal materials and her ability to communicate with defense counsel. (Signed by Judge Alison J. Nathan on 12/8/2020) (ap) (Entered: 12/08/2020)
12/10/2020	93	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 7/14/2020 before Judge Alison J. Nathan. Court Reporter/Transcriber: Kristen Carannante, (212) 805−0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/31/2020. Redacted Transcript Deadline set for 1/11/2021. Release of Transcript Restriction set for 3/10/2021. (McGuirk, Kelly) (Entered: 12/10/2020)
12/10/2020	94	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 7/14/2020 has been filed by the court reporter/transcriber in the above−captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 12/10/2020)
12/14/2020	95	ORDER as to Ghislaine Maxwell: On December 8, 2020, Defendant Ghislaine Maxwell filed her renewed application for bail under seal with proposed redactions, in accordance with this Court's December 7, 2020 Order, see Dkt. No. 89. The Government did not file any opposition to the Defendant's proposed redactions. After due consideration, the Court will adopt the Defendant's proposed redactions. The Court's decision to adopt those 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 11920. "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 proposed redactions satisfy this test. The Court finds that Defendant's letter motions are "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). And the Court also finds that the common law presumption of access attaches. Id. at 146; see also Nixon v. Warner Commc'ns, Inc., 435 U.S. 589, 602 (1978). Nevertheless, in balancing competing considerations against the presumption of access, the Court finds that the redactions are narrowly tailored to properly guard the privacy interests of the individuals referenced in the Defendant's submission and in the corresponding exhibits The Defendant is hereby ORDERED to docket the redacted documents and corresponding exhibits. (Signed by Judge Alison J. Nathan on 12/14/2020) (ap) (Entered: 12/14/2020)
12/14/2020	96	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated December 8, 2020 re: Cover Letter for Renewed Bail Application (Everdell, Christian) (Entered: 12/14/2020)
12/14/2020	97	MEMORANDUM OF LAW in Support by Ghislaine Maxwell *re: Renewed Motion for Bail*. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O, # 16 Exhibit P, # 17 Exhibit Q, # 18 Exhibit R, # 19 Exhibit S, # 20 Exhibit T, # 21 Exhibit U, # 22 Exhibit V, # 23 Exhibit W, # 24 Exhibit X)(Everdell, Christian) (Entered: 12/14/2020)
12/17/2020	98	NOTICE OF ATTORNEY APPEARANCE Andrew Rohrbach appearing for USA. (Rohrbach, Andrew) (Entered: 12/17/2020)
12/18/2020	99	ORDER as to Ghislaine Maxwell: On December 16, 2020, the Government filed its opposition to Defendant Ghislaine Maxwell's renewed application for bail. In accordance with this Court's December 7, 2020 Order, see Dkt. No. 89, the Government filed its materials under seal and proposed narrowly tailored redactions on those materials. The Defendant did not file any opposition to the Government's proposed redactions. The Court will adopt the Government's proposed redactions after applying 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 access to the materials; and (iii) balance competing considerations against the presumption of access. Id. at 11920. "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 ("Amodeo II"), 71 F.3d 1044, 1050 (2d Cir. 1995)). The proposed redactions satisfy this test. The Court finds that the Governments submissions are "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). And the Court also finds that the common law presumption of access attaches. Id. at 146; see also Nixon v. Warner Commc'ns, Inc., 435 U.S. 589, 602 (1978). Nevertheless, the proposed redactions are narrowly tailored to serve substantial interests, including, most importantly, third parties' personal privacy interests. See Under Seal v. Under Seal, 273 F. Supp. 3d 460 467 (S.D.N.Y.2017). The Government is hereby ORDERED to docket the redacted documents and corresponding exhibits by no later than December 18, 2 (Signed by Judge Alison J. Nathan on 12/18/2020) (ap) (Entered: 12/18/2020)
12/18/2020	100	MEMORANDUM OF LAW in Opposition by USA as to Ghislaine Maxwell *Renewed Bail Motion*. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Comey, Maurene) (Entered: 12/18/2020)
12/23/2020	101	ORDER as to Ghislaine Maxwell: On December 18, 2020, the Defendant filed her reply to the Government's opposition to her renewed application for bail. In accordance with this Court's December 7, 2020 Order, see Dkt. No. 89, she filed these

		materials under seal and proposed narrowly tailored redactions on those materials. The Government did not file any opposition to the Defendant's proposed redactions. The Court will adopt the Defendant's proposed redactions after applying 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 11920. "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 ("Amodeo II"), 71 F.3d 1044, 1050 (2d Cir. 1995)). The proposed redactions satisfy this test. The Court finds that the Defendant's submissions are "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). And the Court also finds that the common law presumption of access attaches. Id. at 146; see also Nixon v. Warner Commc'ns, Inc., 435 U.S. 589, 602 (1978). As with the redactions to her renewed motion for bail, the proposed redactions here are narrowly tailored to serve substantial interests, including, most importantly, third parties personal privacy interests. See Under Seal v. Under Seal, 273 F. Supp. 3d 460, 467 (S.D.N.Y. 2017). See also Dkt. No. 95. The Defendant is hereby ORDERED to docket the redacted documents and corresponding exhibits by no later than December 23, 2020. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/23/2020) (lnl) (Entered: 12/23/2020)
12/23/2020	102	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated December 18, 2020 re: Cover Letter for Reply Memorandum for Renewed Bail Application (Everdell, Christian) (Entered: 12/23/2020)
12/23/2020	103	REPLY MEMORANDUM OF LAW in Support by Ghislaine Maxwell *re: Renewed Motion for Bail*. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Everdell, Christian) (Entered: 12/23/2020)
12/28/2020	104	ORDER as to Ghislaine Maxwell. On December 8, 2020, Defendant Ghislaine Maxwell filed a renewed motion for releaseon bail. Dkt No. 97. In an Opinion and Order concurrently filed under temporary seal, the Court DENIES the Defendant's motion. In light of the fact that the Opinion includes potentially confidential information that should not be filed on the public docket, the Court will permit the parties 48 hours to propose any redactions to the Courts Opinion and Order and to justify those redactions by reference tothe Second Circuits decision in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110(2d Cir. 2006). After determining which, if any, portions of the Opinion and Order should be redacted, the Court will file the Opinion and Order on the public docket. As a result, the Court concludes that the Government has met its burden of persuasion that the Defendant poses a flight risk and that pretrial detention continues to be warranted. On or before December 30, 2020, the parties are ORDERED to submit a joint letter indicating whether they propose any redactions and the justification for any such proposal. This resolves Dkt No. 97. (Signed by Judge Alison J. Nathan on 12/28/20)(jw) (Entered: 12/28/2020)
12/30/2020	105	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated December 30, 2020 re: Joint Letter re December 28, 2020 Opinion and Order Document filed by USA. (Comey, Maurene) (Entered: 12/30/2020)
12/30/2020	106	OPINION AND ORDER as to Ghislaine Maxwell. Defendant Ghislaine Maxwell has been indicted by a grand jury on charges of conspiracy to entice minors to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 371; enticing a minor to travel to engage in illegal sex acts, in violation of 18 U.S.C. §§ 2422 and 2; conspiracy to transport minors to participate in illegal sex acts, in violation of 18 U.S.C. § 371; transporting minors to participate in illegal sex acts, in violation of 18 U.S.C. §§ 2423 and 2; and two charges of perjury, in violation of 18 U.S.C. § 1623. The Court held a lengthy bail hearing on July 14, 2020. After extensive briefing and argument at the hearing, the Court concluded that the Defendant was a clear risk of flight and that no conditions or combination of conditions would ensure her appearance. Defendant Ghislaine Maxwells renewed motion for release on bail, Dkt. No. 97, is DENIED. (Signed by Judge Alison J. Nathan on 12/28/20)(jw) (Entered: 12/30/2020)

12/31/2020	107	LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated December 31, 2020 re: Extension of Time . Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 12/31/2020)
01/05/2021	108	MEMO ENDORSEMENT as to Ghislaine Maxwell (1) on 107 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated December 31, 2020 re: Extension of Time. ENDORSEMENT: SO ORDERED. (Signed by Judge Alison J. Nathan on 1/5/2021) (ap) (Entered: 01/05/2021)
01/05/2021		Set/Reset Deadlines as to Ghislaine Maxwell: Motions due by 1/25/2021. Responses due by 2/26/2021. Replies due by 3/5/2021. (ap) (Entered: 01/05/2021)
01/08/2021	109	LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated January 8, 2021 re: Extension of Time to File Notice of Appeal . Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 01/08/2021)
01/11/2021	110	SEALED DOCUMENT placed in vault. (jus) (Entered: 01/11/2021)
01/11/2021	111	SEALED DOCUMENT placed in vault. (jus) (Entered: 01/11/2021)
01/11/2021	112	MEMO ENDORSEMENT as to Ghislaine Maxwell (1) denying 109 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated January 8, 2021 re: Extension of Time to File Notice of Appeal. ENDORSEMENT: The request is denied. Good cause for an extension of time to file a notice of appeal has not been provided. SO ORDERED. (Signed by Judge Alison J. Nathan on 1/11/2021) (lnl) (Entered: 01/11/2021)
01/11/2021	113	NOTICE OF APPEAL by Ghislaine Maxwell from 104 Order. (nd) (Entered: 01/12/2021)
01/11/2021		Appeal Remark as to re: 113 Notice of Appeal by Ghislaine Maxwell. $505.00 Appeal filing fee due. (nd) (Entered: 01/12/2021)
01/12/2021		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Ghislaine Maxwell to US Court of Appeals re: 113 Notice of Appeal. (nd) (Entered: 01/12/2021)
01/12/2021		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to Ghislaine Maxwell re: 113 Notice of Appeal were transmitted to the U.S. Court of Appeals. (nd) (Entered: 01/12/2021)
01/13/2021	114	INTERNET CITATION NOTE as to Ghislaine Maxwell: Material from decision with Internet citation re: 106 Memorandum & Opinion. (sjo) (Entered: 01/13/2021)
01/14/2021	115	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated January 14, 2021 re: Laptop Access (Everdell, Christian) (Entered: 01/14/2021)
01/15/2021	116	MEMO ENDORSEMENT as to Ghislaine Maxwell on 115 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated January 14, 2021 re: Laptop Access. ENDORSEMENT: The unobjected−to request is GRANTED. The Bureau of Prisons is ORDERED to give the Defendant access to the laptop computer on weekends and holidays during the hours that she is permitted to review discovery. SO ORDERED. (Signed by Judge Alison J. Nathan on 1/15/2021) (lnl) (Entered: 01/15/2021)
01/15/2021		USCA Case Number 21−0058 from the U.S. Court of Appeals, 2nd Circ. as to Ghislaine Maxwell, assigned to 113 Notice of Appeal filed by Ghislaine Maxwell. (nd) (Entered: 01/15/2021)
01/15/2021		USCA Appeal Fees received $ 505.00, receipt number 465401271727 as to Ghislaine Maxwell on 01/15/2021 re: 113 Notice of Appeal filed by Ghislaine Maxwell. (nd) (Entered: 01/15/2021)
01/25/2021	117	ORDER as to Ghislaine Maxwell: On January 25, 2021, the Court received by email the attached letter from the Bureau of Prisons ("BOP"). In the letter, the BOP requests that the Court vacate its January 15, 2021 Order, Dkt. No. 116, which directed the BOP to give the Defendant access to her Government provided laptop computer on weekends and holidays during the hours that she is permitted to review discovery. The Defendant and the Government may respond to the BOP's letter within one week of

		this Order. (Signed by Judge Alison J. Nathan on 1/25/2021) (ap) (Entered: 01/25/2021)
01/25/2021	118	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Mark S. Cohen dated January 25, 2021 re: Pretrial Motions (Cohen, Mark) (Entered: 01/25/2021)
01/25/2021	119	MOTION for Separate Trial on Counts Ghislaine Maxwell (1) Count 5s−6s,5−6 . Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 01/25/2021)
01/25/2021	120	MEMORANDUM in Support by Ghislaine Maxwell re 119 MOTION for Separate Trial on Counts Ghislaine Maxwell (1) Count 5s−6s,5−6 .. (Pagliuca, Jeffrey) (Entered: 01/25/2021)
01/25/2021	121	MOTION to Dismiss *Either Count One Or Count Three of the Superseding Indictment as Multiplicitous*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 01/25/2021)
01/25/2021	122	MEMORANDUM in Support by Ghislaine Maxwell re 121 MOTION to Dismiss *Either Count One Or Count Three of the Superseding Indictment as Multiplicitous*.. (Pagliuca, Jeffrey) (Entered: 01/25/2021)
01/25/2021	123	MOTION to Dismiss *Counts One through Four of the Superseding Indictment for Lack of Specificity*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 01/25/2021)
01/25/2021	124	MEMORANDUM in Support by Ghislaine Maxwell re 123 MOTION to Dismiss *Counts One through Four of the Superseding Indictment for Lack of Specificity*.. (Pagliuca, Jeffrey) (Entered: 01/25/2021)
01/25/2021	125	MOTION to Dismiss *the Superseding Indictment as it was Obtained in Violation of the Sixth Amendment*. Document filed by Ghislaine Maxwell. (Cohen, Mark) (Entered: 01/25/2021)
01/25/2021	126	MEMORANDUM in Support by Ghislaine Maxwell re 125 MOTION to Dismiss *the Superseding Indictment as it was Obtained in Violation of the Sixth Amendment*.. (Cohen, Mark) (Entered: 01/25/2021)
01/26/2021	127	ORDER as to Ghislaine Maxwell: On January 25, 2021, the Defendant filed twelve pre−trial motions. Because there is a request to redact sensitive or confidential information, several of the motions have been filed under temporary seal. The Government may respond to the Defendant's proposed redactions within two days of this Order. (Signed by Judge Alison J. Nathan on 1/26/2021) (ap) (Entered: 01/26/2021)
01/28/2021	128	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated January 28, 2021 re: Defendant's Proposed Redactions to Pre−Trial Motions Document filed by USA. (Pomerantz, Lara) (Entered: 01/28/2021)
02/01/2021	129	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated February 1, 2021 re: MDC Laptop Access Document filed by USA. (Comey, Maurene) (Entered: 02/01/2021)
02/01/2021	130	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 02/02/2021 re: Opposition to MDC letter (Sternheim, Bobbi) (Entered: 02/01/2021)
02/02/2021	131	MEMO ENDORSEMENT as to Ghislaine Maxwell on Letter addressed to Judge Alison J. Nathan from Sophia Papapetru (Staff Attorney, MDC Brooklyn, Federal Bureau of Prisons) dated January 25, 2021. ENDORSEMENT: Having considered the request submitted by the Bureau of Prisons ("BOP") that the Court vacate its January 15, 2021 Order, Dkt. No. 117, as well as the Government's and the Defendant's responses, Dkt. Nos. 129, 130, the Court hereby DENIES the BOP's request to vacate the Order. SO ORDERED. (Signed by Judge Alison J. Nathan on 2/2/2021)(bw) (Entered: 02/02/2021)

02/04/2021	132	ORDER as to Ghislaine Maxwell: The Defendant is hereby ORDERED to docket the redacted documents and corresponding exhibits by no later than February 5, 2021. With respect to Motion 3, the Defendant is ORDERED to docket the version that includes the Government's proposed redactions in addition to her own. SO ORDERED. (Signed by Judge Alison J. Nathan on 2/4/2021)(See ORDER as set forth) (lnl) (Entered: 02/04/2021)
02/04/2021	133	MOTION to Suppress *Under the Due Process Clause All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five and Six*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	134	MEMORANDUM in Support by Ghislaine Maxwell re 133 MOTION to Suppress *Under the Due Process Clause All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five and Six*.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I)(Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	135	MOTION to Dismiss *Counts Five and Six of the Superseding Indictment Because the Alleged Misstatements are Not Perjurious as a Matter of Law*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	136	MEMORANDUM in Support by Ghislaine Maxwell re 135 MOTION to Dismiss *Counts Five and Six of the Superseding Indictment Because the Alleged Misstatements are Not Perjurious as a Matter of Law*.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K)(Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	137	MOTION to Dismiss *Counts One Through Six of the Superseding Indictment for Pre−Indictment Delay*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	138	MEMORANDUM in Support by Ghislaine Maxwell re 137 MOTION to Dismiss *Counts One Through Six of the Superseding Indictment for Pre−Indictment Delay*.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	139	MOTION to Suppress *Under the Fourth Amendment, Martindell, and the Fifth Amendment All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five And Six*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	140	MEMORANDUM in Support by Ghislaine Maxwell re 139 MOTION to Suppress *Under the Fourth Amendment, Martindell, and the Fifth Amendment All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five And Six*.. (Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	141	MOTION to Dismiss *the Superseding Indictment for Breach of Non−Prosecution Agreement*. Document filed by Ghislaine Maxwell. (Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	142	MEMORANDUM in Support by Ghislaine Maxwell re 141 MOTION to Dismiss *the Superseding Indictment for Breach of Non−Prosecution Agreement*.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C (Sealed), # 4 Exhibit D (Sealed), # 5 Exhibit E (Sealed), # 6 Exhibit F (Sealed), # 7 Exhibit G (Sealed), # 8 Exhibit H (Sealed))(Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	143	MOTION to Dismiss *Counts One Through Four of the Superseding Indictment as Time−Barred*. Document filed by Ghislaine Maxwell. (Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	144	MEMORANDUM in Support by Ghislaine Maxwell re 143 MOTION to Dismiss *Counts One Through Four of the Superseding Indictment as Time−Barred*.. (Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	145	MOTION to Strike *Surplusage from Superseding Indictment*. Document filed by Ghislaine Maxwell. (Cohen, Mark) (Entered: 02/04/2021)

02/04/2021	146	MEMORANDUM in Support by Ghislaine Maxwell re 145 MOTION to Strike *Surplusage from Superseding Indictment*.. (Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	147	MOTION for Bill of Particulars *and Pretrial Disclosures*. Document filed by Ghislaine Maxwell. (Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	148	MEMORANDUM in Support by Ghislaine Maxwell re 147 MOTION for Bill of Particulars *and Pretrial Disclosures*.. (Attachments: # 1 Exhibit A, # 2 Exhibit B (Sealed), # 3 Exhibit C (Sealed), # 4 Exhibit D (Sealed), # 5 Exhibit E)(Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	149	AFFIDAVIT of Bobbi C. Sternheim in Support as to Ghislaine Maxwell re 147 MOTION for Bill of Particulars *and Pretrial Disclosures*.. (Cohen, Mark) (Entered: 02/04/2021)
02/05/2021	150	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	151	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	152	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	153	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	154	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	155	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	156	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	157	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	158	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated February 5, 2021 re: MDC Conditions Update Document filed by USA. (Comey, Maurene) (Entered: 02/05/2021)
02/16/2021	159	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 02/16/2021 re: Conditions of Pretrial Confinement (Sternheim, Bobbi) (Entered: 02/16/2021)
02/23/2021	160	THIRD MOTION for Bond . Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 02/23/2021)
02/24/2021	161	ORDER as to Ghislaine Maxwell: On February 23, 2021, Defendant Ghislaine Maxwell filed a third motion for release on bail. Dkt. No. 160. The Government's response is due March 9, 2021, and the Defendants reply is due March 16, 2021. SO ORDERED. (Responses due by 3/9/2021. Replies due by 3/16/2021.) (Signed by Judge Alison J. Nathan on 2/24/2021) (lnl) (Entered: 02/24/2021)
02/26/2021	162	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated February 26, 2021 re: Cover Letter for Government Opposition to Defense Pretrial Motions Document filed by USA. (Comey, Maurene) (Entered: 02/26/2021)
03/01/2021	163	LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated March 1, 2021 re: Extension of Time to File Reply to Government Opposition to Defense Pretrial Motions . Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 03/01/2021)
03/01/2021	164	MEMO ENDORSEMENT 163 LETTER MOTION To request a 10−day extension of time until Monday, March 15, 2021 to file our reply re: 163 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated March 1, 2021 re: Extension of Time to File Briefing Schedule...ENDORSEMENT...The Defendant's request is GRANTED. Her reply to the Government's Omnibus Memorandum in Opposition to the Defendants Pretrial Motions is now due on March 15, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/1/21) (jw) (Entered: 03/01/2021)
03/01/2021		Set/Reset Deadlines/Hearings as to Ghislaine Maxwell: Defendant Replies due by 3/15/2021 (jw) (Entered: 03/01/2021)

03/09/2021	165	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated March 9, 2021 re: Opposition to Third Bail Motion Document filed by USA. (Attachments: # 1 Exhibit A)(Pomerantz, Lara) (Entered: 03/09/2021)
03/15/2021	166	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated March 15, 2021 re: Pretrial Motion Replies (Everdell, Christian) (Entered: 03/15/2021)
03/16/2021	167	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 03/16/2021 re: Letter regarding Reply to Bail Motion (Sternheim, Bobbi) (Entered: 03/16/2021)
03/18/2021	168	ORDER as to Ghislaine Maxwell. On February 26, 2021, the Government filed its omnibus memorandum of law opposing Defendants' twelve pretrial motions. It filed the brief, along with the corresponding exhibits, under temporary seal pending the Court's resolution of its request to redact sensitive or confidential information. See Dkt. No. 162. On March 9, 2021, the Defendant objected to certain of the redactions that the Government had proposed, and she proposed additional redactions. Having considered the parties' respective positions, the Court will grant the Government's requests for redactions and sealing, as well as the Defendant's additional redaction requests, with the exceptions discussed below. Finally, the Court denies the Governments request to file Exhibit 11 entirely under seal. While portions of that transcript have been redacted, other portions are part of the public record. See Giuffre v. Maxwell, Case No. 15−cv−7433, Dkt. No. 1212−1. In light of this, the Court sees no basis to file the transcript entirely under seal rather than by redacting the relevant portions. In light of the above, the Government is hereby ORDERED to either docket on ECF their brief and the corresponding exhibits, consistent with this Order, or to file a letter with the Court justifying more tailored redaction and sealing requests regarding pages 1128 and 187188 and Exhibits 8 and 9 by no later than March 22, 2021. The parties are further ORDERED to meet, confer, and jointly propose redactions to the Defendant's cover letter objecting to the Government's proposed redactions by March 22, 2021. Finally, the parties are ORDERED to meet, confer, and propose redactions to Exhibit 11 of the Government's submission by March 22, 2021 (Signed by Judge Alison J. Nathan on 3/18/21)(jw) (Entered: 03/18/2021)
03/22/2021	169	ORDER as to Ghislaine Maxwell: Defendant Ghislaine Maxwell's third motion for release on bail, Dkt. No. 160, is DENIED. The parties are ORDERED to meet and confer and propose and justify any redactions to the Defendant's reply brief by March 24, 2021. If they conclude that redactions are unnecessary, the Defendant is ORDERED to docket the unredacted version of the brief by March 24, 2021. (Signed by Judge Alison J. Nathan on 3/22/2021) (See ORDER set forth) (ap) Modified on 3/23/2021 (ap). (Entered: 03/22/2021)
03/22/2021	170	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated March 22, 2021 re: Redactions to Government Opposition to Defense Pretrial Motions Document filed by USA. (Pomerantz, Lara) (Entered: 03/22/2021)
03/23/2021	171	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 160 THIRD MOTION for Bond . . (Sternheim, Bobbi) (Entered: 03/23/2021)
03/24/2021	172	ORDER as to Ghislaine Maxwell. On March 5, 2021, Defendant Ghislaine Maxwell submitted to the Court an application for an order authorizing a subpoena pursuant to Rule 17(c)(3) of the Federal Rules of Criminal Procedure. The proposed subpoena was directed at a law firm that represents alleged victims of the Defendant. As is standard for Rule 17(c) subpoenas, the application was made ex parte and under seal on the ground that it reveals defense strategy....[*** See this Order ***]... Rule 17(c)(3) provides that "[a]fter [an indictment] is filed, a subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order," but "before entering the order and unless there are exceptional circumstances, the court must require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object." Fed. R. Crim. P. 17(c)(3). Consistent with the Rule, on March 12, 2021, in a sealed ex parte Order, the Court required defense counsel to provide notice to alleged victims whose personal or confidential information may be disclosed by the proposed subpoena. The Court also gave the alleged victims an opportunity to object to or request modifications of the

		subpoena as required by Rule 17(c)(3). On March 19, 2021, the Court received a letter from the law firm indicating that it can provide notice to alleged victims whose personal or confidential information may be elicited by the subpoena. The law firm shall provide notice to any such alleged victims it represents. In that letter, the law firm also interposed substantial objections on behalf of the law firm and the alleged victims it represents. Those objections are functionally the equivalent of a motion to quash, even though the subpoena has not yet issued. So that the Court can receive adversarial briefing on the proposed subpoena comparable to a motion to quash, the law firm shall enter an appearance and file its objections on the public docket. See United States v. Ray, No. 20−CR−110 (LJL), 2020 WL 6939677, at *10 (S.D.N.Y. Nov. 25, 2020) ("[I]f the Court determines that the subpoena calls for personal or confidential information about a victim, it requires the requesting party have given notice to the victim before it permits the service of the subpoena. If the victim objects, the Court will then determine whether to modify or quash the subpoena, including on grounds that Nixon was not satisfied."). In advance of noticing an appearance and filing, the law firm shall meet and confer with defense counsel to see if any issues can be narrowed before formal briefing. Moreover, prior to filing, the law firm shall confer with defense counsel as to any proposed, necessary, and tailored redactions to the objections. The law firm's objections with any proposed redactions shall be filed on or before March 26, 2021. Any redactions must be justified consistent with Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). Within one week of the filing of objections, defense counsel may respond to the subpoena objections. The law firm may reply within three days of the Defendant's response.(See Citation 1 on this Order). Counsel shall confer regarding any proposed redactions for all briefing. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/24/2021)(bw) (Entered: 03/24/2021)
03/24/2021	173	NOTICE OF APPEAL by Ghislaine Maxwell from 169 Order, Terminate Motions. (tp) (Additional attachment(s) added on 4/1/2021: # 1 Appeal Fee) (tp). (Entered: 03/24/2021)
03/24/2021		Appeal Remark as to Ghislaine Maxwell re: 173 Notice of Appeal. $505.00 Appeal Fee Due. (tp) (Entered: 03/24/2021)
03/24/2021		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Ghislaine Maxwell to US Court of Appeals re: 173 Notice of Appeal. (tp) (Entered: 03/24/2021)
03/24/2021		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to Ghislaine Maxwell re: 173 Notice of Appeal were transmitted to the U.S. Court of Appeals. (tp) (Entered: 03/24/2021)
03/24/2021	174	SEALED DOCUMENT placed in vault. (dn) (Entered: 03/24/2021)
03/24/2021	175	SEALED DOCUMENT placed in vault. (dn) (Entered: 03/24/2021)
03/24/2021	176	SEALED DOCUMENT placed in vault. (dn) (Entered: 03/24/2021)
03/24/2021	177	SEALED DOCUMENT placed in vault. (dn) (Entered: 03/24/2021)
03/24/2021	178	SEALED DOCUMENT placed in vault. (dn) (Entered: 03/24/2021)
03/24/2021	179	SEALED DOCUMENT placed in vault. (dn) (Entered: 03/24/2021)
03/26/2021	180	NOTICE of Appearance of David Boies for Boies Schiller Flexner LLP and the Victims it Represents as to Ghislaine Maxwell (Boies, David) (Entered: 03/26/2021)
03/26/2021	181	NOTICE of Appearance of Sigrid S. McCawley for Boies Schiller Flexner LLP and the Victims it Represents as to Ghislaine Maxwell (McCawley, Sigrid) (Entered: 03/26/2021)
03/26/2021	182	MOTION for Sigrid S. McCawley to Appear Pro Hac Vice . Filing fee $ 200.00, receipt number ANYSDC−24312691. **Motion and supporting papers to be reviewed by Clerk's Office staff.** Document filed by Boies Schiller Flexner LLP as to Ghislaine Maxwell. (Attachments: # 1 Declaration of Sigrid S. McCawley, # 2 Florida Certificate of Good Standing, # 3 District of Columbia Certificate of Good Standing, # 4 Text of Proposed Order)(McCawley, Sigrid) (Entered: 03/26/2021)

03/26/2021		**>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. 182 MOTION for Sigrid S. McCawley to Appear Pro Hac Vice . Filing fee $ 200.00, receipt number ANYSDC−24312691. Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (wb)** (Entered: 03/26/2021)
03/26/2021	183	LETTER by Boies Schiller Flexner LLP as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid S. McCawley dated March 22, 2021 re: Objection to Defendant Ghislaine Maxwell's motion for an order authorizing a Rule 17(c) subpoena. Document filed by Boies Schiller Flexner LLP. (McCawley, Sigrid) (Entered: 03/26/2021)
03/26/2021	184	LETTER by Boies Schiller Flexner LLP as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid S. McCawley dated March 26, 2021 re: Proposed redactions to March 22, 2021 Letter (ECF No. 183) Document filed by Boies Schiller Flexner LLP. (McCawley, Sigrid) (Entered: 03/26/2021)
03/26/2021	185	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated March 26, 2021 re: Recent decision in United States v. Schulte, 17 Cr. 548 (PAC) Document filed by USA. (Attachments: # 1 Exhibit 1)(Comey, Maurene) (Entered: 03/26/2021)
03/26/2021	186	ORDER as to Ghislaine Maxwell: The Court sees no reason to maintain the redactions on Boies Schiller Flexner LLP's March 26, 2021 letter. Dkt. No. 183. Unless the Government indicates an objection to removing those redactions by March 29, 2021, BSF shall file the unredacted version on the docket on March 30, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/26/2021) (lnl) (Entered: 03/26/2021)
03/29/2021	187	(S2) SUPERSEDING INDICTMENT FILED as to Ghislaine Maxwell (1) count(s) 1ss, 2ss, 3ss, 4ss, 5ss, 6ss, 7ss−8ss. (jm) (Entered: 03/29/2021)
03/29/2021	188	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated March 29, 2021 re: S2 Superseding Indictment Document filed by USA. (Comey, Maurene) (Entered: 03/29/2021)
03/29/2021	189	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's letter responding to its March 18, 2021 order regarding redactions to its omnibus memorandum of law in opposition to the Defendants twelve pretrial motions. Dkt. No. 170. the Court ORDERS that the information contained on pages 129134 of the Governments brief be unredacted. With respect to the proposed redactions to pages 118119 and Exhibit 11, the Court now understands that the parties seek redactions on the basis that the material has been maintained under seal in Giuffre v. Maxwell, Case No 15−cv−7433 (S.D.N.Y.). By April 1, 2021, the parties must meet and confer and either submit to the Court justification for those redactionsbeyond that it has been ordered redacted in the civil matteror, in the alternative, notify the Court that the parties are no longer seeking those redactions. If the parties disagree, they shall indicate their separate views in the joint letter. (Signed by Judge Alison J. Nathan on 3/29/21)(jw) (Entered: 03/29/2021)
03/29/2021	190	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated March 29, 2021 re: Clarification re October 7, 2020 Letter Document filed by USA. (Comey, Maurene) (Entered: 03/29/2021)
03/29/2021		USCA Appeal Fees received $ 505.00, receipt number 465401276762 as to Ghislaine Maxwell on 3/25/2021 re: 173 Notice of Appeal − Final Judgment filed by Ghislaine Maxwell. (tp) (Entered: 04/01/2021)
03/30/2021	191	LETTER by Boies Schiller Flexner LLP as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid S. McCawley dated March 22,2021 re: Unredacted Objection to Defendant Ghislaine Maxwell's motion for an order authorizing a Rule 17(c) subpoena. Document filed by Boies Schiller Flexner LLP. (McCawley, Sigrid) (Entered: 03/30/2021)

03/31/2021	192	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 03/31/2021 re: Filing of Second Superseding Indictment (Sternheim, Bobbi) (Entered: 03/31/2021)
04/02/2021		ORDER granting 182 Motion for Sigrid S. McCawley to Appear Pro Hac Vice as to Ghislaine Maxwell (1). (Signed by Judge Alison J. Nathan on 4/2/2021) (kwi) (Entered: 04/02/2021)
04/02/2021	193	ORDER as to Ghislaine Maxwell. An arraignment on the S2 Superseding Indictment and a status conference is hereby tentatively scheduled for April 16, 2021. As requested by the Defendant, the proceeding will take place in person. The Court is making logistical arrangements and will provide more information when it is available. The Government is ORDERED to respond to the issues raised in the Defendants March 31, 2021 letter, Dkt. No. 192, by April 9, 2021(Government Responses due by 4/9/2021) (Signed by Judge Alison J. Nathan on 4/2/21)(jw) (Entered: 04/02/2021)
04/05/2021	194	LETTER MOTION addressed to Judge Alison J. Nathan from Laura A. Menninger dated April 5, 2021 re: Unopposed Request for One−Week Continuance of Arraignment . Document filed by Ghislaine Maxwell. (Menninger, Laura) (Entered: 04/05/2021)
04/05/2021	195	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 5, 2021 re: Notice of Rule 17(c) subpoenas . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 04/05/2021)
04/06/2021	196	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated April 6, 2021 re: MDC Conditions Update Document filed by USA. (Comey, Maurene) (Entered: 04/06/2021)
04/07/2021	197	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/07/2021 re: Response to Government MDC Update (Sternheim, Bobbi) (Entered: 04/07/2021)
04/08/2021	198	ORDER as to Ghislaine Maxwell: The Defendant's request to adjourn the arraignment on the S2 Superseding Indictment is GRANTED. Dkt. No. 194. The arraignment is RE−SCHEDULED to occur on April 23, 2021 at 2:30 p.m. It will take place at the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, Courtroom 24B, New York, NY 10007. It is ORDERED that the parties ensure that all participants comply with the Southern District of New Yorks COVID−19−related orders that govern entry into and behavior within SDNY courthouses. These materials may be found at: https://www.nysd.uscourts.gov/covid−19−coronavirus. Court staff are working on the logistical arrangements related to public access (including a public dial−in number), and as soon as that information is available it will be provided in a public order. SO ORDERED. (Arraignment set for 4/23/2021 at 02:30 PM in Courtroom 24B, 500 Pearl Street, New York, NY 10007 before Judge Alison J. Nathan) (Signed by Judge Alison J. Nathan on 4/8/2021) (lnl) (Entered: 04/08/2021)
04/09/2021	199	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 9, 2021 re: Response to Defense March 31, 2021 Letter Document filed by USA. (Comey, Maurene) (Entered: 04/09/2021)
04/14/2021	200	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/13/2021 re: Proposed Order to Marshal (Sternheim, Bobbi) (Entered: 04/14/2021)
04/14/2021	201	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 200 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/13/2021 re: Proposed Order to Marshal. ENDORSEMENT: After conferring with the District Executive and the United States Marshal for the Southern District of New York, the Court denies the request. The U.S. Marshall has a generally applicable policy that prohibits inmates being held in the Courthouse cellblocks from possessing any materials or items. The circumstances do not warrant an exception to that policy. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/14/2021)(bw) (Entered: 04/14/2021)

04/15/2021	202	MOTION to Continue *Trial Date*. Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 04/15/2021)
04/16/2021	203	ORDER as to Ghislaine Maxwell: The Court is in receipt of the parties' joint letter responding to the Court's March 29, 2021 Order. The parties agree that the redactions to pages 118 and 119 are no longer necessary. The Defendant continues to press for the redactions on pages 129134. However, for the reasons stated in the Court's March 29, 2021 Order, the information is already part of the public record in this case and accordingly the proposed redactions are unnecessary and overbroad. Dkt. No. 189; see also United States v. Nejad, No. 18−CR−224 (AJN), 2021 WL 681427, at *11 (S.D.N.Y. Feb. 22, 2021). For the reasons stated in the Court's March 18, 2021 and March 29, 2021 Orders, the Court approves the limited redactions to Exhibit 11 to the Government's brief, except for the language quoted in the Indictment, which is already part of the public record. The Government is therefore ORDERED to docket its omnibus memorandum of law, along with the corresponding exhibits, by 3:00 p.m. today, consistent with the Court's orders regarding redactions. The parties are further ORDERED to docket their April 1, 2021 joint letter; if either side believes that portions of that letter should be redacted, they shall propose redactions by April 19, 2021. (Signed by Judge Alison J. Nathan on 4/16/2021) (ap) (Entered: 04/16/2021)
04/16/2021	204	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 139 MOTION to Suppress *Under the Fourth Amendment, Martindell, and the Fifth Amendment All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five And Six.*, 123 MOTION to Dismiss *Counts One through Four of the Superseding Indictment for Lack of Specificity.*, 135 MOTION to Dismiss *Counts Five and Six of the Superseding Indictment Because the Alleged Misstatements are Not Perjurious as a Matter of Law.*, 121 MOTION to Dismiss *Either Count One Or Count Three of the Superseding Indictment as Multiplicitous.*, 125 MOTION to Dismiss *the Superseding Indictment as it was Obtained in Violation of the Sixth Amendment.*, 147 MOTION for Bill of Particulars *and Pretrial Disclosures.*, 119 MOTION for Separate Trial on Counts Ghislaine Maxwell (1) Count 5s−6s,5−6 ., 133 MOTION to Suppress *Under the Due Process Clause All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five and Six.*, 145 MOTION to Strike *Surplusage from Superseding Indictment.*, 143 MOTION to Dismiss *Counts One Through Four of the Superseding Indictment as Time−Barred.*, 137 MOTION to Dismiss *Counts One Through Six of the Superseding Indictment for Pre−Indictment Delay.*, 141 MOTION to Dismiss *the Superseding Indictment for Breach of Non−Prosecution Agreement.*. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12)(Pomerantz, Lara) (Entered: 04/16/2021)
04/16/2021	205	ORDER as to Ghislaine Maxwell: On March 15, 2021, the Defendant filed under seal her reply briefs to the Government memorandum of law opposing Defendants' twelve pre−trial motions. She filed the briefs, along with the corresponding exhibits, temporarily under seal in order to permit the Government and the Court to review certain proposed redactions. Of the twelve reply briefs, Reply Briefs 2, 4, 7, 8, 9, 11, and 12 did not contain any redaction or sealing requests. Reply Briefs 1, 3, 5, 6, and 10 contain limited proposed redactions. Reply Briefs 3, 6, and 10 also contain exhibits that the Defendant proposes be filed under seal. As set forth in the Defendant's cover letter, the premise of the proposed redactions is that the materials were produced in discovery and subject to the protective order that has been entered in this case. The mere existence of a confidentiality agreement or a protective order covering judicial documents is insufficient to overcome the presumption of access. See Aioi Nissay Dowa Ins. Co. v. Prosight Specialty Mgmt. Co., Inc., 12−cv−3274 (JPO), 2012 WL 3583176, at *6 (S.D.N.Y. Aug. 21, 2012). And the Court did not receive specific requests or justifications to redact or seal any of the materials. The Defendant is ORDERED to docket Reply Briefs 2, 4, 7, 8, 9, 11, and 12 on ECF today, as she did not propose any redactions to these and the Government has not voiced any opposition to these being filed without redactions. If either side is seeking these or any other redactions to the remaining reply briefs, they must file a letter indicating the redactions they request and providing specific justifications for the sealing requests or redactions, in line with the principles set forth in Lugosch. By April 20, 2021, the parties shall confer and submit a letter informing the Court whether any redactions are being sought. If no redactions are being sought, the Defendant is ORDERED to docket the

		remaining reply briefs on ECF by April 20, 2021. (Signed by Judge Alison J. Nathan on 4/16/2021) (ap) (Entered: 04/16/2021)
04/16/2021	206	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 143 MOTION to Dismiss *Counts One Through Four of the Superseding Indictment as Time−Barred*. . (Everdell, Christian) (Entered: 04/16/2021)
04/16/2021	207	OPINION & ORDER as to Ghislaine Maxwell. In June 2020, a grand jury returned a six−count indictment charging Ghislaine Maxwell with facilitating the late financier Jeffrey Epstein's sexual abuse of minor victims from around 1994 to 1997. The Government filed a first (S1) superseding indictment shortly thereafter, which contained only small, ministerial corrections. The S1 superseding indictment included two counts of enticement or transportation of minors to engage in illegal sex acts in violation of the Mann Act and two counts of conspiracy to commit those offenses. It also included two counts of perjury in connection with Maxwell's testimony in a civil deposition. Trial is set to begin on July 12, 2021. Maxwell filed twelve pretrial motions seeking to dismiss portions of the S1 superseding indictment, suppress evidence, and compel discovery. After the parties fully briefed those motions, a grand jury returned a second (S2) superseding indictment adding a sex trafficking count and another related conspiracy count. This Opinion resolves all of Maxwell's currently pending pretrial motions other than those seeking to suppress evidence, which the Court will resolve in due course. The motions, and this Opinion, deal exclusively with the S1 superseding indictment and do not resolve any issues related to the newly added sex trafficking charges. For the reasons that follow, the Court denies Maxwell's motions to dismiss the S1 superseding indictment in whole or in part. It grants her motion to sever the perjury charges for a separate trial. It denies her motion to further expedite discovery. The Court provides a brief summary of its conclusions here and its reasoning on the pages that follow:...[*** See this Opinion & Order ***]... Conclusion: The Court DENIES Maxwell's motions to dismiss the indictment as barred by Epstein's non−prosecution agreement (Dkt. No. 141), to dismiss the Mann Act counts as barred by the statute of limitations (Dkt. No. 143), to dismiss the indictment for pre−indictment delay (Dkt. No. 137), to dismiss the Mann Act counts for lack of specificity (Dkt. No. 123), to dismiss the perjury counts as legally untenable (Dkt. No. 135), to strike surplusage (Dkt. No. 145), to dismiss count one or count three as multiplicitous (Dkt. No. 121), and to expedite pretrial disclosures (Dkt. No. 147). The Court GRANTS Maxwell's motion to sever the perjury counts for a separate trial (Dkt. No. 119). The Court ORDERS the Government to confirm within one week whether it considers any evidence related to negotiation of the non−prosecution agreement to constitute Brady or Rule 16 material and, if so, to confirm that it has or will disclose such evidence. The Court further ORDERS the parties to negotiate a final schedule for all pretrial disclosures that remain outstanding, including: Brady, Giglio, and Jenks Act materials, including co−conspirator statements; non−testifying witness statements; testifying witness statements; the identity of victims alleged in the indictment; 404(b) material; and the Government's witness list. The Court also requires the parties to negotiate a schedule for any additional or supplemental motions briefing in light of the S2 indictment. The Court ORDERS a joint proposal to be submitted by April 21, 2021. If agreement is not reached, the parties shall submit their respective proposals. The Court further ORDERS Maxwell to show cause by April 21, 2021 why her motion to dismiss the S1 superseding indictment under the Sixth Amendment (Dkt. No. 125) should not be denied as moot. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/16/2021)(bw) (Entered: 04/16/2021)
04/16/2021	208	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 135 MOTION to Dismiss *Counts Five and Six of the Superseding Indictment Because the Alleged Misstatements are Not Perjurious as a Matter of Law*. . (Attachments: # 1 Exhibit L, # 2 Exhibit M, # 3 Exhibit N)(Everdell, Christian) (Entered: 04/16/2021)
04/16/2021	209	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 137 MOTION to Dismiss *Counts One Through Six of the Superseding Indictment for Pre−Indictment Delay*. . (Everdell, Christian) (Entered: 04/16/2021)
04/16/2021		Set/Reset Deadlines/Hearings as to Ghislaine Maxwell: Brief (Joint proposal by parties) due by 4/21/2021. Show Cause Response (by Defendant) due by 4/21/2021. [*** NOTE: Refer to Opinion & Order, doc.#207. ***] (bw) (Entered: 04/16/2021)

04/16/2021	210	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 121 MOTION to Dismiss *Either Count One Or Count Three of the Superseding Indictment as Multiplicitous*. . (Everdell, Christian) (Entered: 04/16/2021)
04/16/2021	211	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 125 MOTION to Dismiss *the Superseding Indictment as it was Obtained in Violation of the Sixth Amendment*. . (Everdell, Christian) (Entered: 04/16/2021)
04/16/2021	212	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 139 MOTION to Suppress *Under the Fourth Amendment, Martindell, and the Fifth Amendment All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five And Six*. . (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Everdell, Christian) (Entered: 04/16/2021)
04/16/2021	213	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 123 MOTION to Dismiss *Counts One through Four of the Superseding Indictment for Lack of Specificity*. . (Everdell, Christian) (Entered: 04/16/2021)
04/19/2021	214	ORDER as to Ghislaine Maxwell: An arraignment on the S2 Superseding Indictment is scheduled to take place on April 23, 2021 at 2:30 p.m. The proceeding will take place in Courtroom 24B of the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, NY. Given significant public interest, a video feed of the proceeding will be available for viewing in the Jury Assembly Room and Courtroom 9C at the Daniel Patrick Moynihan Courthouse. The use of any electronic devices during the proceeding in either the Courtroom or the overflow rooms is strictly prohibited. SO ORDERED. (Arraignment set for 4/23/2021 at 02:30 PM in Courtroom 24B, 500 Pearl Street, New York, NY 10007 before Judge Alison J. Nathan) (Signed by Judge Alison J. Nathan on 4/19/2021) (lnl) (Entered: 04/19/2021)
04/19/2021	215	ORDER as to Ghislaine Maxwell: IT IS ORDERED that any redaction requests for documents not already filed on the public docket must be made by April 21, 2021. Alternatively, the parties may file the unredacted versions by that date. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/19/2021) (lnl) (Entered: 04/19/2021)
04/19/2021	216	ORDER as to Ghislaine Maxwell: In its April 16, 2021 Opinion, the Court denied the Defendant's motions to dismiss the S1 superseding indictment in whole or in part and granted the Defendant' s motion to sever the perjury counts for a separate trial. Dkt. No. 207. The Court will try the non−perjury counts first. As the Court noted in its Opinion, it has not yet resolved the Defendant's two motions to suppress evidence. See Dkt. Nos. 133, 139. The Defendant contends in those motions that the Government obtained by subpoena documents covered by a protective order in violation of her rights against unreasonable searches and seizures, against self−incrimination, and to due process of law. The motions seek, at minimum, an evidentiary hearing to determine whether the Government knowingly misrepresented facts to procure an order modifying the protective order. The Court requires information from the Government for scheduling purposes. The Government is ORDERED to inform the Court by letter docketed on ECF no later than April 20, 2021, whether it intends to use any of the documents subject to the pending motions to suppress in the trial of the non−perjury counts in this case. If the Government does not intend to use any of the documents subject to the pending motions to suppress in the trial of the non−perjury counts, the Court will defer consideration of those motions until it has scheduled the trial of the perjury counts. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/19/2021) (lnl) (Entered: 04/19/2021)
04/19/2021	217	JOINT LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Laura A. Menninger dated April 1, 2021 re: Joint Letter Concerning Redactions to Omnibus Response & Exhibit 11 (Menninger, Laura) (Entered: 04/19/2021)
04/19/2021	218	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated April 15, 2021 re: Response to Government's April 5, 2021 Letter re. Ms. Maxwell's Rule 17 Subpoena (Pagliuca, Jeffrey) (Entered: 04/19/2021)
04/19/2021	219	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated April 19, 2021 re: request for extension of time to respond to the Court's April 19, 2021 Order . Document filed by USA as to Ghislaine Maxwell. (Moe, Alison) (Entered:

		04/19/2021)
04/20/2021	220	MEMO ENDORSEMENT as to Ghislaine Maxwell (1) granting in part and denying in part 219 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated April 19, 2021 re: request for extension of time to respond to the Court's April 19, 2021 Order. ENDORSEMENT: The Government's request is granted in part and denied in part. It shall respond to Dkt. No. 216 by no later than 5:00 p.m. on April 21, 2021. (Signed by Judge Alison J. Nathan on 4/20/2021) (ap) (Entered: 04/20/2021)
04/20/2021	221	ORDER as to Ghislaine Maxwell: the Court hereby ORDERS counsel for the Defendant to file written answers to the following specific questions by 12:00 p.m. on Thursday, April 22, 2021: 1. Does defense counsel continue to seek an adjournment of the July 12th start date for trial on the non−perjury counts? 2. If the answer to question 1 is yes, what is the specific request being made as to length of adjournment? In particular, is the request for a 90−day adjournment? An adjournment until January 2022? Or something else? The Court requires a specific request be made and justified or it will not be considered. If Maxwell continues to seek an adjournment, the Government may submit any response by 5:00 pm on April 22, 2021. The Court will consider the submissions and resolve expeditiously. As noted, however, unless and until an adjournment is specifically requested and granted, the parties shall assume that the Court will request a jury selection date as close to July 12th as possible and shall plan accordingly. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/20/2021) (See ORDER as set forth) (lnl) (Entered: 04/20/2021)
04/20/2021	222	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 20, 2021 re: Redactions to Defense Reply Briefs and Exhibits Document filed by USA. (Pomerantz, Lara) (Entered: 04/20/2021)
04/20/2021	223	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 141 MOTION to Dismiss *the Superseding Indictment for Breach of Non−Prosecution Agreement*. . (Attachments: # 1 Exhibit A − Sealed)(Everdell, Christian) (Entered: 04/20/2021)
04/20/2021	224	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 119 MOTION for Separate Trial on Counts Ghislaine Maxwell (1) Count 5s−6s,5−6 . . (Everdell, Christian) (Entered: 04/20/2021)
04/21/2021	225	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated April 21, 2021 re: Grand Jury Motion (Everdell, Christian) (Entered: 04/21/2021)
04/21/2021	226	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Defendant's and Boies Schiller Flexner LLPs April 19, 2021 joint letter responding to the Courts April 19, 2021 Order, Dkt. No. 215. The letter proposes limited redactions on the basis that some of the information is covered by the terms of the protective order in this case. In light of this, by April 22, 2021, the Defendant and BSF are hereby ORDERED to confer with the Government regarding whether the Government requests redaction of any information contained in the Defendant's response to BSF's objections to the Defendant's proposed Rule 17(c) subpoena, BSFs reply, and the April 19, 2021 joint letter addressing the redactions to these documents. The Government may submit any redaction requests by April 23, 2021; in doing so, the Government shall justify any proposed redactions by reference to the test articulated in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). The Defendant, BSF, and the Government are further ORDERED to notify the Court whether any party seeks redactions to the April 19, 2021 joint letter. If not, the Defendant shall file the letter on the public docket by April 23, 2021 (Signed by Judge Alison J. Nathan on 4/21/21)(jw) (Entered: 04/21/2021)
04/21/2021	227	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated April 21, 2021 re: in response to the Court's April 19, 2021 Order Document filed by USA. (Moe, Alison) (Entered: 04/21/2021)
04/21/2021	228	MEMO ENDORSEMENT as to Ghislaine Maxwell re: 225 Letter Grand Jury Motion... ENDORSEMENT: The motion to dismiss the SI superseding indictment on

		the grounds that it was returned by a grand jury sitting at the White Plains courthouse (Dkt. No. 125) is DENIED as moot. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/21/21)(jbo) (Entered: 04/21/2021)
04/21/2021	229	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 21, 2021 re: Proposed Pretrial Schedule Document filed by USA. (Comey, Maurene) (Entered: 04/21/2021)
04/21/2021	230	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated April 21, 2021 re: Proposed Pretrial Schedule (Everdell, Christian) (Entered: 04/21/2021)
04/21/2021	231	ORDER as to Ghislaine Maxwell: The Court will schedule a trial date for the severed perjury counts after trial of the non−perjury counts is completed. Given that and in light of the representations in the Government's April 21, 2021 letter, see Dkt. No. 227, the Court intends to defer resolution of the pending motions to suppress (including resolution of the request for an evidentiary hearing) until after the trial on the non−perjury counts. If either side objects, counsel shall state the basis for any objection by letter on or before by 5pm on Thursday, April 22, 2021.SO ORDERED. (Signed by Judge Alison J. Nathan on 4/21/2021) (lnl) (Entered: 04/22/2021)
04/22/2021	232	MEMO ENDORSEMENT as to Ghislaine Maxwell on 222 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 20, 2021 re: Redactions to Defense Reply Briefs and Exhibits. ENDORSEMENT: The Court grants the Government's proposed redaction and sealing requests. This conclusion 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 11920. The Court concludes that these are judicial documents and that the First Amendment and common law presumptions of access attach. In balancing competing considerations against the presumption of access, however, the Court finds that the specific arguments the Government has put forward in this letter, including the need to protect the privacy interests of third parties and alleged victims, favor the narrowly tailored redactions. See United States v. Amodeo, 71 F.3d 1044, 1050 (2d Cir. 1995). The Government's letter does not discuss Exhibit L of Reply Brief 6. By April 23, 2021, the parties shall either propose redactions to Exhibit L of Reply Brief 6, which was originally filed under seal, or they shall indicate to the Court that they seek no redactions and file it on ECF. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/22/2021) (lnl) (Entered: 04/22/2021)
04/22/2021	233	LETTER by Boies Schiller Flexner LLP as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid McCawley dated 04−22−2021 re: Request to Bring Electronic Devices Document filed by Boies Schiller Flexner LLP. (Attachments: # 1 Exhibit Electronic Device Form)(McCawley, Sigrid) (Entered: 04/22/2021)
04/22/2021	234	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated April 22, 2021 re: Response to Dkt. No. 227, Governments April 21, 2021 Letter re Ms. Maxwells Motions to Suppress (Pagliuca, Jeffrey) (Entered: 04/22/2021)
04/22/2021	235	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 22, 2021 re: Response to Defense Request for Adjournment Document filed by USA. (Comey, Maurene) (Entered: 04/22/2021)
04/22/2021	236	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 22, 2021 re: Response to the Court's April 22, 2021 Order Document filed by USA. (Pomerantz, Lara) (Entered: 04/22/2021)
04/22/2021	237	MEMO ENDORSEMENT as to Ghislaine Maxwell on 233 LETTER by Boies Schiller Flexner LLP as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid McCawley dated 04−22−2021 re: Request to Bring Electronic Devices Document.

		ENDORSEMENT: Because remote access is available for tomorrow and because no electronic devices may be used in the courtroom or overflow rooms, Dkt. No. 214, to the extent the request is for tomorrow's arraignment, that request is denied. Counsel may renew their application in advance of future proceedings. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/22/2021) (lnl) (Entered: 04/23/2021)
04/23/2021	238	SEALED DOCUMENT placed in vault. (jus) (Entered: 04/23/2021)
04/23/2021	239	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated April 23, 2021 re: in response to the Court's April 16, 2021 Order. Document filed by USA. (Moe, Alison) (Entered: 04/23/2021)
04/23/2021	240	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 23, 2021 re: Proposed Redactions Document filed by USA. (Comey, Maurene) (Entered: 04/23/2021)
04/23/2021	241	MEMO ENDORSEMENT as to Ghislaine Maxwell on 240 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 23, 2021 re: Proposed Redactions. ENDORSEMENT: The Court grants the Government's redaction requests. Its conclusion 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 11920. The Court concludes that these are judicial documents and that the First Amendment and common law presumptions of access attach. But in balancing competing considerations against the presumption of access, the Court finds that the specific arguments the Government has put forward in this letter, including the need to protect the privacy interests of third parties referenced in the documents, favor the narrowly tailored redactions. See United States v. Amodeo, 71 F.3d 1044, 1050 (2d Cir. 1995). The Defendant and Boies Schiller are hereby ORDERED to docket the respective documents with the Government's proposed redactions by April 23, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/23/2021) (lnl) (Entered: 04/23/2021)
04/23/2021	242	ORDER as to Ghislaine Maxwell: On April 22, 2021, Defendant Ghislaine Maxwell filed her response to the Court's April 21, 2021 Order, Dkt. No. 221, under temporary seal with proposed redactions. The proposed redactions are GRANTED. The Court's conclusion 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 11920. The Court concludes that these are judicial documents and that the First Amendment and common law presumptions of access attach. In balancing competing considerations against the presumption of access, however, the Court finds that the proposed redactions are narrowly tailored to protect the privacy interests of defense lawyers' clients in other matters and to allow defense counsel to comply with their professional obligations under the rules of professional conduct. The Defendant is ORDERED to docket the redacted version of her letter by April 23, 2021. The Defendant is further ORDERED to docket the basis for the redaction request, originally sent by email, on ECF by April 23, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/23/2021) (lnl) (Entered: 04/23/2021)
04/23/2021	243	MEMO ENDORSEMENT as to Ghislaine Maxwell on 234 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated April 22, 2021 re: Response to Dkt. No. 227, Governments April 21, 2021 Letter re Ms. Maxwell's Motions to Suppress. ENDORSEMENT: The Court agrees with the position set forth in this letter that, unless the Government agrees to forgo any use of the documents subject to the motions to suppress at trial on the non−perjury counts, the Court must resolve those motions prior to that trial. The Court will resolve the motions in due course. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/23/2021) (lnl) (Entered: 04/23/2021)

04/23/2021	244	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated April 2, 2021 re: Response to Letter Motion to Quash Rule 17 Subpoena to Boies Schiller Flexner LLP (Pagliuca, Jeffrey) (Entered: 04/23/2021)
04/23/2021	245	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Laura A. Menninger dated April 19, 2021 re: Redactions to Pleadings Re: Rule 17 Subpoenas (Menninger, Laura) (Entered: 04/23/2021)
04/23/2021	246	LETTER MOTION addressed to Judge Alison J. Nathan from Laura A. Menninger dated April 22, 2021 re: 221 Order,,,, re: Request for Adjournment of 120 or 180 Days for Trial on the Non−Perjury Counts . Document filed by Ghislaine Maxwell. (Menninger, Laura) (Entered: 04/23/2021)
04/23/2021	247	LETTER by Boies Schiller Flexner LLP as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid S. McCawley dated April 5, 2021 re: Reply in Support of Objections to Rule 17 Subpoena Document filed by Boies Schiller Flexner LLP. (McCawley, Sigrid) (Entered: 04/23/2021)
04/23/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Arraignment as to Ghislaine Maxwell (1) Count 1ss,2ss,3ss,4ss,5ss,6ss,7ss−8ss held on 4/23/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Maurene Comey, Alison Moe, and Lara Pomerantz for the government. Defendant is arraigned on Superseding Indictment 2. Defendant enters a plea of Not Guilty to the S2 indictment. Defendant remains remanded. See Transcript. (Court Reporter Rebecca Forman) (ap) (Entered: 04/27/2021)
04/23/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: **Plea entered by Ghislaine Maxwell (1) Count 1ss,2ss,3ss,4ss,5ss,6ss,7ss−8ss Not Guilty.** (ap) (Entered: 04/27/2021)
04/26/2021	248	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/26/21 re: Confiscation of Legal Documents (Sternheim, Bobbi) (Entered: 04/26/2021)
04/26/2021	250	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' proposed schedules for pretrial disclosures and pretrial motions practice. Dkt. Nos. 229, 230. Having considered the parties respective positions, the Court hereby sets the schedule below, which it deems reasonable and fair: the Court hereby sets the following schedule: Government expert witness disclosure are due April 23, 2021 (agreement of the parties); Supplemental Pretrial Motions that pertain only to the new charges raised in the S2 indictment (agreement of the parties): Defense supplemental motions are due May 7, 2021; Governments response is due May 21, 2021; Defense replies are due May 28, 2021; Disclosure of the alleged victims referenced in the S2 Indictment: May 17, 2021 (agreement of the parties); The Court will address a process and schedule for the parties' proposals regarding a jury questionnaire by separate order. Finally, the parties are ORDERED to meet and confer on the Government's proposal that the Defendant submit witness statements pursuant to Federal Rule of Criminal Procedure 26.2 at least four weeks in advance of trial. The parties are further ORDERED to submit a joint letter laying out their respective positions and proposals within one week of this Order (Defense supplemental Motions due by 5/7/2021., Defense Replies due by 5/28/2021., Government's Responses due by 5/21/2021). (Signed by Judge Alison J. Nathan on 4/26/21)(jw) (Entered: 04/27/2021)
04/27/2021	249	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 248 Letter filed by Ghislaine Maxwell to report an incident stemming from an attorney−client conference with Ghislaine Maxwell: Guards on Ms. Maxwell's security detail wrongfully seized and reviewed her confidential legal documents...ENDORSEMENT...MDC legal counsel is hereby ORDERED to show cause by April 28, 2021 why an order directing the MDC to provide the information requested in this letter to the Defendant's counsel ought not issue. MDC legal counsel shall either docket it on ECF or email the letter to the Court so that the Court can docket it on ECF. Chambers will email a copy of this Order directly to legal counsel for the MDC (Signed by Judge Alison J. Nathan on 4/27/21)(jw) (Entered: 04/27/2021)
04/27/2021	251	SEALED DOCUMENT placed in vault. (jus) (Entered: 04/27/2021)

04/27/2021	252	ORDER re: 195 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 5, 2021 re: Notice of Rule 17(c) subpoenas. The Defendant's motion for an order authorizing the subpoena pursuant to Rule 17(c)(3) is DENIED. The Government is ORDERED to respond to Requests 9 through 11 of the proposed subpoena within one week of this Order. (Signed by Judge Alison J. Nathan on 4/27/21) (jw) (Entered: 04/27/2021)
04/28/2021	253	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/28/2021 re: Reply to MDC letter re: order to show cause re: confiscation of legal documents (Sternheim, Bobbi) (Entered: 04/28/2021)
04/29/2021	254	LETTER addressed to Judge Alison J. Nathan from Sophia Papapetru dated 4/28/21 re: I am writing in response to your April 26, 2021, Order seeking information regarding an alleged incident involving Ghislaine Maxwell, Register No. 02879−509, at the Metropolitan Detention Center in Brooklyn, New York (MDC Brooklyn) as relayed by her counsel in an April 26, 2021, letter. We respectfully request Your Honor deny defense counsel's proposed order. Please let us know if the Court requires any additional information, which we will be happy to provide (jw) (Entered: 04/29/2021)
04/29/2021	255	ORDER as to Ghislaine Maxwell. On April 26, 2021, defense counsel advised the Court of an incident that took place on April 24, 2021 in which Defendant Ghislaine Maxwell's legal materials were seized by staff at the Metropolitan Detention Center. Dkt. No. 248. The Court ordered legal counsel for the MDC to show cause why the requested order should not issue. Dkt. No. 249. The MDC filed its response with the Court. Dkt No. 254. In reply, Maxwell made additional requests. Dkt. No. 253. Defense counsels requests are GRANTED in part and DENIED in part. IT IS ORDERED that by April 30, 2021, legal counsel to the MDC must provide the following information: If known, an inventory of the items seized from Ms. Maxwell in the incident that occurred on April 24, 2021 shall be provided by email to defense counsel only; and A representation to this Court, to be filed on ECF, indicating: Whether any of the materials seized from Ms. Maxwell were duplicated in any fashion and what investigation was undertaken in order to determine this information; Whether Ms. Maxwell is permitted to bring confidential legal materials to in−person meetings with defense counsel without those materials being seized; What steps have been or will be taken to ensure the confidentiality of Ms. Maxwell's lawyer−client communications (Signed by Judge Alison J. Nathan on 4/29/21)(jw) (Entered: 04/29/2021)
04/29/2021	256	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/29/2021 re: Sleep Deprivation in MDC (Sternheim, Bobbi) (Entered: 04/29/2021)
04/29/2021	257	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 256 During oral argument of Ghislaine Maxwells bail appeal before the Circuit, Ms. Maxwell's appellate counsel expressed concern that she was improperly deprived of sleep while detained in the MDC, an issue that has been raised in filings before this Court. we ask the Court to address Ms. Maxwell's sleeping conditions by directing the MDC to cease 15−minute light surveillance of Ms. Maxwell or justify the need for the disruptive flashlight surveillance..ENDORSEMENT...By May 5, 2021, the Government is ORDERED to confer with MDC legal counsel and provide the Court responses to the following questions: Is Ms. Maxwell being subjected to flashlight surveillance every 15 minutes at night? Or any other atypical flashlight surveillance? If so, what is the basis for doing so? 3. And if so, can she be provided with appropriate eye covering? The Government is further ORDERED to share its response with defense counsel before filing it on ECF so that defense counsel can indicate whether they believe any private medical information needs to be redacted before public filing (Signed by Judge Alison J. Nathan on 4/29/21)(jw) (Entered: 04/29/2021)
04/29/2021	258	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/29/2021 re: Reply to MDC letter re: confiscation of legal documents (Sternheim, Bobbi) (Entered: 04/29/2021)
04/30/2021	259	LETTER addressed to Judge Alison J. Nathan from Sophia Papapetru dated 4/29/21 re: This letter is written in response to your April 28, 2021, Order seeking the following information regarding an alleged incident involving Ghislaine Maxwell,

		Register No. 02879−509, at the Metropolitan Detention Center in Brooklyn, New York (MDC Brooklyn) on April 24, 2021 (jw) (Entered: 04/30/2021)
04/30/2021	260	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated April 30, 2021 re: Hard Drives (Everdell, Christian) (Entered: 04/30/2021)
05/03/2021	261	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 4/23/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Rebecca Forman, (212) 805−0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/24/2021. Redacted Transcript Deadline set for 6/3/2021. Release of Transcript Restriction set for 8/2/2021. (McGuirk, Kelly) (Entered: 05/03/2021)
05/03/2021	262	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 4/23/21 has been filed by the court reporter/transcriber in the above−captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 05/03/2021)
05/03/2021	263	MEMO ENDORSEMENT as to Ghislaine Maxwell re: 260 Letter on Hard Drives... ENDORSEMENT: Counsel for the MDC may submit any objection to the Defendant's request by May 4, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 5/3/21)(jbo) (Entered: 05/03/2021)
05/03/2021	264	ORDER as to Ghislaine Maxwell. On April 21, 2021, the Court's Chambers received a letter from counsel for a non−party requesting assurances as to privacy protections for his client in any filings or proceedings in this case. The letter requests anonymity on behalf of the client as an alleged victim of a sexual crime. After receiving the letter, the Court forwarded it to the parties and required the Government to respond to counsel, which it has done. The Court will take no further action based on the April 21, 2021 letter but will file it under seal to protect the privacy interests of the non−party asserting that interest. The Government is requested to forward this order to counsel for the non−party. SO ORDERED. (Signed by Judge Alison J. Nathan on 5/3/21)(jbo) (Entered: 05/03/2021)
05/03/2021	265	ORDER as to Ghislaine Maxwell: The Court has received an exchange of letters that pertain to an incident that took place on April 24, 2021. Dkt. Nos. 248, 253, 254, 258, 259. Legal counsel for MDC, where Ms. Maxwell is detained pretrial, alleges that her lawyers violated Bureau of Prisons rules by providing Ms. Maxwell materials at an in−person attorney−client visit. Dkt. Nos. 254, 259. Ms. Maxwells lawyers categorically deny the allegations and threaten separate legal action against MDC staff based on the incident and the accusation. Dkt. Nos. 253, 258. The Court intimates no views as to whether some other action or process is appropriate or proper in light of either sides allegations. This Courts obligation in this case, and any other, is to ensure that the defendant is given an opportunity to meet with her lawyers, engage in confidential attorney−client communications, and prepare for trial. Mindful of that obligation, the Court declines to take further action at this time. After receiving the defenses first letter motion, the Court ordered MDC legal counsel to show cause why the Court should not grant the requested relief. Dkt. No. 249. The Court then granted in part defense counsels original request and ordered MDC legal counsel to respond to certain questions about the April 24, 2021 incident and the procedures in place to ensure the confidentiality of Ms. Maxwells lawyer−client communications. Dkt. No. 255. Defense counsels current application is that this Court order MDC to turn over copies of video tapes of the in−person attorney−client visit. Dkt. No. 258. Those video tapes must be preserved in light of defense counsels preservation letter. Dkt. No. 248, Ex. C. If Ms. Maxwell or defense counsel are entitled to view or receive copies of those materials as a matter of law, they should be provided. To the extent defense counsel is seeking entitlement to those materials from this Court, that application is denied. The Court has ensured and will continue to ensure that Ms. Maxwell has the opportunity to meet meaningfully and confidentially with her lawyers in light of all relevant circumstances and consistent with the treatment of all other detained inmates in BOP custody. The isolated incident that took place on April 24, 2021, and the

		serious allegations leveled by MDC legal counsel and defense counsel in no way undermine the Courts conclusion that Ms. Maxwell and her lawyers are fully able to prepare for trial. The Court is confident that all parties recognize the importance of this going forward and in advance of the upcoming trial. In furtherance of this, counsel for the Government are ORDERED to confer with legal counsel for MDC to ensure that Ms. Maxwell continues to have access to confidential attorney−client communications as she prepares for trial. If any additional incidents arise, defense counsel shall promptly confer with counsel for the Government regarding those incidents and seek to resolve any such issues swiftly, responsibly, reasonably, and amicably. If that fails, the parties may write to the Court jointly indicating their views, identifying and justifying any specific application being made. (Signed by Judge Alison J. Nathan on 5/3/2021) (ap) (Entered: 05/03/2021)
05/03/2021	266	ORDER as to Ghislaine Maxwell: The Court concludes that the interests of justice justify granting a short continuance. The Court deems an adjournment until fall 2021 to be reasonable. Such an adjournment would plainly give the defense team sufficient time to prepare for trial in light of the additional charges contained in the S2 indictment while also ensuring that the trial proceeds without undue delay. No additional delay is necessary or in the interests of justice. The parties are hereby ORDERED to meet and confer and by May 10, 2021, they shall jointly propose a trial start date for the Court to request of the Clerk's Office (as is required by COVID protocols). The Court urges counsel to agree to the earliest possible date this fall and to seek adjustments to other schedules in order to facilitate an early fall trial start date. The parties shall also discuss and propose any adjustments necessary to the pre−trial schedule in place. Dkt. No. 250. The Government may move in the letter for any requested exclusion of time under the Speedy Trial Act. (Signed by Judge Alison J. Nathan on 5/3/2021) (See ORDER set forth) (ap) (Entered: 05/03/2021)
05/03/2021	267	JOINT LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated May 3, 2021 re: defense witness disclosures, Dkt. No. 250 (Pagliuca, Jeffrey) (Entered: 05/03/2021)
05/04/2021	268	ORDER as to Ghislaine Maxwell: On April 30, 2021, defense counsel requested that the Court issue an order directing the MDC to accept two hard drives from defense counsel that contain the non−Highly Confidential discovery in this case for Ms. Maxwell's use. Dkt. No. 260. On May 4, 2021, the Court received the attached email from MDC legal counsel indicating that MDC does not oppose the defense's request and that MDC staff will coordinate with defense counsel so that Ms. Maxwell can receive the hard drives. In light of this, defense counsel's April 30, 2021 request appears moot. Defense counsel shall raise any further issues regarding their request within two weeks of this order. (Signed by Judge Alison J. Nathan on 5/4/2021) (ap) (Entered: 05/04/2021)
05/04/2021	269	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 4, 2021 re: Subpoena Requests 9 Through 11 Document filed by USA. (Rohrbach, Andrew) (Entered: 05/04/2021)
05/05/2021	270	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated May 5, 2021 re: Use of Flighlights at MDC Document filed by USA. (Pomerantz, Lara) (Entered: 05/05/2021)
05/06/2021		*****DELETED DOCUMENT. Deleted document number 271 LETTER, as to Ghislaine Maxwell. The document was incorrectly filed in this case, as per Supervisor. (ap)** (Entered: 05/06/2021)
05/06/2021	271	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 6, 2021 re: Subpoena Request 11 Document filed by USA. (Rohrbach, Andrew) (Entered: 05/06/2021)
05/07/2021	272	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 5/7/2021 re: MDC flashlight security checks (Sternheim, Bobbi) (Entered: 05/07/2021)

05/07/2021	273	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated May 7, 2021 re: Cover Letter for Omnibus Memorandum in Support of the Defendant's Supplemental Pretrial Motions Relating to the S2 Superseding Indictment (Everdell, Christian) (Entered: 05/07/2021)
05/10/2021	274	MEMO ENDORSEMENT as to Ghislaine Maxwell on 273 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated May 7, 2021 re: Cover Letter for Omnibus Memorandum in Support of the Defendant's Supplemental Pretrial Motions Relating to the S2 Superseding Indictment. ENDORSEMENT: The Government is hereby ORDERED to propose and justify any redactions by May 12, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 5/10/2021) (lnl) (Entered: 05/10/2021)
05/10/2021	275	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 10, 2021 re: Proposed Trial Date Document filed by USA. (Pomerantz, Lara) (Entered: 05/10/2021)
05/11/2021	276	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 05/10/2021 re: Request for November 8th trial start date (Sternheim, Bobbi) (Entered: 05/11/2021)
05/11/2021	277	ORDER as to Ghislaine Maxwell: The Court has considered the parties' proposals regarding the commencement of trial. Dkt. Nos. 275, 276. For the reasons stated in the Government's letter, the Court will request November 29, 2021 from the Clerk's Office as the trial start datethat is the date (pending approval from the Clerk's Office consistent with the SDNY COVID protocols) that opening statements will be made to the jury. However, the Court will also request from the Clerk's Office that jury selection occur during the week of November 15. Counsel shall plan accordingly. The Court grants the Government's motion to exclude time until November 29, 2021. The Court finds that the ends of justice served by granting an exclusion from speedy trial computations for the period from today's date through November 29, 2021, outweigh the interests of the public and the Defendant in a speedy trial, because this time is necessary to permit the defense to continue to review discovery and other materials in light of the superseding indictment; to permit the parties to prepare and file motions in limine; to permit the parties to make and review additional pretrial disclosures; and to allow adequate time for the parties to prepare for trial. Time is therefore excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), until November 29, 2021. In order to ensure that there is no delay in the commencement of trial, the Court will adjust the current pre−trial schedule. So that the Court can resolve motions in limine in advance of the November 29th trial commencement date, any such motions shall be fully briefed no later than four weeks in advance of the anticipated trial commencement date of November 29. The parties shall meet and confer to propose adjustments to other pre−trial disclosures accordingly. The parties are hereby ORDERED to meet and confer for at least 30 minutes by phone regarding the overall pretrial disclosure schedule and submit a joint letter by May 14, 2021. The Court will accept only a joint letter with a joint proposal or with each sides views briefly stated. The letter must attest to the meet and confer. Any separately filed letters will be struck. SO ORDERED. (Time excluded from 5/11/2021 until 11/29/2021) (Signed by Judge Alison J. Nathan on 5/11/2021) (lnl) (Entered: 05/11/2021)
05/12/2021	278	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 12, 2021 re: Proposed Redactions to Defendant's Supplemental Pre−Trial Motions Document filed by USA. (Pomerantz, Lara) (Entered: 05/12/2021)
05/13/2021	279	ORDER as to Ghislaine Maxwell: On May 12, 2021, the Defendant submitted a response to the Government's May 4 and May 6 letters. See Dkt. Nos. 269, 271. She submitted it under temporary seal, though she noted that she is willing to file the response and its corresponding exhibits on the public docket. The Government is hereby ORDERED to notify the Court by May 14, 2021 whether it requests that any part of the Defendants submission be redacted or filed under seal; any such request must be justified by reference to the test articulated in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). SO ORDERED. (Signed by Judge Alison J. Nathan on 5/13/20201) (lnl) (Entered: 05/13/2021)

05/14/2021	280	JOINT LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 14, 2021 re: 277 Order to Continue − Interest of Justice, Terminate Motions, Set Deadlines/Hearings,,,

		Amodeo, 71 F.3d 1044, 1050 (2d Cir. 1995). Similarly, the Court concludes that the Government has shown that Exhibits E, F, G, H, and I should be filed under seal. With respect to Exhibit C, however, the Court concludes that narrowly tailored redactions are sufficient to advance the privacy interests the Government has identified. Accordingly, the Government is ORDERED to confer with defense counsel and submit proposed redactions to Exhibit C by May 20, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 5/17/21)(jbo) (Entered: 05/17/2021)
05/20/2021	285	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 139 MOTION to Suppress *Under the Fourth Amendment, Martindell, and the Fifth Amendment All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five And Six*. . (Attachments: # 1 Exhibit J, # 2 Exhibit K, # 3 Exhibit L, # 4 Exhibit M, # 5 Exhibit N, # 6 Exhibit O, # 7 Exhibit P, # 8 Exhibit Q)(Everdell, Christian) (Entered: 05/20/2021)
05/20/2021	286	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 145 MOTION to Strike *Surplusage from Superseding Indictment*. . (Everdell, Christian) (Entered: 05/20/2021)
05/20/2021	287	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 147 MOTION for Bill of Particulars *and Pretrial Disclosures*. . (Attachments: # 1 Exhibit A (Filed under seal))(Everdell, Christian) (Entered: 05/20/2021)
05/20/2021	288	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 20, 2021 re: Proposed Redactions to Exhibit C to Defendant's Supplemental Pre−Trial Motions Document filed by USA. (Pomerantz, Lara) (Entered: 05/20/2021)
05/21/2021	289	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated May 21, 2021 re: Reply to Government Letter dated May 14 Regarding Proposed Redactions to Ms. Maxwells May 12, 2021 Letter (DE 283) (Pagliuca, Jeffrey) (Entered: 05/21/2021)
05/21/2021	290	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 288 The Government respectfully submits this letter in response to the Courts Order dated May 17, 2021, which directed the Government to confer with defense counsel and submit proposed redactions to Exhibit C to the defendant's memorandum in support of her supplemental pretrial motions. (Dkt. No. 284). The Government seeks redactions that are narrowly tailored to protect the privacy interests of victims and third parties referenced in the document...ENDORSEMENT...The Government's proposed redactions are permitted for the reasons provided. By May 25, 2021, the Defendant is ORDERED to file her supplemental pretrial motions and supporting papers on the docket in accordance with Dkt. No. 284 and this order (Supplemental Pretrial Motions due by 5/25/2021.). (Signed by Judge Alison J. Nathan on 5/21/21)(jw) (Entered: 05/21/2021)
05/21/2021	291	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from All Counsel dated May 21, 2021 re: Joint Letter re Scheduling Document filed by USA. (Comey, Maurene) (Entered: 05/21/2021)
05/25/2021	292	MOTION to Dismiss *and to Obtain the Relief Specified in her Supplemental Pre−Trial Motions Relating to the S2 Superseding Indictment*. Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 05/25/2021)
05/25/2021	293	MEMORANDUM in Support by Ghislaine Maxwell re 292 MOTION to Dismiss *and to Obtain the Relief Specified in her Supplemental Pre−Trial Motions Relating to the S2 Superseding Indictment.. (OMNIBUS MEMORANDUM OF GHISLAINE MAXWELL IN SUPPORT OF HER SUPPLEMENTAL PRETRIAL MOTIONS RELATING TO THE S2 SUPERSEDING INDICTMENT)* (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C (Redacted), # 4 Exhibit D, # 5 Exhibit E (Filed Under Seal), # 6 Exhibit F (Filed Under Seal), # 7 Exhibit G (Filed Under Seal), # 8 Exhibit H (Filed Under Seal), # 9 Exhibit I (Filed Under Seal))(Everdell, Christian) (Entered: 05/25/2021)
05/25/2021	294	AFFIDAVIT of Christian Everdell in Support as to Ghislaine Maxwell re 292 MOTION to Dismiss *and to Obtain the Relief Specified in her Supplemental Pre−Trial Motions Relating to the S2 Superseding Indictment.. (AFFIDAVIT OF CERTIFICATION PURSUANT TO LOCAL CRIMINAL RULE 16.1)* (Everdell,

		Christian) (Entered: 05/25/2021)
05/25/2021	295	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 292 MOTION to Dismiss *and to Obtain the Relief Specified in her Supplemental Pre−Trial Motions Relating to the S2 Superseding Indictment*.. (Rohrbach, Andrew) (Entered: 05/25/2021)
05/28/2021	296	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated May 28, 2021 re: Cover Letter for Omnibus Reply Memorandum in Support of the Defendant's Supplemental Pretrial Motions Relating to the S2 Superseding Indictment. (Everdell, Christian) (Entered: 05/28/2021)
06/02/2021	297	ORDER as to Ghislaine Maxwell: Having considered the parties' respective proposals, Dkt. No. 291, the Court hereby sets the following disclosure schedule: September 13, 2021: Disclosure of alleged victims' identities (Government's proposal) October 11, 2021: Government's disclosure of Jencks Act and Giglio material, Rule 404(b) evidence and notice, co−conspirator statements, and Government witness list (Government's proposal) October 11, 2021: Government's disclosure of its proposed exhibit list (Defendant's proposal) October 18, 2021: Simultaneous filing of motions in limine (agreement of the parties) October 25, 2021: Simultaneous filing of proposed jury questionnaire and voir dire (agreement of the parties) November 1, 2021: Defense expert disclosures (Defendant's proposal) November 1, 2021: Responses to motions in limine (agreement of the parties) November 8, 2021: Simultaneous filing of requests to charge and verdict sheet (agreement of the parties) − November 8, 2021: Defense disclosures pursuant to Rules 16(b)(1)(A) and 16(b)(1)(B) materials (The Government proposed November 1, 2021; the Defendant proposed the close of the Government's case−in−chief) Close of the Government's case−in−chief: Defense witness list and 26.2 statements (Defendant's proposal) These dates establish a baseline for when the parties must disclose certain materials. Each of the parties has a continuing obligation to update all disclosures if they become aware of additional responsive materials. In addition, and as requested by the parties, the parties may bring issues to the Court's attention that arise after the deadline for motions in limine if the issues could not have been raised within the deadline set for in limine motions. (Motions due by 10/18/2021. Responses due by 11/1/2021) (Signed by Judge Alison J. Nathan on 6/2/2021) (ap) (Entered: 06/02/2021)
06/04/2021	298	ORDER as to Ghislaine Maxwell: The Defendant's motion for an order authorizing the subpoena pursuant to Rule 17(c)(3) is DENIED. (Signed by Judge Alison J. Nathan on 6/4/2021) (See ORDER set forth) (ap) (Entered: 06/04/2021)
06/07/2021	299	MANDATE of USCA (Certified Copy) as to Ghislaine Maxwell re: 173 Notice of Appeal, 113 Notice of Appeal. USCA Case Number 21−58; 21−770. Defendant−Appellant Ghislaine Maxwell appeals from orders of the District Court entered December 28, 2020 and March 22, 2021, which denied her renewed requests for bail pending trial. See Dkts. 1, 20. Upon due consideration, it is hereby ORDERED that the District Courts orders are AFFIRMED and that Appellants motion for bail, or in the alternative, temporary pretrial release pursuant to 18 U.S.C. § 3142(i), Dkt. 39, is DENIED. During oral argument, counsel for Appellant expressed concern that Appellant was improperly being deprived of sleep while incarcerated. To the extent Appellant seeks relief specific to her sleeping conditions, such request should be addressed to the District Court... Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 6/7/2021. (nd) (Entered: 06/08/2021)
06/08/2021		Transmission of USCA Mandate to the District Judge re: 299 USCA Mandate. (nd) (Entered: 06/08/2021)
06/15/2021	300	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 6/15/2021 re: Response to MDC Conditions Update (Sternheim, Bobbi) (Entered: 06/15/2021)
06/15/2021	301	ORDER as to Ghislaine Maxwell: On June 7, 2021, the Government submitted an update on the Defendants conditions of confinement. It submitted it under temporary seal to permit the Defendant to propose redactions. On June 15, 2021, the Defendant proposed narrowly tailored redactions, which the Court adopts after applying the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). The Government is ORDERED to publicly docket the redacted version of its June 7, 2021 letter by June 17, 2021. (Signed by

		Judge Alison J. Nathan on 6/16/2021) (ap) (Entered: 06/16/2021)
06/16/2021	302	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated June 7, 2021 re: MDC Conditions Update Document filed by USA. (Pomerantz, Lara) (Entered: 06/16/2021)
06/25/2021	303	ORDER as to Ghislaine Maxwell. Maxwell's motions to suppress evidence (Dkt. Nos. 133, 139) are DENIED. The Court sets out its reasoning in an opinion concurrently filed under temporary seal to allow Maxwell and the Government the opportunity to propose redactions. The parties may file under seal any proposed redactions to the opinion within three days. The Court further ORDERS that the April 9, 2019 memorandum decision and order on the Government's application to modify the protective order in Giuffre v. Maxwell, No. 15−cv−7433, as well as the transcripts of the March 26, 2019 and April 9, 2019 ex parte hearings on that application shall be unsealed. These documents were previously filed under seal as Exhibits D, E, F, and G to the memorandum of law in support of Maxwell's first motion to suppress (Dkt. No. 134). Within one week, the parties shall confer and file under seal any proposed redactions to the memorandum decision, order, and transcripts. Any proposed redactions shall be narrowly tailored and shall be supported with reference to the Second Circuit's opinion in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). The parties proposed redactions should not include any information that has already been made public. SO ORDERED (Signed by Judge Alison J. Nathan on 6/25/21)(jbo) (Entered: 06/25/2021)
06/25/2021	304	ORDER as to Ghislaine Maxwell. The Court grants the Defendant's request that going forward the Government shall only file updates if there are any material changes to Ms. Maxwell's conditions of confinement. See Dkt. No. 300 at 1. In the absence of any other specific or supported application for relief from the Defendant, the Court will take no further action at this time. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/25/2021)(bw) (Entered: 06/25/2021)
06/25/2021	307	OPINION & ORDER as to Ghislaine Maxwell. Maxwell moves to suppress evidence obtained through a grand jury subpoena to a law firm involved in earlier civil litigation against her. She contends that because the documents sought by the subpoena were previously subject to a protective order, the Government obtained them in violation of her rights against compelled self−incrimination, against unreasonable searches and seizures, and to due process of law. For the foregoing reasons, the Court finds that the Government did not violate Maxwell's constitutional rights when it obtained evidence covered by a protective order in her earlier civil case. It further finds that Maxwell is not entitled to suppression of any evidence or to an evidentiary hearing. The Court thus DENIES Maxwell's motions to suppress (Dkt. Nos. 133, 139) (Signed by Judge Alison J. Nathan on 6/25/21)(jw) (Entered: 07/01/2021)
06/30/2021	305	ORDER as to Ghislaine Maxwell: Pursuant to the Court's order of June 25, 2021 (Dkt. No. 303), any proposed redactions to the Court's opinion on Maxwell's motions to suppress evidence must be filed no later than today, June 30, 2021. Any proposed redactions to the other documents ordered unsealed in that order must be filed no later than July 2, 2021. The parties shall file a joint letter by each of these dates informing the Court if no redactions are sought. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/30/2021) (lnl) (Entered: 06/30/2021)
06/30/2021	306	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated June 30, 2021 re: Joint Letter re June 25, 2021 Opinion and Order and Defense Exhibits Document filed by USA. (Pomerantz, Lara) (Entered: 06/30/2021)
07/01/2021	308	ORDER as to Ghislaine Maxwell. No party has proposed redactions to the Court's opinion on Maxwell's motions to suppress evidence or the documents ordered unsealed in the Courts June 25, 2021 Order (Dkt. No. 303). Thus, the Court lifts the temporary seal on its June 25, 2021 opinion on Maxwells motions to suppress. It also unseals the April 9, 2019 memorandum decision and order on the Governments application to modify the protective order in Giuffre v. Maxwell, No. 15−cv−7433, as well as the transcripts of the March 26, 2019 and April 9, 2019 ex parte hearings on that application, originally filed under seal as Exhibits D, E, F, and G to the memorandum of law in support of Maxwell's first motion to suppress (Dkt. No. 134). Maxwell shall

		file those exhibits on the public docket without redaction by July 2, 2021 (Signed by Judge Alison J. Nathan on 7/1/21)(jw) (Entered: 07/01/2021)
07/01/2021	309	LETTER MOTION addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, and Lara Pomerantz dated July 1, 2021 re: Local Rule 23.1 . Document filed by USA as to Ghislaine Maxwell. (Moe, Alison) (Entered: 07/01/2021)
07/02/2021	310	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated July 2, 2021 re: Cosby Opinion (Attachments: # 1 Exhibit A)(Everdell, Christian) (Entered: 07/02/2021)
07/02/2021	311	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated July 2, 2021 re: Cover Letter Attaching Unsealed Exhibits for the Memorandum in Support of the Defendant's Motion Under the Due Process Clause to Suppress all Evidence Obtained from the Government's Subpoena to Boies Schiller and to Dismiss Counts Five and Six (Dkt. No. 134) (Attachments: # 1 Exhibit D, # 2 Exhibit E, # 3 Exhibit F, # 4 Exhibit G)(Everdell, Christian) (Entered: 07/02/2021)
07/02/2021	312	ORDER as to Ghislaine Maxwell re: Defense counsel, including David Markus, are ORDERED to respond to the Governments July 1, 2021 letter motion, Dkt. No. 309, by July 9, 2021 (Defense Counsel Responses due by 7/9/2021) (Signed by Judge Alison J. Nathan on 7/2/21)(jw) (Entered: 07/02/2021)
07/09/2021	313	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 07/09/2021 re: Counsel of Record reply to Court Order Dkt 312 (Sternheim, Bobbi) (Entered: 07/09/2021)
07/12/2021	314	LETTER addressed to Judge Alison J. Nathan from David Oscar Markus dated 7/9/21 re: The Governments request should be denied because (1) undersigned counsel does not currently represent Ms. Maxwell, and (2) the Op−Ed did not violate the local rules. (jw) (Entered: 07/12/2021)
07/30/2021	315	ORDER as to Ghislaine Maxwell. The Government has moved for an order requiring David Markus to comply with Local Criminal Rule 23.1 following an op−ed that he authored opining on the merits of this pending case. Dkt. No. 309. Mr. Markus is therefore ORDERED to comply with Local Criminal Rule 23.1. The Government does not ask the Court to discipline Mr. Markus based on his op−ed and the Court declines to consider whether it violated Rule 23.1 given the potential lack of clarity with respect to whether Mr. Markus was bound by the rule. The Court emphasizes that the rule provides illustrative examples of statements that "presumptively involve a substantial likelihood that their public dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice within the meaning of the rule." S.D.N.Y. Local Criminal Rule 23(d). Going forward, Mr. Markus and all lawyers associated with the pending case are now clearly on notice that their conduct falls under the purview of Local Criminal Rule 23.1. Indeed, the above concerns do not apply only to Mr. Markus. This Court has previously noted that counsel[,] agents for the parties and counsel for potential witnesses must take care to protect the Defendant's right to a fair trial by an impartial jury. Dkt. No. 28. This Court is cognizant that criminal matters heading toward trial are especially sensitive to extrajudicial statements. All those associated with this case must act to ensure the case is tried solely in court or else they risk being deemed responsible for any trial delay or for undermining the integrity of the upcoming trial. See S.D.N.Y. Local Criminal Rule 23.1(h). In addition to the impact it could have on this matter, failure to comply could also result in attorney discipline. Id. Rule 23.1(i). (Signed by Judge Alison J. Nathan on 7/30/21)(jw) Modified on 7/30/2021 (jw). (Entered: 07/30/2021)
07/30/2021		NOTICE OF MAILING as to Ghislaine Maxwell: Copy of Order dated 7/30/21 (dkt.315) was emailed to Mr. Markus on Friday, September 30. (jbo) (Entered: 08/03/2021)
08/05/2021	316	INTERNET CITATION NOTE as to Ghislaine Maxwell: Material from decision with Internet citation re: 315 Order. (sjo) (Entered: 08/05/2021)
08/13/2021	317	OPINION & ORDER as to Ghislaine Maxwell. For the reasons above and in this Courts April 16, 2021 Opinion & Order, the Court DENIES Maxwell's motion to obtain relief specified in her supplemental pre−trial motions relating to the S2 indictment. This resolves Dkt. No. 292. (Signed by Judge Alison J. Nathan on

		8/13/2021) (See ORDER set forth) (ap) (Entered: 08/13/2021)
08/13/2021	318	ORDER as to Ghislaine Maxwell: On March 19, 2021, Defendant Ghislaine Maxwell submitted a sealed and ex parte motion for an order authorizing four subpoenas pursuant to Rule 17(c)(3) of the Federal Rules of Criminal Procedure. By sealed order dated March 22, 2021, the Court provided an opportunity for recipients of the subpoenas to respond to the requests by March 30, 2021, but it received no responses. In an Opinion and Order temporarily filed under seal, the Court DENIES Maxwell's motion without prejudice. It does so after concluding that none of the proposed subpoenas conform to the factors first set out in United States v. Nixon, 418 U.S. 683, 69870 (1974). The Court will send the temporarily sealed Opinion and Order to defense counsel. By August 18, 2021, Maxwell is ORDERED to inform the Court whether she seeks sealing or limited redactions of the Court's opinion and of her original motion papers, justifying any such request by reference to the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). In addition, by that date Maxwell shall inform the Court whether she seeks full sealing or redactions of the original motion, again justifying any such request by reference to the Lugosch test. (Signed by Judge Alison J. Nathan on 8/13/2021) (ap) (Entered: 08/13/2021)
08/13/2021	334	OPINION & ORDER as to Ghislaine Maxwell. Maxwell's motion is, at this time, DENIED without prejudice. She may renew any Rule 17(c) applications upon a proper showing that each of the requested materials satisfies the Nixon test, as described above and in the Court's April 27, 2021 and June 2, 2021 Orders. The Court will file this Opinion & Order under temporary seal to allow consideration of any sealing or redaction requests. (Signed by Judge Alison J. Nathan on 8/13/2021) (See ORDER set forth) (ap) (Entered: 09/03/2021)
08/18/2021	319	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 08/18/2021 re: Disruption of MDC attorney−client video teleconferences (Sternheim, Bobbi) (Entered: 08/18/2021)
08/18/2021	320	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated August 18, 2021 re: Identification of co−conspirators Document filed by USA. (Rohrbach, Andrew) (Entered: 08/18/2021)
08/19/2021	321	ENDORSED LETTER as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim, dated 8/18/2021, re: Counsel writes: I write to update the Court regarding MDC ongoing interference with attorney−client communication between Ghislaine Maxwell and her counsel. ENDORSEMENT: The Government is hereby ORDERED to confer with BOP and MDC Legal and file a response to Defendant's letter on or before August 23, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 8/19/2021) (lnl) (Entered: 08/19/2021)
08/19/2021	322	MEMO ENDORSEMENT as to Ghislaine Maxwell on 320 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated August 18, 2021 re: Identification of co−conspirators. ENDORSEMENT: The parties are hereby ORDERED to meet and confer in an effort to reach an agreement on the disclosure issues raised in this letter. If the parties reach an agreement, they shall inform the Court by August 26, 2021. If the parties do not reach agreement, the Defendant may file a response to the arguments made here by the Government on or before August 30, 2021. Any response letter shall confirm that the meet and confer occurred. SO ORDERED. (Signed by Judge Alison J. Nathan on 8/19/2021) (lnl) (Entered: 08/19/2021)
08/19/2021	323	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 19, 2021 re: Redactions to Motion for 17(c) Subpoenas. (Everdell, Christian) (Entered: 08/19/2021)
08/20/2021	324	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated August 20, 2021 re: Limited unsealing . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 08/20/2021)

08/23/2021	325	ORDER re: 324 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated August 20, 2021 re: Limited unsealing. Defense counsel is ORDERED to provide this Order and the temporarily sealed Opinion and Order to the intended recipients of the subpoenas. By August 25, 2021, defense counsel is ORDERED to confirm service of this Order and the temporarily sealed Opinion and Order. The Court GRANTS the Governments request for a limited unsealing of the Court's August 13 Opinion and Order and the underlying motion papers. Dkt. No. 324. The Court will send the temporarily sealed Opinion and Order and motion papers to the Government. This resolves Dkt. No. 324. (Signed by Judge Alison J. Nathan on 8/23/21) (jw) (Entered: 08/23/2021)
08/23/2021		Transmission to Sealed Records Clerk: as to Ghislaine Maxwell. Transmitted re: 325 Order on Letter Motion to the Sealed Records Clerk for the sealing or unsealing of document or case. (jw) (Entered: 08/23/2021)
08/23/2021	326	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated August 23, 2021 re: Response to Defense August 18, 2021 Letter Document filed by USA. (Comey, Maurene) (Entered: 08/23/2021)
08/24/2021	327	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 08/24/2021 (Sternheim, Bobbi) (Entered: 08/24/2021)
08/25/2021	328	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 25, 2021 re: Service of Order. (Everdell, Christian) (Entered: 08/25/2021)
08/25/2021	329	ORDER as to Ghislaine Maxwell. Defendant submitted a letter on August 18 informing the Court about disruptions of attorney−client video teleconferences. Dkt. No. 319. After conferring with MDC Legal, the Government responded on August 23. Dkt. No. 326. According to the Government and MDC Legal, the Defendant's difficulties in communicating with her counsel via video teleconference have been resolved, and the Government's letter sufficiently addresses her other requests. The Court finds MDC Legal's assurance that Defendant's communications have not been interfered with, recorded, or listened to sufficient. No further application for relief was made in Defendant's August 24 reply. Dkt. No. 327. The Court remains confident that Ms. Maxwell is fully able to communicate with her defense counsel and to prepare for trial. If Defendant experiences further issues in communicating with her counsel, she should promptly notify the Court after conferring in good faith with the Government and MDC Legal. (Signed by Judge Alison J. Nathan on 8/25/21)(jw) (Entered: 08/25/2021)
08/27/2021	330	ORDER as to Ghislaine Maxwell. The Clerk's Office has now confirmed that a jury trial in this case has been scheduled to commence on November 29, 2021. This is a firm trial date. When the information is available, the Court will provide courtroom location and public access information by separate order. In light of the firm dates discussed above, it is hereby ORDERED that the parties appear for a telephone conference to discuss jury selection matters on October 21, 2021 at 12:00 P.M. Dial−in information for the parties and for public access will be provided when it is available by separate order. In light of the jury selection dates provided by the Clerks Office, the Court amends theschedule that it set on June 2, 2021 as follows. The parties shall meet and confer and submit a joint proposed juror questionnaire and joint proposed voir dire by October 11, 2021. The parties shall file a joint proposed charge and verdict sheet, with any differing proposals supported by authority or other justification, by October 27, 2021. Any motions in limine must be simultaneously filed by October 18, 2021, and any responses to motions in limine are due by October 25, 2021. Otherwise, the parties shall continue to follow the schedule that the Court set on June 2, 2021. Dkt. No. 297. IT IS FURTHER ORDERED that the parties appear for an in−person pretrial conference on November 1, 2021 at 11:00 A.M. (Pretrial Conference set for 11/1/2021 at 11:00 AM before Judge Alison J. Nathan., Telephone Conference set for 10/21/2021 at 12:00 PM before Judge Alison J. Nathan.). (Signed by Judge Alison J. Nathan on 8/27/21)(jw) (Entered: 08/27/2021)
08/30/2021	331	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated August 30, 2021 re: Response to Government Letter dated August 18, 2021, Dkt. 320 (Pagliuca, Jeffrey) (Entered: 08/30/2021)

09/01/2021	332	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated September 1, 2021 re: Proposed Redactions Document filed by USA. (Comey, Maurene) (Entered: 09/01/2021)
09/03/2021	333	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 332 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated September 1, 2021 re: Proposed Redactions. ENDORSEMENT: The Court has reviewed the proposed redactions and finds that they are narrowly tailored and necessary to protect the privacy and identities of third parties not identified on the record in this case. The intended recipients of the subpoenas did not file proposed redactions by September 1, 2021, per this Court's August 23 Order. Dkt. No. 325. The Court accordingly ORDERS Defendant to file the redacted Motion and Exhibits 1, 3, and 4, and unredacted Exhibit 2, by September 7, 2021. The Court hereby unseals the August 13 Opinion, and the Court will file the Opinion on the public docket. (Signed by Judge Alison J. Nathan on 9/2/2021) (ap) (Entered: 09/03/2021)
09/03/2021	335	ORDER as to Ghislaine Maxwell: The Court ORDERS that at the same time that the Government discloses Jencks Act material, the Government shall also disclose to the defense the identities of any unnamed co−conspirators who allegedly participated in the conspiracies charged in the S2 indictment to whom the Government will refer at trial. The Government is FURTHER ORDERED to disclose all co−conspirator statements it intends to offer at trial no later than October 11, as consistent with this Court's scheduling order. Dkt. No. 297 at 1. (Signed by Judge Alison J. Nathan on 9/3/2021) (See ORDER set forth) (ap) (Entered: 09/03/2021)
09/07/2021	336	MOTION for Discovery *(Ex Parte and In Camera for an Order Authorizing a Subpoena Pursuant to Fed. R. Crim. P. 17(c)(3))*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4)(Everdell, Christian) (Entered: 09/07/2021)
10/05/2021	337	ORDER as to Ghislaine Maxwell. The Court is currently in the process of planning logistics for trial in this matter and requires the parties' best and current estimate of length of trial. The Court plans to have the jury sit 5 days a week from 9am until 5pm. Given that jury selection will be complete by November 19 and opening statements will occur on November 29, the Court requests that the parties provide their best estimate as to when the jury is likely to begin deliberations. This will allow the Court to assess the likelihood that trial may continue after the Christmas holiday and therefore whether the jury may be required to sit some days during the week between Christmas and New Year's Day. Accordingly, on or before October 12, 2021, the parties are ORDERED to confer and submit a joint letter with their best and current estimate as to when the jury is likely to begin deliberations. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/5/2021)(bw) (Entered: 10/05/2021)
10/12/2021	338	MEMO ENDORSEMENT as to Ghislaine Maxwell re: Motion to Intervene....ENDORSEMENT...The motion to intervene is DENIED. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/12/21)(jw) (Entered: 10/12/2021)
10/12/2021	339	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 11, 2021 re: Sealing of Joint Proposed Juror Questionnaire and Voir Dire . Document filed by USA as to Ghislaine Maxwell. (Pomerantz, Lara) (Entered: 10/12/2021)
10/12/2021	340	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 12, 2021 re: Trial length Document filed by USA. (Rohrbach, Andrew) (Entered: 10/12/2021)
10/13/2021	341	MOTION Individual Sequestered Voir Dire and Limited Attorney−Conducted Voir Dire re 339 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 11, 2021 re: Sealing of Joint Proposed Juror Questionnaire and Voir Dire . . Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 10/13/2021)
10/13/2021	342	MEMORANDUM in Support by Ghislaine Maxwell re 341 MOTION Individual Sequestered Voir Dire and Limited Attorney−Conducted Voir Dire re 339 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara

		Pomerantz, and Andrew Rohrbach dated October 11, 2021 re: Sealing of Joint. (Sternheim, Bobbi) (Entered: 10/13/2021)
10/13/2021	343	ORDER as to Ghislaine Maxwell. The Court is in receipt of Defendant's motion for an order granting individual sequestered juror voir dire and limited counsel−conducted voir dire. Dkt. No. 341. The Government is hereby ORDERED to respond by Monday, October 18, 2021 (Government Responses due by 10/18/2021) (Signed by Judge Alison J. Nathan on 10/13/21)(jw) (Entered: 10/14/2021)
10/14/2021	344	ORDER as to Ghislaine Maxwell. The Court received a letter via email from a lawyer for an alleged victim regarding victim attendance at the upcoming trial. The Court will file the letter under seal and forward a copy to counsel for both sides. Consistent with the Districts COVID−19 protocols, the Court will ensure public access for pretrial proceedings and trial, including several overflow rooms at the courthouse with live feeds of the proceedings. Additional information will be provided as soon as it is available. Access for alleged victims will be coordinated between the Victim Witness Unit and the District Executives Office. The contact information for each office is provided below. Furthermore, Defense counsel may coordinate access for the Defendant's family members with the District Executives Office (Signed by Judge Alison J. Nathan on 10/14/21)(jw) (Entered: 10/14/2021)
10/14/2021	345	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated October 14, 2021 re: Deadline for Filing Motion under Federal Rule of Evidence 412 (Pagliuca, Jeffrey) (Entered: 10/14/2021)
10/14/2021	346	MOTION to Direct MDC to deliver legal mail within one day of receipt . Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 10/14/2021)
10/14/2021	347	ORDER as to Ghislaine Maxwell: The Court is in receipt of Defendant's letter regarding the deadline for filing a motion under Federal Rule of Evidence 412. Dkt. No. 345. The Government is hereby ORDERED to respond by 5:00 p.m. tomorrow, October 15, 2021. (Signed by Judge Alison J. Nathan on 10/14/2021) (ap) (Entered: 10/15/2021)
10/15/2021	348	ORDER as to Ghislaine Maxwell: The Court is in receipt of Defendant's letter regarding delivery of Defendant's legal mail at MDC. Dkt. No. 346. The Government is hereby ORDERED to respond as soon as possible but by no later than today, October 15, 2021 at 5:00 p.m. (Signed by Judge Alison J. Nathan on 10/15/2021) (ap) (Entered: 10/15/2021)
10/15/2021	349	SEALED DOCUMENT placed in vault. (jus) (Entered: 10/15/2021)
10/15/2021	350	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 15, 2021 re: Delivery of Legal Mail at MDC Document filed by USA. (Pomerantz, Lara) (Entered: 10/15/2021)
10/15/2021	351	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 15, 2021 re: Federal Rule of Evidence 412 Document filed by USA. (Pomerantz, Lara) (Entered: 10/15/2021)
10/15/2021	352	LETTER RESPONSE in Support of Motion by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 10/15/2021 re: 346 MOTION to Direct MDC to deliver legal mail within one day of receipt .. (Sternheim, Bobbi) (Entered: 10/15/2021)
10/15/2021	353	ENDORSED LETTER as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Counsels of record for the Government dated 10/15/21 re: Government response to Order of The Court dated 10/15/21 (Dkt No. 348).ENDORSEMENT: Based on the information in this letter the Court will not enter the Defendant's requested order. See Dkt. 346. However, it is the Court's firm expectation that a defendant in a pre−trial posture like Ms. Maxwell will in most circumstances receive legal mail within approximately 1 business day. Going forward, if another delay occurs, the Defendant may renew the request for a specific order requiring delivery within the time frame. With this understanding and in light of the unusually early pre−trial disclosure schedule set by the Court, the Court remains confident that Ms. Maxwell and her

		attorneys are fully able to prepare for trial. This resolves Dkt. No. 346. SO Ordered.. (Signed by Judge Alison J. Nathan on 10/15/21)(jm) (Entered: 10/15/2021)
10/15/2021	354	MEMO ENDORSEMENT as to Ghislaine Maxwell on 351 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 15, 2021 re: Federal Rule of Evidence 412. ENDORSEMENT: For the reasons stated in this letter, the Court finds that there is good cause for any motion under Federal Rule of Evidence 412 to be filed no later than October 27, 2021. Any response will be due November 1, 2021. Any hearing will tentatively be scheduled for November 5, 2021.Additional details will be provided if and when any motions are filed. SO ORDERED. (Motions due by 10/27/2021. Responses due by 11/1/2021) (Signed by Judge Alison J. Nathan on 10/15/2021) (lnl) (Entered: 10/18/2021)
10/18/2021		*****DELETED DOCUMENT. Deleted document number 354 Rule 5(f) as to Ghislaine Maxwell. The document was incorrectly filed in this case. (jm)** (Entered: 10/18/2021)
10/18/2021	355	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 18, 2021 re: Response to Defense Motion for Limited Attorney−Conducted Voir Dire and Individual Sequestered Voir Dire Document filed by USA. (Pomerantz, Lara) (Entered: 10/18/2021)
10/18/2021	356	REPLY TO RESPONSE to Motion by Ghislaine Maxwell re 341 MOTION Individual Sequestered Voir Dire and Limited Attorney−Conducted Voir Dire re 339 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 11, 2021 re: Sealing of Joint. (Sternheim, Bobbi) (Entered: 10/18/2021)
10/18/2021	357	NOTICE of Defendant Ghislaine Maxwell's Motions in Limine as to Ghislaine Maxwell (Pagliuca, Jeffrey) (Entered: 10/18/2021)
10/18/2021	358	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated October 18, 2021 re: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN) (Pagliuca, Jeffrey) (Entered: 10/18/2021)
10/18/2021	359	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 18, 2021 re: Cover letter for Government Motions in Limine Document filed by USA. (Rohrbach, Andrew) (Entered: 10/18/2021)
10/19/2021	360	ORDER as to Ghislaine Maxwell. As noted in its previous order, the Court will hold a telephone conference to discuss jury selection matters on October 21, 2021 at 12:00 p.m. Dkt. No. 330. Members of the press and the public in the United States may access the live audio feed of the proceeding by calling 844−721−7237 and using access code 9991787. Those outside of the United States may access the live audio feed by calling 409−207−6951 and using the same access code. The Court will provide counsel for both sides an additional dial−in number to be used by counsel, the Defendant, alleged victims, and any family members of the Defendant. Any photographing, recording, or rebroadcasting of federal court proceedings is prohibited by law. Violation of these prohibitions may result in fines or sanctions, including monetary fines, 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 10/19/2021)(bw) (Entered: 10/19/2021)
10/20/2021	361	ORDER as to Ghislaine Maxwell: At the telephone conference scheduled to take place on October 21, 2021, in which the Court will discuss jury selection matters and logistics with the parties, the Court will hear from counsel regarding the unopposed request to seal their joint proposed juror questionnaire and voir dire. See Dkt. No. 339. The Court will also inquire as to whether the sealing request extends to the Court's draft questionnaire and voir dire and any justification for such sealing. In the meantime, the Court will today transmit via email its draft questionnaire and draft voir dire to the parties so that the drafts can be discussed at the conference tomorrow. After the Court explains how jury selection will proceed, the parties should be prepared to raise any objections to the Court's draft questionnaire and voir dire. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/20/2021) (lnl) (Entered: 10/20/2021)

10/20/2021	362	LETTER RESPONSE in Opposition by Reporters Committee for Freedom of the Press as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Reporters Committee for Freedom of the Press and 17 News Media Organizations dated October 20, 2021 re: 339 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 11, 2021 re: Sealing of Joint Proposed Juror Questionnaire and Voir Dire .. (Townsend, Katielynn) (Entered: 10/20/2021)
10/21/2021	363	LETTER as to USA v. Ghislaine Maxwell addressed to Judge Alison J. Nathan from Pete Brush, reporter, New York federal courts, dated Thu 10/21/2021 11:28 AM re: members of SDNY press corps join RCFP in opposition to secret jury selection in USA v. Maxwell. (bw) (Entered: 10/21/2021)
10/21/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Pretrial Conference as to Ghislaine Maxwell held on 10/21/2021. Defendant Ghislaine Maxwell present via telephone with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger via telephone. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government via telephone. Court Reporter Carol Ganley via telephone. Pretrial Conference held via telephone. Defendant remains remanded. See Transcript. (jbo) (Entered: 10/25/2021)
10/22/2021	364	ORDER as to Ghislaine Maxwell: For the reasons stated on the record at yesterday's conference, the Court will implement the following procedures for jury selection: A screening questionnaire will be administered on November 4, 5, and 12. The Clerk's Office will create a corresponding list of names and randomly assigned juror numbers. The list will be provided to counsel and the Court for use throughout jury selection. Jurors will be identified on the questionnaire and in court throughout the process by their assigned number only. Completed questionnaires will be copied and distributed to defense counsel by the U.S. Attorney's Office. After reviewing the completed questionnaires, counsel must confer in good faith and jointly submit four lists: (1) prospective jurors that both sides agree should proceed to voir dire; (2) prospective jurors that both sides agree should be excused; (3) prospective jurors that the defense, but not the Government believes should be excused; and (4) prospective jurors that the Government, but not the defense believes should be excused. Lists for questionnaires completed on November 4 and 5 will be due to the Court via email by November 7. Lists for questionnaires completed on November 12 will be due to the Court via email by November 13. If necessary, there will be an in−person conference on November 15 at 9:30 a.m. to resolve any disputes. Voir dire will proceed on November 16−19. The Court will conduct one−on−one voir dire with each prospective juror in the presence of the parties and with public access to the proceeding. At the conference, both sides indicated the potential need for additional procedures during voir dire under certain circumstances. See Transcript at 1011. As the Court indicated, it will consider proposed narrowly tailored measures that may be necessary during voir dire on a case−by−case basis. See id. at 12. The Court will decide in due course whether the exercise of peremptory strikes will proceed on November 19 or November 29. The Court implements these procedures taking into account the significant publicity this case has garnered, the nature of the charges, and the District's COVID−19 protocols. These procedures are carefully balanced and tailored to ensure the safety of the parties and prospective jurors in light of the continuing pandemic; to ensure juror candor, impartiality, and privacy; and to ensure the First Amendment right to public access of criminal proceedings. Also for the reasons stated on the record at yesterday's conference, the request to seal the parties' proposed questionnaire and voir dire and the Court's draft questionnaire and voir dire until after jury selection is completed is denied. Although the Court has and will continue to implement tailored measures to ensure a fair trial despite significant media interest, see Dkt. Nos. 28, 81, 95, 99, 101, 232, 241, 284, 301, 315, the defense did not justify sealing the entirety of the proposed and draft questionnaires and voir dire. See Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). The Court's planned individual voir dire process is designed to carefully probe the prior exposure to and the potential influence of any pre−trial media. As noted at the conference, the parties may continue to propose for the Court's consideration, any appropriate and tailored procedures in light of the specific factors related to this case and upcoming trial. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/22/2021) (lnl) (Entered: 10/22/2021)
10/22/2021	365	ORDER as to Ghislaine Maxwell: Attached are the Court's draft jury questionnairewith changes adopted at yesterday's proceeding in redlineand draft voir

		dire. In light of the District's COVID−19 protocols, the Court has proposed an additional question on page 6 of the questionnaire, which is also indicated in redline. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/22/2021) (lnl) (Entered: 10/22/2021)
10/22/2021	366	ORDER as to Ghislaine Maxwell: As discussed at yesterday's conference, attached is the Courts draft preliminary remarks to be recorded and played before each questionnaire session. The parties may suggest any proposed edits by letter on or before October 26, 2021, or they shall indicate by that date that they have no objections or suggestions. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/22/2021) (lnl) (Entered: 10/22/2021)
10/22/2021	367	PROPOSED EXAMINATION OF JURORS by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit Joint Proposed Examination of Prospective Jurors)(Pomerantz, Lara) (Entered: 10/22/2021)
10/25/2021	368	ORDER as to Ghislaine Maxwell. On October 18, 2021, the parties filed their respective motions in limine. Dkt. Nos. 355, 357, 358. Responses are due today, October 25, 2021. The parties are further ORDERED that reply briefs, if any, are due by October 27, 2021. Each sides' responses and any replies must be filed as a single document. The parties are ORDERED to file on the public docket all briefing with both parties proposed redactions, and a joint letter justifying any requested redactions by reference to the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006), on or before October 29, 2021. (Replies due by 10/27/2021.) (Signed by Judge Alison J. Nathan on 10/25/21)(jw) (Entered: 10/25/2021)
10/25/2021	369	LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated 10/25/21 re: Extension of Time to File Joint Proposed Jury Charge and Verdict Sheet . Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 10/25/2021)
10/25/2021	370	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated October 25, 2021 re: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN) (Pagliuca, Jeffrey) (Entered: 10/25/2021)
10/26/2021	371	MEMO ENDORSEMENT 369 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated 10/25/21 re: Extension of Time to File Joint Proposed Jury Charge and Verdict Sheet. To request a one−week extension until November 3, 2021, to file the joint proposed jury charge and verdict sheet, which are currently due on October 27, 2021...ENDORSEMENT...SO ORDERED. (Signed by Judge Alison J. Nathan on 10/26/21) (jw) (Entered: 10/26/2021)
10/26/2021	372	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 26, 2021 re: the Court's draft preliminary remarks Document filed by USA. (Pomerantz, Lara) (Entered: 10/26/2021)
10/26/2021	373	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 10/26/2021 re: Response to court order (Sternheim, Bobbi) (Entered: 10/27/2021)
10/27/2021	375	REPLY by Ghislaine Maxwell re: 372 Letter filed by USA . (Sternheim, Bobbi) (Entered: 10/27/2021)
10/27/2021	376	ORDER as to Ghislaine Maxwell. The Court is receipt of the parties' letters regarding the jury questionnaire and voir dire. See Dkt. Nos. 372, 373, 375. The Court will provide counsel the corresponding list of juror names and assigned juror numbers on November 16 at the commencement of voir dire. The placeholder for the juror information sheet in the Courts draft questionnaire refers to the information sheet required by the Jury Department. See Dkt. No. 365. The information sheet will be removed and collected by the Jury Department from the packet before the parties review of the questionnaires. The Court is still considering the logistics of when peremptory strikes will be exercised, but the Court anticipates peremptory strikes will be exercised on November 29. Assuming so, the swearing in of the jury, preliminary instructions, and opening statements would commence immediately following the simultaneous (via submission of lists) exercise of peremptory challenges. (Signed by

		Judge Alison J. Nathan on 10/27/21)(jw) (Entered: 10/27/2021)
10/27/2021	377	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated October 27, 2021 re: Ms. Maxwell's Fed. R. Evid. 412 Motion (Pagliuca, Jeffrey) (Entered: 10/27/2021)
10/27/2021	378	NOTICE of of Motion Under Federal Rule of Evidence 412 as to Ghislaine Maxwell (Pagliuca, Jeffrey) (Entered: 10/27/2021)
10/28/2021	379	ORDER as to Ghislaine Maxwell. As noted in its previous order, the Court will hold an in−person pretrial conference on November 1, 2021 at 11:00 a.m. Dkt. No. 330. The conference will take place in Courtroom 518 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. In accordance with its prior Order, the Court will ensure access for alleged victims and any members of the Defendants family. Dkt. No. 344. Two pool reporters will be permitted in the courtroom proper. (Pretrial Conference set for 11/1/2021 at 11:00 AM in Courtroom 518, 40 Centre Street, New York, NY 10007 before Judge Alison J. Nathan.) (Signed by Judge Alison J. Nathan on 10/28/21)(jw) (Entered: 10/28/2021)
10/29/2021	380	MOTION in Limine . Document filed by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit Exhibit A)(Rohrbach, Andrew) (Entered: 10/29/2021)
10/29/2021	381	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 10/29/2021 re: Legal Mail Delivery Request (Sternheim, Bobbi) (Entered: 10/29/2021)
10/29/2021	382	RESPONSE to Motion by Ghislaine Maxwell re: 380 MOTION in Limine .. (Attachments: # 1 Exhibit A (Filed Under Seal), # 2 Exhibit B (Filed Under Seal), # 3 Exhibit C (Filed Under Seal), # 4 Exhibit D (Filed Under Seal), # 5 Exhibit E, # 6 Exhibit F (Filed Under Seal), # 7 Exhibit G, # 8 Exhibit H (Filed Under Seal), # 9 Exhibit I (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	383	REPLY MEMORANDUM OF LAW in Support by USA as to Ghislaine Maxwell re: 380 MOTION in Limine . . (Rohrbach, Andrew) (Entered: 10/29/2021)
10/29/2021	384	MOTION in Limine *to Preclude the Introduction of Alleged Co−Conspirator Statements as a Sanction for Failing to Comply with This Court's September 3, 2021 Order*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1)(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	385	MOTION in Limine *to Exclude Any Evidence Offered by the Government Pursuant to Fed. R. Evid. 404(b) for Failure to Comply with the Rule's Notice Requirement*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A)(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	386	MOTION in Limine *to Exclude Under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Request for Daubert Hearing*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	387	MOTION in Limine *to Exclude Evidence Related to Accuser−3*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A − Filed Under Seal, # 2 Exhibit B − Filed Under Seal)(Everdell, Christian) (Entered: 10/29/2021)
10/29/2021	388	MOTION in Limine *to Exclude Evidence of Alleged Flight*. Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 10/29/2021)
10/29/2021	389	MOTION in Limine *to Exclude Evidence of Alleged False Statement Evidence*. Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 10/29/2021)
10/29/2021	390	MOTION in Limine *to Exclude Government Exhibit 52, an Unauthenticated Hearsay Document from Suspect Sources*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	391	MOTION in Limine *to Exclude Items Purportedly Seized During Search of 358 El Brillo Way on October 20, 2005*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A)(Pagliuca, Jeffrey) (Entered: 10/29/2021)

10/29/2021	392	MOTION in Limine *to Suppress Identification*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A)(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	393	MOTION in Limine *to Preclude Law Enforcement Witnesses from Offering Expert Opinion Testimony*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	394	MOTION in Limine *to Preclude Testimony About Any Alleged "Rape" by Jeffrey Epstein*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	395	MOTION in Limine *to Preclude Reference to the Accusers as "Victims" or "Minor Victims"*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	396	MOTION in Limine *to Preclude Introduction of Government's Exhibits 251, 288, 294, 313 and 606*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A)(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	397	RESPONSE in Opposition by USA as to Ghislaine Maxwell re: 386 MOTION in Limine *to Exclude Under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Request for Daubert Hearing*., 396 MOTION in Limine *to Preclude Introduction of Government's Exhibits 251, 288, 294, 313 and 606*., 390 MOTION in Limine *to Exclude Government Exhibit 52, an Unauthenticated Hearsay Document from Suspect Sources*., 389 MOTION in Limine *to Exclude Evidence of Alleged False Statement Evidence*., 388 MOTION in Limine *to Exclude Evidence of Alleged Flight*., 387 MOTION in Limine *to Exclude Evidence Related to Accuser−3*., 384 MOTION in Limine *to Preclude the Introduction of Alleged Co−Conspirator Statements as a Sanction for Failing to Comply with This Court's September 3, 2021 Order*., 395 MOTION in Limine *to Preclude Reference to the Accusers as "Victims" or "Minor Victims"*., 385 MOTION in Limine *to Exclude Any Evidence Offered by the Government Pursuant to Fed. R. Evid. 404(b) for Failure to Comply with the Rule's Notice Requirement*., 394 MOTION in Limine *to Preclude Testimony About Any Alleged "Rape" by Jeffrey Epstein*., 391 MOTION in Limine *to Exclude Items Purportedly Seized During Search of 358 El Brillo Way on October 20, 2005*., 392 MOTION in Limine *to Suppress Identification*., 393 MOTION in Limine *to Preclude Law Enforcement Witnesses from Offering Expert Opinion Testimony*.. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B)(Rohrbach, Andrew) (Entered: 10/29/2021)
10/29/2021	398	REPLY TO RESPONSE to Motion by Ghislaine Maxwell re 386 MOTION in Limine *to Exclude Under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Request for Daubert Hearing*., 396 MOTION in Limine *to Preclude Introduction of Government's Exhibits 251, 288, 294, 313 and 606*., 390 MOTION in Limine *to Exclude Government Exhibit 52, an Unauthenticated Hearsay Document from Suspect Sources*., 389 MOTION in Limine *to Exclude Evidence of Alleged False Statement Evidence*., 388 MOTION in Limine *to Exclude Evidence of Alleged Flight*., 387 MOTION in Limine *to Exclude Evidence Related to Accuser−3*., 384 MOTION in Limine *to Preclude the Introduction of Alleged Co−Conspirator Statements as a Sanction for Failing to Comply with This Court's September 3, 2021 Order*., 395 MOTION in Limine *to Preclude Reference to the Accusers as "Victims" or "Minor Victims"*., 385 MOTION in Limine *to Exclude Any Evidence Offered by the Government Pursuant to Fed. R. Evid. 404(b) for Failure to Comply with the Rule's Notice Requirement*., 394 MOTION in Limine *to Preclude Testimony About Any Alleged "Rape" by Jeffrey Epstein*., 391 MOTION in Limine *to Exclude Items Purportedly Seized During Search of 358 El Brillo Way on October 20, 2005*., 392 MOTION in Limine *to Suppress Identification*., 393 MOTION in Limine *to Preclude Law Enforcement Witnesses from Offering Expert Opinion Testimony*.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	399	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated Oct. 28, 2021 re: Justifications for redactions Document filed by USA. (Rohrbach, Andrew) (Entered: 10/29/2021)

10/29/2021	402	ORDER as to Ghislaine Maxwell. The Court is in receipt of Defendant's letter regarding delivery of Defendant's legal mail at MDC. Dkt. No. 381. The Government is hereby ORDERED to respond by Tuesday, November 2, 2021 at 12:00 p.m. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/29/2021)(bw) (Entered: 11/02/2021)
10/31/2021	400	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Defendant's motion under Federal Rule of Evidence 412, Dkt. No. 378, and the Defendant's motion in limine to exclude under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), Dkt. No. 386. The issues raised in the two motions overlap significantly. The Court is required under Federal Rule of Evidence 412 to conduct an in camera hearing. Fed. R. Evid. 412 ("Before admitting evidence under this rule, the court must conduct an in camera hearing and give the victim and parties a right to attend and be heard. Unless the court orders otherwise, the motion, related materials, and the record of the hearing must remain under seal.). In addition, the Court has determined it will conduct a Daubert hearing with respect to the Defendant's motion under Federal Rule of Evidence 702. Because of the overlap in the substance of the motions, the Court will conduct the two proceedings back to back. The Court previously set a tentative date for the Rule 412 Motion hearing as November 5, 2021. Dkt. No. 354. The Court is prepared to proceed with both hearings on that date. Alternatively, the proceedings could be held on either the afternoon of November 9 or the afternoon of November 10. The Government shall confer with its proposed expert regarding availability for the Daubert hearing as well as with alleged victims who wish to attend and be heard at the Rule 412 Motion hearing. After doing so, the parties shall confer with each other as to availability. On or before November 2, 2021, the parties shall jointly file a letter with the Court indicating whether the parties request that the hearings be held on November 5, 9, or 10. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/31/2021)(bw) (Entered: 11/01/2021)
11/01/2021	401	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' proposed redactions to the parties' motions in limine, responses in opposition, replies in support, and related exhibits. As the Court indicated at today's conference, some of the parties' proposed redactions are overbroad considering the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). In particular, for the reasons stated at today's conference, the Court denies the Government's request to redact section ten of the Government's motion in limine. See Dkt. No. 380. The Court will also not permit redactions pertaining to the general description of evidence or anticipated testimony as such redactions are unnecessary to protect the privacy interests of the individuals implicated. Accordingly, the parties must propose more tailored redactions consistent with the Court's discussion at today's conference. The parties are ORDERED to submit the proposals to the Court via email by November 4, 2021. In order to facilitate the Court's review of the requests, the Court requires the parties to submit the proposed redactions as a single document and with the proposed redactions highlighted. The Defendant's proposed redactions should be highlighted in one color, and the Government's a different color. The Court will rule on the proposed redactions expeditiously. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/1/2021)(bw) (Entered: 11/02/2021)
11/01/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Pretrial Conference as to Ghislaine Maxwell held on 11/1/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Pamela Utter and Michael McDaniel. Pretrial Conference held. Defendant remains remanded. See Transcript. (jbo) (Entered: 11/02/2021)
11/02/2021	403	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 2, 2021 re: Delivery of Legal Mail at MDC Document filed by USA. (Pomerantz, Lara) (Entered: 11/02/2021)
11/02/2021	404	ORDER as to Ghislaine Maxwell. As discussed at yesterday's conference, attached is the Court's draft preliminary remarks to be recorded and played before each voir dire session. The parties may suggest any proposed edits or additions by letter on or before November 8, 2021, or they shall indicate by that date that they have no objections or suggestions. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/2/2021)(bw)

		(Entered: 11/02/2021)
11/02/2021	405	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 2, 2021 re: Trial length Document filed by USA. (Rohrbach, Andrew) (Entered: 11/02/2021)
11/02/2021	406	JOINT LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated November 2, 2021 re: Fed. R. Evid. 412 and 702 Motions Hearing Date (Pagliuca, Jeffrey) (Entered: 11/02/2021)
11/03/2021	407	MOTION for Reconsideration *Re: Disclosure of Juror Names to Counsel Only upon completion of Questionnaire*. Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 11/03/2021)
11/03/2021	408	MOTION for Reconsideration *re: Release on Bond*. Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 11/03/2021)
11/03/2021	409	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' joint letter in response to this Court's order dated October 31, 2021. Dkt. No. 406. The Court will hold a hearing on November 10, 2021 at 9:00 a.m. on the Defendant's motion under Federal Rule of Evidence 412, Dkt. No. 378, the Defendant's motion in limine to exclude under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), Dkt. No. 386, and the other outstanding issues that overlap with these two motions as discussed at the November 1, 2021 conference. The proceeding will take place in Courtroom 110 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. The Court will provide information on public access (for the portion of the Daubert hearing that does not overlap with the Rule 412 issues) as soon as it is available. Otherwise, the Court will order the following briefing schedule if the Government seeks to exclude any of the Defendant's anticipated witness testimony as disclosed in her November 1, 2021 notice. See Dkt. No. 406: Government brief to be filed on ECF: November 8, 2021; Defense response brief to be filed on ECF: November 11, 2021. The parties are further ORDERED to docket Exhibit A to Dkt. No. 406 with any proposed redactions on or before November 8, 2021. In order to facilitate the Court's review of any proposed redactions, the parties must also submit via email a highlighted copy. SO ORDERED. (Status Conference set for 11/10/2021 at 09:00 AM in Courtroom 110, 40 Centre Street, New York, NY 10007 before Judge Alison J. Nathan.) (Signed by Judge Alison J. Nathan on 11/3/2021)(bw) (Entered: 11/03/2021)
11/03/2021	412	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's letter dated November 2, 2021. Dkt. No. 403. The Government is hereby ORDERED to confer further with MDC legal counsel and file a letter regarding Defendant's transportation to the courthouse for proceedings in this matter on or before November 8, 2021. The Court hereby authorizes the letter to be filed under seal because such information may implicate security concerns. The Court will also confer with the United States Marshal for the Southern District of New York and with the District Executive regarding transportation of the Defendant for upcoming in court proceedings and trial. With respect to legal mail, the Court requires MDC Legal Counsel to consider what additional steps can be taken (including what steps by counsel for the Government or the Defendant) to ensure that within the weeks leading up to trial, Ms. Maxwell promptly receives her legal mail. The Government shall docket a letter with MDC Legal Counsel's proposal on or before November 8, 2021. The Court will also transmit this Order to Chief Judge Brodie, who is overseeing the litigation and mediation in Case No. 19−cv−660 (E.D.N.Y.) regarding access to counsel for pre−trial detainees being held at the MDC so that the issue can be discussed as to all MDC pre−trial detainees who require prompt access to legal mail in the weeks leading up to their trials. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/3/2021)(bw) (Entered: 11/04/2021)
11/03/2021		Transmission to Sealed Records Clerk: as to Ghislaine Maxwell. Transmitted re: 412 Order, to the Sealed Records Clerk for the sealing of document. (bw) (Entered: 11/04/2021)

11/03/2021	413	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Defendant's motions for reconsideration. See Dkt. Nos. 407, 408. The Government is hereby ORDERED to respond to Defendant's motion for reconsideration, Dkt. No. 408, on or before November 8, 2021. As to the motion for reconsideration regarding the disclosure of juror names, the Court reminds counsel of the following. First, as the Court previously indicated, the lawyers will be provided the names of jurors on November 16, prior to the commencement of the voir dire process. Second, the Court has now resolved the logistical issues regarding the ability to conduct peremptory challenges on November 29 and the Court can now confirm that peremptory strikes will not be exercised until November 29. Finally, as previously indicated, although only 40 qualified jurors are needed for the exercise of peremptory strikes, the Court will seek to qualify approximately 50 to 60 prospective jurors to return on November 29 for the exercise of peremptory strikes. If counsel for either side learns of any additional information that would be a basis for a strike for cause prior to November 29, they shall immediately raise the issue with the Court. Bearing in mind this information, the Government is ORDERED to respond to Defendant's motion for reconsideration, Dkt. No. 407, on or before November 4, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/3/2021)(bw) (Entered: 11/04/2021)
11/04/2021	410	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 3, 2021 re: RTC and Verdict Sheet Document filed by USA. (Attachments: # 1 Exhibit Request to Charge, # 2 Exhibit Verdict sheet)(Rohrbach, Andrew) (Entered: 11/04/2021)
11/04/2021	411	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 4, 2021 re: Reconsideration of Court Order (Dkt. 409) . Document filed by USA as to Ghislaine Maxwell. (Pomerantz, Lara) (Entered: 11/04/2021)
11/04/2021	414	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 411 LETTER MOTION filed by USA addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 4, 2021 re: Reconsideration of Court Order (Dkt. 409). ENDORSEMENT: The Court hereby DENIES the Government's request as to Dr. Park Dietz and Dr. Elizabeth Loftus. Pursuant to this Court's Order, if the Government seeks to exclude these anticipated witnesses, briefing must be submitted by November 8, 2021. Dkt. No. 409. As to the remaining individuals disclosed in Defendant's notice, the Court GRANTS the Government's request. If the Government seeks to exclude those anticipated witnesses, briefing must be submitted by November 15, 2021, with a response by Defendant due November 19, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/4/2021)(bw) (Entered: 11/04/2021)
11/04/2021	415	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 4, 2021 re: Reply to Defendant's Motion for Reconsideration regarding Disclosure of Juror Names Document filed by USA. (Pomerantz, Lara) (Entered: 11/04/2021)
11/05/2021	416	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 415 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 4, 2021 re: Reply to Defendant's Motion for Reconsideration regarding Disclosure of Juror Names. ENDORSEMENT: For the reasons stated in the Government's letter, the motion for reconsideration, Dkt. No. 407, is DENIED. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/5/2021) (ap) (Entered: 11/05/2021)
11/08/2021	417	ORDER as to Ghislaine Maxwell: The Court is in receipt of the Government's supplemental letter regarding its opposition to the defense motion to exclude evidence of Minor Victim−3. See Dkt. No. 387. The letter is submitted temporarily under seal to allow defense counsel the opportunity to propose any additional redactions beyond what the Government proposes. At the November 1, 2021 conference, the Court asked the Government to provide its position as to whether Alleged "Victim−3" could be considered a "victim" of the crimes charged in the indictment for any legal purpose, including for purposes of restitution under 18 U.S.C. § 3663(a)(2). See Transcript at 71−72. The Government's supplemental letter does not address this issue. While acknowledging that the Court's request may have been unclear, the Government is now

		ORDERED to file a supplemental letter responsive to the Court's question on or before 12:00 p.m. on November 7, 2021. For the sake of clarity, the Government is directed to state its position as to whether this anticipated witness could be deemed a victim of any of the crimes charged in the indictment for any legal purpose, including for purposes of restitution under 18 U.S.C. § 3663(a)(2). SO ORDERED. (Signed by Judge Alison J. Nathan on 11/6/2021) (lnl) (Entered: 11/08/2021)
11/08/2021	418	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 8, 2021 re: Dkt. No. 406 Ex. A Document filed by USA. (Attachments: # 1 Exhibit Exhibit A)(Rohrbach, Andrew) (Entered: 11/08/2021)
11/08/2021	419	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/8/2021 re: Suggestions to Dkt 404 (Sternheim, Bobbi) (Entered: 11/08/2021)
11/08/2021	420	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 8, 2021 re: the Court's draft preliminary remarks for voir dire (Dkt. 404) Document filed by USA. (Pomerantz, Lara) (Entered: 11/08/2021)
11/08/2021	421	ORDER as to Ghislaine Maxwell: A conference is scheduled for November 10, 2021 to address the Defendant's motion under Federal Rule of Evidence 412, Dkt. No. 378, the Defendant's motion in limine to exclude under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), Dkt. No. 386, and the other outstanding issues that overlap with these two motions as discussed at the November 1, 2021 conference. Dkt. No. 409. The parties are ORDERED to confirm by 12:00 p.m. tomorrow, November 9, 2021, that the alleged victims referenced in the Defendant's Rule 412 Motion have been notified of the November 10 hearing and of their right to attend. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/8/2021) (lnl) (Entered: 11/08/2021)
11/08/2021	422	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 8, 2021 re: Delivery of Legal Mail (Dkt. 412) Document filed by USA. (Pomerantz, Lara) (Entered: 11/08/2021)
11/08/2021	423	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 8, 2021 re: Opposition to Motion for Bail Reconsideration Document filed by USA. (Pomerantz, Lara) (Entered: 11/08/2021)
11/08/2021	424	MOTION to Preclude *Expert Testimony of Dr. Dietz and Dr. Loftus*. Document filed by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Rohrbach, Andrew) (Entered: 11/08/2021)
11/09/2021	425	MEMO ENDORSEMENT as to Ghislaine Maxwell on 422 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 8, 2021 re: Delivery of Legal Mail (Dkt. 412). ENDORSEMENT: SO ORDERED. (Signed by Judge Alison J. Nathan on 11/9/2021) (lnl) (Entered: 11/09/2021)
11/09/2021	426	ORDER as to Ghislaine Maxwell: The Court is in receipt of the Defendant's motion for reconsideration regarding release on bond, Dkt. No. 408, and the parties' letters regarding the delivery of the Defendant's legal mail and transport to the courthouse for pretrial conferences and trial in this case, Dkt. Nos. 381, 403, 422. For the reasons stated in this Court's prior bail determinations, Dkt. Nos. 93, 106, 169, and the Government's letter in opposition, Dkt. No. 423, the renewed request for bail is denied. Moreover, based on the representations from MDC legal counsel regarding the delivery of the Defendant's legal mail, Dkt. No. 422, the Court concludes that the Defendant has adequate access to legal counsel and legal mail in order to prepare for trial. MDC legal counsel and the Government are ordered to take the steps outlined in the Dkt. No. 422 between now and the completion of trial. As to the Defendant's transport, the Court concludes that she will be transported to and from the courthouse for pretrial conferences and trial in a way that is humane, proper, and consistent with security protocols. This conclusion is based on representations from MDC legal counsel in the letter submitted under seal because it discusses BOP security protocols,

		see Dkt. No. 412, as well as the Court's communication with the United States Marshal for the Southern District of New York. The Government, BOP, and USMS shall continue to take all available measures consistent with security protocols to ensure the Defendant has sufficient rest, nutrition, and comfort in order to be able to prepare for and participate in trial. This resolves Dkt. No. 408. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/9/2021) (lnl) (Entered: 11/09/2021)
11/09/2021	427	ORDER as to Ghislaine Maxwell: Attached is the Court's revised draft preliminary remarks to be recorded and played before each voir dire session. The Court is in receipt of the Government's letter approving of the remarks, Dkt. No. 420, and the Defendant's proposed additions, Dkt. No. 419. The revised remarks adopt all but one of the Defendant's proposals because the Court's subsequent revisions eliminated that portion of the script. In particular, the Court has made three additional changes in order to accurately explain the logistics of voir dire. Each of these changes is reflected in redline. The parties are ORDERED to indicate by letter on or before November 11, 2021 at 12:00 p.m. whether or not they have any objections or suggestions the Court's revised preliminary remarks to be played before each voir dire session. Attached is also the Court's revised draft voir dire in redline. The Court's revisions simplify the phrasing of questions 1, 2, 3, 10, 13, 25, and 37 in an effort to maximize the time dedicated to questioning each prospective juror. The revision to question 11 reflects the Court's oral ruling on November 1, 2021 regarding the use of pseudonyms for certain witnesses. The revisions to questions 9, 13, 14, 15, 20, 21, and 33 are non−substantive changes to question numbers in order to accurately reference the corresponding question numbers on the jury questionnaire or are grammatical changes. Attached is also the Court's draft instruction sheet for those jurors who are not struck for cause and will return for the exercise of peremptory strikes, as discussed at the November 1 conference. The parties are FURTHER ORDERED to indicate by letter on or before November 12, 2021 whether or not they have any objections or suggestions to the revised voir dire and draft instruction sheet. Finally, the parties are ORDERED to jointly submit the list of individuals and locations who may be mentioned at trial for questions 11 and 12 of the voir dire on or before November 14, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/9/2021) (lnl) (Entered: 11/09/2021)
11/09/2021	428	SEALED DOCUMENT placed in vault. (nmo) (Entered: 11/09/2021)
11/09/2021	429	LETTER REPLY TO RESPONSE to Motion by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/9/2021 re 408 MOTION for Reconsideration *re: Release on Bond*.. (Sternheim, Bobbi) (Entered: 11/09/2021)
11/09/2021	430	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated November 9, 2021 re: victim notification Document filed by USA. (Moe, Alison) (Entered: 11/09/2021)
11/09/2021	431	ORDER as to Ghislaine Maxwell: As noted in its previous Order, the Court will hold an in−person proceeding on November 10, 2021 at 9:00 a.m. Dkt. No. 409. The proceeding will take place in Courtroom 110 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. The purpose of the proceeding is to address the Defendant's motion under Federal Rule of Evidence 412, Dkt. No. 378, the Defendant's motion in limine to exclude under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), Dkt. No. 386, and the other outstanding issues that overlap with these two motions as discussed at the November 1, 2021 conference. As is expressly required by Federal Rule of Evidence 412, the Court must conduct a hearing on this motion in camera and seal the record of the hearing. Fed. R. Evid. 412(c)(2). Accordingly, this portion of the hearing will be sealed and in camera. The Government confirmed that the attorneys for the alleged victims implicated by the Defendants motion have been notified of their right to attend the hearing pursuant to Federal Rule of Evidence 412. Dkt. No. 430. For the public portions of the proceeding, the Court will ensure access for alleged victims and any members of the Defendant's family, in accordance with its prior Order. Dkt. No. 344. Space will be available in the courtroom proper for members of the media. In order to comply with the District's COVID−19 protocols, the public and additional members of the media will be able to access the proceeding in overflow Courtrooms 506 and 905 of the Thurgood Marshall U.S. Courthouse. These overflow rooms will have live video

		and audio feeds of the proceeding. The use of any electronic devices during the proceeding in the overflow rooms is strictly prohibited. The Court anticipates seating capacity in the overflow rooms for 50 members of the public. If capacity is reached, no additional persons will be admitted. Per the S.D.N.Y. Response to COVID−19, anyone who appears at any S.D.N.Y. courthouse must complete a questionnaire on the date of the proceeding prior to entering the courthouse. All visitors must also have their temperature taken when they arrive at the courthouse. 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. All visitors must wear a mask that covers the person's nose and mouth. Bandannas, gaiters, and masks with valves are not permitted. If a person does not have an approved mask, a screener will provide one. 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. For more information, please see https://www.nysd.uscourts.gov/covid−19−coronavirus. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/9/2021) (lnl) (Entered: 11/09/2021)
11/10/2021	432	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 10, 2021 re: Pseudonym logistics Document filed by USA. (Attachments: # 1 Exhibit A)(Rohrbach, Andrew) (Entered: 11/10/2021)
11/10/2021	437	ORDER as to Ghislaine Maxwell: The Court hereby revises the schedule for the supplemental briefing as to Defendant's first and seventh motions in limine, which was previously set at the November 1, 2021 conference, as follows: Government submission due Friday, November 12, 2021 Defense submission due Monday, November 15, 2021 At today's conference, the parties inquired about the start time for voir dire on November 16, 2021. The parties are ORDERED to appear at 8:30 a.m. on November 16, 2021 in Courtroom 518 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York, for the start of voir dire. SO ORDERED. (Voir Dire set for 11/16/2021 at 08:30 AM in Courtroom 518, 40 Centre Street, New York, NY 10007 before Judge Alison J. Nathan) (Signed by Judge Alison J. Nathan on 11/10/2021) (lnl) (Entered: 11/12/2021)
11/10/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Pretrial Conference as to Ghislaine Maxwell held on 11/10/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Paula Speer and Sadie Herbert. Pretrial Conference held. See transcript. Defendant remains remanded. (jbo) (Entered: 11/15/2021)
11/11/2021	433	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated November 11, 2021 re: preliminary remarks, voir dire, and instruction sheet Document filed by USA. (Moe, Alison) (Entered: 11/11/2021)
11/11/2021	434	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Laura A. Menninger dated November 11, 2021 re: Court's revised proposed remarks, voir dire and instruction sheet (Dkt. 427) (Menninger, Laura) (Entered: 11/11/2021)
11/11/2021	435	OPINION & ORDER as to Ghislaine Maxwell: The Court therefore denies the Defense's motion to exclude Dr. Rocchio's testimony except as to the opinion that the presence of a third party can facilitate grooming. This resolves docket number 386. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/11/2021) (lnl) (Entered: 11/12/2021)
11/11/2021	450	ORDER as to Ghislaine Maxwell: The Court is in receipt of the parties' proposed redactions in accordance with Dkt. No. 401. The Court concludes that the proposed redactions and requests to seal certain exhibits are consistent with the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006) and narrowly tailored to protect the pre−trial privacy interests of alleged victims, anticipated witnesses, and non−parties. See United States v. Amodeo, 71 F.3d 1044, 1050−51 (2d Cir. 1995). The parties are hereby ORDERED to file the proposed redactions and accompanying exhibits on the public docket on or before

		November 12, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/11/2021) (lnl) (Entered: 11/12/2021)
11/12/2021	436	MEMO ENDORSEMENT as to Ghislaine Maxwell on 432 JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 10, 2021 re: Pseudonym logistics. ENDORSEMENT: The parties are ORDERED to submit the lists referenced in this letter on or before November 14, 2021, in accordance with Dkt. No. 427. The parties may continue submitting proposed redactions in accordance with the procedures this Court has previously set. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/11/2021) (lnl) (Entered: 11/12/2021)
11/12/2021	438	MOTION in Limine . Document filed by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit Exhibit A)(Rohrbach, Andrew) (Entered: 11/12/2021)
11/12/2021	439	RESPONSE to Motion by Ghislaine Maxwell re: 438 MOTION in Limine .. (Attachments: # 1 Exhibit A (Filed Under Sealed), # 2 Exhibit B (Filed Under Seal), # 3 Exhibit C (Filed Under Seal), # 4 Exhibit D (Filed Under Seal), # 5 Exhibit E, # 6 Exhibit F (Filed Under Seal), # 7 Exhibit G, # 8 Exhibit H (Filed Under Seal), # 9 Exhibit I (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	440	REPLY MEMORANDUM OF LAW in Support by USA as to Ghislaine Maxwell re: 438 MOTION in Limine . . (Rohrbach, Andrew) (Entered: 11/12/2021)
11/12/2021	441	MOTION in Limine *to Preclude the Introduction of Alleged Co−Conspirator Statements as a Sanction for Failing to Comply with This Court's September 3, 2021 Order*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1)(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	442	MOTION in Limine *to Exclude Any Evidence Offered by the Government Pursuant to Fed. R. Evid. 404(b) for Failure to Comply with the Rule's Notice Requirement*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A)(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	443	MOTION in Limine *to Exclude Under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Request for Daubert Hearing*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	444	MOTION in Limine *to Exclude Evidence Related to Accuser−3*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A − Filed under Seal, # 2 Exhibit B − Filed under Seal)(Everdell, Christian) (Entered: 11/12/2021)
11/12/2021	445	MOTION in Limine *to Exclude Government Exhibit 52, an Unauthenticated Hearsay Document from Suspect Sources*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1 (Filed Under Seal), # 2 Exhibit 2 (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	446	MOTION in Limine *to Exclude Items Purportedly Seized During Search of 358 El Brillo Way on October 20, 2005*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	447	MOTION in Limine *to Suppress Identification*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	448	MOTION in Limine *to Preclude Law Enforcement Witnesses from Offering Expert Opinion Testimony*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	449	MOTION in Limine *to Preclude Introduction of Government's Exhibits 251, 288, 294, 313 and 606*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	451	ENDORSED LETTER as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Matthew Russell Lee, dated 10/29/2021, re: timely opposition to blanket requests

		to seal portions of motions in limine, trial exhibits, public access. ENDORSEMENT: The Court received the attached letters via email. This District no longer permits public access by telephone for in−court criminal proceedings, including trials. The memorandum can be found here − https:// nysd.uscourts.gov/covid−19−coronavirus. The Courts public access orders for all proceedings in the case can be found here − https://www.nysd.uscourts.gov/usa−vsghislaine−maxwell−20−cr−330−ajn−caseinformation. The Court has implemented a procedure for docketing filings with proposed redactions and is ruling on the proposals as expeditiously as possible. See Dkt. No. 401. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/12/2021) (lnl) (Entered: 11/12/2021)
11/12/2021	452	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 449 MOTION in Limine *to Preclude Introduction of Government's Exhibits 251, 288, 294, 313 and 606.*, 444 MOTION in Limine *to Exclude Evidence Related to Accuser−3.*, 447 MOTION in Limine *to Suppress Identification.*, 443 MOTION in Limine *to Exclude Under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Request for Daubert Hearing.*, 448 MOTION in Limine *to Preclude Law Enforcement Witnesses from Offering Expert Opinion Testimony.*, 445 MOTION in Limine *to Exclude Government Exhibit 52, an Unauthenticated Hearsay Document from Suspect Sources.*, 442 MOTION in Limine *to Exclude Any Evidence Offered by the Government Pursuant to Fed. R. Evid. 404(b) for Failure to Comply with the Rule's Notice Requirement.*, 446 MOTION in Limine *to Exclude Items Purportedly Seized During Search of 358 El Brillo Way on October 20, 2005.*, 441 MOTION in Limine *to Preclude the Introduction of Alleged Co−Conspirator Statements as a Sanction for Failing to Comply with This Court's September 3, 2021 Order.*. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B)(Rohrbach, Andrew) (Entered: 11/12/2021)
11/12/2021	453	REPLY TO RESPONSE to Motion by Ghislaine Maxwell re 449 MOTION in Limine *to Preclude Introduction of Government's Exhibits 251, 288, 294, 313 and 606.*, 444 MOTION in Limine *to Exclude Evidence Related to Accuser−3.*, 447 MOTION in Limine *to Suppress Identification.*, 443 MOTION in Limine *to Exclude Under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Request for Daubert Hearing.*, 448 MOTION in Limine *to Preclude Law Enforcement Witnesses from Offering Expert Opinion Testimony.*, 445 MOTION in Limine *to Exclude Government Exhibit 52, an Unauthenticated Hearsay Document from Suspect Sources.*, 442 MOTION in Limine *to Exclude Any Evidence Offered by the Government Pursuant to Fed. R. Evid. 404(b) for Failure to Comply with the Rule's Notice Requirement.*, 446 MOTION in Limine *to Exclude Items Purportedly Seized During Search of 358 El Brillo Way on October 20, 2005.*, 441 MOTION in Limine *to Preclude the Introduction of Alleged Co−Conspirator Statements as a Sanction for Failing to Comply with This Court's September 3, 2021 Order.*. (Attachments: # 1 Exhibit A (Filed Under Seal), # 2 Exhibit B (Filed Under Seal), # 3 Exhibit C (Filed Under Seal), # 4 Exhibit D (Filed Under Seal), # 5 Exhibit E)(Pagliuca, Jeffrey) (Main Document 453 replaced on 11/22/2021) (jw). (Entered: 11/12/2021)
11/12/2021	454	ORDER as to Ghislaine Maxwell: As discussed at Wednesday's conference, the Court will hold an in−person proceeding on November 15, 2021 at 9:30 a.m. The proceeding will take place in Courtroom 518 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. In accordance with its prior Order, the Court will ensure access for alleged victims and any members of the Defendant's family. Dkt. No. 344. In order to comply with the District's COVID−19 protocols, the public will be able to access the proceeding in overflow Courtrooms 110 and 506 of the Thurgood Marshall U.S. Courthouse. These overflow rooms will have live video and audio feeds of the proceeding. The use of any electronic devices during the proceeding in the overflow rooms is strictly prohibited. The Court anticipates seating capacity in the overflow rooms for at least 50 members of the public. If capacity is reached, no additional persons will be admitted. Per the S.D.N.Y. Response to COVID−19, anyone who appears at any S.D.N.Y. courthouse must complete a questionnaire on the date of the proceeding prior to entering the courthouse. All visitors must also have their temperature taken when they arrive at the courthouse. 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. All visitors must wear a mask

		that covers the person's nose and mouth. Bandannas, gaiters, and masks with valves are not permitted. If a person does not have an approved mask, a screener will provide one. 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. For more information, please see https://www.nysd.uscourts.gov/covid−19−coronavirus. SO ORDERED. (Status Conference set for 11/15/2021 at 09:30 AM in Courtroom 518, 40 Centre Street, New York, NY 10007 before Judge Alison J. Nathan) (Signed by Judge Alison J. Nathan on 11/12/2021) (lnl) (Entered: 11/12/2021)
11/12/2021	455	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 12, 2021 re: Clarification re pseudonym order . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/12/2021)
11/12/2021	456	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 12, 2021 re: Co−Conspirator Statements Document filed by USA. (Comey, Maurene) (Entered: 11/12/2021)
11/12/2021	458	ORDER as to Ghislaine Maxwell: The Court is in receipt of the Government's letter motion seeking clarification on two items from the November 1, 2021 pretrial conference. Dkt. No. 455. As to the first item, the Government seeks clarification about the line between permissible and impermissible cross−examination for witnesses testifying under a pseudonym. The Government's suggested level of generality as to permissible cross−examination of the witnesses' careers would unduly curtail the Defendant's Sixth Amendment right to meaningful cross−examination. See United States v. Figueroa, 548 F.3d 222, 227 (2d Cir. 2008). The line of questioning the Government identifies may be relevant to a juror's credibility determination and thus the Court will not limit the Defendant's ability to pursue such questioning on cross−examination. As the Court noted at the November 1 conference, the Defendant may not elicit the name of a specific employer, but the type and genre of employment may be relevant to the jury's assessment of credibilty. Nov. 1, 2021 Transcript at 11−12. As to the second item, the Government is ORDERED to submit a proposed order regarding sketch artist depictions of certain witnesses on or before November 18, 2021. (Signed by Judge Alison J. Nathan on 11/12/2021) (ap) (Entered: 11/15/2021)
11/13/2021	457	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated November 12, 2021 re: Government Exhibit 52 Document filed by USA. (Moe, Alison) (Entered: 11/13/2021)
11/15/2021	459	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 10/21/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Carol Ganley, (212) 805−0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/6/2021. Redacted Transcript Deadline set for 12/16/2021. Release of Transcript Restriction set for 2/14/2022. (Moya, Goretti) (Entered: 11/15/2021)
11/15/2021	460	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 10/21/21 has been filed by the court reporter/transcriber in the above−captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 11/15/2021)
11/15/2021	461	SEALED DOCUMENT placed in vault. (nmo) (Entered: 11/15/2021)
11/15/2021	462	ORDER as to Ghislaine Maxwell: Attached is a copy of the final jury questionnaire, which is the same as Dkt. No. 365, docketed on October 22, 2021, except that it incorporates the redline changes. (Signed by Judge Alison J. Nathan on 11/15/2021) (ap) (Entered: 11/15/2021)
11/15/2021	463	ORDER as to Ghislaine Maxwell: Voir dire for this matter is set to begin on November 16, 2021 at 8:30 a.m. in Courtroom 518 of the United States District Court

		for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. In accordance with its prior Order, the Court will ensure access for alleged victims and any members of the Defendants family. Dkt. No. 344. In order to comply with the Districts COVID−19 protocols, a number of pool reporters will be permitted in the courtroom proper as managed by the District Executives Office. Press will also be able to access the proceeding in dedicated overflow press rooms. The public will be able to access the proceeding in overflow Courtrooms 110 and 906 of the Thurgood Marshall U.S. Courthouse. These overflow rooms will have live video and audio feeds of the proceeding. The use of any electronic devices during the proceeding in the overflow rooms is strictly prohibited. (Signed by Judge Alison J. Nathan on 11/15/2021) (See ORDER set forth) (ap) (Entered: 11/15/2021)
11/15/2021	464	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/15/2021 re: Late Receipt of Govt Disclosures to MDC (Sternheim, Bobbi) (Entered: 11/15/2021)
11/15/2021	465	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 11/1/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Michael McDaniel, (212) 805−0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/6/2021. Redacted Transcript Deadline set for 12/16/2021. Release of Transcript Restriction set for 2/14/2022. (Moya, Goretti) (Entered: 11/15/2021)
11/15/2021	466	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 11/1/21 has been filed by the court reporter/transcriber in the above−captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 11/15/2021)
11/15/2021	467	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 11/10/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Sonya Ketter Moore, (212) 805−0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/6/2021. Redacted Transcript Deadline set for 12/16/2021. Release of Transcript Restriction set for 2/14/2022. (Moya, Goretti) (Entered: 11/15/2021)
11/15/2021	468	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 11/10/21 has been filed by the court reporter/transcriber in the above−captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 11/15/2021)
11/15/2021	469	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 464 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/15/2021 re: Late Receipt of Govt Disclosures to MDC. ENDORSEMENT: It appears that the mail referenced in this letter was sent prior to the Court's memo endorsement of the Government's November 8, 2021 letter. Dkt. Nos. 422, 425. In any event, as this matter is less than two weeks before trial, the Government is ordered to send materials via FedEx and provide the tracking number to defense counsel. (Signed by Judge Alison J. Nathan on 11/15/2021) (ap) (Entered: 11/16/2021)
11/15/2021		Minute Entry for proceedings held before Judge Alison J. Nathan:Pretrial Conference as to Ghislaine Maxwell held on 11/15/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter Rebecca Forman. See Transcript. (jw) (Entered: 12/09/2021)

11/15/2021		Terminate Deadlines and Hearings as to Ghislaine Maxwell: (jw) (Entered: 12/09/2021)
11/16/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Voir Dire held on 11/16/2021 as to Ghislaine Maxwell. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell, Laura Menninger and Renato Stabile. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Eve Giniger and Khris Sellin. Jury selection began. Jury selection adjourned to Wednesday, November 17, 2021 at 8:30 AM. See transcript. (jbo) (Entered: 11/19/2021)
11/17/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: (Jury Selection) Jury Trial as to Ghislaine Maxwell held on 11/17/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell, Laura Menninger and Renato Stabile. AUSA Lara Pomerantz, Maurene Comey, and Alison Moe for the government. Court Reporters Eve Giniger and Khris Sellin. Jury selection held. Jury selection adjourned to Thursday, November 18, 2021 at 8:30 AM. See transcript. (jbo) (Entered: 11/19/2021)
11/18/2021	470	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 18, 2021 re: Courtroom sketch artists Document filed by USA. (Attachments: # 1 Text of Proposed Order Proposed Order)(Rohrbach, Andrew) (Entered: 11/18/2021)
11/18/2021	471	ORDER as to Ghislaine Maxwell: IT HEREBY IS ORDERED: 1. That courtroom sketch artists whether in the courtroom or overflow rooms may not draw exact likenesses of the Protected Witnesses; and 2. For avoidance of doubt, courtroom sketch artists may confer with the Court or counsel for either party to determine whether a witness is a Protected Witness. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/18/2021) (lnl) (Entered: 11/18/2021)
11/18/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: (Jury Selection) Jury Trial as to Ghislaine Maxwell held on 11/18/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell, Laura Menninger and Renato Stabile. AUSA Lara Pomerantz, Maurene Comey and Alison Moe for the government. Court Reporters Eve Giniger and Khris Sellin. Jury selection held. Jury selection adjourned until Monday, November 29, 2021 at 9:00 AM. See transcript. (jbo) (Entered: 11/19/2021)
11/19/2021	472	ENDORSED LETTER as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Patrick J. Smith dated 11/18/21 re: We respectfully request that the Court approve Jordana H. Feldman being added to the ECF docket in this case as a movant....ENDORSEMENT: The Clerk of Court is respectfully directed to add Jordana H. Feldman to the ECF docket in this case as a "movant". SO ORDERED. (Signed by Judge Alison J. Nathan on 11/19/21)(jw) (Entered: 11/19/2021)
11/19/2021	473	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's letter motion to quash the Defendants Rule 17(c)(3) subpoena. That motion has been filed temporarily under seal to allow the parties the opportunity to propose limited redactions. The parties are hereby ORDERED to file any proposed redactions on the public docket on or before November 22, 2021, and to justify any requested redactions by reference to the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006) (Signed by Judge Alison J. Nathan on 11/19/21)(jw) (Entered: 11/19/2021)
11/19/2021	474	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's letter motion dated November 18, 2021. That motion has been filed temporarily under seal to allow the parties the opportunity to propose limited redactions. Defendant is hereby ORDERED to file a response on or before November 20, 2021. The parties are FURTHER ORDERED to file any proposed redactions to the motion papers on the public docket on or before November 22, 2021, justifying any requested redactions by reference to the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006) (Defendant Responses due by 11/20/2021) (Signed by Judge Alison J. Nathan on 11/19/21)(jw) (Entered: 11/19/2021)

11/19/2021	475	JOINT LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 11/19/21 re: Video Monitor (Everdell, Christian) (Entered: 11/19/2021)
11/19/2021	476	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's supplemental letter regarding Government Exhibit 52, Dkt. No. 457, and the Defendants response, which has been temporarily filed under seal to allow the parties the opportunity to request limited redactions. The Government is hereby ORDERED to file a reply to Defendants response on or before 12:00 p.m. on November 21, 2021. The letter reply should address the Defendants argument that Employee−1 cannot authenticate Government Exhibit 52 because Mr. Rodriguez, a former employee, purportedly removed the document from the property before Employee−1 began working for Mr. Epstein. The parties are FURTHER ORDERED to file any proposed redactions to the motion papers on the public docket on or before November 22, 2021, justifying any requested redactions by reference to the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006) (Government Replies due by 11/21/2021.). (Signed by Judge Alison J. Nathan on 11/19/21)(jw) (Entered: 11/19/2021)
11/19/2021	477	ORDER as to Ghislaine Maxwell. On October 29, 2021, Defendant filed a motion in limine to exclude evidence related to Accuser−3. Dkt. Nos. 387, 444. The Court twice heard argument related to this motion, including extensive argument at the November 10, 2021 in camera hearing that was sealed pursuant to Federal Rule of Evidence 412. See generally Nov. 1, 2021 Transcript; Nov. 10, 2021 Transcript. The Court has also considered supplemental briefing from the parties. That briefing has been filed temporarily under seal to permit the parties the opportunity to propose redactions in accordance with Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). In a Memorandum Opinion & Order filed under temporary seal, the Court GRANTS in part and DENIES in part the Defendant's motion. The Memorandum Opinion & Order lays out the permissible and impermissible testimony that may be offered by this witness based on Rules 412, 404, 401, and 403. The Court will send the temporarily sealed Memorandum Opinion & Order to the parties. By November 21, 2021, the parties are ORDERED to inform the Court whether either seeks sealing or limited redactions of the Courts Memorandum Opinion & Order and of the supplemental briefing, justifying any such request by reference to Federal Rule of Evidence 412(c)(2) and/or the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). (Signed by Judge Alison J. Nathan on 11/19/2021)(jw) (Entered: 11/19/2021)
11/19/2021	478	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 19, 2021 re: Courtroom Connect Document filed by USA. (Comey, Maurene) (Entered: 11/19/2021)
11/19/2021	690	MEMORANDUM OPINION & ORDER as to Ghislaine Maxwell. Before the Court is the Defendant's fourth motion in limine to "exclude evidence related to Accuser−3," to whom the Court refers as Witness−3, on the grounds that the testimony is not direct evidence of the charged conspiracies and is inadmissible under Federal Rules of Evidence 404(b) and 403. Dkt. Nos. 387, 444. The Court has twice heard argument related to this motion, including argument at the November 10, 2021 in camera hearing that was sealed pursuant to Federal Rule of Evidence 412. See generally Nov. 1, 2021 Transcript; Nov. 10, 2021 Transcript. At the November 1, 2021 hearing, the Court provided a brief explanation of its current position based on the information then before it, but the Court ultimately reserved ruling pending additional briefing. The Court is now in receipt of the parties' additional briefing and accordingly is prepared to resolve the motion.(See Footnote 1 on this Memorandum Opinion & Order). The Government now proffers that the anticipated testimony of Witness−3 will describe how she met the Defendant and her relationship with the Defendant and Mr. Epstein. In particular, Witness−3 is anticipated to testify how Defendant introduced her to Mr. Epstein, how massages progressed to involve sexual activity, and Ms. Maxwell's role in facilitating those massages. Based on all of the information now before the Court, including a substantially more detailed proffer by the Government as to the anticipated testimony, see Gov. Supp. Ltr. at 2−3 (Nov. 5, 2021); see also Dkt. No. 452 at 42−43, the Court concludes that some of the anticipated testimony may serve as direct evidence of the Mann Act counts....[*** See this Memorandum Opinion & Order ***]... The parties may submit any requested edits to the proposed limiting instructions

		that are consistent with the Court's ruling or indicate that they have none on or before November 21, 2021. This resolves Dkt. Nos. 387, 444. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/19/2021)(bw) (Entered: 06/29/2022)
11/21/2021	479	LETTER by Jordana H. Feldman as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Patrick J. Smith dated 11/15/2021 re: Rule 17(c) Subpoena to Jordana H. Feldman Document filed by Jordana H. Feldman. (Smith, Patrick) (Entered: 11/21/2021)
11/21/2021	480	MOTION Authorizing a Subpoena Pursuant to Fed. R. Crim. P 17(c)(3) . Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1)(Pagliuca, Jeffrey) (Entered: 11/21/2021)
11/21/2021	481	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 21, 2021 re: Redactions related to Witness−3 . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/21/2021)
11/21/2021	482	ORDER as to Ghislaine Maxwell. On November 1, 2021, the Defense noticed eight expert witnesses. Def. Br., Ex. 1 ("Notice"). On November 8, 2021, the Government filed a motion to partially preclude the testimony of two of those experts, Dr. Dietz and Dr. Loftus. Gov't Br., Dkt. No. 424. The Defense filed a response via email on November 12, 2021, to permit the Government the opportunity to propose redactions. In an Opinion and Order temporarily filed under seal, the Court DENIES in part and GRANTS in part the Governments motion to preclude Dr. Dietz's testimony and DENIES in part and GRANTS in part the Governments motion to preclude Dr. Loftus's testimony. It doesso after considering the admissibility of the anticipated testimony under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993). The Court will send the temporarily sealed Opinion & Order to the parties. By November 23, 2021, the parties are ORDERED to inform the Court whether either seeks sealing or limited redactions of the Court's Opinion & Order, justifying any such request by reference to the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). In addition, by that date, the parties are FURTHER ORDERED to file any proposed redactions to the Defenses response brief and/or supporting exhibits on the public docket, again justifying any such request by reference to the Lugosch test (Signed by Judge Alison J. Nathan on 11/21/21)(jw) (Entered: 11/22/2021)
11/21/2021	516	OPINION & ORDER as to Ghislaine Maxwell. The Court therefore denies in part and grants in part the Government's motion to preclude Dr. Dietz's testimony and denies in part and grants in part the Government's motion to preclude Dr. Loftus's testimony. This resolves docket number 424. (Signed by Judge Alison J. Nathan on 11/21/2021) (See ORDER set forth) (ap) (Entered: 11/29/2021)
11/22/2021	483	ORDER as to Ghislaine Maxwell. The Court will hold final pretrial conference on November 23, 2021 at 9:30 a.m. The proceeding will take place in Courtroom 318 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. In accordance with its prior Order, the Court will ensure access for alleged victims and any members of the Defendants family. Dkt. No. 344. The public will be able to access the proceeding in overflow Courtrooms 110, 506, 905, and 906 of the Thurgood Marshall U.S. Courthouse. These overflow rooms will have live video and audio feeds of the proceeding. (Pretrial Conference set for 11/23/2021 at 09:30 AM in Courtroom 318, 40 Centre Street, New York, NY 10007 before Judge Alison J. Nathan.). (Signed by Judge Alison J. Nathan on 11/22/21)(jw) (Entered: 11/22/2021)
11/22/2021	484	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 475 Pursuant to the Court's email of November 15, 2021, the parties respectfully submit this joint letter to request video monitors with a live feed to the trial proceedings in each of the parties' counsel rooms...ENDORSEMENT...To the extent that the Government is requesting that a video monitor be provided in a counsel room at 40 Foley Square, the request is granted to the extent the District Executive can accommodate the request. If the Government is requesting a video monitor in its own offices, the request is denied.The request is granted as to defense counsel's room. SO ORDERED (Signed by Judge Alison J. Nathan on 11/22/21)(jw) (Entered: 11/22/2021)

11/22/2021	485	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's proposed redactions to the parties supplemental briefing and the Court's Memorandum Opinion & Order regarding the admissibility of the anticipated testimony of Witness−3. Dkt. No. 481; see also Dkt. No. 477. Accordingly, the parties are ORDERED to file the redacted papers on the public docket by November 22, 2021, including the Government's supplemental letter regarding Witness−3 dated November 7, 2021 in response to Dkt. No. 417. The Court will file the redacted Memorandum Opinion & Order (Signed by Judge Alison J. Nathan on 11/22/21)(jw) (Entered: 11/22/2021)
11/22/2021	486	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 22, 2021 re: Proposed Redactions . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/22/2021)
11/22/2021	487	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 18, 2021 re: Motion to quash Rule 17(c) subpoena . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/22/2021)
11/22/2021	488	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 18, 2021 re: Authenticate birth certificates . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/22/2021)
11/22/2021	489	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 11/20/21 re: Birth Certificates (Everdell, Christian) (Entered: 11/22/2021)
11/22/2021	490	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated November 15, 2021 re: Government Exhibit 52 (Pagliuca, Jeffrey) (Entered: 11/22/2021)
11/22/2021	491	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 21, 2021 re: Reply re GX−52 Document filed by USA. (Rohrbach, Andrew) (Entered: 11/22/2021)
11/22/2021	492	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 5, 2021 re: Supplemental letter re Witness−3 Document filed by USA. (Rohrbach, Andrew) (Entered: 11/22/2021)
11/22/2021	493	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 7, 2021 re: Witness−3 and Definitions of "Victim" Document filed by USA. (Rohrbach, Andrew) (Entered: 11/22/2021)
11/22/2021	494	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 11/11/21 re: Accuser−3 Evidence (Everdell, Christian) (Entered: 11/22/2021)
11/22/2021	495	ORDER as to Ghislaine Maxwell. The Court will send the temporarily sealed Memorandum Opinions and Orders to the parties. By November 24, 2021, the parties are ORDERED to inform the Court whether either seeks sealing or limited redactions of the Memorandum Opinions and Orders, justifying any such request by reference to the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). In addition, by that date, the parties are FURTHER ORDERED to file any proposed redactions to the moving papers and/or supporting exhibits on the public docket, again justifying any such request by reference to the Lugosch test. (Signed by Judge Alison J. Nathan on 11/22/21)(jw) (Entered: 11/23/2021)
11/22/2021	496	ORDER 486 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 22, 2021 re: Proposed Redactions. The Court is in receipt of the Government's, Administrator Feldman's, and two anticipated witnesses' motions to quash the Defendant's Rule 17(c)(3) subpoena. Dkt. No. 486. The motions to quash are

		DENIED. The Court hereby ORDERS the Administrator of the Epstein Victims' Compensation Program to produce to the Court via electronic thumb drive any materials responsive to the subpoena as soon as possible, but no later than 12:00 p.m. on November 24, 2021. Accordingly, the parties shall negotiate a protective order and submit the proposal for approval by the Court no later than 12:00 p.m. on November 24, 2021 (Signed by Judge Alison J. Nathan on 11/22/21) (jw) (Entered: 11/23/2021)
11/22/2021	691	MEMORANDUM OPINION & ORDER as to Ghislaine Maxwell. The Defense on November 1, 2021, noticed eight expert witnesses. Def. Br., Ex. 1 ("Notice"). Two of those experts, Dr. Park Dietz and Dr. Elizabeth Loftus, are expected to offer opinions that rebut opinions of the Government's expert witness, Dr. Lisa Rocchio. The Government on November 8, 2021, filed a motion to partially preclude the testimony of Dr. Dietz and Dr. Loftus. Dkt. No. 424. The Court has already addressed that motion. On November 15, 2021, the Government moved to fully or partially preclude the testimony of the remaining six experts. The Defense filed a response on November 19, 2021. The Court addressed the admissibility of Dr. Ryan Hall in a separate written opinion. In this opinion, the Court addresses the preliminary admissibility of Bennett Gershman based on the parties' current proffers....[*** See this Memorandum Opinion & Order ***]... III. Conclusion. The Court therefore grants the Government's motion to preclude Gershman's expert testimony. Because this is a preliminary pre−trial ruling, it is possible that facts and circumstances at trial would alter the Court's analysis. In that event, the Defense must re−raise its request to admit Gershman as an expert witness. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/22/2021)(bw) (Entered: 06/29/2022)
11/22/2021	692	MEMORANDUM OPINION & ORDER as to Ghislaine Maxwell. The Defense on November 1, 2021, noticed eight expert witnesses. Def. Br., Ex. 1 ("Notice"). Two of those experts, Dr. Park Dietz and Dr. Elizabeth Loftus, are expected to offer opinions that rebut opinions of the Government's expert witness, Dr. Lisa Rocchio. The Government on November 8, 2021, filed a motion to partially preclude the testimony of Dr. Dietz and Dr. Loftus. Dkt. No. 424. The Court has already addressed that motion. On November 15, 2021, the Government moved to fully or partially preclude the testimony of the remaining six experts. The Defense filed a response on November 19, 2021. The Court addresses the motion to preclude Dr. Hall in this separate opinion. It will address the other five experts in public rulings....[*** See this Memorandum Opinion & Order ***]... III. Conclusion. The Court therefore grants the Government's motion to preclude Dr. Hall's expert testimony. Because this is a preliminary pre−trial ruling, it is possible that facts and circumstances at trial would alter the Court's analysis. In that event, the Defense must re−raise its request to admit Dr. Hall as an expert witness. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/22/2021)(bw) (Entered: 06/29/2022)
11/23/2021	497	ORDER as to Ghislaine Maxwell. As discussed at today's conference, attached is the Courts draft preliminary instructions for the sworn jury. The Court has considered both parties proposed instructions as to the Courts order that certain witnesses be permitted to testify or be referred to by first name only or pseudonym. Dkt. No. 432. The draft preliminary instructions include a limiting instruction regarding this process. The parties may suggest any proposed edits to the preliminary instructions by letter on or before November 27, 2021, or they shall indicate by that date that they have no objections or suggestions. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/23/21)(jw) (Entered: 11/23/2021)
11/23/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: (Final) Pretrial Conference as to Ghislaine Maxwell held on 11/23/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter Paula Speers. Final Pretrial Conference held. See Transcript. (jbo) (Entered: 11/23/2021)
11/23/2021	498	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 23, 2021 re: Proposed redactions to Dietz/Loftus materials . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/23/2021)
11/23/2021	499	RESPONSE to Motion by Ghislaine Maxwell re: 424 MOTION to Preclude *Expert Testimony of Dr. Dietz and Dr. Loftus.*. (Attachments: # 1 Exhibit 1, # 2 Exhibit

		2)(Pagliuca, Jeffrey) (Entered: 11/23/2021)
11/24/2021	500	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 24, 2021 re: Proposed protective order Document filed by USA. (Attachments: # 1 Text of Proposed Order Proposed Protective Order)(Rohrbach, Andrew) (Entered: 11/24/2021)
11/24/2021	501	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 24, 2021 re: Corrected proposed protective order Document filed by USA. (Attachments: # 1 Text of Proposed Order Corrected Proposed Protective Order)(Rohrbach, Andrew) (Entered: 11/24/2021)
11/24/2021	502	ORDER as to Ghislaine Maxwell. As noted in this Court's prior order, trial in this case will commence on November 29, 2021. Dkt. No. 330. The trial will take place in Courtroom 318 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. In accordance with its prior Order, the Court will ensure access for alleged victims and members of the Defendants family. Dkt. No. 344. Per the S.D.N.Y. Response to COVID−19, anyone who appears at any S.D.N.Y. courthouse must complete a questionnaire on the date of the proceeding prior to entering the courthouse. All visitors must also have their temperature taken when they arrive at the courthouse. 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. All visitors must wear a mask that covers the persons nose and mouth. Bandannas, gaiters, and masks with valves are not permitted. If a person does not have an approved mask, a screener will provide one. 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. For more information, please see https://www.nysd.uscourts.gov /covid−19−coronavirus (Signed by Judge Alison J. Nathan on 11/24/21)(jw) (Entered: 11/24/2021)
11/24/2021	503	ORDER as to Ghislaine Maxwell re: 501 The Court is in receipt of the initial production of the Epstein Victims' Compensation Program pursuant to the Rule 17(c) subpoena. See Dkt. No. 496. The Court is also in receipt of the parties' proposed protective order. Dkt. No. 501. The Court will enter the proposed protective order. Consistent with its prior Order, Dkt. No. 496, the Court determines that the parties may review the materials under the provisions of the protective order. Dkt. No. 501. In doing so, the Court has made no determination as to the admissibility of any of the material. Accordingly, the Administrator of the Epstein Victims Compensation Program is ORDERED to produce the materials contained in the initial production to the parties as soon as possible, but no later than 7:00 p.m. on November 24, 2021. (Signed by Judge Alison J. Nathan on 11/24/21)(jw) (Entered: 11/24/2021)
11/24/2021	504	LETTER by Jordana H. Feldman as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Patrick J. Smith dated 11/23/2021 re: Document Production from Jordana H. Feldman (with proposed redactions) Document filed by Jordana H. Feldman. (Smith, Patrick) (Entered: 11/24/2021)
11/24/2021	505	PROTECTIVE ORDER as to Ghislaine Maxwell...regarding procedures to be followed that shall govern the handling of confidential material.... (Signed by Judge Alison J. Nathan on 11/24/21)(jw) (Entered: 11/24/2021)
11/24/2021	506	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 24, 2021 re: Proposed redactions to Hall et al. materials . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/24/2021)
11/24/2021	507	MOTION to Preclude *Expert Testimony of Dr. Ryan Hall et al.*. Document filed by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B)(Rohrbach, Andrew) (Entered: 11/24/2021)
11/24/2021	508	RESPONSE to Motion by Ghislaine Maxwell re: 507 MOTION to Preclude *Expert Testimony of Dr. Ryan Hall et al...* (Pagliuca, Jeffrey) (Entered: 11/24/2021)

11/24/2021	509	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 22, 2021 re: 507 MOTION to Preclude *Expert Testimony of Dr. Ryan Hall et al.*. re: File reply brief . Document filed by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit Proposed reply brief, # 2 Exhibit Proposed Exhibit C)(Rohrbach, Andrew) (Entered: 11/24/2021)
11/27/2021	510	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 27, 2021 re: Preliminary instructions Document filed by USA. (Rohrbach, Andrew) (Entered: 11/27/2021)
11/27/2021	511	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/27/2021 re: Trial document procedure (Sternheim, Bobbi) (Entered: 11/27/2021)
11/27/2021	512	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated November 27, 2021 re: Court's Proposed Preliminary Instructions to the Jury (Pagliuca, Jeffrey) (Entered: 11/27/2021)
11/28/2021	515	ORDER as to Ghislaine Maxwell: The Court is in receipt of the third production of the Epstein Victims Compensation Program pursuant to the Rule 17(c) subpoena. See Dkt. Nos. 496, 503. Consistent with its prior orders, Dkt. Nos. 496, 503, the Court determines that the parties may review the materials under the provisions of the protective order. Dkt. No. 505. In doing so, the Court has made no determination as to the admissibility of any of the material. Accordingly, the Administrator of the Epstein Victims' Compensation Program is ORDERED to produce the materials contained in the third production to the parties as soon as possible, but no later than 8:30 p.m. on November 28, 2021. (Signed by Judge Alison J. Nathan on 11/28/2021) (ap) (Entered: 11/29/2021)
11/29/2021	513	ORDER as to Ghislaine Maxwell: The Court is in receipt of the second production of the Epstein Victims Compensation Program pursuant to the Rule 17(c) subpoena. See Dkt. Nos. 496, 503. The Administrator provided the materials via a secure FTP site, which the Court concludes is sufficient. Consistent with its prior orders, Dkt. Nos. 496, 503, the Court determines that the parties may review the materials under the provisions of the protective order. Dkt. No. 505. In doing so, the Court has made no determination as to the admissibility of any of the material. Accordingly, the Administrator of the Epstein Victims Compensation Program is ORDERED to produce the materials contained in the second production to the parties as soon as possible, but no later than 5:00 p.m. on November 27, 2021. (Signed by Judge Alison J. Nathan on 11/27/2021) (ap) (Entered: 11/29/2021)
11/29/2021	514	ORDER as to Ghislaine Maxwell: The Court is in receipt of the Government's letter motion to preclude certain lines of cross−examination of Government witnesses. The Court hereby GRANTS the Government's request to file the letter motion under seal in order to protect the privacy interests of anticipated witnesses, including those who are subject to the Court's pseudonym order. See Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110, 120 (2d Cir. 2006). The Defendant is hereby ORDERED to respond by today, November 28, 2021, at 2:00 p.m. (Responses due by 11/28/2021) (Signed by Judge Alison J. Nathan on 11/28/2021) (ap) (Entered: 11/29/2021)
11/29/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Selection / Jury Trial as to Ghislaine Maxwell held on 11/29/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski Jury selection held. Jury trial begins. See Transcript. (jbo) (Entered: 12/02/2021)
11/30/2021	517	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 30, 2021 re: Defense exhibits Document filed by USA. (Rohrbach, Andrew) (Entered: 11/30/2021)
11/30/2021	518	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated November 30, 2021 re: Fed. R. Crim. P. 16(b)(1)(A) (Pagliuca, Jeffrey) (Entered: 11/30/2021)

11/30/2021	519	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated November 30, 2021 re: Pseudonyms (Pagliuca, Jeffrey) (Entered: 11/30/2021)
11/30/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 11/30/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski. Jury trial held. See Transcript. (jbo) (Entered: 12/02/2021)
11/30/2021	693	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' letters regarding the issue of potential cross−examination that might elicit identifying information in violation of this Court's order. See Dkt. No. 519. The Government is hereby ORDERED to provide to the Defense the information it believes falls within the categories of specifically identifying information for the current testifying witness no later than 7:00 a.m. tomorrow morning, December 1, 2021. The Defense is ORDERED to alert the Government of any issues concerning the current testifying witness by the same time7:00 a.m. tomorrow morning, December 1, 2021. The Defense shall remain cognizant not only of its duty to avoid revealing the names of witnesses testifying under pseudonyms, but also any specifically identifying information of the protected witnesses. See Transcript, at 10−11 (Nov. 1, 2021). The parties shall then meet and confer on any disagreements. If the parties cannot reach a resolution, they may raise any issues with the Court when the parties are scheduled to appear at 8:45 a.m. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/30/2021)(bw) (Entered: 06/29/2022)
12/02/2021	520	ORDER as to Ghislaine Maxwell: The Clerk of Court is respectfully directed to pay the invoices received in connection with the transportation of jurors in this matter. (Signed by Judge Alison J. Nathan on 12/2/2021) (ap) (Entered: 12/03/2021)
12/02/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/2/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and Alena Lynch. Jury trial held. See Transcript. (jbo) (Entered: 12/07/2021)
12/03/2021	521	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 3, 2021 re: Witness Jane's Testimony (Attachments: # 1 Exhibit 1 (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 12/03/2021)
12/03/2021	522	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 3, 2021 re: Witness Dawson Document filed by USA. (Rohrbach, Andrew) (Entered: 12/03/2021)
12/03/2021	526	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 522 Accordingly, the parties jointly and respectfully request that the Court release Michael Dawson from his obligation to return to Court on Monday...ENDORSEMENT...SO ORDERED (Signed by Judge Alison J. Nathan on 12/3/21)(jw) (Entered: 12/06/2021)
12/03/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/3/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters George Malinowski and Andrew Walker. Jury trial held. See Transcript. (jbo) (Entered: 12/07/2021)
12/04/2021	523	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 4, 2021 re: 900 Series of Exhibits Document filed by USA. (Rohrbach, Andrew) (Entered: 12/04/2021)
12/05/2021	524	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 5, 2021 re: Edit to Witness−3 instruction . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 12/05/2021)

12/05/2021	525	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 5, 2021 re: Response to the Government's Letter Regarding 900 Series of Exhibits (Pagliuca, Jeffrey) (Entered: 12/05/2021)
12/05/2021	527	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's letter motion regarding the limiting instruction for Witness−3's anticipated testimony. The Government is hereby ORDERED to file an additional letter explaining what details regarding the alleged sexual activity the Government would seek to elicit absent instruction from the Court and in light of the Defenses opening. The Government's letter must be submitted no later than today, December 5, 2021, at 4:00 p.m. With that information, the Defense can respond to and the Court can analyze the Government's requested addition in the limiting instruction. Accordingly, the Defense is ORDERED to respond to the Government's letter motion and further response letter no later than today, December 5, 2021, at 7:00 p.m. In their letter responses the parties shall be mindful of Rule 412s requirement regarding sealing (Signed by Judge Alison J. Nathan on 12/5/21)(jw) (Entered: 12/06/2021)
12/06/2021	528	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 6, 2021 re: Attorney−Client Privilege Document filed by USA. (Rohrbach, Andrew) (Entered: 12/06/2021)
12/06/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/6/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski. Jury trial held. See Transcript. (jbo) (Entered: 12/07/2021)
12/07/2021		Minute Entry for proceedings held before Judge Alison J. Nathan:Jury Trial as to Ghislaine Maxwell held on 12/7/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski. See Transcript. (jw) (Entered: 12/13/2021)
12/08/2021	529	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 11/15/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Rebecca Forman, (212) 805−0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/29/2021. Redacted Transcript Deadline set for 1/10/2022. Release of Transcript Restriction set for 3/8/2022. (Moya, Goretti) (Entered: 12/08/2021)
12/08/2021	530	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 11/15/21 has been filed by the court reporter/transcriber in the above−captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 12/08/2021)
12/08/2021	531	ORDER as to Ghislaine Maxwell. Juror Number 70 is directed to submit the receipts associated with the transportation cost incurred on Wednesday 8, 2021, to the Jury Administrator. Upon receipt, the Clerk of Court is directed to reimburse Juror Number 70 for said cost. SO ORDERED (Signed by Judge Alison J. Nathan on 12/8/21)(jw) (Entered: 12/08/2021)
12/08/2021		Minute Entry for proceedings held before Judge Alison J. Nathan:Jury Trial as to Ghislaine Maxwell held on 12/8/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski. See Transcript (jw) (Entered: 12/13/2021)
12/09/2021	532	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 8, 2021 re: Exhibit 52 (Pagliuca, Jeffrey) (Entered:

		12/09/2021)
12/09/2021	533	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 8, 2021 re: Admission of GX 52 . Document filed by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Rohrbach, Andrew) (Entered: 12/09/2021)
12/09/2021	534	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 9, 2021 re: Proposed redactions to Dkt. No. 533 . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 12/09/2021)
12/09/2021	535	MEMORANDUM OPINION & ORDER as to Ghislaine Maxwell. The Government seeks to admit what has been identified as Government Exhibit 52 ("GX 52"), and submit to the jury a redacted version of GX 52. The Defense objects to the admission of GX 52 on authentication and hearsay grounds. The admissibility of the exhibit has been the subject of pretrial motion in limine briefing and extensive supplemental briefing. See Dkt. Nos. 390, 397, 398, 457, 476, 490. This includes supplemental briefing received on December 8, 2021, after the authenticating witness, Mr. Juan Alessi, underwent direct examination by the Government and voir dire by the Defense. The Court reserved ruling on the exhibit, pending what was anticipated to be additional testimony. Trial Tr. at 876. The Court now overrules the Defenses objections. The parties are ORDERED to confer and propose a limiting instruction consistent with this ruling on or before today, December 9, 2021, at 7:00 p.m. The parties are FURTHER ORDERED to confer and prepare a stipulation that Government Exhibits 52A, 52D, 52E, 52F, 52G, and 52H are true and correct photocopies of five pages from GX 52. See Trial Tr. at 858. (Signed by Judge Alison J. Nathan on 12/9/21)(jw) (Entered: 12/10/2021)
12/09/2021		Minute Entry for proceedings held before Judge Alison J. Nathan:Jury Trial as to Ghislaine Maxwell held on 12/9/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski. See transcript. (jw) (Entered: 12/13/2021)
12/10/2021	536	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 11/23/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Paula Speer, (212) 805−0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/3/2022. Redacted Transcript Deadline set for 1/10/2022. Release of Transcript Restriction set for 3/10/2022. (Moya, Goretti) (Entered: 12/10/2021)
12/10/2021	537	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 11/23/21 has been filed by the court reporter/transcriber in the above−captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 12/10/2021)
12/10/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/10/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski Jury trial held. See Transcript. (jbo) (Entered: 12/20/2021)
12/11/2021	538	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 9, 2021 re: Limiting instruction for GX 52 Document filed by USA. (Rohrbach, Andrew) (Entered: 12/11/2021)
12/12/2021	539	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 12, 2021 re: Defense witness order . Document filed by USA as to Ghislaine Maxwell.

		(Rohrbach, Andrew) (Entered: 12/12/2021)
12/12/2021	540	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 12/12/2021 re: Order of Defense Witnesses (Sternheim, Bobbi) (Entered: 12/12/2021)
12/13/2021	541	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 13, 2021 re: Privilege stipulation Document filed by USA. (Rohrbach, Andrew) (Entered: 12/13/2021)
12/14/2021	542	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Defense's letter dated December 13, 2021, regarding anticipated witnesses. The Government is ORDERED to submit a response no later than today, December 14, 2021, at 10:00 p.m. The Defense is FURTHER ORDERED to provide a copy of its anticipated witness order to the Court no later than today, December 14, 2021, at 12:00 p.m. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/14/2021)(bw) (Entered: 12/14/2021)
12/14/2021	543	SEALED DOCUMENT placed in vault. (jus) (Entered: 12/14/2021)
12/14/2021	544	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 13, 2021 re: Jack Scarola, Brad Edwards and Robert Glassman (Attachments: # 1 Exhibit 1 (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 12/15/2021)
12/15/2021	545	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 14, 2021 re: Testimony from Victim Counsel Document filed by USA. (Rohrbach, Andrew) (Entered: 12/15/2021)
12/15/2021	546	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 15, 2021 re: Proposed redactions *to Privilege Letters*. Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 12/15/2021)
12/15/2021	547	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 12/15/2021 re: Opposition to restriction on expert testimony (Sternheim, Bobbi) (Entered: 12/15/2021)
12/15/2021	548	MEMORANDUM OPINION & ORDER as to Ghislaine Maxwell. The Defense on December 12, 2021, moved to permit three anticipated witnesses to testify under a pseudonym or their first names only. The Government filed a letter opposing this request on December 14, 2021. The Defense's primary contention is that some form of anonymity for its witnesses is justified by the same reasons that the Court permitted three alleged victims and two related government witnesses to testify under pseudonyms. The Court disagrees with this basic premise and denies the Defense's motion....[*** See this Memorandum Opinion & Order ***]... Last, the Court emphasizes that while it currently denies the Defense's motion, the Defense may of course raise, and the Court will consider, objections that particular lines of questioning into witnesses' backgrounds or lives are irrelevant, cumulative, intended to harass, or otherwise inappropriate. See, e.g., Smith v. Illinois, 390 U.S. 129, 133 (1968) (emphasizing that even when anonymity is not warranted, the court has a duty to protect a witness "from questions which go beyond the bounds of proper cross−examination merely to harass, annoy or humiliate him"). SO ORDERED. (Signed by Judge Alison J. Nathan on 12/15/2021)(bw) (Entered: 12/16/2021)
12/15/2021	694	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's motion to preclude certain testimony of defense witnesses, dated December 15, 2021. The Defense is ORDERED to submit a response as follows: − A response to the motion with respect to Dr. Loftus by today, December 15, 2021, at 7:45 p.m. − A response to the motion with respect to Alexander Hamilton by tomorrow, December 16, 2021, at 7:00 a.m. − A response to the motion with respect to the other anticipated witnesses by tomorrow, December 16, 2021, at 5:00 p.m. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/15/2021)(bw) (Entered: 06/29/2022)
12/16/2021	551	ORDER as to Ghislaine Maxwell: The Court is in receipt of the parties' joint letter regarding the admission of prior inconsistent statements. The parties' letter notes "that

		many of these statements raise one of two questions: (1) must counsel show the witness the prior inconsistent statement under Rule 613(b), and (2) is a statement admissible when the witness affirms that the 3500 material contains the inconsistent statement and also expresses disagreement with the substance." The parties are hereby ORDERED to submit a letter citing authority (beyond the rule itself) for their respective positions. The parties are FURTHER ORDERED to indicate each disputed prior inconsistent statement that was read into the record. Letters must be submitted as soon as possible but no later than today, December 16, 2021, at 10:15 p.m. The parties are FURTHER ORDERED to docket their respective letters by tomorrow, December 17, 2021, at 8:00 a.m. (Signed by Judge Alison J. Nathan on 12/16/2021) (ap) Modified on 12/17/2021 (ap). (Entered: 12/17/2021)
12/16/2021	552	ORDER as to Ghislaine Maxwell: The Court denies the motion for the remaining witnesses the Government seeks to preclude. (Signed by Judge Alison J. Nathan on 12/16/2021) (ap) (Entered: 12/17/2021)
12/16/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/16/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski Jury trial held. See Transcript. (jbo) (Entered: 12/20/2021)
12/17/2021	549	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 17, 2021 re: Law enforcement witness testimony Document filed by USA. (Attachments: # 1 Exhibit A)(Rohrbach, Andrew) (Entered: 12/17/2021)
12/17/2021	550	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 16, 2021 re: Prior inconsistent statements Document filed by USA. (Rohrbach, Andrew) (Entered: 12/17/2021)
12/17/2021	553	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 16, 2021 re: Prior Inconsistent Statements (Pagliuca, Jeffrey) (Entered: 12/17/2021)
12/17/2021	562	ORDER as to Ghislaine Maxwell. Attached is the draft jury charge and draft verdict sheet. Counsel shall be prepared to provide at the charging conference tomorrow, December 18, 2021, specific suggestions (with supporting authority if available) for any requested changes (Signed by Judge Alison J. Nathan on 12/17/21)(jw) (Entered: 12/20/2021)
12/17/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/17/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski Jury trial held. See Transcript. (jbo) (Entered: 12/20/2021)
12/18/2021	554	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 18, 2021 re: Jury instructions Document filed by USA. (Rohrbach, Andrew) (Entered: 12/18/2021)
12/18/2021	555	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 15, 2021 re: Ms. Maxwell's Response to Government's Motion to Preclude Certain Testimony by Alexander Hamilton (Pagliuca, Jeffrey) (Entered: 12/18/2021)
12/18/2021	563	ORDER as to Ghislaine Maxwell. The charging conference for this matter was held today, December 18, 2021. Attached to this Order are redline and clean copies of the draft jury charge and draft verdict form that incorporate all changes discussed at the conference, or by the Government's subsequent letter, Dkt. No. 554, and adopted by the Court. The Court also edited "a minor" to be "an individual under the age of 18" on page 38, line 19, and deleted "or foreign" on page 28, line 5, as consistent with the agreed upon edits at conference. No later than tomorrow, December 19, 2021, at 12:00

		p.m., the parties may inform the Court in writing of any errors that were the result of the Court's inputting the changes from todays charging conference. (Signed by Judge Alison J. Nathan on 12/18/21)(jw) (Entered: 12/20/2021)
12/18/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/18/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Khris Sellin and Paula Speers. Jury trial held. See Transcript. (jbo) (Entered: 12/22/2021)
12/19/2021	556	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 19, 2021 re: Jury charge Document filed by USA. (Rohrbach, Andrew) (Entered: 12/19/2021)
12/19/2021	557	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 12/19/2021 re: Letter re: Jury Charge (Sternheim, Bobbi) (Entered: 12/19/2021)
12/19/2021	558	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 19, 2021 re: Closing logistics Document filed by USA. (Rohrbach, Andrew) (Entered: 12/19/2021)
12/19/2021	559	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 19, 2021 re: Redacted exhibits . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 12/19/2021)
12/19/2021	560	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 558 The parties respectfully submit this letter regarding the logistics for public access for closing arguments. The parties propose that they will release a public version of their slides (to the extent they do not contain sealed materials) following the conclusion of the trial day on the same basis that they have been releasing public exhibits during trial....ENDORSEMENT...The parties previously indicated to the Court that they did not intend to make the visuals of the closing argument presentations public. The Court accordingly ordered the parties to confer on a proposal so as to ensure public access. For the reasons provided by the parties, the Court adopts the parties' proposal. Versions of the closing argument visual presentations with narrowly tailored redactions (e.g., redactions to protect the anonymity of witnesses the Court has permitted to testify under pseudonyms) shall be made available to the public within two hours of the completion of closing arguments. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/19/2021)(jw) (Entered: 12/20/2021)
12/19/2021	561	MEMO ENDORSEMENT 559 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 19, 2021 re: Redacted exhibits...ENDORSEMENT...SO ORDERED (Signed by Judge Alison J. Nathan on 12/19/21) (jw) (Entered: 12/20/2021)
12/19/2021	564	ORDER as to Ghislaine Maxwell. The parties are hereby ORDERED by 9:00 a.m. tomorrow, December 20, 2021, to docket or otherwise make publicly available all admitted exhibits. The parties shall confer on and propose narrowly tailored redactions for any exhibits admitted temporarily under seal. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/19/21)(jw) (Entered: 12/20/2021)
12/19/2021	565	ORDER as to Ghislaine Maxwell. Attached to this Order are the final versions of the jury charge and verdict form. Per the parties' letters, the Court adopted the Government's proposed edit to Instruction No. 19. See Dkt. Nos. 556, 557. (Signed by Judge Alison J. Nathan on 12/19/21)(jw) (Entered: 12/20/2021)
12/20/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/20/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski. Jury trial held.

		See Transcript. (jbo) (Entered: 12/22/2021)
12/21/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/21/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter Martha Martin. Jury trial held. See Transcript. (jbo) (Entered: 12/22/2021)
12/22/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/22/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter George Malinowski. Jury trial held. See Transcript. (jbo) (Entered: 01/10/2022)
12/27/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/27/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter Martha Martin. Jury trial held. See Transcript. (jbo) (Entered: 01/10/2022)
12/28/2021	566	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated December 27, 2021 re: Supplemental Instruction (Everdell, Christian) (Entered: 12/28/2021)
12/28/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/28/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter George Malinowski. Jury trial held. See Transcript. (jbo) (Entered: 01/10/2022)
12/29/2021		Minute Entry for proceedings held before Judge Alison J. Nathan:Jury Trial as to Ghislaine Maxwell held on 12/29/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter Khris Sellin. Defendant found GUILTY on Counts 1, 3, 4, 5, 6. Defendant found NOT GUILTY on Count 2. Jury trial concluded. (jw) (Entered: 01/11/2022)
12/29/2021		JURY VERDICT as to Ghislaine Maxwell (1) Guilty on Count 1ss,3ss,4ss,5ss,6ss; Not Guilty on Count 2ss. (jw) (Entered: 06/29/2022)
01/03/2022	567	ORDER as to Ghislaine Maxwell. The parties are ORDERED to submit a joint letter by January 10, 2022, proposing a briefing schedule for the Defendant's Rule 29 motion and proposing a schedule for sentencing. The joint letter should also propose a schedule for the severed perjury counts. The Defense also inquired about a booster shot for the Defendant. The Court has been advised that MDC is making booster shots available within a week of receiving a request from an inmate. Defense counsel is accordingly advised to follow the MDC's instructions for requesting a booster. If a request is made and a booster not provided, Defense counsel may make a further application to the Court. SO ORDERED. (Signed by Judge Alison J. Nathan on 1/3/2022)(bw) (Entered: 01/03/2022)
01/05/2022	568	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated January 5, 2022 re: Inquiry . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 01/05/2022)
01/05/2022	569	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 1/5/22 re: Juror Issue (Redacted) (Everdell, Christian) (Entered: 01/05/2022)
01/05/2022	570	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated January 5, 2022 re: Ms. Maxwell's Response to Government's Letter re.

		Juror's Statements (Dkt. 568) (Pagliuca, Jeffrey) (Entered: 01/05/2022)
01/05/2022	571	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' letters. Dkt. Nos. 568, 569, 570. The Court hereby sets the following briefing schedule for the Defense to move for a new trial in light of the issues raised in the parties' letters: Defense motion: January 19, 2022; Government response: February 2, 2022; Defense reply: February 9, 2022. The parties' briefing should address whether an inquiry of some kind is permitted and/or required, and, if so, the nature of such an inquiry. Although the Court reserves decision on whether an inquiry of any kind is warranted, the Court grants the Government's request, Dkt. No. 568, to offer court−appointed counsel to the juror in issue. Subject to the juror's right to decline court−appointed counsel, the Court will appoint the on−duty CJA counsel to represent the juror. If counsel for the juror wishes to be heard on the issue of the appropriateness of an inquiry, briefing by the juror's counsel may be filed by January 26, 2022. The Court will not adjourn post−trial briefing on other issues as requested by the Defense, Dkt. No. 569, but sets the following schedule for any other post−verdict motion by the Defense: Defense motion: February 4, 2022; Government opposition: February 18, 2022; Defense reply: March 4, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 1/5/2022) (bw) (Entered: 01/05/2022)
01/05/2022	572	NOTICE of Notice of Appearance for Jury Number 50 as to Ghislaine Maxwell (Spodek, Todd) (Entered: 01/05/2022)
01/05/2022	573	ORDER as to Ghislaine Maxwell. A notice of appearance has been filed by retained counsel on behalf of Juror Number 50. See Dkt. No. 572. Retained counsel has communicated to the Court that the juror does not wish to have counsel appointed. Accordingly, the Court will not appoint CJA counsel as indicated in its prior order. See Dkt. No. 571. Counsel for Juror Number 50 is directed to review Dkt. No. 571. SO ORDERED. (Signed by Judge Alison J. Nathan on 1/5/2022)(bw) (Entered: 01/06/2022)
01/10/2022	574	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated January 10, 2022 re: Scheduling Document filed by USA. (Rohrbach, Andrew) (Entered: 01/10/2022)
01/12/2022	575	ORDER as to Ghislaine Maxwell. The parties are ORDERED to submit via email any proposed redactions on or before January 13, 2022, justifying any such request by reference to the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). If any redactions are proposed, the Court will determine whether any are appropriate and then docket the motion. The parties shall respond to Juror 50s motion on or before January 20, 2022. Upon further reflection, unless and until Juror No. 50 is permitted to intervene, he may have no standing to be heard on the question of whether an inquiry should be conducted. Accordingly, the Court withdraws the aspect of its prior order setting January 26, 2022, as the date by which counsel for Juror 50 should file a submission on the issue of the appropriateness of an inquiry. Dkt. No. 571. The Court will hear from the parties first regarding Juror 50's pending motion. Depending on the resolution of that motion, the Court will provide further guidance to counsel for Juror 50 regarding any permitted submission. If a further submission is permitted, the Court will provide ECF docketing access to counsel for Juror 50 at that time (Signed by Judge Alison J. Nathan on 1/12/22)(jw) (Entered: 01/12/2022)
01/14/2022	576	ORDER as to Ghislaine Maxwell. The Court required the parties to indicate whether Juror 50's motion to intervene and to be provided a copy of the jurors completed questionnaire and voir dire should be redacted. Dkt. No. 575. In response, the parties have submitted letters to the Court indicating their differing views on whether Juror 50s motion should be docketed at all. Upon further reflection, the Courtconcludes that it must first address the threshold question of whether an inquiry is permittedand/or required before considering Juror 50s requests. Accordingly, the Court will not consider or act on Juror 50's request to intervene and to be provided a copy of the jurors completed questionnaire and voir dire until the Court receives the parties briefing on the appropriateness of an inquiry and the nature of any such inquiry. The Court will maintain Juror 50's motion temporarily under seal until the Court considers the parties arguments and determines the appropriate next steps. Consistent with this and to (Signed by Judge Alison J. Nathan on 1/14/22)(jw) (Entered: 01/14/2022)

01/14/2022	577	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' joint letter regarding a schedule for sentencing and resolution of the severed perjury counts. Dkt. No. 574. The Court hereby schedules the sentencing in this matter for June 28, 2022, at 11:00 a.m. The Court will delay ordering the preparation of a presentence investigation report until April 2022. The Court previously set the schedule for briefing on the new trial motion as well as all other post−verdict motions. Dkt. No. 571. That schedule remains in place. The Court adopts the parties proposal that the scheduling of any proceedings related to the severed perjury counts be deferred until the post−verdict motions are resolved. By January 18, 2022, the Government shall indicate in a joint letter whether it is seeking an exclusion of time under the Speedy Trial Act for the perjury counts and the basis for any requested exclusion. In the joint letter, the defense shall indicate whether it consents to the proposed exclusion of time (Sentencing set for 6/28/2022 at 11:00 AM before Judge Alison J. Nathan.) (Signed by Judge Alison J. Nathan on 1/14/22)(jw) (Entered: 01/14/2022)
01/18/2022	578	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated January 18, 2022 re: Speedy Trial Act Document filed by USA. (Moe, Alison) (Entered: 01/18/2022)
01/19/2022	579	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 578 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated January 18, 2022 re: Speedy Trial Act. ENDORSEMENT: With respect to Counts 7 and 8, the Court hereby excludes time under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), from todays date through April 1, 2022. The Court finds that the ends of justice served by granting this exclusion from speedy trial computations outweigh the interests of the public and the defendant in a speedy trial on these counts because the time is necessary for the parties to research and brief post−trial motions. (Signed by Judge Alison J. Nathan on 1/19/2022) (ap) (Entered: 01/19/2022)
01/19/2022	580	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 01/19/2022 re: Letter to Court re: Motion for New Trial (Sternheim, Bobbi) (Entered: 01/19/2022)
01/24/2022	581	LETTER addressed to Judge Alison J. Nathan from Christine N. Walz, Sanford L. Bohrer and Cynthia A. Gierhart dated 1/21/22 re: Miami Herald letter regarding the Filing of Ms. Maxwell's Motion for a New Trial Under Seal (Dkt. 580) (jw) (Entered: 01/24/2022)
01/25/2022	582	**FILING ERROR − DEFICIENT DOCKET ENTRY − WRONG FILER −** LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Nathan Siegel dated 1/25/2022 re: Letter from Nathan Siegel on behalf of American Broadcasting Companies, Inc., and NBCUniversal News Group to Hon. Alison J. Nathan Joining the Requests of The Miami Herald (Dkt. No. 581) and the New York Times to Oppose Sealing, and Requesting Additional Unsealing Document filed by USA. (Siegel, Nathan) Modified on 1/26/2022 (lb). (Entered: 01/25/2022)
01/25/2022	583	LETTER addressed to Judge Alison J. Nathan from David E. McCraw dated 1/24/2022 re: Letter by the NY Times Company.(jw) Modified on 1/25/2022 (jw). (Entered: 01/25/2022)
01/26/2022	584	ORDER as to Ghislaine Maxwell. As a post−trial housekeeping matter, Court staff directed the parties via email to complete the process of providing copies of Court Exhibits with narrowly tailored redactions (e.g., redactions to protect the anonymity of jurors and of witnesses the Court permitted to testify under pseudonyms) for the Court to docket. The Government subsequently submitted one court exhibit with the name unredacted of a witness subject to the Court's anonymity order. Subsequently the Defense indicated in a temporarily sealed letter why the name was unredacted. The Government is accordingly ORDERED to docket a letter on ECF on or before January 28, 2022, indicating why a redaction is no longer being sought for the name of this witness. Once the Government confirms in that letter that it no longer seeks redaction of the name, then the Defense may file the temporarily sealed letter on the docket without redaction of the name. The Court will then docket all Court Exhibits. (Signed by Judge Alison J. Nathan on 1/26/22)(jw) (Entered: 01/26/2022)

01/26/2022	585	ORDER as to Ghislaine Maxwell. The Court is in receipt of Defendant's motion for a new trial and accompanying exhibits, which she requests to file under seal. See Dkt. No. 580. The Court has also received requests from media organizations to unseal the motion. The Court is aware there is substantial public interest in this matter and will ensure that the First Amendment right to public access is fully safeguarded. At the same time, the Court must act deliberately and hear from the parties in considering these sealing issues in order to ensure the integrity of any potential inquiry process going forward, should one be ordered. That too is in the public, as well as the Defendant's and the Government's, interest. Accordingly, to the extent the Defense requests that arguments in favor of sealing should themselves be sealed, that request is DENIED. Arguments in favor of sealing can be made in such a way so as not to undermine the grounds for seeking sealing or redaction in the first instance. The Defense is therefore ORDERED to file a letter on the public docket on or before February 1, 2022, that justifies the proposed sealing by reference to the three−part test in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). The Government may file on ECF a response to the Defenses justification letter on or before February 4, 2022. The Government's opposition to the Defenses new trial motion is due February 2, 2022. Dkt. No. 571. Per the established practice in this case, the Government must provide a copy via email to the Defense to allow the Defense the opportunity to propose narrowly tailored redactions and/or sealing. If either party proposes redactions to or sealing of the Government's anticipated opposition, a letter justifying such redactions or sealing must be filed on the public docket. The Defense letter must be filed on or before February 8, 2022, and the Government letter must be filed by February 11, 2022. The same process will apply for any Defense reply in support, which is due February 9, 2022. Dkt. No. 571. If redactions or sealing are proposed, the Defense letter justifying such requests would be due February 15, 2022, and the Government letter would be due February 18, 2022. The parties are FURTHER ORDERED to address the New York Times Company's motion to unseal the filled−out questionnaires for the twelve seated jurors. See Dkt. No. 583. Letters by both parties must be submitted via ECF on or before February 11, 2022. SO ORDERED (Signed by Judge Alison J. Nathan on 1/26/2022)(jw) (Entered: 01/26/2022)
01/26/2022	586	LETTER addressed to Judge Alison J. Nathan from Matthew A. Leish dated 1/26/2022 re: I write on behalf of Daily News, L.P. (jw) (Entered: 01/26/2022)
01/27/2022	587	LETTER addressed to Judge Alison J. Nathan from Nathan Siegel dated 1/26/2022 re: Letter addressed to Judge Alison J. Nathan on behalf of American Broadcasting Companies, Inc and NBC Universal News Group (jw) (Entered: 01/27/2022)
01/28/2022	588	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated January 28, 2022 re: Redaction of Witness Name Document filed by USA. (Pomerantz, Lara) (Entered: 01/28/2022)
01/28/2022	589	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 1/28/22 re: Redaction (Everdell, Christian) (Entered: 01/28/2022)
02/01/2022	590	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 2/1/22 re: Sealing Motion for New Trial (Everdell, Christian) (Entered: 02/01/2022)
02/01/2022	591	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 2/1/22 re: Extension of Time (Everdell, Christian) (Entered: 02/01/2022)
02/02/2022	592	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 591 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 2/1/22 re: Extension of Time. ENDORSEMENT: The extension request is hereby GRANTED. The briefing schedule for other post−verdict motions is revised as follows: − Defense submission: February 11, 2022. Government response: February 25, 2022. Defense reply: March 11, 2022. (Motions due by 2/11/2022. Responses due by 2/25/2022. Replies due by 3/11/2022) (Signed by Judge Alison J. Nathan on 2/2/2022) (ap) (Entered: 02/02/2022)
02/04/2022	593	ORDER as to Ghislaine Maxwell: As a post−trial house−keeping matter, attached to this Order are the Court Exhibits. The parties have proposed redactions to several

		exhibits and the sealing of Court Exhibit 4. The Court concludes that the proposed redactions are consistent with the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006), and narrowly tailored. The redactions serve the purpose of protecting the anonymity of jurors and of victim−witnesses subject to the Court's anonymity order. With respect to Court Exhibit 4, rather than seal the entire document, the Court has redacted the information that would potentially identify the victim−witness who testified pursuant to the Court's anonymity order. Unredacted copies of the Court Exhibits will be filed under seal. (Signed by Judge Alison J. Nathan on 2/4/2022)(ap) (Entered: 02/04/2022)
02/04/2022	594	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated February 4, 2022 re: Opposition to Defendant's Sealing Request Document filed by USA. (Pomerantz, Lara) (Entered: 02/04/2022)
02/08/2022	595	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 2/8/2022 re: Request for Sealing (Sternheim, Bobbi) (Entered: 02/08/2022)
02/11/2022	596	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' letters addressing the Defendant's request to temporarily seal her motion for a new trial and accompanying exhibits, and the Governments response in opposition and accompanying exhibits. See Dkt. Nos. 590, 594, 595. Several media organizations have also filed letters seeking unsealing. The Court is also in receipt of Juror 50's motion to intervene. Both the Government and the Defendant oppose intervention. The Defendant seeks to strike or, in the alternative, seal Juror 50's motion. For the reasons outlined more fully below, the Court rules as follows. First, the Defendant's motion to temporarily seal in their entirety all documents related to the motion for a new trial is DENIED. Any sealing of judicial documents must be narrowly tailored to serve competing interests. (Signed by Judge Alison J. Nathan on 2/11/22)(jw) (Entered: 02/11/2022)
02/11/2022	597	ORDER as to Ghislaine Maxwell. The Court's chambers received the attached letter via email from counsel for the National Association of Criminal Defense Lawyers (NACDL) seeking leave to file an amicus brief regarding the Defendant's motion for a new trial. The Court issues this Order in response. If any party wishes to file an amicus brief concerning the Defendant's motion for a new trial, it may submit to the Court via email a motion for leave to do so on or before February 18, 2022. The Court will only consider such a motion if: It is timely submitted by February 18, 2022; (Amicus Brief due by 2/18/2022) (Signed by Judge Alison J. Nathan on 2/11/22)(jw) (Entered: 02/11/2022)
02/11/2022	598	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated February 11, 2022 re: motion by the New York Times Company. Document filed by USA. (Moe, Alison) (Entered: 02/11/2022)
02/11/2022	599	MOTION for New Trial *to Obtain Relief Requested in Memorandum in Support of Post−Trial Motions*. Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 02/11/2022)
02/11/2022	600	MEMORANDUM in Support by Ghislaine Maxwell re 599 MOTION for New Trial *to Obtain Relief Requested in Memorandum in Support of Post−Trial Motions.*. *OMNIBUS MEMORANDUM in Support by Ghislaine Maxwell re Post−Trial Motions* (Everdell, Christian) (Entered: 02/12/2022)
02/15/2022	601	SEALED DOCUMENT placed in vault. (jus) (Entered: 02/15/2022)
02/16/2022	602	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 02/16/2022 re: Letter in Response to Dkt. 596 (Sternheim, Bobbi) (Entered: 02/16/2022)
02/16/2022	603	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated February 16, 2022 re: Letter regarding proposed redactions. Document filed by USA. (Moe, Alison) (Entered: 02/16/2022)

02/17/2022	604	MEMO ENDORSEMENT as to Ghislaine Maxwell on MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF. ENDORSEMENT: The request for leave to file an amicus brief in accordance with this Court's February 11, 2022 order is GRANTED. SO ORDERED. (Signed by Judge Alison J. Nathan on 2/17/2022) (lnl) (Entered: 02/17/2022)
02/18/2022	605	ORDER as to Ghislaine Maxwell: The parties are hereby ORDERED to re−submit via email revised redactions to the parties' briefing on the Defendant's motion for a new trial by February 22, 2022. The revised proposed redactions shall be consistent with this Order. SO ORDERED. (Signed by Judge Alison J. Nathan on 2/18/2022) (lnl) (Entered: 02/18/2022)
02/21/2022	606	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 02/21/2022 re: Letter in Response to Dkt. 605 (Sternheim, Bobbi) (Entered: 02/21/2022)
02/24/2022	607	ORDER as to Ghislaine Maxwell: The Court is in receipt of the Defendant's proposed redactions revised in response to this Court's order. See Dkt. Nos. 605, 606. The Court has reviewed the proposed redactions and concludes that they are in accordance with its prior orders. See Dkt. Nos. 596, 605. The narrowly tailored redactions further the important interests of helping ensure the integrity of any inquiry and maintaining juror anonymity and privacy. As the Court explained in its February 11 Order, these interests justify redaction of the questions the parties propose be asked at any hearing and specific factual information developed by the parties that has not been publicly reported in the press and that the parties propose be inquired about at any forthcoming hearing. Dkt. No. 596 at 4 (citing United States v. McCoy et al., No. 14 Cr. 6181 (EAW), Dkt. No. 312 (text order) (W.D.N.Y. May 26, 2017); id. Dkt. No. 329 at 38−39; Press−Enter. Co. v. Superior Ct. of Cal., Riverside Cnty., 464 U.S. 501, 511−12 (1984)). Accordingly, the parties are ORDERED to docket the redacted briefs, accompanying exhibits, and their January 13 letters, by February 25, 2022. The Court will docket Juror 50's motion. As noted in its prior Order, following the Court's resolution of the Defendant's motion or a hearing, all redactions will be promptly unsealed except those necessary to protect any continuing interest in juror anonymity and privacy. See United States v. Amodeo, 44 F.3d 141, 146−47 (2d Cir. 1995); see also Press−Enter. Co., 478 U.S. at 14. (Signed by Judge Alison J. Nathan on 2/24/2022) (ap) (Entered: 02/24/2022)
02/24/2022	608	NOTICE OF MOTIONTO INTERVENE AND FOR THE RELEASE OF DOCUMENTS UNDER SEAL. Document filed as to Ghislaine Maxwell. (ap) (Entered: 02/24/2022)
02/24/2022	609	MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE AND FOR RELEASE OF SEALED JURY QUESTIONNAIRE AND TRANSCRIPT, ON BEHALF OF PROPOSED INTERVENOR, JUROR 50 as to Ghislaine Maxwell re: 608 MOTION. (ap) (Entered: 02/24/2022)
02/24/2022	610	ORDER as to Ghislaine Maxwell: for the reasons fully explained in the Opinion & Order, a hearing is necessary to resolve the Defendant's motion. Because of the important interest in the finality of judgments, the standard for obtaining a post−verdict hearing is high. The Court concludes, and the Government concedes, that the demanding standard for holding a post−verdict evidentiary hearing is met as to whether Juror 50 failed to respond truthfully during the jury selection process to whether he was a victim of sexual abuse. Following trial, Juror 50 made several direct, unambiguous statements to multiple media outlets about his own experience that do not pertain to jury deliberations and that cast doubt on the accuracy of his responses during jury selection. Juror 50's post−trial statements are "clear, strong, substantial and incontrovertible evidence that a specific, non−speculative impropriety"namely, a false statement during jury selection has occurred. United States v. Baker, 899 F.3d 123, 130 (2d Cir. 2018). To be clear, the potential impropriety is not that someone with a history of sexual abuse may have served on the jury. Rather, it is the potential failure to respond truthfully to questions during the jury selection process that asked for that material information so that any potential bias could be explored. In contrast, the demanding standard for ordering an evidentiary hearing is not met as to the conduct of any other juror. The Court DENIES the request to conduct a hearing with respect to the other jurors. The Court also DENIES the Defendant's request for a broader hearing and pre−hearing discovery. The Court therefore ORDERS that a hearing take place at

		which the Court will question Juror 50 under oath. The Court further ORDERS that Juror 50's questionnaire be unsealed, for the reasons explained in the Opinion & Order. The Court will email counsel for Juror 50 a copy of his questionnaire and a copy of this Order. As also explained in the Opinion & Order, the Court will conduct the questioning at the public hearing with input from counsel for the Defendant and the Government. The parties may submit by email proposed questions in accordance with the Opinion & Order on or before March 1, 2022. The hearing will take place on March 8, 2022, at 10:00 a.m. The Court ORDERS Juror 50 to appear in Courtroom 906 of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York at that date and time to give testimony under oath in response to the Court's questions. The Court will ensure public access and will provide information on public access as soon as it is available. The Court will send the temporarily sealed Opinion & Order to the parties. By noon on February 25, 2022, the parties are ORDERED to inform the Court whether either seeks limited redactions to the Opinion & Order, conforming any requests to this Court's prior order, Dkt. No. 596, and justifying any such request by reference to the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). (Status Conference set for 3/8/2022 at 10:00 AM in Courtroom 906, 40 Centre Street, New York, NY 10007 before Judge Alison J. Nathan) (Signed by Judge Alison J. Nathan on 2/24/2022) (ap) Modified on 2/25/2022 (ap). (Entered: 02/24/2022)
02/24/2022	611	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated February 24, 2022 re: Court's February 24, 2022 Order (Dkt. No. 610) Document filed by USA. (Pomerantz, Lara) (Entered: 02/24/2022)
02/24/2022	612	LETTER MOTION addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated January 13, 2022 re: Ms. Maxwell's Request for Juror 50's Memorandum of Law in Support of Motion to Intervene, Jury Questionnaire and Transcript Remain Under Seal Upon Resolution of Her Motion for a New Trial . Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 02/24/2022)
02/24/2022	613	MOTION for New Trial . Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Pagliuca, Jeffrey) (Entered: 02/24/2022)
02/24/2022	614	AMICUS CURIAE BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS. The Court should not allow any juror to thwart its screening process by giving inaccurate answers and thereby create such a grave potential, realized in this case, for depriving the defendant of her right to a fair trial. A new trial is required. Document filed as to Ghislaine Maxwell. (See BRIEF set forth) (ap) (Entered: 02/24/2022)
02/24/2022	615	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 613 MOTION for New Trial .. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Pomerantz, Lara) (Entered: 02/24/2022)
02/24/2022	616	REPLY TO RESPONSE to Motion by Ghislaine Maxwell re 613 MOTION for New Trial .. (Attachments: # 1 Exhibit 3 (1 of 3), # 2 Exhibit 3 (2 of 3), # 3 Exhibit 3 (3of 3))(Pagliuca, Jeffrey) (Entered: 02/24/2022)
02/24/2022	617	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated January 13, 2022 re: Juror 50's Motion to Intervene Document filed by USA. (Pomerantz, Lara) (Entered: 02/24/2022)
02/24/2022	618	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 02/24/2022 re: Letter in Response to Dkt 610 (Sternheim, Bobbi) (Entered: 02/24/2022)
02/25/2022	619	MEMO ENDORSEMENT as to Ghislaine Maxwell on 618 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 02/24/2022 re: Letter in Response to Dkt 610. ENDORSEMENT: The Court approves the Defense's proposed redactions, which are narrowly tailored to redact specific categories of questions the Court may ask at the forthcoming hearing. Consistent with this Court's prior order, such redactions help ensure the integrity of the forthcoming hearing. See Dkt. No. 596. The Court will docket the redacted Opinion & Order. As noted in the prior order, the redactions will be promptly unsealed following the

		hearing. SO ORDERED. (Signed by Judge Alison J. Nathan on 2/25/2022)(lnl) (Entered: 02/25/2022)
02/25/2022	620	OPINION & ORDER as to Ghislaine Maxwell: For the reasons stated above, the Court will hold a hearing regarding Juror 50's answers to Questions 25 and 48 of the questionnaire. The public proceeding will take place on March 8, 2022, at 10:00 a.m. Juror 50 is hereby ORDERED to appear in Courtroom 906 of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York at that date and time to give testimony under oath in response to the Court's questions. Counsel for the Defendant and the Government are ORDERED to submit via email proposed questions in accordance with this Opinion & Order on or before March 1, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 2/24/2022) (lnl) (Main Document 620 replaced on 3/9/2022) (jw). (Entered: 02/25/2022)
02/25/2022	621	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 599 MOTION for New Trial *to Obtain Relief Requested in Memorandum in Support of Post−Trial Motions*.. (Rohrbach, Andrew) (Entered: 02/25/2022)
02/28/2022	622	SEALED DOCUMENT placed in vault. (nmo) (Entered: 02/28/2022)
02/28/2022	623	SEALED DOCUMENT placed in vault. (nmo) (Entered: 02/28/2022)
03/01/2022	635	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSA Maurene Comey/Alison Moe/Lara Pomerantz/Andrew Rohrbach dated 3/1/22 re: Dear Judge Nathan: In accordance with the Courts February 24, 2022 Opinion and Order (Dkt. No. 620), the Government respectfully submits this letter to propose questions for the public hearing at which the Court will question Juror 50 under oath..... Document filed by USA. (jbo) (Entered: 03/09/2022)
03/01/2022	636	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from defense counsel Christian R. Everdell dated 3/1/22 re: Dear Judge Nathan: We write in response to the Courts order, dated February 24, 2022, permitting the parties to submit proposed questions to the Court for the hearing related to Ms. Maxwells Motion for a New Trial. Dkt. 610..... (jbo) (Entered: 03/09/2022)
03/02/2022	624	LETTER as to USA v. Ghislaine Maxwell addressed to Judge Alison J. Nathan from Attorney Todd A. Spodek dated March 1, 2022 re: Please be advised that I represent Juror 50. I am writing in response to Your Honor's February 24, 2022 Order (ECF No.: 610) directing Juror 50 to appear for a hearing on March 8, 2022. I write to inform the Court that Juror 50 will invoke his Fifth Amendment privilege against self−incrimination at the hearing. (bw) (Entered: 03/02/2022)
03/02/2022	625	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, Andrew Rohrbach, dated March 1, 2022 re: By letter dated March 1, 2022, counsel for Juror 50 informed the Court that Juror 50 will invoke his Fifth Amendment privilege against self−incrimination at the hearing scheduled for March 8, 2022. The Government writes to notify the Court that it is in the process of seeking internal approval to seek an order, pursuant to 18 U.S.C. §§ 6002 and 6003, compelling Juror 50's testimony at the hearing. The Government will, subject to internal approval, submit a proposed order to the Court in advance of the hearing.(bw) (Entered: 03/02/2022)
03/02/2022		*****DELETED DOCUMENT. Deleted document number 626 SEALED DOCUMENT placed in vault, as to Ghislaine Maxwell. The document was incorrectly filed in this case. (nmo)** (Entered: 03/02/2022)
03/02/2022	626	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 03/02/2022 re: Juror 50's intent to assert 5th Amendment and potential immunity (Sternheim, Bobbi) (Entered: 03/02/2022)
03/02/2022	627	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated March 2, 2022 re: Ms. Maxwells Request for adjournment of hearing on Motion for New Trial (Pagliuca, Jeffrey) (Entered: 03/02/2022)
03/02/2022	628	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated March 2, 2022 re: Opposition to Defendant's Adjournment Request Document filed by USA. (Pomerantz, Lara) (Entered: 03/02/2022)

03/03/2022	629	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 626 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Attorney Bobbi C Sternheim dated 03/02/2022 re: Juror 50's intent to assert 5th Amendment and potential immunity. ENDORSEMENT: No grounds are offered for entitlement to the requested proffer, and the Court is not aware of any basis for granting the request. DENIED. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/3/2022)(bw) (Entered: 03/03/2022)
03/03/2022	630	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 627 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Attorney Jeffrey S. Pagliuca dated March 2, 2022 re: Ms. Maxwells Request for adjournment of hearing on Motion for New Trial. ENDORSEMENT: The requested two−month adjournment to May is not justified and is therefore DENIED. Two of the Defendant's four attorneys are able to be present and represent the Defendant at the March 8 hearing. The Court will conduct the questioning at the hearing, and the parties have already submitted briefing and proposed questions. The public interest in a reasonably prompt hearing outweighs the Defendant's preference for an adjournment. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/3/2022)(bw) (Entered: 03/03/2022)
03/03/2022	631	ORDER as to Ghislaine Maxwell. As noted in this Court's prior order, a hearing on the Defendant's motion for a new trial is scheduled for March 8, 2022, at 10:00 a.m. Dkt. No. 610. The hearing location is hereby changed to Courtroom 110 of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York....[*** See this Order ***]... Per the S.D.N.Y. Response to COVID−19, anyone who appears at any S.D.N.Y. courthouse must complete a questionnaire on the date of the proceeding prior to entering the courthouse. Only persons who meet the entry requirements established by the questionnaire will be allowed to enter the courthouse. All visitors must wear an N95, KN95, or KF94 mask at all times. Surgical masks, cloth masks, bandannas, gaiters, and masks with valves are not permitted. If a person does not have an approved mask, a screener will provide one. 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. For more information, please see https://www.nysd.uscourts.gov/covid−19−coronavirus. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/3/2022)(bw) (Entered: 03/03/2022)
03/07/2022	632	MOTION Application under 18 U.S.C. §§ 6002 and 6003 . Document filed by USA as to Ghislaine Maxwell. (Pomerantz, Lara) (Entered: 03/07/2022)
03/08/2022		Minute Entry for proceedings held before Judge Alison J. Nathan:Motion Hearing as to Ghislaine Maxwell held on 3/8/2022. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim and Christian Everdell, AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Juror 50 present with retained counsel Todd Spodek. Court Reporters Mike McDaniel and Kelly Surina. See transcript. Defendant remains remanded. (jw) (Entered: 03/09/2022)
03/09/2022	633	SEALED DOCUMENT placed in vault. (nmo) (Entered: 03/09/2022)
03/09/2022	634	SEALED DOCUMENT placed in vault. (nmo) (Entered: 03/09/2022)
03/09/2022	637	ORDER as to Ghislaine Maxwell... ORDERED that, pursuant to Title 18, United States Code, Sections 6002 and 6003, −−−−− give testimony at said hearing; and IT IS FURTHER ORDERED that, pursuant to Title 18, United States Code, Sections 6002 and 6003, no testimony or other information compelled under this Order, or any information directly or indirectly derived from such testimony or other information, may be used against −−−−− in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this Order. This Order shall become effective only if after the date of this Order −−−−− −−−−− refuses to testify on the basis of his privilege against self−incrimination. (Signed by Judge Alison J. Nathan on 3/8/22)(jbo) (Entered: 03/09/2022)
03/09/2022	638	HEARING EXHIBIT 1 as to Ghislaine Maxwell. (jbo) (Entered: 03/09/2022)
03/09/2022	639	ORDER as to Ghislaine Maxwell. As indicated at yesterday's hearing, the Court has docketed the unredacted copy of the Court's February 24, 2022, Opinion & Order, the Government's proposed questions, the Defendant's proposed questions with limited redactions, the signed immunity order with limited redactions, and Hearing Exhibit 1. The limited redactions to the signed immunity order and the Defendants proposed

		questions are narrowly tailored to further the interest of protecting juror anonymity. The Court will file the unredacted documents under seal. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/9/22)(jbo) (Entered: 03/09/2022)
03/10/2022	640	ORDER as to Ghislaine Maxwell. Per the Court's instruction at the March 8 hearing, the parties submitted revised redactions to their briefing on the Defendants motion for a new trial. The Court rejects the Defendant's proposed redaction to page 8, lines 6−7 of her reply because it is not necessary to protect any continuing interest in juror anonymity and privacy. See Dkt. No. 607. The Court concludes that the remaining proposed redactions are narrowly tailored to further the important interest of protecting juror anonymity and privacy. Press−Enter. Co. v. Superior Ct. of Cal., Riverside Cnty., 464 U.S. 501, 511−12 (1984). The parties are ORDERED to file the redacted briefs (with the above noted line unredacted) on the docket on or before March 11, 2022. The Court will file the unredacted briefs under seal. (Signed by Judge Alison J. Nathan on 3/10/2022)(jw) (Entered: 03/10/2022)
03/10/2022	641	SEALED DOCUMENT placed in vault. (nmo) (Entered: 03/10/2022)
03/11/2022	642	MOTION for New Trial . Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, Exhibit 3)(Pagliuca, Jeffrey); Modified on 6/29/2022 (bw). (Entered: 03/11/2022)
03/11/2022	643	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 642 MOTION for New Trial .. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Pomerantz, Lara) (Entered: 03/11/2022)
03/11/2022	644	REPLY TO RESPONSE to Motion by Ghislaine Maxwell re 642 MOTION for New Trial .. (Attachments: # 1 Exhibit 3 (1 of 3), # 2 Exhibit 3 (2 of 3), # 3 Exhibit 3 (3of 3))(Pagliuca, Jeffrey) (Entered: 03/11/2022)
03/11/2022	645	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 3/8/22 before Judge Alison J. Nathan. Court Reporter/Transcriber: Michael McDaniel, (212) 805−0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/1/2022. Redacted Transcript Deadline set for 4/11/2022. Release of Transcript Restriction set for 6/9/2022. (Moya, Goretti) (Entered: 03/11/2022)
03/11/2022	646	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 3/8/22 has been filed by the court reporter/transcriber in the above−captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 03/11/2022)
03/11/2022	647	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 599 MOTION for New Trial *to Obtain Relief Requested in Memorandum in Support of Post−Trial Motions*. . (Everdell, Christian) (Entered: 03/11/2022)
03/15/2022	648	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 642 MOTION for New Trial .. (Pomerantz, Lara) (Entered: 03/15/2022)
03/15/2022	649	MEMORANDUM in Support by Ghislaine Maxwell re 642 MOTION for New Trial .. (Sternheim, Bobbi) (Entered: 03/15/2022)
04/01/2022	650	LETTER MOTION addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated April 1, 2022 re: Speedy Trial Act . Document filed by USA as to Ghislaine Maxwell. (Moe, Alison) (Entered: 04/01/2022)
04/01/2022	651	MOTION to Stay re: 649 Memorandum in Support of Motion, 642 MOTION for New Trial ., 644 Reply to Response to Motion . Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 04/01/2022)
04/01/2022	652	LETTER by USA as to Ghislaine Maxwell addressed to Judge Vernon S. Broderick from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated April 1, 2022 re: opposition to defendant's April 1, 2022 letter. Document filed by

		USA. (Moe, Alison) (Entered: 04/01/2022)
04/01/2022		*****DELETED DOCUMENT. Deleted docket entry, no document number. NOTICE OF CASE REASSIGNMENT, as to Ghislaine Maxwell. The document was incorrectly filed in this case. (bw)** (Entered: 04/01/2022)
04/01/2022		REMARK as to USA v. Ghislaine Maxwell. Case reassigned to Judge Broderick due to an administrative error. Case returned to Judge Nathan. (bw) (Entered: 04/01/2022)
04/01/2022	653	OPINION & ORDER as to Ghislaine Maxwell. The Court concludes that Juror 50 testified credibly and truthfully at the post−trial hearing. His failure to disclose his prior sexual abuse during the jury selection process was highly unfortunate, but not deliberate. The Court further concludes that Juror 50 harbored no bias toward the Defendant and could serve as a fair and impartial juror. The requirements for a new trial under McDonough are not satisfied. The Defendant's motion for a new trial pursuant to Rule 33 is therefore DENIED. The Court orders the preparation of the presentence investigation report. With respect to Counts 7 and 8, the Court hereby excludes time under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), from today's date through April 22, 2022. The Court finds that the ends of justice served by granting this exclusion from speedy trial computations outweigh the interests of the public and the Defendant in a speedy trial on these counts because the pending post−trial motions affect the scheduling considerations set forth in the Government's January 10, 2022 letter. See Dkt. No. 574. The Defendant consents to this exclusion. Dkt. No. 650. The Court will rule on the Defendant's remaining post−verdict motions in due course. Sentencing remains scheduled for June 28, 2022. This resolves docket numbers 613, 614, 642, 650, and 651. (Signed by Judge Alison J. Nathan on 4/1/2022) (See ORDER set forth) (ap) (Entered: 04/01/2022)
04/04/2022	654	SEALED DOCUMENT placed in vault. (nmo) (Entered: 04/04/2022)
04/25/2022	655	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 25, 2022 re: Advance PSR Deadline . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 04/25/2022)
04/26/2022	656	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's letter regarding the deadline for the disclosure of the Presentence Investigation Report. Dkt. No. 655. After conferring with the Probation Office, the Court determines that advancing the PSR disclosure schedule will aid the parties in preparing their sentencing submissions. Further the Court hereby adjusts its standard sentencing submission schedule to ensure sufficient time to prepare for sentencing. Accordingly, the Court ORDERS the following schedule for sentencing: May 24, 2022 − First PSR disclosure; May 31, 2022 − Defendant objections due; June 6, 2022 − Government response due; June 9, 2022 − Second PSR disclosure; June 15, 2022 − Defendant sentencing submission due; June 22, 2022 − Government sentencing submission due; June 28, 2022 − Sentencing. This resolves Dkt. No. 655. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/26/2022)(bw) (Entered: 04/26/2022)
04/29/2022	657	OPINION & ORDER as to Ghislaine Maxwell....[*** See this Opinion & Order ***]... V. Conclusion. For the foregoing reasons, the Court denies the Defendant's Rule 29 motion because the jury's guilty verdicts were supported by the witness testimony and documentary evidence presented at trial. The Court denies the Defendant's motion based on constructive amendment or variance because the jury instructions, the Government's evidence at trial, and summation all captured the core of criminality charged in the Indictment, and the Defendant was not prejudiced by any alleged variance. Further, because the Government neither intentionally delayed its prosecution nor was the Defendant prejudiced by any delay, the Court also denies the Defendant's motion based on pre−indictment delay. Finally, the Court grants the Defendant's motion as to multiplicity. The Government concedes that Count One is multiplicitous with Count Three, and the Court further concludes that Count Five is multiplicitous with Count Three. Count Five, like Counts One and Three, charged the Defendant's participation in the same decade−long unlawful agreement with the Defendant's continuous coconspirator, Jeffrey Epstein, to groom and sexually abuse underage girls. Accordingly, the Court will enter judgment of conviction on Counts Three, Four, and Six. The Defendant's sentencing date remains scheduled for June 28, 2022. The Court previously set a schedule for sentencing submissions that remains in

		effect. Dkt. No. 656. This resolves Dkt. No. 599. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/29/2022)(bw) (Entered: 04/29/2022)
05/10/2022	658	LETTER MOTION addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 05/10/2022 re: 2−day extension to file sentencing submission . Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 05/10/2022)
05/11/2022	659	MEMO ENDORSEMENT 658 LETTER MOTION addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 05/10/2022 re: 2−day extension to file sentencing submission...ENDORSEMENT..The request is DENIED. SO ORDERED (Signed by Judge Alison J. Nathan on 5/11/22) (jw) (Entered: 05/11/2022)
05/11/2022	660	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 11, 2022 re: Speedy Trial Exclusion . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 05/11/2022)
05/11/2022	661	MEMO ENDORSEMENT as to Ghislaine Maxwell (1) on 660 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 11, 2022 re: Speedy Trial Exclusion. ENDORSEMENT: SO ORDERED. (Signed by Alison J. Nathan, U.S. Circuit Judge Sitting by designation on 5/11/2022) (ap) (Entered: 05/11/2022)
06/15/2022	662	MEMORANDUM OF LAW in Support by Ghislaine Maxwell *Memorandum of Ghislaine Maxwell in Support of Her Objections to the Presentence Investigation Report*. (Everdell, Christian) (Entered: 06/15/2022)
06/15/2022	663	SENTENCING SUBMISSION by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 06/15/2022)
06/17/2022	664	ORDER as to Ghislaine Maxwell: As noted in this Court's prior order, sentencing in this matter is scheduled for June 28, 2022, at 11:00 a.m. Dkt. No. 577. The sentencing proceeding will take place in Courtroom 318 of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York. Substantial seating for members of the press and public will be available in Courtroom 318. Overflow courtrooms will be available if needed. The overflow rooms will have live video and audio feeds of the proceeding. The use of any electronic devices in Courtroom 318 or the overflow courtrooms is prohibited. The District Executive's Office will coordinate seating in Courtroom 318 and the overflow courtrooms. The Court will ensure access for any victims. Victim access will be coordinated between the Victim Witness Unit and the District Executives Office. Defense counsel may coordinate access for members of the Defendant's family with the District Executive's Office. Wendy Olson, Coordinator, Victim Witness Unit, United States Attorney's Office, (212) 637−1028, Wendy.Olson@usdoj.gov; Joseph Pecorino, District Executive's Office, United States District Court, Southern District of New York, (212) 805−0513, Joseph_Pecorino@nysd.uscourts.gov. For information on Courthouse entry protocols, please see https://www.nysd.uscourts.gov/covid−19−coronavirus. (Signed by Judge Alison J. Nathan on 6/17/2022) (ap) (Entered: 06/17/2022)
06/21/2022	665	ORDER as to Ghislaine Maxwell: The Court is in receipt of a letter submitted by an attorney for two individuals seeking to speak as victims at sentencing. The Defendant submitted a letter in response. No party requested redactions or sealing of the letters. The Court will docket the letters. Any victim seeking to make a statement at sentencing shall contact the Victim Witness Unit of the United States Attorneys Office: Wendy Olson, Coordinator Victim Witness Unit United States Attorneys Office, (212) 637−1028, Wendy.Olson@usdoj.gov. A victim seeking to make a statement must submit a written statement by email to the Victim Witness Unit by noon on Thursday, June 23, 2022. In addition to submitting the written statement, the submission must note whether the victim seeks to make an oral statement at sentencing and provide a basis for entitlement to make a statement under the Crime Victims Rights Act, 18 U.S.C. § 3771. Statements that do not conform to this process will not be permitted. The Government is ORDERED to inform the Defendant of any anticipated victim impact statements by 2:00 p.m. on Thursday, June 23, 2022. If either party objects to any statement, the objection and statement being objected to must be filed with the Court by 2:00 p.m. on Friday, June 24, 2022. Any statements to which the parties do not object must be submitted to the Court by 5:00 p.m. on that same date. The Government is FURTHER ORDERED to confirm with the Court by

		noon tomorrow, June 22, 2022, that victims have been notified of the rights described in the CVRA, consistent with 18 U.S.C. § 3771(c)(1). (Signed by Judge Alison J. Nathan on 6/21/2022) (ap) (Entered: 06/21/2022)
06/21/2022	666	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan, from Robert Y. Lewis dated 6/14/2022 re: Victims' counsel writes a letter regarding sentencing. (ap) (Entered: 06/21/2022)
06/21/2022	667	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan, from Bobbi C. Sternheim dated 6/17/2022 re: Defense counsel writes regarding sealing of certain documents. (ap) (Entered: 06/21/2022)
06/21/2022	668	ORDER as to Ghislaine Maxwell: This order corrects the contact information for Wendy Olsen contained in the Court's original order, Dkt. No. 665. The Court is in receipt of a letter submitted by an attorney for two individuals seeking to speak as victims at sentencing. The Defendant submitted a letter in response. No party requested redactions or sealing of the letters. The Court will docket the letters. Any victim seeking to make a statement at sentencing shall contact the Victim Witness Unit of the United States Attorney's Office: Wendy Olsen, Coordinator Victim Witness Unit United States Attorney's Office, (212) 637−1028, Wendy.Olsen@usdoj.gov. A victim seeking to make a statement must submit a written statement by email to the Victim Witness Unit by noon on Thursday, June 23, 2022. In addition to submitting the written statement, the submission must note whether the victim seeks to make an oral statement at sentencing and provide a basis for entitlement to make a statement under the Crime Victims' Rights Act, 18 U.S.C. § 3771. Statements that do not conform to this process will not be permitted. The Government is ORDERED to inform the Defendant of any anticipated victim impact statements by 2:00 p.m. on Thursday, June 23, 2022. If either party objects to any statement, the objection and statement being objected to must be filed with the Court by 2:00 p.m. on Friday, June 24, 2022. Any statements to which the parties do not object must be submitted to the Court by 5:00 p.m. on that same date. The Government is FURTHER ORDERED to confirm with the Court by noon tomorrow, June 22, 2022, that victims have been notified of the rights described in the CVRA, consistent with 18 U.S.C. § 3771(c)(1). (Signed by Judge Alison J. Nathan on 6/21/20221) (ap) (Entered: 06/21/2022)
06/22/2022	669	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated June 22, 2022 re: CVRA Notice Document filed by USA. (Comey, Maurene) (Entered: 06/22/2022)
06/22/2022	670	SENTENCING SUBMISSION by USA as to Ghislaine Maxwell. (Moe, Alison) (Entered: 06/22/2022)
06/24/2022	671	ORDER as to Ghislaine Maxwell: The Government is ORDERED to provide its position on the proposed victim impact statements and the Defendant's objections and redaction requests by 5:00 p.m. today, June 24, 2022. The Government's letter should be docketed with any proposed redactions. Defense counsel is ORDERED to docket its letter regarding proposed victim impact statements and accompanying exhibits with any proposed redactions by 5:00 p.m. today, June 24, 2022. (Signed by Judge Alison J. Nathan on 6/24/2022) (ap) (Entered: 06/24/2022)
06/24/2022	672	LETTER MOTION addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 06/24/2022 re: 668 Order,,,,,,, 671 Order,, 665 Order,,,,,, re: Challenge to standing under CVRA . Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 06/24/2022)
06/24/2022	673	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated June 24, 2022 re: CVRA submissions Document filed by USA. (Rohrbach, Andrew) (Entered: 06/24/2022)
06/24/2022	674	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Lara Pomerantz, Alison Moe, and Andrew Rohrbach dated June 24, 2022 re: Victim Impact Statements Document filed by USA. (Comey, Maurene) (Entered: 06/24/2022)

06/24/2022	682	ORDER as to Ghislaine Maxwell. The Crime Victims' Rights Act (CVRA) "guarantees to the victims of federal crimes an array of substantive and participatory rights, including the rights to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding, to confer with the attorney for the Government in the case, and to receive full and timely restitution as provided in law." United States v. Murillo−Bejerano (In re Rendon Galvis), 564 F.3d 170, 174 (2d Cir. 2009) (per curiam) (cleaned up). "In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded th[ose] rights." 18 U.S.C. § 3771(b)(1). In accordance with the procedure required by this Court's prior order, Dkt. No. 671, the Government has provided statements from seven individuals asserting they are crime victims under the CVRA. As explained below, the Court will permit all seven individuals to provide statements and the Defendant's request for redactions is denied....[*** See this Order ***]... In sum, all seven written statements received by the Court are deemed part of the record. The Court will consider them only for what they permissibly may be considered. The Government shall promptly docket the written statements without redactions. Annie Farmer, Kate, and Virginia Giuffre may present an in−person statement at sentencing if they wish to do so. The Government shall provide copies of this Order to counsel for the seven individuals who submitted statements by no later than today, June 24, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/24/22, United States Circuit Judge, Sitting by Designation)(bw) (Entered: 06/27/2022)
06/25/2022	675	NOTICE of Motion to be Heard at Sentencing as to Ghislaine Maxwell re: 668 Order,,,,,,,. (Attachments: # 1 Affidavit Declaration of RYL ISO Motion, # 2 Exhibit Victim Impact Statement of Sarah Ransome, # 3 Exhibit Victim Impact Statement of Elizabeth Stein)(Marsh, James) (Entered: 06/25/2022)
06/25/2022	676	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 06/25/2022 re: Opposition to Dkt 675 (Sternheim, Bobbi) (Entered: 06/25/2022)
06/25/2022	677	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 06/25/2022 re: Notice of Possible Request for Adjournment of Sentencing (Sternheim, Bobbi) (Entered: 06/25/2022)
06/25/2022	683	ORDER as to Ghislaine Maxwell. The parties are ORDERED to submit their positions on Ms. Ransome and Ms. Stein's motion, Dkt. No. 675, which the Court received for the first time today, by 10:00 a.m. tomorrow, June 26, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/25/2022, United States Circuit Judge, Sitting by Designation)(bw) (Entered: 06/27/2022)
06/25/2022	685	ORDER as to Ghislaine Maxwell. Immediately upon receipt of the Defendant's letter, Dkt. No. 677, the Court directly contacted the Warden for MDC. He informed the Court that after meeting with defense counsel today, the Defendant was permitted to retain legal documents and a writing implement, to which she has had continuous access. Further, the Warden represented to the Court that first thing tomorrow morning (Sunday, June 26) he will confirm that the Defendant has access to requested legal materials to prepare for sentencing. The Government is ORDERED to confer with the Warden for MDC or MDC Legal Counsel as follow−up to the Court's conversation and to provide an update to the Court by 2:00 p.m. tomorrow, June 26, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/25/2022, United States Circuit Judge, Sitting by Designation)(bw) (Entered: 06/27/2022)
06/26/2022	678	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan re: CVRA. Document filed by USA. (Moe, Alison) (Entered: 06/26/2022)
06/26/2022	679	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Lara Pomerantz, Alison Moe, and Andrew Rohrbach dated June 26, 2022 re: Update from MDC Document filed by USA. (Comey, Maurene) (Entered: 06/26/2022)
06/26/2022	680	Sentencing Letter by Ghislaine Maxwell addressed to Honorable Alison J. Nathan from Bobbi C Sternheim dated 06/26/2022 re: Supplemental Exhibit to Dkt. 663. (Sternheim, Bobbi) (Entered: 06/26/2022)

06/26/2022	681	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated June 26, 2022 re: Kate Motion Document filed by USA. (Attachments: # 1 Exhibit Kate Motion)(Pomerantz, Lara) (Entered: 06/26/2022)
06/26/2022	684	ORDER as to Ghislaine Maxwell. The Defendant's letter in response to the Court's order regarding the CVRA references a motion by Kate's attorney that accompanied her impact statement. Dkt. No. 672 at 2 n.1. The Court is not in receipt of this motion. The Government is ORDERED to docket the motion referenced by the Defendant as soon as possible but no later than midnight tonight, June 26, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/26/2022, United States Circuit Judge, Sitting by Designation)(bw) (Entered: 06/27/2022)
06/27/2022	686	ORDER as to Ghislaine Maxwell. The Court has now received and docketed the full set of submissions related to victim impact statements that were filed in accordance with this Court's prior order. Dkt. No. 668. The Court received statements from Annie Farmer, Kate, Virginia Giuffre, Maria Farmer, Sarah Ransome, Teresa Helm, Juliette Bryant, and Elizabeth Stein. As indicated in its prior order, the Court will exercise its discretion to permit all of these individuals to be heard in writing. Dkt. No. 682. The Court also denied the Defendants redaction requests. Id. All unredacted statements are now part of the record. Dkt. Nos. 674, 675−1. Also as previously indicated in its order, the Court will permit Annie Farmer, Kate, and Virginia Giuffre to make an oral statement at sentencing if they wish to do so. Dkt. No. 682. Further, having now reviewed the full set of requests, and having heard from the Government that it does not object, Dkt. No. 678, the Court deems it feasible to exercise its discretion to permit the remaining individuals who seek to themselves make an oral statement at sentencing to do so. They are: Teresa Helm, Sarah Ransome, and Elizabeth Stein. In order to feasibly accomplish this in light of the anticipated length of the sentencing proceeding, while ensuring fairness and avoiding delay of sentencing, each individual speaking orally may read a shortened version of their previously submitted written statement. The Court deems counsel for the individuals to be responsible for ensuring that anticipated statements conform to this requirement. The Government shall promptly provide copies of this order to counsel for the eight individuals who submitted statements. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/27/2022, United States Circuit Judge, sitting by designation)(bw) (Entered: 06/27/2022)
06/27/2022	687	ENDORSED LETTER as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid S. McCawley dated June 27, 2022 re: I am in receipt of the Court's Order, Dkt. No. 686. As explained in our submission, due to a medical issue, Ms. Giuffre is not able to be present physically in the courtroom, but has asked that I be able to read her statement at the hearing. I seek clarification of Your Honor's Order that I will be allowed to read a portion of Ms. Guiffre's statement at the hearing. ENDORSEMENT: The Court anticipates permitting counsel for CVRA victim Virginia Giuffre to read a shortened version of Ms. Giuffre's previously submitted written statement. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/27/2022, U.S. Circuit Judge, Sitting by designation)(bw) (Entered: 06/28/2022)
06/28/2022		Minute Entry for proceedings held before Judge Alison J. Nathan: Sentencing held on 6/28/2022 for Ghislaine Maxwell (1) Count 1ss,3ss,4ss,5ss,6ss. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim and Christian Everdell. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Alena Lynch and Kristen Carannante. See transcript. (jw) Modified on 6/29/2022 (jw). (Entered: 06/29/2022)
06/29/2022	688	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 583 LETTER filed by Ghislaine Maxwell addressed to Judge Alison J. Nathan from David E. McCraw dated 1/24/2022 re: Letter by the NY Times Company. ENDORSEMENT: The motion to unseal the questionnaires of the twelve seated jurors is GRANTED. The motion to unseal the Defendant's motion for a new trial is moot as the Defendant's motion for a new trial is docketed at Dkt. No. 613. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/29/2022)(bw) (Entered: 06/29/2022)
06/29/2022	689	ORDER as to Ghislaine Maxwell. As a post−trial house−keeping matter, the Court has determined that a few miscellaneous court orders failed to be docketed during trial: − November 19, 2021 Memorandum Opinion & Order re Witness−3 (Kate); −

		November 22, 2021 Memorandum Opinion & Order re Expert Witness Gershman; − November 22, 2021 Memorandum Opinion & Order re Expert Witness Hall; − November 30, 2021 Scheduling Order re Pseudonym Conferral; − December 15, 2021 Order re Response Schedule. The Court is now docketing those items. In order to ensure a complete docket, the parties are ORDERED to confer and determine whether any letters or briefing submitted to the Court without a redaction or sealing request remain to be docketed. The Court has determined, for example, that the parties failed to file on the docket their December 15 letter briefing and December 16 joint letter regarding witness prior inconsistent statements. Any outstanding items, including any proposed redactions, must be filed on ECF by July 12, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/29/2022, United States Circuit Judge, Sitting by Designation)(bw) (Entered: 06/29/2022)
06/29/2022	695	SEALED DOCUMENT placed in vault. (jus) (Entered: 06/29/2022)
06/29/2022	696	JUDGMENT In A Criminal Case (S2 20−Cr−330). Date of Imposition of Judgment: 6/29/2022. Defendant Ghislaine Maxwell (1) was found guilty on Count(s) 1ss, 3ss, 4ss, 5ss, 6ss (judgment not entered on 1 & 5 as multiplicitous, Dkt. No. 657), after a plea of not guilty. The defendant has been found not guilty on Count(s) 2ss. Count(s) 7ss−8ss, and underlying indictments are dismissed on the motion of the United States. IMPRISONMENT: The Defendant is sentenced to a term of 240 Months. Count 3 a sentence of 60 Months. Count 4 a sentence of 120 Months. Count 6 a sentence of 240 Months. All Counts to run concurrently. − Defendant was notified of her right to Appeal. − The court makes the following recommendations to the Bureau of Prisons: Defendant to be considered for designation to FCI Danbury. Defendant to be considered for enrollment in FIT program. SUPERVISED RELEASE: 3 Years on Counts 3 and 4. 5 Years on Count 6 to run concurrently. Standard Conditions of Supervision (See page 5 of Judgment). Special Conditions of Supervision (See page 6 of Judgment). ASSESSMENT: $300.00, due immediately. FINE: $750,000.00. Schedule of Payments (See page 8 of Judgment). (Signed by Judge Alison J. Nathan on 6/29/2022)(bw) (Entered: 06/29/2022)
06/29/2022		DISMISSAL OF COUNTS on Government Motion as to Ghislaine Maxwell (1) Count 1s,1,2s,2,3s,3,4s,4,5s−6s,5−6,7ss−8ss. (bw) (Entered: 06/29/2022)
07/07/2022	697	NOTICE OF APPEAL by Ghislaine Maxwell from 696 Judgment. Filing fee $ 505.00, receipt number 2280. (nd) (Entered: 07/07/2022)
07/07/2022		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Ghislaine Maxwell to US Court of Appeals re: 697 Notice of Appeal − Final Judgment. (nd) (Entered: 07/07/2022)
07/07/2022		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to Ghislaine Maxwell re: 697 Notice of Appeal were transmitted to the U.S. Court of Appeals. (nd) (Entered: 07/07/2022)

AO 245B (Rev. 09/19) Judgment in a Criminal Case Sheet 1 (form modified within District on Sept. 30, 2019)

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA

v.

GHISLAINE MAXWELL

JUDGMENT IN A CRIMINAL CASE

Case Number: S2 20 CR 330 (AJN)

USM Number: 02879-509

BOBBI C. STERNHEIM
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☑ was found guilty on count(s) after a plea of not guilty. 1, 3, 4, 5, 6 (judgment not entered on 1 & 5 as multiplicitous, Dkt. No. 657)

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC 371.F	CONSPIRACY TO TRANSPORT MINORS WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY	7/30/2004	3

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☑ The defendant has been found not guilty on count(s) 2

☑ Count(s) 7, 8 and underlying indictments ☐ is ☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

6/29/2022
Date of Imposition of Judgment

Signature of Judge

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 6/29/2022

ALISON J. NATHAN, US Circuit Judge sitting by designation
Name and Title of Judge

6/29/2022
Date

DEFENDANT: GHISLAINE MAXWELL
CASE NUMBER: S2 20 CR 330 (AJN)

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18 USC 2423.F	TRANSPORTATION OF A MINOR WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY	12/31/1997	4
18 USC 1591.F	SEX TRAFFICKING OF AN INDIVIDUAL UNDER THE AGE OF EIGHTEEN	7/30/2004	6

AO 245B (Rev. 09/19) Judgment in Criminal Case
Sheet 2 — Imprisonment

DEFENDANT: GHISLAINE MAXWELL
CASE NUMBER: S2 20 CR 330 (AJN)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

The Defendant is sentenced to a term of 240 Months.
Count 3 a sentence of 60 Months. Count 4 a sentence of 120 Months. Count 6 a sentence of 240 Months. All Counts to run concurrently.

Defendant was notified of her right to Appeal.

☑ The court makes the following recommendations to the Bureau of Prisons:
Defendant to be considered for designation to FCI Danbury.

Defendant to be considered for enrollment in FIT program.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: GHISLAINE MAXWELL
CASE NUMBER: S2 20 CR 330 (AJN)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

3 Years on Counts 3 and 4. 5 Years on Count 6 to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☑ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☑ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: GHISLAINE MAXWELL
CASE NUMBER: S2 20 CR 330 (AJN)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: GHISLAINE MAXWELL
CASE NUMBER: S2 20 CR 330 (AJN)

SPECIAL CONDITIONS OF SUPERVISION

You shall submit your person, and any property, residence, vehicle, papers, computer, other electronic communication, data storage devices, cloud storage or media, and effects to a search by any United States Probation Officer, and if needed, with the assistance of any law enforcement. The search is to be conducted when there is reasonable suspicion concerning violation of a condition of supervision or unlawful conduct by the person being supervised. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition. Any search shall be conducted at a reasonable time and in a reasonable manner.

You shall undergo a sex-offense-specific evaluation and participate in an outpatient sex offender treatment and/or outpatient mental health treatment program approved by the U.S. Probation Office. You shall abide by all rules, requirements, and conditions of the sex offender treatment program(s), including submission to polygraph testing and refraining from accessing websites, chatrooms, instant messaging, or social networking sites to the extent that the sex offender treatment and/or mental health treatment program determines that such access would be detrimental to your ongoing treatment. You will not view, access, possess, and/or download any pornography involving adults unless approved by the sex-offender specific treatment provider. You must waive your right of confidentiality in any records for mental health assessment and treatment imposed as a consequence of this judgment to allow the U.S. Probation Office to review the course of treatment and progress with the treatment provider. You must contribute to the cost of services rendered based on your ability to pay and the availability of third-party payments. The Court authorizes the release of available psychological and psychiatric evaluations and reports, including the presentence investigation report, to the sex offender treatment provider and/or mental health treatment provider.

You must not have contact with the victim(s) in this case. This includes any physical, visual, written, or telephonic contact with such persons. Additionally, you must not directly cause or encourage anyone else to have such contact with the victim (s).

You must not have deliberate contact with any child under 18 years of age, unless approved by the U.S. Probation Office. You must not loiter within 100 feet of places regularly frequented by children under the age of 18, such as schoolyards, playgrounds, and arcades. You must not view and/or access any web profile of users under the age of 18. This includes, but is not limited to, social networking websites, community portals, chat rooms or other online environment (audio/visual/messaging), etc. which allows for real time interaction with other users, without prior approval from your probation officer.

You must provide the probation officer with access to any requested financial information.

You must not incur new credit charges or open additional lines of credit without the approval of the probation officer unless you are in compliance with the installment payment schedule.

If you are sentenced to any period of supervision, it is recommended that you be supervised by the district of residence.

DEFENDANT: GHISLAINE MAXWELL
CASE NUMBER: S2 20 CR 330 (AJN)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 300.00	$	$ 750,000.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 6 — Schedule of Payments

DEFENDANT: GHISLAINE MAXWELL
CASE NUMBER: S2 20 CR 330 (AJN)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 300.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☑ Payment during the term of supervised release will commence within 30 *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

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: July 08, 2022
Docket #: 22-1426
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
Sent: Thursday, July 7, 2022 12:08 PM
To: NYSD CourtMail
Subject: Activity in Case 1:20-cr-00330-AJN USA v. Maxwell Appeal Record Sent to USCA - Electronic File

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

Southern District of New York

Notice of Electronic Filing

The following transaction was entered on 7/7/2022 at 12:07 PM EDT and filed on 7/7/2022
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: [697] Notice of Appeal were transmitted to the U.S. Court of Appeals. (nd)

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

David Boies, II dboies@bsfllp.com, NYC_Managing_Clerk@bsfllp.com

Patrick J. Smith patrick.smith@smithvillazor.com, suzanne.kowalski@smithvillazor.com

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Andrew Rohrbach Andrew.Rohrbach@usdoj.gov, caseview.ecf@usdoj.gov, usanys.ecf@usdoj.gov

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

CLOSED,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

Date Terminated: 06/29/2022

Movant

Jordana H. Feldman

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ATTORNEY TO BE NOTICED
Designation: Retained

Assigned to: Judge Alison J. Nathan

Appeals court case number: 21−0058 U.S. Court of Appeals, 2nd Circ.

Defendant (1)

Ghislaine Maxwell
TERMINATED: 06/29/2022
also known as
Sealed Defendant 1
TERMINATED: 06/29/2022

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Pending Counts	**Disposition**
18:371.F CONSPIRACY TO ENTICE MINORS TO TRAVEL TO ENGAGE IN ILLEGAL SEX ACTS (1ss)	Judgment not entered on 1 & 5 as multiplicitous, Dkt. No. 657.
18:371.F CONSPIRACY TO TRANSPORT MINORS WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY (3ss)	IMPRISONMENT: The Defendant is sentenced to a term of 240 Months. Count 3 a sentence of 60 Months. Count 4 a sentence of 120 Months. Count 6 a sentence of 240 Months. All Counts to run concurrently. SUPERVISED RELEASE: 3 Years on Counts 3 and 4. 5 Years on Count 6 to run concurrently. FINE: $750,000.00
18:2423.F COERCION OR ENTICEMENT OF MINOR FEMALE (TRANSPORTATION OF A MINOR WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY) (4ss)	IMPRISONMENT: The Defendant is sentenced to a term of 240 Months. Count 3 a sentence of 60 Months. Count 4 a sentence of 120 Months. Count 6 a sentence of 240 Months. All Counts to run concurrently. SUPERVISED RELEASE: 3 Years on Counts 3 and 4. 5 Years on Count 6 to run concurrently. FINE: $750,000.00
18:371.F SEX TRAFFICKING CONSPIRACY (5ss)	Judgment not entered on 1 & 5 as multiplicitous, Dkt. No. 657.
18:1591.F SEX TRAFFICKING OF CHILDREN OR BY FORCE, FRAUD OR COERCION (6ss)	IMPRISONMENT: The Defendant is sentenced to a term of 240 Months. Count 3 a sentence of 60 Months. Count 4 a sentence of 120 Months. Count 6 a sentence of 240 Months. All Counts to run concurrently. SUPERVISED RELEASE: 3 Years on Counts 3 and 4. 5 Years on Count 6 to run concurrently. FINE: $750,000.00

Highest Offense Level (Opening)

Felony

Terminated Counts	**Disposition**
18:371.F CONSPIRACY TO ENTICE MINORS TO TRAVEL TO ENGAGE IN ILLEGAL SEX	Dismissed

ACTS (1)	
18:371.F CONSPIRACY TO ENTICE MINORS TO TRAVEL TO ENGAGE IN ILLEGAL SEX ACTS (1s)	Dismissed
18:2422.F COERCION OR ENTICEMENT OFA MINOT TO TRAVEL TO ENGAGE IN ILLEGAL SEX ACTS (2)	Dismissed
18:2422.F COERCION OR ENTICEMENT OF MINOR TO ENGAGE IN ILLEGAL SEX ACTS (2s)	Dismissed
18:2422.F COERCION OR ENTICEMENT OF FEMALE (ENTICEMENT OF A MONOR TO TRAVEL TO ENGAGE IN ILLEGAL SEX ACTS) (2ss)	Acquitted by Jury
18:371.F CONSPIRACY TO TRANSPORT MINORS WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY (3)	Dismissed
18:371.F 18:371.F CONSPIRACY TO TRANSPORT MINORS WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY (3s)	Dismissed
18:2423.F COERCION OR ENTICEMENT OF MINOR FEMALE (TRANSPORTATION OF A MINOR WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY) (4)	Dismissed
18:2423.F TRANSPORTATION OF A MINOR WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY (4s)	Dismissed
18:1623.F FALSE DECLARATIONS BEFORE GRAND JURY/COURT (PERJURY) (5−6)	Dismissed
18:1623.F FALSE DECLARATIONS BEFORE GRAND JURY/COURT (5s−6s)	Dismissed
18:1623.F FALSE DECLARATIONS BEFORE GRAND JURY/COURT (PERJURY) (7ss−8ss)	Dismissed

Highest Offense Level (Terminated)

Felony

Complaints **Disposition**

None

Interested Party

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And the Victims it Represents

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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)
09/24/2020	58	SEALED DOCUMENT placed in vault. (mhe) (Entered: 09/24/2020)
10/05/2020	59	NOTICE OF ATTORNEY APPEARANCE: Bobbi C Sternheim appearing for Ghislaine Maxwell. Appearance Type: Retained. (Sternheim, Bobbi) (Entered: 10/05/2020)
10/06/2020	60	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated October 6, 2020 re: Request to Delay Disclosure Document filed by USA. (Comey, Maurene) (Entered: 10/06/2020)
10/06/2020	61	AFFIDAVIT of Maurene Comey by USA as to Ghislaine Maxwell. (Comey, Maurene) (Entered: 10/06/2020)

10/07/2020	62	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 60 Accordingly, the Government respectfully requests that the Court approve the Government's request to delay disclosure of these Materials...ENDORSEMENT...The Defendant shall file any opposition to the Government's request by October 14, 2020. The Government's reply, if any, is due by October 20, 2020. SO ORDERED. (Government Replies due by 10/20/2020., Defendant Responses due by 10/14/2020) (Signed by Judge Alison J. Nathan on 10/7/20)(jw) (Entered: 10/07/2020)
10/07/2020	63	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated October 7, 2020 re: Review of Investigative Files from Other Offices and Agencies Document filed by USA. (Comey, Maurene) (Entered: 10/07/2020)
10/14/2020	64	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated October 14, 2020 re: Response to 60 LETTER addressed to Judge Alison J. Nathan from USA dated October 6, 2020 re: Request to Delay Disclosure. (Everdell, Christian) (Entered: 10/14/2020)
10/20/2020	65	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated October 20, 2020 re: Reply Letter in Further Support of Request to Delay Disclosure Document filed by USA. (Comey, Maurene) (Entered: 10/20/2020)
10/23/2020	66	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated October 23, 2020 re: Response to the Governments October 7, 2020 letter (Pagliuca, Jeffrey) (Entered: 10/23/2020)
10/30/2020	67	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated October 30, 2020 re: Reply to Defense's October 23, 2020 Letter Document filed by USA. (Comey, Maurene) (Entered: 10/30/2020)
11/05/2020	68	ORDER as to Ghislaine Maxwell: This Order is entered, pursuant to Federal Rule of Criminal Procedure 5(f) and the Due Process Protections Act, Pub. L. No 116182, 134 Stat. 894 (Oct. 21, 2020), to confirm the Government's disclosure obligations under Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, and to summarize the possible consequences of violating those obligations. (Signed by Judge Alison J. Nathan on 11/5/2020) (See ORDER set forth) (ap) (Entered: 11/05/2020)
11/06/2020	69	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated November 6, 2020 re: Request to Extend Discovery Deadline for Portion of Electronic Discovery Document filed by USA. (Comey, Maurene) (Entered: 11/06/2020)
11/06/2020	70	AFFIDAVIT of Maurene Comey by USA as to Ghislaine Maxwell. (Comey, Maurene) (Entered: 11/06/2020)
11/09/2020	71	MANDATE of USCA (Certified Copy) as to Ghislaine Maxwell re: 55 Notice of Appeal. USCA Case Number 20−3061−cr. 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.. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 11/09/2020. (nd) (Entered: 11/09/2020)
11/09/2020	72	MEMO ENDORSEMENT as to Ghislaine Maxwell on 69 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated November 6, 2020 re: Request to Extend Discovery Deadline for Portion of Electronic Discovery. ENDORSEMENT: The Court hereby extends the deadline for the Government's production of electronic discovery from November 9, 2020 to November 23, 2020. The Court also grants the parties' request for an extension of the motions deadlines as follows: the Defendant's motions are due by January 11, 2021, the Government's responses are due by February 12, 2021, and any replies are due by February 19, 2021. SO ORDERED. (Discovery due by 11/23/2020. Motions due by 1/11/2021. Responses due by 2/12/2021. Replies due by 2/19/2021.) (Signed by Judge Alison J. Nathan on 11/9/2020) (lnl) (Entered: 11/10/2020)

11/18/2020	73	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 60 Letter filed by USA as to Ghislaine Maxwell re: The Government respectfully requests that the Court approve the Government's request to delay disclosure of these Materials...ENDORSEMENT...There is no dispute that the materials referenced in the Government's letter will be turned over to the defense. The Government has indicated that it will do so. The only dispute, then, relates to the timing of such disclosure. See Dkt. Nos. 64, 65. Because the Government has articulated plausible reasons for some delay of disclosure, see Dkt. No. 65 at 4, the Court grants the Government's request to delay disclosure. However, the Governments proposal to delay disclosure until 8 weeks in advance of trial is insufficient. In order to ensure that the defense can adequately prepare for trial, the Government shall produce the referenced materials, which are not voluminous, to the defense by March 12, 2021. Disclosure of the materials will of course be subject to the protective order entered by the Court, see Dkt. No. 36. (Government Responses due by 3/12/2021) (Signed by Judge Alison J. Nathan on 11/18/20)(jw) (Entered: 11/18/2020)
11/23/2020	74	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated November 23, 2020 re: Update Regarding Conditions of Confinement Document filed by USA. (Comey, Maurene) (Entered: 11/23/2020)
11/24/2020	75	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/24/2020 re: Response to 90−day MDC conditions report (Sternheim, Bobbi) (Entered: 11/24/2020)
11/24/2020	76	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 75 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/24/2020 re: Response to 90−day MDC conditions report. ENDORSEMENT: The parties are hereby ORDERED to meet and confer regarding Defendant's request that Warden Heriberto Tellez directly address Defendant's concerns regarding the conditions of her detention. The parties shall jointly submit a status update within one week of this Order. (Signed by Judge Alison J. Nathan on 11/24/2020) (ap) (Entered: 11/24/2020)
12/01/2020	77	ORDER as to Ghislaine Maxwell. On November 25, 2020, the Defendant filed a letter request under seal. On November 30, 2020, she filed a second letter request in which she proposed redactions on both letters. The Government is hereby ORDERED to respond to the Defendant's November 25, 2020 letter request and to the request for proposed redactions by no later than December 2, 2020. The letters shall be temporarily sealed while the Court resolves the redaction request. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/1/2020)(bw) (Entered: 12/01/2020)
12/01/2020	78	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated December 1, 2020 re: Joint Letter regarding Conditions of Confinement Document filed by USA. (Pomerantz, Lara) (Entered: 12/01/2020)
12/02/2020	79	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 78 LETTER by USA addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated December 1, 2020 re: Joint Letter regarding Conditions of Confinement. ENDORSEMENT: MDC legal counsel shall submit their letter to the Court by December 4, 2020. Upon review of that letter, the Court will determine whether any additional information is required, either orally or in writing. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/2/2020)(bw) (Entered: 12/02/2020)
12/02/2020	80	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated December 2, 2020 re: Defense Requests for Sealing Document filed by USA. (Comey, Maurene) (Entered: 12/02/2020)
12/03/2020	81	ORDER as to Ghislaine Maxwell. On November 25, 2020, counsel for Defendant Ghislaine Maxwell filed a letter request seeking an in camera conference for the presentation of a renewed motion for release on bail and a request to seal the November 25, 2020 letter in its entirety. The Court required justification for the sealing request. On November 30, 2020, the defense counsel filed a second letter no longer fully pressing the unsupported request to file the letter entirely under seal and

		instead proposing redactions to both the November 25th and November 30th letters. The Government has indicated that it does not oppose the redactions. Dkt. No. 80. After due consideration, the Court will adopt the Defendant's proposed redactions, which are consented to by the Government. The Court's decision 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 11920. "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, 1050 (2d Cir. 1995) ("Amodeo II")). The proposed redactions satisfy this test. First, the Court finds that the Defendant's letter motions are "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). And while the Court assumes that the common law presumption of access attaches, in balancing competing considerations against the presumption of access, the Court finds that the arguments the Defendant has put forthincluding, most notably, the privacy interests of the individuals referenced in the lettersfavor her proposed and tailored redactions. The Defendant is hereby ORDERED to docket the redacted versions of the two letters by December 4, 2020. For the reasons outlined in the Government's letter dated December 2, 2020, Dkt. No. 80, the Court DENIES the Defendant's request for an in camera conference. In order to protect the privacy interests referenced in the Defendant's November 25, 2020 letter, the Court will permit the Defendant to make her submission in writing and to propose narrowly tailored redactions. The parties are hereby ORDERED to meet and confer and to jointly prepare a briefing schedule for the Defendant's forthcoming renewed motion for release on bail. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/3/2020)(bw) (Entered: 12/03/2020)
12/03/2020	82	SEALED DOCUMENT placed in vault. (jus) (Entered: 12/03/2020)
12/03/2020	83	SEALED DOCUMENT placed in vault. (jus) (Entered: 12/03/2020)
12/03/2020	84	SEALED DOCUMENT placed in vault. (jus) (Entered: 12/03/2020)
12/04/2020	85	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated December 4, 2020 re: Briefing Schedule (Everdell, Christian) (Entered: 12/04/2020)
12/04/2020	86	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 11/25/2020 re: Sealing (Everdell, Christian) (Entered: 12/04/2020)
12/04/2020	87	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 11/30/2020 re: Sealing (Everdell, Christian) (Entered: 12/04/2020)
12/07/2020	88	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sophia Papapetru and John Wallace dated 12/4/20 re: This letter is written in response to your order dated December 2, 2020, concerning Ghislaine Maxwell, Reg. 02879−509., an inmate currently confined at the Metropolitan Detention center in Brooklyn, New York. You expressed various concerns regarding Ms. Maxwells confinement and well−being. (jw) (Entered: 12/07/2020)
12/07/2020	89	ORDER as to Ghislaine Maxwell re: 85 Letter filed by Ghislaine Maxwell. The Court is in receipt of the Defendant's December 4, 2020 letter, Dkt. No. 85, and hereby sets the following schedule: The Defendants submission is due December 8, 2020; The Government's response is due December 16, 2020; The Defendant's reply is due December 18, 2020. After reviewing these submissions, the Court will determine whether a hearing on the renewed bail motion is necessary. The Court grants the Defendants request that the Government shall file its submission under seal with proposed redactions. Any objections to proposed redactions are due within 24 hours after any brief has been filed. Finally, the Defendant is granted leave to file a motion not to exceed 40 pages. The Governments response shall also be limited to 40 pages. The Defendant's reply shall not exceed 10 pages (Defendant submission due by 12/8/2020., Defendant Replies due by 12/18/2020., Government Responses due by 12/16/2020) (Signed by Judge Alison J. Nathan on 12/7/20)(jw) (Entered: 12/07/2020)

12/07/2020	90	ENDORSED LETTER as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Mark S. Cohen and Christian R. Everdell dated 11/25/20 re: On behalf of my client, Ghislaine Maxwell, we plan to file a Renewed Motion for Release on Bail (the "Motion") and respectfully request an in camera conference, with all counsel present, to address the appropriate procedures for the filing and consideration of the Motion. For the reasons explained below, we intend to request, pursuant to Fed. R. Crim. P. 49.l(d), that the Court permit the filing of portions of the Motion and certain supporting materials under seal and require that any responsive materials be filed under seal....ENDORSEMENT: The Court sees no basis for the sealing of this letter. On or before December 2, 2020, Defendant shall justify why this letter should be sealed (or redacted). Alternatively, the Defendant may file the letter on the public docket by that date. The Court will take no action on the request pending resolution of the initial sealing question. The Defendant's letter and this memorandum endorsement will be temporarily sealed pending resolution of the sealing request. (Signed by Judge Alison J. Nathan on 11/25/20)(jw) (Entered: 12/07/2020)
12/07/2020	91	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 12/07/2020 re: Response to MDC Report to Court re: conditions (Sternheim, Bobbi) (Entered: 12/07/2020)
12/08/2020	92	ORDER as to Ghislaine Maxwell: On December 4, 2020, the Court received a letter from MDC legal counsel responding to the concerns that the Defendant raised in her November 24, 2020 letter. See Dkt. Nos. 75, 88; see also Dkt. No. 78. The Defendant responded to the MDC legal counsel's letter on December 7, 2020, reiterating her request that the Court summon Warden Heriberto Tellez to personally respond to questions from the Court regarding the Defendant's conditions of confinement. See Dkt. No. 91. Having carefully reviewed the parties' submissions, along with the MDC legal counsel's December 4, 2020 letter, the Court DENIES the Defendant's request to summon the Warden to personally appear and respond to questions. This resolves Dkt. No. 75. Notwithstanding this, as originally provided in Dkt. No. 49, the Government shall continue to submit written status updates detailing any material changes to the conditions of Ms. Maxwell's confinement, with particular emphasis on her access to legal materials, including legal mail and email, and her ability to communicate with defense counsel. The updates shall also include information on the frequency of searches of the Defendant. The Court hereby ORDERS the Government to submit these written updates every 60 days. Furthermore, the Government shall take all necessary steps to ensure that the Defendant continues to receive adequate access to her legal materials and her ability to communicate with defense counsel. (Signed by Judge Alison J. Nathan on 12/8/2020) (ap) (Entered: 12/08/2020)
12/10/2020	93	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 7/14/2020 before Judge Alison J. Nathan. Court Reporter/Transcriber: Kristen Carannante, (212) 805−0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/31/2020. Redacted Transcript Deadline set for 1/11/2021. Release of Transcript Restriction set for 3/10/2021. (McGuirk, Kelly) (Entered: 12/10/2020)
12/10/2020	94	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 7/14/2020 has been filed by the court reporter/transcriber in the above−captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 12/10/2020)
12/14/2020	95	ORDER as to Ghislaine Maxwell: On December 8, 2020, Defendant Ghislaine Maxwell filed her renewed application for bail under seal with proposed redactions, in accordance with this Court's December 7, 2020 Order, see Dkt. No. 89. The Government did not file any opposition to the Defendant's proposed redactions. After due consideration, the Court will adopt the Defendant's proposed redactions. The Court's decision to adopt those 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 11920. "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 proposed redactions satisfy this test. The Court finds that Defendant's letter motions are "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). And the Court also finds that the common law presumption of access attaches. Id. at 146; see also Nixon v. Warner Commc'ns, Inc., 435 U.S. 589, 602 (1978). Nevertheless, in balancing competing considerations against the presumption of access, the Court finds that the redactions are narrowly tailored to properly guard the privacy interests of the individuals referenced in the Defendant's submission and in the corresponding exhibits The Defendant is hereby ORDERED to docket the redacted documents and corresponding exhibits. (Signed by Judge Alison J. Nathan on 12/14/2020) (ap) (Entered: 12/14/2020)
12/14/2020	96	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated December 8, 2020 re: Cover Letter for Renewed Bail Application (Everdell, Christian) (Entered: 12/14/2020)
12/14/2020	97	MEMORANDUM OF LAW in Support by Ghislaine Maxwell *re: Renewed Motion for Bail*. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O, # 16 Exhibit P, # 17 Exhibit Q, # 18 Exhibit R, # 19 Exhibit S, # 20 Exhibit T, # 21 Exhibit U, # 22 Exhibit V, # 23 Exhibit W, # 24 Exhibit X)(Everdell, Christian) (Entered: 12/14/2020)
12/17/2020	98	NOTICE OF ATTORNEY APPEARANCE Andrew Rohrbach appearing for USA. (Rohrbach, Andrew) (Entered: 12/17/2020)
12/18/2020	99	ORDER as to Ghislaine Maxwell: On December 16, 2020, the Government filed its opposition to Defendant Ghislaine Maxwell's renewed application for bail. In accordance with this Court's December 7, 2020 Order, see Dkt. No. 89, the Government filed its materials under seal and proposed narrowly tailored redactions on those materials. The Defendant did not file any opposition to the Government's proposed redactions. The Court will adopt the Government's proposed redactions after applying 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 access to the materials; and (iii) balance competing considerations against the presumption of access. Id. at 11920. "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 ("Amodeo II"), 71 F.3d 1044, 1050 (2d Cir. 1995)). The proposed redactions satisfy this test. The Court finds that the Governments submissions are "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). And the Court also finds that the common law presumption of access attaches. Id. at 146; see also Nixon v. Warner Commc'ns, Inc., 435 U.S. 589, 602 (1978). Nevertheless, the proposed redactions are narrowly tailored to serve substantial interests, including, most importantly, third parties' personal privacy interests. See Under Seal v. Under Seal, 273 F. Supp. 3d 460 467 (S.D.N.Y.2017). The Government is hereby ORDERED to docket the redacted documents and corresponding exhibits by no later than December 18, 2 (Signed by Judge Alison J. Nathan on 12/18/2020) (ap) (Entered: 12/18/2020)
12/18/2020	100	MEMORANDUM OF LAW in Opposition by USA as to Ghislaine Maxwell *Renewed Bail Motion*. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Comey, Maurene) (Entered: 12/18/2020)
12/23/2020	101	ORDER as to Ghislaine Maxwell: On December 18, 2020, the Defendant filed her reply to the Government's opposition to her renewed application for bail. In accordance with this Court's December 7, 2020 Order, see Dkt. No. 89, she filed these

		materials under seal and proposed narrowly tailored redactions on those materials. The Government did not file any opposition to the Defendant's proposed redactions. The Court will adopt the Defendant's proposed redactions after applying 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 11920. "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 ("Amodeo II"), 71 F.3d 1044, 1050 (2d Cir. 1995)). The proposed redactions satisfy this test. The Court finds that the Defendant's submissions are "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). And the Court also finds that the common law presumption of access attaches. Id. at 146; see also Nixon v. Warner Commc'ns, Inc., 435 U.S. 589, 602 (1978). As with the redactions to her renewed motion for bail, the proposed redactions here are narrowly tailored to serve substantial interests, including, most importantly, third parties personal privacy interests. See Under Seal v. Under Seal, 273 F. Supp. 3d 460, 467 (S.D.N.Y. 2017). See also Dkt. No. 95. The Defendant is hereby ORDERED to docket the redacted documents and corresponding exhibits by no later than December 23, 2020. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/23/2020) (lnl) (Entered: 12/23/2020)
12/23/2020	102	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated December 18, 2020 re: Cover Letter for Reply Memorandum for Renewed Bail Application (Everdell, Christian) (Entered: 12/23/2020)
12/23/2020	103	REPLY MEMORANDUM OF LAW in Support by Ghislaine Maxwell *re: Renewed Motion for Bail*. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Everdell, Christian) (Entered: 12/23/2020)
12/28/2020	104	ORDER as to Ghislaine Maxwell. On December 8, 2020, Defendant Ghislaine Maxwell filed a renewed motion for releaseon bail. Dkt No. 97. In an Opinion and Order concurrently filed under temporary seal, the Court DENIES the Defendant's motion. In light of the fact that the Opinion includes potentially confidential information that should not be filed on the public docket, the Court will permit the parties 48 hours to propose any redactions to the Courts Opinion and Order and to justify those redactions by reference tothe Second Circuits decision in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110(2d Cir. 2006). After determining which, if any, portions of the Opinion and Order should be redacted, the Court will file the Opinion and Order on the public docket. As a result, the Court concludes that the Government has met its burden of persuasion that the Defendant poses a flight risk and that pretrial detention continues to be warranted. On or before December 30, 2020, the parties are ORDERED to submit a joint letter indicating whether they propose any redactions and the justification for any such proposal. This resolves Dkt No. 97. (Signed by Judge Alison J. Nathan on 12/28/20)(jw) (Entered: 12/28/2020)
12/30/2020	105	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated December 30, 2020 re: Joint Letter re December 28, 2020 Opinion and Order Document filed by USA. (Comey, Maurene) (Entered: 12/30/2020)
12/30/2020	106	OPINION AND ORDER as to Ghislaine Maxwell. Defendant Ghislaine Maxwell has been indicted by a grand jury on charges of conspiracy to entice minors to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 371; enticing a minor to travel to engage in illegal sex acts, in violation of 18 U.S.C. §§ 2422 and 2; conspiracy to transport minors to participate in illegal sex acts, in violation of 18 U.S.C. § 371; transporting minors to participate in illegal sex acts, in violation of 18 U.S.C. §§ 2423 and 2; and two charges of perjury, in violation of 18 U.S.C. § 1623. The Court held a lengthy bail hearing on July 14, 2020. After extensive briefing and argument at the hearing, the Court concluded that the Defendant was a clear risk of flight and that no conditions or combination of conditions would ensure her appearance. Defendant Ghislaine Maxwells renewed motion for release on bail, Dkt. No. 97, is DENIED. (Signed by Judge Alison J. Nathan on 12/28/20)(jw) (Entered: 12/30/2020)

12/31/2020	107	LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated December 31, 2020 re: Extension of Time . Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 12/31/2020)
01/05/2021	108	MEMO ENDORSEMENT as to Ghislaine Maxwell (1) on 107 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated December 31, 2020 re: Extension of Time. ENDORSEMENT: SO ORDERED. (Signed by Judge Alison J. Nathan on 1/5/2021) (ap) (Entered: 01/05/2021)
01/05/2021		Set/Reset Deadlines as to Ghislaine Maxwell: Motions due by 1/25/2021. Responses due by 2/26/2021. Replies due by 3/5/2021. (ap) (Entered: 01/05/2021)
01/08/2021	109	LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated January 8, 2021 re: Extension of Time to File Notice of Appeal . Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 01/08/2021)
01/11/2021	110	SEALED DOCUMENT placed in vault. (jus) (Entered: 01/11/2021)
01/11/2021	111	SEALED DOCUMENT placed in vault. (jus) (Entered: 01/11/2021)
01/11/2021	112	MEMO ENDORSEMENT as to Ghislaine Maxwell (1) denying 109 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated January 8, 2021 re: Extension of Time to File Notice of Appeal. ENDORSEMENT: The request is denied. Good cause for an extension of time to file a notice of appeal has not been provided. SO ORDERED. (Signed by Judge Alison J. Nathan on 1/11/2021) (lnl) (Entered: 01/11/2021)
01/11/2021	113	NOTICE OF APPEAL by Ghislaine Maxwell from 104 Order. (nd) (Entered: 01/12/2021)
01/11/2021		Appeal Remark as to re: 113 Notice of Appeal by Ghislaine Maxwell. $505.00 Appeal filing fee due. (nd) (Entered: 01/12/2021)
01/12/2021		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Ghislaine Maxwell to US Court of Appeals re: 113 Notice of Appeal. (nd) (Entered: 01/12/2021)
01/12/2021		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to Ghislaine Maxwell re: 113 Notice of Appeal were transmitted to the U.S. Court of Appeals. (nd) (Entered: 01/12/2021)
01/13/2021	114	INTERNET CITATION NOTE as to Ghislaine Maxwell: Material from decision with Internet citation re: 106 Memorandum & Opinion. (sjo) (Entered: 01/13/2021)
01/14/2021	115	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated January 14, 2021 re: Laptop Access (Everdell, Christian) (Entered: 01/14/2021)
01/15/2021	116	MEMO ENDORSEMENT as to Ghislaine Maxwell on 115 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated January 14, 2021 re: Laptop Access. ENDORSEMENT: The unobjected−to request is GRANTED. The Bureau of Prisons is ORDERED to give the Defendant access to the laptop computer on weekends and holidays during the hours that she is permitted to review discovery. SO ORDERED. (Signed by Judge Alison J. Nathan on 1/15/2021) (lnl) (Entered: 01/15/2021)
01/15/2021		USCA Case Number 21−0058 from the U.S. Court of Appeals, 2nd Circ. as to Ghislaine Maxwell, assigned to 113 Notice of Appeal filed by Ghislaine Maxwell. (nd) (Entered: 01/15/2021)
01/15/2021		USCA Appeal Fees received $ 505.00, receipt number 465401271727 as to Ghislaine Maxwell on 01/15/2021 re: 113 Notice of Appeal filed by Ghislaine Maxwell. (nd) (Entered: 01/15/2021)
01/25/2021	117	ORDER as to Ghislaine Maxwell: On January 25, 2021, the Court received by email the attached letter from the Bureau of Prisons ("BOP"). In the letter, the BOP requests that the Court vacate its January 15, 2021 Order, Dkt. No. 116, which directed the BOP to give the Defendant access to her Government provided laptop computer on weekends and holidays during the hours that she is permitted to review discovery. The Defendant and the Government may respond to the BOP's letter within one week of

		this Order. (Signed by Judge Alison J. Nathan on 1/25/2021) (ap) (Entered: 01/25/2021)
01/25/2021	118	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Mark S. Cohen dated January 25, 2021 re: Pretrial Motions (Cohen, Mark) (Entered: 01/25/2021)
01/25/2021	119	MOTION for Separate Trial on Counts Ghislaine Maxwell (1) Count 5s−6s,5−6 . Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 01/25/2021)
01/25/2021	120	MEMORANDUM in Support by Ghislaine Maxwell re 119 MOTION for Separate Trial on Counts Ghislaine Maxwell (1) Count 5s−6s,5−6 .. (Pagliuca, Jeffrey) (Entered: 01/25/2021)
01/25/2021	121	MOTION to Dismiss *Either Count One Or Count Three of the Superseding Indictment as Multiplicitous*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 01/25/2021)
01/25/2021	122	MEMORANDUM in Support by Ghislaine Maxwell re 121 MOTION to Dismiss *Either Count One Or Count Three of the Superseding Indictment as Multiplicitous*.. (Pagliuca, Jeffrey) (Entered: 01/25/2021)
01/25/2021	123	MOTION to Dismiss *Counts One through Four of the Superseding Indictment for Lack of Specificity*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 01/25/2021)
01/25/2021	124	MEMORANDUM in Support by Ghislaine Maxwell re 123 MOTION to Dismiss *Counts One through Four of the Superseding Indictment for Lack of Specificity*.. (Pagliuca, Jeffrey) (Entered: 01/25/2021)
01/25/2021	125	MOTION to Dismiss *the Superseding Indictment as it was Obtained in Violation of the Sixth Amendment*. Document filed by Ghislaine Maxwell. (Cohen, Mark) (Entered: 01/25/2021)
01/25/2021	126	MEMORANDUM in Support by Ghislaine Maxwell re 125 MOTION to Dismiss *the Superseding Indictment as it was Obtained in Violation of the Sixth Amendment*.. (Cohen, Mark) (Entered: 01/25/2021)
01/26/2021	127	ORDER as to Ghislaine Maxwell: On January 25, 2021, the Defendant filed twelve pre−trial motions. Because there is a request to redact sensitive or confidential information, several of the motions have been filed under temporary seal. The Government may respond to the Defendant's proposed redactions within two days of this Order. (Signed by Judge Alison J. Nathan on 1/26/2021) (ap) (Entered: 01/26/2021)
01/28/2021	128	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated January 28, 2021 re: Defendant's Proposed Redactions to Pre−Trial Motions Document filed by USA. (Pomerantz, Lara) (Entered: 01/28/2021)
02/01/2021	129	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated February 1, 2021 re: MDC Laptop Access Document filed by USA. (Comey, Maurene) (Entered: 02/01/2021)
02/01/2021	130	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 02/02/2021 re: Opposition to MDC letter (Sternheim, Bobbi) (Entered: 02/01/2021)
02/02/2021	131	MEMO ENDORSEMENT as to Ghislaine Maxwell on Letter addressed to Judge Alison J. Nathan from Sophia Papapetru (Staff Attorney, MDC Brooklyn, Federal Bureau of Prisons) dated January 25, 2021. ENDORSEMENT: Having considered the request submitted by the Bureau of Prisons ("BOP") that the Court vacate its January 15, 2021 Order, Dkt. No. 117, as well as the Government's and the Defendant's responses, Dkt. Nos. 129, 130, the Court hereby DENIES the BOP's request to vacate the Order. SO ORDERED. (Signed by Judge Alison J. Nathan on 2/2/2021)(bw) (Entered: 02/02/2021)

02/04/2021	132	ORDER as to Ghislaine Maxwell: The Defendant is hereby ORDERED to docket the redacted documents and corresponding exhibits by no later than February 5, 2021. With respect to Motion 3, the Defendant is ORDERED to docket the version that includes the Government's proposed redactions in addition to her own. SO ORDERED. (Signed by Judge Alison J. Nathan on 2/4/2021)(See ORDER as set forth) (lnl) (Entered: 02/04/2021)
02/04/2021	133	MOTION to Suppress *Under the Due Process Clause All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five and Six*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	134	MEMORANDUM in Support by Ghislaine Maxwell re 133 MOTION to Suppress *Under the Due Process Clause All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five and Six*.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I)(Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	135	MOTION to Dismiss *Counts Five and Six of the Superseding Indictment Because the Alleged Misstatements are Not Perjurious as a Matter of Law*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	136	MEMORANDUM in Support by Ghislaine Maxwell re 135 MOTION to Dismiss *Counts Five and Six of the Superseding Indictment Because the Alleged Misstatements are Not Perjurious as a Matter of Law*.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K)(Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	137	MOTION to Dismiss *Counts One Through Six of the Superseding Indictment for Pre−Indictment Delay*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	138	MEMORANDUM in Support by Ghislaine Maxwell re 137 MOTION to Dismiss *Counts One Through Six of the Superseding Indictment for Pre−Indictment Delay*.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	139	MOTION to Suppress *Under the Fourth Amendment, Martindell, and the Fifth Amendment All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five And Six*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	140	MEMORANDUM in Support by Ghislaine Maxwell re 139 MOTION to Suppress *Under the Fourth Amendment, Martindell, and the Fifth Amendment All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five And Six*.. (Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	141	MOTION to Dismiss *the Superseding Indictment for Breach of Non−Prosecution Agreement*. Document filed by Ghislaine Maxwell. (Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	142	MEMORANDUM in Support by Ghislaine Maxwell re 141 MOTION to Dismiss *the Superseding Indictment for Breach of Non−Prosecution Agreement*.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C (Sealed), # 4 Exhibit D (Sealed), # 5 Exhibit E (Sealed), # 6 Exhibit F (Sealed), # 7 Exhibit G (Sealed), # 8 Exhibit H (Sealed))(Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	143	MOTION to Dismiss *Counts One Through Four of the Superseding Indictment as Time−Barred*. Document filed by Ghislaine Maxwell. (Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	144	MEMORANDUM in Support by Ghislaine Maxwell re 143 MOTION to Dismiss *Counts One Through Four of the Superseding Indictment as Time−Barred*.. (Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	145	MOTION to Strike *Surplusage from Superseding Indictment*. Document filed by Ghislaine Maxwell. (Cohen, Mark) (Entered: 02/04/2021)

02/04/2021	146	MEMORANDUM in Support by Ghislaine Maxwell re 145 MOTION to Strike *Surplusage from Superseding Indictment*.. (Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	147	MOTION for Bill of Particulars *and Pretrial Disclosures*. Document filed by Ghislaine Maxwell. (Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	148	MEMORANDUM in Support by Ghislaine Maxwell re 147 MOTION for Bill of Particulars *and Pretrial Disclosures*.. (Attachments: # 1 Exhibit A, # 2 Exhibit B (Sealed), # 3 Exhibit C (Sealed), # 4 Exhibit D (Sealed), # 5 Exhibit E)(Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	149	AFFIDAVIT of Bobbi C. Sternheim in Support as to Ghislaine Maxwell re 147 MOTION for Bill of Particulars *and Pretrial Disclosures*.. (Cohen, Mark) (Entered: 02/04/2021)
02/05/2021	150	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	151	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	152	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	153	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	154	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	155	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	156	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	157	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	158	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated February 5, 2021 re: MDC Conditions Update Document filed by USA. (Comey, Maurene) (Entered: 02/05/2021)
02/16/2021	159	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 02/16/2021 re: Conditions of Pretrial Confinement (Sternheim, Bobbi) (Entered: 02/16/2021)
02/23/2021	160	THIRD MOTION for Bond . Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 02/23/2021)
02/24/2021	161	ORDER as to Ghislaine Maxwell: On February 23, 2021, Defendant Ghislaine Maxwell filed a third motion for release on bail. Dkt. No. 160. The Government's response is due March 9, 2021, and the Defendants reply is due March 16, 2021. SO ORDERED. (Responses due by 3/9/2021. Replies due by 3/16/2021.) (Signed by Judge Alison J. Nathan on 2/24/2021) (lnl) (Entered: 02/24/2021)
02/26/2021	162	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated February 26, 2021 re: Cover Letter for Government Opposition to Defense Pretrial Motions Document filed by USA. (Comey, Maurene) (Entered: 02/26/2021)
03/01/2021	163	LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated March 1, 2021 re: Extension of Time to File Reply to Government Opposition to Defense Pretrial Motions . Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 03/01/2021)
03/01/2021	164	MEMO ENDORSEMENT 163 LETTER MOTION To request a 10−day extension of time until Monday, March 15, 2021 to file our reply re: 163 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated March 1, 2021 re: Extension of Time to File Briefing Schedule...ENDORSEMENT...The Defendant's request is GRANTED. Her reply to the Government's Omnibus Memorandum in Opposition to the Defendants Pretrial Motions is now due on March 15, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/1/21) (jw) (Entered: 03/01/2021)
03/01/2021		Set/Reset Deadlines/Hearings as to Ghislaine Maxwell: Defendant Replies due by 3/15/2021 (jw) (Entered: 03/01/2021)

03/09/2021	165	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated March 9, 2021 re: Opposition to Third Bail Motion Document filed by USA. (Attachments: # 1 Exhibit A)(Pomerantz, Lara) (Entered: 03/09/2021)
03/15/2021	166	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated March 15, 2021 re: Pretrial Motion Replies (Everdell, Christian) (Entered: 03/15/2021)
03/16/2021	167	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 03/16/2021 re: Letter regarding Reply to Bail Motion (Sternheim, Bobbi) (Entered: 03/16/2021)
03/18/2021	168	ORDER as to Ghislaine Maxwell. On February 26, 2021, the Government filed its omnibus memorandum of law opposing Defendants' twelve pretrial motions. It filed the brief, along with the corresponding exhibits, under temporary seal pending the Court's resolution of its request to redact sensitive or confidential information. See Dkt. No. 162. On March 9, 2021, the Defendant objected to certain of the redactions that the Government had proposed, and she proposed additional redactions. Having considered the parties' respective positions, the Court will grant the Government's requests for redactions and sealing, as well as the Defendant's additional redaction requests, with the exceptions discussed below. Finally, the Court denies the Governments request to file Exhibit 11 entirely under seal. While portions of that transcript have been redacted, other portions are part of the public record. See Giuffre v. Maxwell, Case No. 15−cv−7433, Dkt. No. 1212−1. In light of this, the Court sees no basis to file the transcript entirely under seal rather than by redacting the relevant portions. In light of the above, the Government is hereby ORDERED to either docket on ECF their brief and the corresponding exhibits, consistent with this Order, or to file a letter with the Court justifying more tailored redaction and sealing requests regarding pages 1128 and 187188 and Exhibits 8 and 9 by no later than March 22, 2021. The parties are further ORDERED to meet, confer, and jointly propose redactions to the Defendant's cover letter objecting to the Government's proposed redactions by March 22, 2021. Finally, the parties are ORDERED to meet, confer, and propose redactions to Exhibit 11 of the Government's submission by March 22, 2021 (Signed by Judge Alison J. Nathan on 3/18/21)(jw) (Entered: 03/18/2021)
03/22/2021	169	ORDER as to Ghislaine Maxwell: Defendant Ghislaine Maxwell's third motion for release on bail, Dkt. No. 160, is DENIED. The parties are ORDERED to meet and confer and propose and justify any redactions to the Defendant's reply brief by March 24, 2021. If they conclude that redactions are unnecessary, the Defendant is ORDERED to docket the unredacted version of the brief by March 24, 2021. (Signed by Judge Alison J. Nathan on 3/22/2021) (See ORDER set forth) (ap) Modified on 3/23/2021 (ap). (Entered: 03/22/2021)
03/22/2021	170	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated March 22, 2021 re: Redactions to Government Opposition to Defense Pretrial Motions Document filed by USA. (Pomerantz, Lara) (Entered: 03/22/2021)
03/23/2021	171	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 160 THIRD MOTION for Bond . . (Sternheim, Bobbi) (Entered: 03/23/2021)
03/24/2021	172	ORDER as to Ghislaine Maxwell. On March 5, 2021, Defendant Ghislaine Maxwell submitted to the Court an application for an order authorizing a subpoena pursuant to Rule 17(c)(3) of the Federal Rules of Criminal Procedure. The proposed subpoena was directed at a law firm that represents alleged victims of the Defendant. As is standard for Rule 17(c) subpoenas, the application was made ex parte and under seal on the ground that it reveals defense strategy....[*** See this Order ***]... Rule 17(c)(3) provides that "[a]fter [an indictment] is filed, a subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order," but "before entering the order and unless there are exceptional circumstances, the court must require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object." Fed. R. Crim. P. 17(c)(3). Consistent with the Rule, on March 12, 2021, in a sealed ex parte Order, the Court required defense counsel to provide notice to alleged victims whose personal or confidential information may be disclosed by the proposed subpoena. The Court also gave the alleged victims an opportunity to object to or request modifications of the

		subpoena as required by Rule 17(c)(3). On March 19, 2021, the Court received a letter from the law firm indicating that it can provide notice to alleged victims whose personal or confidential information may be elicited by the subpoena. The law firm shall provide notice to any such alleged victims it represents. In that letter, the law firm also interposed substantial objections on behalf of the law firm and the alleged victims it represents. Those objections are functionally the equivalent of a motion to quash, even though the subpoena has not yet issued. So that the Court can receive adversarial briefing on the proposed subpoena comparable to a motion to quash, the law firm shall enter an appearance and file its objections on the public docket. See United States v. Ray, No. 20−CR−110 (LJL), 2020 WL 6939677, at *10 (S.D.N.Y. Nov. 25, 2020) ("[I]f the Court determines that the subpoena calls for personal or confidential information about a victim, it requires the requesting party have given notice to the victim before it permits the service of the subpoena. If the victim objects, the Court will then determine whether to modify or quash the subpoena, including on grounds that Nixon was not satisfied."). In advance of noticing an appearance and filing, the law firm shall meet and confer with defense counsel to see if any issues can be narrowed before formal briefing. Moreover, prior to filing, the law firm shall confer with defense counsel as to any proposed, necessary, and tailored redactions to the objections. The law firm's objections with any proposed redactions shall be filed on or before March 26, 2021. Any redactions must be justified consistent with Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). Within one week of the filing of objections, defense counsel may respond to the subpoena objections. The law firm may reply within three days of the Defendant's response.(See Citation 1 on this Order). Counsel shall confer regarding any proposed redactions for all briefing. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/24/2021)(bw) (Entered: 03/24/2021)
03/24/2021	173	NOTICE OF APPEAL by Ghislaine Maxwell from 169 Order, Terminate Motions. (tp) (Additional attachment(s) added on 4/1/2021: # 1 Appeal Fee) (tp). (Entered: 03/24/2021)
03/24/2021		Appeal Remark as to Ghislaine Maxwell re: 173 Notice of Appeal. $505.00 Appeal Fee Due. (tp) (Entered: 03/24/2021)
03/24/2021		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Ghislaine Maxwell to US Court of Appeals re: 173 Notice of Appeal. (tp) (Entered: 03/24/2021)
03/24/2021		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to Ghislaine Maxwell re: 173 Notice of Appeal were transmitted to the U.S. Court of Appeals. (tp) (Entered: 03/24/2021)
03/24/2021	174	SEALED DOCUMENT placed in vault. (dn) (Entered: 03/24/2021)
03/24/2021	175	SEALED DOCUMENT placed in vault. (dn) (Entered: 03/24/2021)
03/24/2021	176	SEALED DOCUMENT placed in vault. (dn) (Entered: 03/24/2021)
03/24/2021	177	SEALED DOCUMENT placed in vault. (dn) (Entered: 03/24/2021)
03/24/2021	178	SEALED DOCUMENT placed in vault. (dn) (Entered: 03/24/2021)
03/24/2021	179	SEALED DOCUMENT placed in vault. (dn) (Entered: 03/24/2021)
03/26/2021	180	NOTICE of Appearance of David Boies for Boies Schiller Flexner LLP and the Victims it Represents as to Ghislaine Maxwell (Boies, David) (Entered: 03/26/2021)
03/26/2021	181	NOTICE of Appearance of Sigrid S. McCawley for Boies Schiller Flexner LLP and the Victims it Represents as to Ghislaine Maxwell (McCawley, Sigrid) (Entered: 03/26/2021)
03/26/2021	182	MOTION for Sigrid S. McCawley to Appear Pro Hac Vice . Filing fee $ 200.00, receipt number ANYSDC−24312691. **Motion and supporting papers to be reviewed by Clerk's Office staff.** Document filed by Boies Schiller Flexner LLP as to Ghislaine Maxwell. (Attachments: # 1 Declaration of Sigrid S. McCawley, # 2 Florida Certificate of Good Standing, # 3 District of Columbia Certificate of Good Standing, # 4 Text of Proposed Order)(McCawley, Sigrid) (Entered: 03/26/2021)

03/26/2021		**>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. 182 MOTION for Sigrid S. McCawley to Appear Pro Hac Vice . Filing fee $ 200.00, receipt number ANYSDC−24312691. Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (wb)** (Entered: 03/26/2021)
03/26/2021	183	LETTER by Boies Schiller Flexner LLP as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid S. McCawley dated March 22, 2021 re: Objection to Defendant Ghislaine Maxwell's motion for an order authorizing a Rule 17(c) subpoena. Document filed by Boies Schiller Flexner LLP. (McCawley, Sigrid) (Entered: 03/26/2021)
03/26/2021	184	LETTER by Boies Schiller Flexner LLP as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid S. McCawley dated March 26, 2021 re: Proposed redactions to March 22, 2021 Letter (ECF No. 183) Document filed by Boies Schiller Flexner LLP. (McCawley, Sigrid) (Entered: 03/26/2021)
03/26/2021	185	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated March 26, 2021 re: Recent decision in United States v. Schulte, 17 Cr. 548 (PAC) Document filed by USA. (Attachments: # 1 Exhibit 1)(Comey, Maurene) (Entered: 03/26/2021)
03/26/2021	186	ORDER as to Ghislaine Maxwell: The Court sees no reason to maintain the redactions on Boies Schiller Flexner LLP's March 26, 2021 letter. Dkt. No. 183. Unless the Government indicates an objection to removing those redactions by March 29, 2021, BSF shall file the unredacted version on the docket on March 30, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/26/2021) (lnl) (Entered: 03/26/2021)
03/29/2021	187	(S2) SUPERSEDING INDICTMENT FILED as to Ghislaine Maxwell (1) count(s) 1ss, 2ss, 3ss, 4ss, 5ss, 6ss, 7ss−8ss. (jm) (Entered: 03/29/2021)
03/29/2021	188	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated March 29, 2021 re: S2 Superseding Indictment Document filed by USA. (Comey, Maurene) (Entered: 03/29/2021)
03/29/2021	189	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's letter responding to its March 18, 2021 order regarding redactions to its omnibus memorandum of law in opposition to the Defendants twelve pretrial motions. Dkt. No. 170. the Court ORDERS that the information contained on pages 129134 of the Governments brief be unredacted. With respect to the proposed redactions to pages 118119 and Exhibit 11, the Court now understands that the parties seek redactions on the basis that the material has been maintained under seal in Giuffre v. Maxwell, Case No 15−cv−7433 (S.D.N.Y.). By April 1, 2021, the parties must meet and confer and either submit to the Court justification for those redactionsbeyond that it has been ordered redacted in the civil matteror, in the alternative, notify the Court that the parties are no longer seeking those redactions. If the parties disagree, they shall indicate their separate views in the joint letter. (Signed by Judge Alison J. Nathan on 3/29/21)(jw) (Entered: 03/29/2021)
03/29/2021	190	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated March 29, 2021 re: Clarification re October 7, 2020 Letter Document filed by USA. (Comey, Maurene) (Entered: 03/29/2021)
03/29/2021		USCA Appeal Fees received $ 505.00, receipt number 465401276762 as to Ghislaine Maxwell on 3/25/2021 re: 173 Notice of Appeal − Final Judgment filed by Ghislaine Maxwell. (tp) (Entered: 04/01/2021)
03/30/2021	191	LETTER by Boies Schiller Flexner LLP as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid S. McCawley dated March 22,2021 re: Unredacted Objection to Defendant Ghislaine Maxwell's motion for an order authorizing a Rule 17(c) subpoena. Document filed by Boies Schiller Flexner LLP. (McCawley, Sigrid) (Entered: 03/30/2021)

03/31/2021	192	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 03/31/2021 re: Filing of Second Superseding Indictment (Sternheim, Bobbi) (Entered: 03/31/2021)
04/02/2021		ORDER granting 182 Motion for Sigrid S. McCawley to Appear Pro Hac Vice as to Ghislaine Maxwell (1). (Signed by Judge Alison J. Nathan on 4/2/2021) (kwi) (Entered: 04/02/2021)
04/02/2021	193	ORDER as to Ghislaine Maxwell. An arraignment on the S2 Superseding Indictment and a status conference is hereby tentatively scheduled for April 16, 2021. As requested by the Defendant, the proceeding will take place in person. The Court is making logistical arrangements and will provide more information when it is available. The Government is ORDERED to respond to the issues raised in the Defendants March 31, 2021 letter, Dkt. No. 192, by April 9, 2021(Government Responses due by 4/9/2021) (Signed by Judge Alison J. Nathan on 4/2/21)(jw) (Entered: 04/02/2021)
04/05/2021	194	LETTER MOTION addressed to Judge Alison J. Nathan from Laura A. Menninger dated April 5, 2021 re: Unopposed Request for One−Week Continuance of Arraignment . Document filed by Ghislaine Maxwell. (Menninger, Laura) (Entered: 04/05/2021)
04/05/2021	195	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 5, 2021 re: Notice of Rule 17(c) subpoenas . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 04/05/2021)
04/06/2021	196	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated April 6, 2021 re: MDC Conditions Update Document filed by USA. (Comey, Maurene) (Entered: 04/06/2021)
04/07/2021	197	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/07/2021 re: Response to Government MDC Update (Sternheim, Bobbi) (Entered: 04/07/2021)
04/08/2021	198	ORDER as to Ghislaine Maxwell: The Defendant's request to adjourn the arraignment on the S2 Superseding Indictment is GRANTED. Dkt. No. 194. The arraignment is RE−SCHEDULED to occur on April 23, 2021 at 2:30 p.m. It will take place at the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, Courtroom 24B, New York, NY 10007. It is ORDERED that the parties ensure that all participants comply with the Southern District of New Yorks COVID−19−related orders that govern entry into and behavior within SDNY courthouses. These materials may be found at: https://www.nysd.uscourts.gov/covid−19−coronavirus. Court staff are working on the logistical arrangements related to public access (including a public dial−in number), and as soon as that information is available it will be provided in a public order. SO ORDERED. (Arraignment set for 4/23/2021 at 02:30 PM in Courtroom 24B, 500 Pearl Street, New York, NY 10007 before Judge Alison J. Nathan) (Signed by Judge Alison J. Nathan on 4/8/2021) (lnl) (Entered: 04/08/2021)
04/09/2021	199	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 9, 2021 re: Response to Defense March 31, 2021 Letter Document filed by USA. (Comey, Maurene) (Entered: 04/09/2021)
04/14/2021	200	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/13/2021 re: Proposed Order to Marshal (Sternheim, Bobbi) (Entered: 04/14/2021)
04/14/2021	201	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 200 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/13/2021 re: Proposed Order to Marshal. ENDORSEMENT: After conferring with the District Executive and the United States Marshal for the Southern District of New York, the Court denies the request. The U.S. Marshall has a generally applicable policy that prohibits inmates being held in the Courthouse cellblocks from possessing any materials or items. The circumstances do not warrant an exception to that policy. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/14/2021)(bw) (Entered: 04/14/2021)

04/15/2021	202	MOTION to Continue *Trial Date*. Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 04/15/2021)
04/16/2021	203	ORDER as to Ghislaine Maxwell: The Court is in receipt of the parties' joint letter responding to the Court's March 29, 2021 Order. The parties agree that the redactions to pages 118 and 119 are no longer necessary. The Defendant continues to press for the redactions on pages 129134. However, for the reasons stated in the Court's March 29, 2021 Order, the information is already part of the public record in this case and accordingly the proposed redactions are unnecessary and overbroad. Dkt. No. 189; see also United States v. Nejad, No. 18−CR−224 (AJN), 2021 WL 681427, at *11 (S.D.N.Y. Feb. 22, 2021). For the reasons stated in the Court's March 18, 2021 and March 29, 2021 Orders, the Court approves the limited redactions to Exhibit 11 to the Government's brief, except for the language quoted in the Indictment, which is already part of the public record. The Government is therefore ORDERED to docket its omnibus memorandum of law, along with the corresponding exhibits, by 3:00 p.m. today, consistent with the Court's orders regarding redactions. The parties are further ORDERED to docket their April 1, 2021 joint letter; if either side believes that portions of that letter should be redacted, they shall propose redactions by April 19, 2021. (Signed by Judge Alison J. Nathan on 4/16/2021) (ap) (Entered: 04/16/2021)
04/16/2021	204	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 139 MOTION to Suppress *Under the Fourth Amendment, Martindell, and the Fifth Amendment All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five And Six.*, 123 MOTION to Dismiss *Counts One through Four of the Superseding Indictment for Lack of Specificity.*, 135 MOTION to Dismiss *Counts Five and Six of the Superseding Indictment Because the Alleged Misstatements are Not Perjurious as a Matter of Law.*, 121 MOTION to Dismiss *Either Count One Or Count Three of the Superseding Indictment as Multiplicitous.*, 125 MOTION to Dismiss *the Superseding Indictment as it was Obtained in Violation of the Sixth Amendment.*, 147 MOTION for Bill of Particulars *and Pretrial Disclosures.*, 119 MOTION for Separate Trial on Counts Ghislaine Maxwell (1) Count 5s−6s,5−6 ., 133 MOTION to Suppress *Under the Due Process Clause All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five and Six.*, 145 MOTION to Strike *Surplusage from Superseding Indictment.*, 143 MOTION to Dismiss *Counts One Through Four of the Superseding Indictment as Time−Barred.*, 137 MOTION to Dismiss *Counts One Through Six of the Superseding Indictment for Pre−Indictment Delay.*, 141 MOTION to Dismiss *the Superseding Indictment for Breach of Non−Prosecution Agreement.*. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12)(Pomerantz, Lara) (Entered: 04/16/2021)
04/16/2021	205	ORDER as to Ghislaine Maxwell: On March 15, 2021, the Defendant filed under seal her reply briefs to the Government memorandum of law opposing Defendants' twelve pre−trial motions. She filed the briefs, along with the corresponding exhibits, temporarily under seal in order to permit the Government and the Court to review certain proposed redactions. Of the twelve reply briefs, Reply Briefs 2, 4, 7, 8, 9, 11, and 12 did not contain any redaction or sealing requests. Reply Briefs 1, 3, 5, 6, and 10 contain limited proposed redactions. Reply Briefs 3, 6, and 10 also contain exhibits that the Defendant proposes be filed under seal. As set forth in the Defendant's cover letter, the premise of the proposed redactions is that the materials were produced in discovery and subject to the protective order that has been entered in this case. The mere existence of a confidentiality agreement or a protective order covering judicial documents is insufficient to overcome the presumption of access. See Aioi Nissay Dowa Ins. Co. v. Prosight Specialty Mgmt. Co., Inc., 12−cv−3274 (JPO), 2012 WL 3583176, at *6 (S.D.N.Y. Aug. 21, 2012). And the Court did not receive specific requests or justifications to redact or seal any of the materials. The Defendant is ORDERED to docket Reply Briefs 2, 4, 7, 8, 9, 11, and 12 on ECF today, as she did not propose any redactions to these and the Government has not voiced any opposition to these being filed without redactions. If either side is seeking these or any other redactions to the remaining reply briefs, they must file a letter indicating the redactions they request and providing specific justifications for the sealing requests or redactions, in line with the principles set forth in Lugosch. By April 20, 2021, the parties shall confer and submit a letter informing the Court whether any redactions are being sought. If no redactions are being sought, the Defendant is ORDERED to docket the

		remaining reply briefs on ECF by April 20, 2021. (Signed by Judge Alison J. Nathan on 4/16/2021) (ap) (Entered: 04/16/2021)
04/16/2021	206	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 143 MOTION to Dismiss *Counts One Through Four of the Superseding Indictment as Time−Barred*. . (Everdell, Christian) (Entered: 04/16/2021)
04/16/2021	207	OPINION & ORDER as to Ghislaine Maxwell. In June 2020, a grand jury returned a six−count indictment charging Ghislaine Maxwell with facilitating the late financier Jeffrey Epstein's sexual abuse of minor victims from around 1994 to 1997. The Government filed a first (S1) superseding indictment shortly thereafter, which contained only small, ministerial corrections. The S1 superseding indictment included two counts of enticement or transportation of minors to engage in illegal sex acts in violation of the Mann Act and two counts of conspiracy to commit those offenses. It also included two counts of perjury in connection with Maxwell's testimony in a civil deposition. Trial is set to begin on July 12, 2021. Maxwell filed twelve pretrial motions seeking to dismiss portions of the S1 superseding indictment, suppress evidence, and compel discovery. After the parties fully briefed those motions, a grand jury returned a second (S2) superseding indictment adding a sex trafficking count and another related conspiracy count. This Opinion resolves all of Maxwell's currently pending pretrial motions other than those seeking to suppress evidence, which the Court will resolve in due course. The motions, and this Opinion, deal exclusively with the S1 superseding indictment and do not resolve any issues related to the newly added sex trafficking charges. For the reasons that follow, the Court denies Maxwell's motions to dismiss the S1 superseding indictment in whole or in part. It grants her motion to sever the perjury charges for a separate trial. It denies her motion to further expedite discovery. The Court provides a brief summary of its conclusions here and its reasoning on the pages that follow:...[*** See this Opinion & Order ***]... Conclusion: The Court DENIES Maxwell's motions to dismiss the indictment as barred by Epstein's non−prosecution agreement (Dkt. No. 141), to dismiss the Mann Act counts as barred by the statute of limitations (Dkt. No. 143), to dismiss the indictment for pre−indictment delay (Dkt. No. 137), to dismiss the Mann Act counts for lack of specificity (Dkt. No. 123), to dismiss the perjury counts as legally untenable (Dkt. No. 135), to strike surplusage (Dkt. No. 145), to dismiss count one or count three as multiplicitous (Dkt. No. 121), and to expedite pretrial disclosures (Dkt. No. 147). The Court GRANTS Maxwell's motion to sever the perjury counts for a separate trial (Dkt. No. 119). The Court ORDERS the Government to confirm within one week whether it considers any evidence related to negotiation of the non−prosecution agreement to constitute Brady or Rule 16 material and, if so, to confirm that it has or will disclose such evidence. The Court further ORDERS the parties to negotiate a final schedule for all pretrial disclosures that remain outstanding, including: Brady, Giglio, and Jenks Act materials, including co−conspirator statements; non−testifying witness statements; testifying witness statements; the identity of victims alleged in the indictment; 404(b) material; and the Government's witness list. The Court also requires the parties to negotiate a schedule for any additional or supplemental motions briefing in light of the S2 indictment. The Court ORDERS a joint proposal to be submitted by April 21, 2021. If agreement is not reached, the parties shall submit their respective proposals. The Court further ORDERS Maxwell to show cause by April 21, 2021 why her motion to dismiss the S1 superseding indictment under the Sixth Amendment (Dkt. No. 125) should not be denied as moot. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/16/2021)(bw) (Entered: 04/16/2021)
04/16/2021	208	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 135 MOTION to Dismiss *Counts Five and Six of the Superseding Indictment Because the Alleged Misstatements are Not Perjurious as a Matter of Law*. . (Attachments: # 1 Exhibit L, # 2 Exhibit M, # 3 Exhibit N)(Everdell, Christian) (Entered: 04/16/2021)
04/16/2021	209	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 137 MOTION to Dismiss *Counts One Through Six of the Superseding Indictment for Pre−Indictment Delay*. . (Everdell, Christian) (Entered: 04/16/2021)
04/16/2021		Set/Reset Deadlines/Hearings as to Ghislaine Maxwell: Brief (Joint proposal by parties) due by 4/21/2021. Show Cause Response (by Defendant) due by 4/21/2021. [*** NOTE: Refer to Opinion & Order, doc.#207. ***] (bw) (Entered: 04/16/2021)

04/16/2021	210	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 121 MOTION to Dismiss *Either Count One Or Count Three of the Superseding Indictment as Multiplicitous*. . (Everdell, Christian) (Entered: 04/16/2021)
04/16/2021	211	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 125 MOTION to Dismiss *the Superseding Indictment as it was Obtained in Violation of the Sixth Amendment*. . (Everdell, Christian) (Entered: 04/16/2021)
04/16/2021	212	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 139 MOTION to Suppress *Under the Fourth Amendment, Martindell, and the Fifth Amendment All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five And Six*. . (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Everdell, Christian) (Entered: 04/16/2021)
04/16/2021	213	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 123 MOTION to Dismiss *Counts One through Four of the Superseding Indictment for Lack of Specificity*. . (Everdell, Christian) (Entered: 04/16/2021)
04/19/2021	214	ORDER as to Ghislaine Maxwell: An arraignment on the S2 Superseding Indictment is scheduled to take place on April 23, 2021 at 2:30 p.m. The proceeding will take place in Courtroom 24B of the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, NY. Given significant public interest, a video feed of the proceeding will be available for viewing in the Jury Assembly Room and Courtroom 9C at the Daniel Patrick Moynihan Courthouse. The use of any electronic devices during the proceeding in either the Courtroom or the overflow rooms is strictly prohibited. SO ORDERED. (Arraignment set for 4/23/2021 at 02:30 PM in Courtroom 24B, 500 Pearl Street, New York, NY 10007 before Judge Alison J. Nathan) (Signed by Judge Alison J. Nathan on 4/19/2021) (lnl) (Entered: 04/19/2021)
04/19/2021	215	ORDER as to Ghislaine Maxwell: IT IS ORDERED that any redaction requests for documents not already filed on the public docket must be made by April 21, 2021. Alternatively, the parties may file the unredacted versions by that date. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/19/2021) (lnl) (Entered: 04/19/2021)
04/19/2021	216	ORDER as to Ghislaine Maxwell: In its April 16, 2021 Opinion, the Court denied the Defendant's motions to dismiss the S1 superseding indictment in whole or in part and granted the Defendant' s motion to sever the perjury counts for a separate trial. Dkt. No. 207. The Court will try the non−perjury counts first. As the Court noted in its Opinion, it has not yet resolved the Defendant's two motions to suppress evidence. See Dkt. Nos. 133, 139. The Defendant contends in those motions that the Government obtained by subpoena documents covered by a protective order in violation of her rights against unreasonable searches and seizures, against self−incrimination, and to due process of law. The motions seek, at minimum, an evidentiary hearing to determine whether the Government knowingly misrepresented facts to procure an order modifying the protective order. The Court requires information from the Government for scheduling purposes. The Government is ORDERED to inform the Court by letter docketed on ECF no later than April 20, 2021, whether it intends to use any of the documents subject to the pending motions to suppress in the trial of the non−perjury counts in this case. If the Government does not intend to use any of the documents subject to the pending motions to suppress in the trial of the non−perjury counts, the Court will defer consideration of those motions until it has scheduled the trial of the perjury counts. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/19/2021) (lnl) (Entered: 04/19/2021)
04/19/2021	217	JOINT LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Laura A. Menninger dated April 1, 2021 re: Joint Letter Concerning Redactions to Omnibus Response & Exhibit 11 (Menninger, Laura) (Entered: 04/19/2021)
04/19/2021	218	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated April 15, 2021 re: Response to Government's April 5, 2021 Letter re. Ms. Maxwell's Rule 17 Subpoena (Pagliuca, Jeffrey) (Entered: 04/19/2021)
04/19/2021	219	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated April 19, 2021 re: request for extension of time to respond to the Court's April 19, 2021 Order . Document filed by USA as to Ghislaine Maxwell. (Moe, Alison) (Entered:

		04/19/2021)
04/20/2021	220	MEMO ENDORSEMENT as to Ghislaine Maxwell (1) granting in part and denying in part 219 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated April 19, 2021 re: request for extension of time to respond to the Court's April 19, 2021 Order. ENDORSEMENT: The Government's request is granted in part and denied in part. It shall respond to Dkt. No. 216 by no later than 5:00 p.m. on April 21, 2021. (Signed by Judge Alison J. Nathan on 4/20/2021) (ap) (Entered: 04/20/2021)
04/20/2021	221	ORDER as to Ghislaine Maxwell: the Court hereby ORDERS counsel for the Defendant to file written answers to the following specific questions by 12:00 p.m. on Thursday, April 22, 2021: 1. Does defense counsel continue to seek an adjournment of the July 12th start date for trial on the non−perjury counts? 2. If the answer to question 1 is yes, what is the specific request being made as to length of adjournment? In particular, is the request for a 90−day adjournment? An adjournment until January 2022? Or something else? The Court requires a specific request be made and justified or it will not be considered. If Maxwell continues to seek an adjournment, the Government may submit any response by 5:00 pm on April 22, 2021. The Court will consider the submissions and resolve expeditiously. As noted, however, unless and until an adjournment is specifically requested and granted, the parties shall assume that the Court will request a jury selection date as close to July 12th as possible and shall plan accordingly. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/20/2021) (See ORDER as set forth) (lnl) (Entered: 04/20/2021)
04/20/2021	222	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 20, 2021 re: Redactions to Defense Reply Briefs and Exhibits Document filed by USA. (Pomerantz, Lara) (Entered: 04/20/2021)
04/20/2021	223	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 141 MOTION to Dismiss *the Superseding Indictment for Breach of Non−Prosecution Agreement*. . (Attachments: # 1 Exhibit A − Sealed)(Everdell, Christian) (Entered: 04/20/2021)
04/20/2021	224	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 119 MOTION for Separate Trial on Counts Ghislaine Maxwell (1) Count 5s−6s,5−6 . . (Everdell, Christian) (Entered: 04/20/2021)
04/21/2021	225	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated April 21, 2021 re: Grand Jury Motion (Everdell, Christian) (Entered: 04/21/2021)
04/21/2021	226	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Defendant's and Boies Schiller Flexner LLPs April 19, 2021 joint letter responding to the Courts April 19, 2021 Order, Dkt. No. 215. The letter proposes limited redactions on the basis that some of the information is covered by the terms of the protective order in this case. In light of this, by April 22, 2021, the Defendant and BSF are hereby ORDERED to confer with the Government regarding whether the Government requests redaction of any information contained in the Defendant's response to BSF's objections to the Defendant's proposed Rule 17(c) subpoena, BSFs reply, and the April 19, 2021 joint letter addressing the redactions to these documents. The Government may submit any redaction requests by April 23, 2021; in doing so, the Government shall justify any proposed redactions by reference to the test articulated in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). The Defendant, BSF, and the Government are further ORDERED to notify the Court whether any party seeks redactions to the April 19, 2021 joint letter. If not, the Defendant shall file the letter on the public docket by April 23, 2021 (Signed by Judge Alison J. Nathan on 4/21/21)(jw) (Entered: 04/21/2021)
04/21/2021	227	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated April 21, 2021 re: in response to the Court's April 19, 2021 Order Document filed by USA. (Moe, Alison) (Entered: 04/21/2021)
04/21/2021	228	MEMO ENDORSEMENT as to Ghislaine Maxwell re: 225 Letter Grand Jury Motion... ENDORSEMENT: The motion to dismiss the SI superseding indictment on

		the grounds that it was returned by a grand jury sitting at the White Plains courthouse (Dkt. No. 125) is DENIED as moot. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/21/21)(jbo) (Entered: 04/21/2021)
04/21/2021	229	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 21, 2021 re: Proposed Pretrial Schedule Document filed by USA. (Comey, Maurene) (Entered: 04/21/2021)
04/21/2021	230	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated April 21, 2021 re: Proposed Pretrial Schedule (Everdell, Christian) (Entered: 04/21/2021)
04/21/2021	231	ORDER as to Ghislaine Maxwell: The Court will schedule a trial date for the severed perjury counts after trial of the non−perjury counts is completed. Given that and in light of the representations in the Government's April 21, 2021 letter, see Dkt. No. 227, the Court intends to defer resolution of the pending motions to suppress (including resolution of the request for an evidentiary hearing) until after the trial on the non−perjury counts. If either side objects, counsel shall state the basis for any objection by letter on or before by 5pm on Thursday, April 22, 2021.SO ORDERED. (Signed by Judge Alison J. Nathan on 4/21/2021) (lnl) (Entered: 04/22/2021)
04/22/2021	232	MEMO ENDORSEMENT as to Ghislaine Maxwell on 222 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 20, 2021 re: Redactions to Defense Reply Briefs and Exhibits. ENDORSEMENT: The Court grants the Government's proposed redaction and sealing requests. This conclusion 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 11920. The Court concludes that these are judicial documents and that the First Amendment and common law presumptions of access attach. In balancing competing considerations against the presumption of access, however, the Court finds that the specific arguments the Government has put forward in this letter, including the need to protect the privacy interests of third parties and alleged victims, favor the narrowly tailored redactions. See United States v. Amodeo, 71 F.3d 1044, 1050 (2d Cir. 1995). The Government's letter does not discuss Exhibit L of Reply Brief 6. By April 23, 2021, the parties shall either propose redactions to Exhibit L of Reply Brief 6, which was originally filed under seal, or they shall indicate to the Court that they seek no redactions and file it on ECF. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/22/2021) (lnl) (Entered: 04/22/2021)
04/22/2021	233	LETTER by Boies Schiller Flexner LLP as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid McCawley dated 04−22−2021 re: Request to Bring Electronic Devices Document filed by Boies Schiller Flexner LLP. (Attachments: # 1 Exhibit Electronic Device Form)(McCawley, Sigrid) (Entered: 04/22/2021)
04/22/2021	234	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated April 22, 2021 re: Response to Dkt. No. 227, Governments April 21, 2021 Letter re Ms. Maxwells Motions to Suppress (Pagliuca, Jeffrey) (Entered: 04/22/2021)
04/22/2021	235	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 22, 2021 re: Response to Defense Request for Adjournment Document filed by USA. (Comey, Maurene) (Entered: 04/22/2021)
04/22/2021	236	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 22, 2021 re: Response to the Court's April 22, 2021 Order Document filed by USA. (Pomerantz, Lara) (Entered: 04/22/2021)
04/22/2021	237	MEMO ENDORSEMENT as to Ghislaine Maxwell on 233 LETTER by Boies Schiller Flexner LLP as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid McCawley dated 04−22−2021 re: Request to Bring Electronic Devices Document.

		ENDORSEMENT: Because remote access is available for tomorrow and because no electronic devices may be used in the courtroom or overflow rooms, Dkt. No. 214, to the extent the request is for tomorrow's arraignment, that request is denied. Counsel may renew their application in advance of future proceedings. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/22/2021) (lnl) (Entered: 04/23/2021)
04/23/2021	238	SEALED DOCUMENT placed in vault. (jus) (Entered: 04/23/2021)
04/23/2021	239	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated April 23, 2021 re: in response to the Court's April 16, 2021 Order. Document filed by USA. (Moe, Alison) (Entered: 04/23/2021)
04/23/2021	240	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 23, 2021 re: Proposed Redactions Document filed by USA. (Comey, Maurene) (Entered: 04/23/2021)
04/23/2021	241	MEMO ENDORSEMENT as to Ghislaine Maxwell on 240 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 23, 2021 re: Proposed Redactions. ENDORSEMENT: The Court grants the Government's redaction requests. Its conclusion 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 11920. The Court concludes that these are judicial documents and that the First Amendment and common law presumptions of access attach. But in balancing competing considerations against the presumption of access, the Court finds that the specific arguments the Government has put forward in this letter, including the need to protect the privacy interests of third parties referenced in the documents, favor the narrowly tailored redactions. See United States v. Amodeo, 71 F.3d 1044, 1050 (2d Cir. 1995). The Defendant and Boies Schiller are hereby ORDERED to docket the respective documents with the Government's proposed redactions by April 23, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/23/2021) (lnl) (Entered: 04/23/2021)
04/23/2021	242	ORDER as to Ghislaine Maxwell: On April 22, 2021, Defendant Ghislaine Maxwell filed her response to the Court's April 21, 2021 Order, Dkt. No. 221, under temporary seal with proposed redactions. The proposed redactions are GRANTED. The Court's conclusion 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 11920. The Court concludes that these are judicial documents and that the First Amendment and common law presumptions of access attach. In balancing competing considerations against the presumption of access, however, the Court finds that the proposed redactions are narrowly tailored to protect the privacy interests of defense lawyers' clients in other matters and to allow defense counsel to comply with their professional obligations under the rules of professional conduct. The Defendant is ORDERED to docket the redacted version of her letter by April 23, 2021. The Defendant is further ORDERED to docket the basis for the redaction request, originally sent by email, on ECF by April 23, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/23/2021) (lnl) (Entered: 04/23/2021)
04/23/2021	243	MEMO ENDORSEMENT as to Ghislaine Maxwell on 234 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated April 22, 2021 re: Response to Dkt. No. 227, Governments April 21, 2021 Letter re Ms. Maxwell's Motions to Suppress. ENDORSEMENT: The Court agrees with the position set forth in this letter that, unless the Government agrees to forgo any use of the documents subject to the motions to suppress at trial on the non−perjury counts, the Court must resolve those motions prior to that trial. The Court will resolve the motions in due course. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/23/2021) (lnl) (Entered: 04/23/2021)

04/23/2021	244	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated April 2, 2021 re: Response to Letter Motion to Quash Rule 17 Subpoena to Boies Schiller Flexner LLP (Pagliuca, Jeffrey) (Entered: 04/23/2021)
04/23/2021	245	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Laura A. Menninger dated April 19, 2021 re: Redactions to Pleadings Re: Rule 17 Subpoenas (Menninger, Laura) (Entered: 04/23/2021)
04/23/2021	246	LETTER MOTION addressed to Judge Alison J. Nathan from Laura A. Menninger dated April 22, 2021 re: 221 Order,,,, re: Request for Adjournment of 120 or 180 Days for Trial on the Non−Perjury Counts . Document filed by Ghislaine Maxwell. (Menninger, Laura) (Entered: 04/23/2021)
04/23/2021	247	LETTER by Boies Schiller Flexner LLP as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid S. McCawley dated April 5, 2021 re: Reply in Support of Objections to Rule 17 Subpoena Document filed by Boies Schiller Flexner LLP. (McCawley, Sigrid) (Entered: 04/23/2021)
04/23/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Arraignment as to Ghislaine Maxwell (1) Count 1ss,2ss,3ss,4ss,5ss,6ss,7ss−8ss held on 4/23/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Maurene Comey, Alison Moe, and Lara Pomerantz for the government. Defendant is arraigned on Superseding Indictment 2. Defendant enters a plea of Not Guilty to the S2 indictment. Defendant remains remanded. See Transcript. (Court Reporter Rebecca Forman) (ap) (Entered: 04/27/2021)
04/23/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: **Plea entered by Ghislaine Maxwell (1) Count 1ss,2ss,3ss,4ss,5ss,6ss,7ss−8ss Not Guilty.** (ap) (Entered: 04/27/2021)
04/26/2021	248	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/26/21 re: Confiscation of Legal Documents (Sternheim, Bobbi) (Entered: 04/26/2021)
04/26/2021	250	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' proposed schedules for pretrial disclosures and pretrial motions practice. Dkt. Nos. 229, 230. Having considered the parties respective positions, the Court hereby sets the schedule below, which it deems reasonable and fair: the Court hereby sets the following schedule: Government expert witness disclosure are due April 23, 2021 (agreement of the parties); Supplemental Pretrial Motions that pertain only to the new charges raised in the S2 indictment (agreement of the parties): Defense supplemental motions are due May 7, 2021; Governments response is due May 21, 2021; Defense replies are due May 28, 2021; Disclosure of the alleged victims referenced in the S2 Indictment: May 17, 2021 (agreement of the parties); The Court will address a process and schedule for the parties' proposals regarding a jury questionnaire by separate order. Finally, the parties are ORDERED to meet and confer on the Government's proposal that the Defendant submit witness statements pursuant to Federal Rule of Criminal Procedure 26.2 at least four weeks in advance of trial. The parties are further ORDERED to submit a joint letter laying out their respective positions and proposals within one week of this Order (Defense supplemental Motions due by 5/7/2021., Defense Replies due by 5/28/2021., Government's Responses due by 5/21/2021). (Signed by Judge Alison J. Nathan on 4/26/21)(jw) (Entered: 04/27/2021)
04/27/2021	249	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 248 Letter filed by Ghislaine Maxwell to report an incident stemming from an attorney−client conference with Ghislaine Maxwell: Guards on Ms. Maxwell's security detail wrongfully seized and reviewed her confidential legal documents...ENDORSEMENT...MDC legal counsel is hereby ORDERED to show cause by April 28, 2021 why an order directing the MDC to provide the information requested in this letter to the Defendant's counsel ought not issue. MDC legal counsel shall either docket it on ECF or email the letter to the Court so that the Court can docket it on ECF. Chambers will email a copy of this Order directly to legal counsel for the MDC (Signed by Judge Alison J. Nathan on 4/27/21)(jw) (Entered: 04/27/2021)
04/27/2021	251	SEALED DOCUMENT placed in vault. (jus) (Entered: 04/27/2021)

04/27/2021	252	ORDER re: 195 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 5, 2021 re: Notice of Rule 17(c) subpoenas. The Defendant's motion for an order authorizing the subpoena pursuant to Rule 17(c)(3) is DENIED. The Government is ORDERED to respond to Requests 9 through 11 of the proposed subpoena within one week of this Order. (Signed by Judge Alison J. Nathan on 4/27/21) (jw) (Entered: 04/27/2021)
04/28/2021	253	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/28/2021 re: Reply to MDC letter re: order to show cause re: confiscation of legal documents (Sternheim, Bobbi) (Entered: 04/28/2021)
04/29/2021	254	LETTER addressed to Judge Alison J. Nathan from Sophia Papapetru dated 4/28/21 re: I am writing in response to your April 26, 2021, Order seeking information regarding an alleged incident involving Ghislaine Maxwell, Register No. 02879−509, at the Metropolitan Detention Center in Brooklyn, New York (MDC Brooklyn) as relayed by her counsel in an April 26, 2021, letter. We respectfully request Your Honor deny defense counsel's proposed order. Please let us know if the Court requires any additional information, which we will be happy to provide (jw) (Entered: 04/29/2021)
04/29/2021	255	ORDER as to Ghislaine Maxwell. On April 26, 2021, defense counsel advised the Court of an incident that took place on April 24, 2021 in which Defendant Ghislaine Maxwell's legal materials were seized by staff at the Metropolitan Detention Center. Dkt. No. 248. The Court ordered legal counsel for the MDC to show cause why the requested order should not issue. Dkt. No. 249. The MDC filed its response with the Court. Dkt No. 254. In reply, Maxwell made additional requests. Dkt. No. 253. Defense counsels requests are GRANTED in part and DENIED in part. IT IS ORDERED that by April 30, 2021, legal counsel to the MDC must provide the following information: If known, an inventory of the items seized from Ms. Maxwell in the incident that occurred on April 24, 2021 shall be provided by email to defense counsel only; and A representation to this Court, to be filed on ECF, indicating: Whether any of the materials seized from Ms. Maxwell were duplicated in any fashion and what investigation was undertaken in order to determine this information; Whether Ms. Maxwell is permitted to bring confidential legal materials to in−person meetings with defense counsel without those materials being seized; What steps have been or will be taken to ensure the confidentiality of Ms. Maxwell's lawyer−client communications (Signed by Judge Alison J. Nathan on 4/29/21)(jw) (Entered: 04/29/2021)
04/29/2021	256	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/29/2021 re: Sleep Deprivation in MDC (Sternheim, Bobbi) (Entered: 04/29/2021)
04/29/2021	257	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 256 During oral argument of Ghislaine Maxwells bail appeal before the Circuit, Ms. Maxwell's appellate counsel expressed concern that she was improperly deprived of sleep while detained in the MDC, an issue that has been raised in filings before this Court. we ask the Court to address Ms. Maxwell's sleeping conditions by directing the MDC to cease 15−minute light surveillance of Ms. Maxwell or justify the need for the disruptive flashlight surveillance..ENDORSEMENT...By May 5, 2021, the Government is ORDERED to confer with MDC legal counsel and provide the Court responses to the following questions: Is Ms. Maxwell being subjected to flashlight surveillance every 15 minutes at night? Or any other atypical flashlight surveillance? If so, what is the basis for doing so? 3. And if so, can she be provided with appropriate eye covering? The Government is further ORDERED to share its response with defense counsel before filing it on ECF so that defense counsel can indicate whether they believe any private medical information needs to be redacted before public filing (Signed by Judge Alison J. Nathan on 4/29/21)(jw) (Entered: 04/29/2021)
04/29/2021	258	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/29/2021 re: Reply to MDC letter re: confiscation of legal documents (Sternheim, Bobbi) (Entered: 04/29/2021)
04/30/2021	259	LETTER addressed to Judge Alison J. Nathan from Sophia Papapetru dated 4/29/21 re: This letter is written in response to your April 28, 2021, Order seeking the following information regarding an alleged incident involving Ghislaine Maxwell,

		Register No. 02879−509, at the Metropolitan Detention Center in Brooklyn, New York (MDC Brooklyn) on April 24, 2021 (jw) (Entered: 04/30/2021)
04/30/2021	260	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated April 30, 2021 re: Hard Drives (Everdell, Christian) (Entered: 04/30/2021)
05/03/2021	261	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 4/23/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Rebecca Forman, (212) 805−0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/24/2021. Redacted Transcript Deadline set for 6/3/2021. Release of Transcript Restriction set for 8/2/2021. (McGuirk, Kelly) (Entered: 05/03/2021)
05/03/2021	262	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 4/23/21 has been filed by the court reporter/transcriber in the above−captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 05/03/2021)
05/03/2021	263	MEMO ENDORSEMENT as to Ghislaine Maxwell re: 260 Letter on Hard Drives... ENDORSEMENT: Counsel for the MDC may submit any objection to the Defendant's request by May 4, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 5/3/21)(jbo) (Entered: 05/03/2021)
05/03/2021	264	ORDER as to Ghislaine Maxwell. On April 21, 2021, the Court's Chambers received a letter from counsel for a non−party requesting assurances as to privacy protections for his client in any filings or proceedings in this case. The letter requests anonymity on behalf of the client as an alleged victim of a sexual crime. After receiving the letter, the Court forwarded it to the parties and required the Government to respond to counsel, which it has done. The Court will take no further action based on the April 21, 2021 letter but will file it under seal to protect the privacy interests of the non−party asserting that interest. The Government is requested to forward this order to counsel for the non−party. SO ORDERED. (Signed by Judge Alison J. Nathan on 5/3/21)(jbo) (Entered: 05/03/2021)
05/03/2021	265	ORDER as to Ghislaine Maxwell: The Court has received an exchange of letters that pertain to an incident that took place on April 24, 2021. Dkt. Nos. 248, 253, 254, 258, 259. Legal counsel for MDC, where Ms. Maxwell is detained pretrial, alleges that her lawyers violated Bureau of Prisons rules by providing Ms. Maxwell materials at an in−person attorney−client visit. Dkt. Nos. 254, 259. Ms. Maxwells lawyers categorically deny the allegations and threaten separate legal action against MDC staff based on the incident and the accusation. Dkt. Nos. 253, 258. The Court intimates no views as to whether some other action or process is appropriate or proper in light of either sides allegations. This Courts obligation in this case, and any other, is to ensure that the defendant is given an opportunity to meet with her lawyers, engage in confidential attorney−client communications, and prepare for trial. Mindful of that obligation, the Court declines to take further action at this time. After receiving the defenses first letter motion, the Court ordered MDC legal counsel to show cause why the Court should not grant the requested relief. Dkt. No. 249. The Court then granted in part defense counsels original request and ordered MDC legal counsel to respond to certain questions about the April 24, 2021 incident and the procedures in place to ensure the confidentiality of Ms. Maxwells lawyer−client communications. Dkt. No. 255. Defense counsels current application is that this Court order MDC to turn over copies of video tapes of the in−person attorney−client visit. Dkt. No. 258. Those video tapes must be preserved in light of defense counsels preservation letter. Dkt. No. 248, Ex. C. If Ms. Maxwell or defense counsel are entitled to view or receive copies of those materials as a matter of law, they should be provided. To the extent defense counsel is seeking entitlement to those materials from this Court, that application is denied. The Court has ensured and will continue to ensure that Ms. Maxwell has the opportunity to meet meaningfully and confidentially with her lawyers in light of all relevant circumstances and consistent with the treatment of all other detained inmates in BOP custody. The isolated incident that took place on April 24, 2021, and the

		serious allegations leveled by MDC legal counsel and defense counsel in no way undermine the Courts conclusion that Ms. Maxwell and her lawyers are fully able to prepare for trial. The Court is confident that all parties recognize the importance of this going forward and in advance of the upcoming trial. In furtherance of this, counsel for the Government are ORDERED to confer with legal counsel for MDC to ensure that Ms. Maxwell continues to have access to confidential attorney−client communications as she prepares for trial. If any additional incidents arise, defense counsel shall promptly confer with counsel for the Government regarding those incidents and seek to resolve any such issues swiftly, responsibly, reasonably, and amicably. If that fails, the parties may write to the Court jointly indicating their views, identifying and justifying any specific application being made. (Signed by Judge Alison J. Nathan on 5/3/2021) (ap) (Entered: 05/03/2021)
05/03/2021	266	ORDER as to Ghislaine Maxwell: The Court concludes that the interests of justice justify granting a short continuance. The Court deems an adjournment until fall 2021 to be reasonable. Such an adjournment would plainly give the defense team sufficient time to prepare for trial in light of the additional charges contained in the S2 indictment while also ensuring that the trial proceeds without undue delay. No additional delay is necessary or in the interests of justice. The parties are hereby ORDERED to meet and confer and by May 10, 2021, they shall jointly propose a trial start date for the Court to request of the Clerk's Office (as is required by COVID protocols). The Court urges counsel to agree to the earliest possible date this fall and to seek adjustments to other schedules in order to facilitate an early fall trial start date. The parties shall also discuss and propose any adjustments necessary to the pre−trial schedule in place. Dkt. No. 250. The Government may move in the letter for any requested exclusion of time under the Speedy Trial Act. (Signed by Judge Alison J. Nathan on 5/3/2021) (See ORDER set forth) (ap) (Entered: 05/03/2021)
05/03/2021	267	JOINT LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated May 3, 2021 re: defense witness disclosures, Dkt. No. 250 (Pagliuca, Jeffrey) (Entered: 05/03/2021)
05/04/2021	268	ORDER as to Ghislaine Maxwell: On April 30, 2021, defense counsel requested that the Court issue an order directing the MDC to accept two hard drives from defense counsel that contain the non−Highly Confidential discovery in this case for Ms. Maxwell's use. Dkt. No. 260. On May 4, 2021, the Court received the attached email from MDC legal counsel indicating that MDC does not oppose the defense's request and that MDC staff will coordinate with defense counsel so that Ms. Maxwell can receive the hard drives. In light of this, defense counsel's April 30, 2021 request appears moot. Defense counsel shall raise any further issues regarding their request within two weeks of this order. (Signed by Judge Alison J. Nathan on 5/4/2021) (ap) (Entered: 05/04/2021)
05/04/2021	269	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 4, 2021 re: Subpoena Requests 9 Through 11 Document filed by USA. (Rohrbach, Andrew) (Entered: 05/04/2021)
05/05/2021	270	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated May 5, 2021 re: Use of Flighlights at MDC Document filed by USA. (Pomerantz, Lara) (Entered: 05/05/2021)
05/06/2021		*****DELETED DOCUMENT. Deleted document number 271 LETTER, as to Ghislaine Maxwell. The document was incorrectly filed in this case, as per Supervisor. (ap)** (Entered: 05/06/2021)
05/06/2021	271	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 6, 2021 re: Subpoena Request 11 Document filed by USA. (Rohrbach, Andrew) (Entered: 05/06/2021)
05/07/2021	272	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 5/7/2021 re: MDC flashlight security checks (Sternheim, Bobbi) (Entered: 05/07/2021)

05/07/2021	273	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated May 7, 2021 re: Cover Letter for Omnibus Memorandum in Support of the Defendant's Supplemental Pretrial Motions Relating to the S2 Superseding Indictment (Everdell, Christian) (Entered: 05/07/2021)
05/10/2021	274	MEMO ENDORSEMENT as to Ghislaine Maxwell on 273 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated May 7, 2021 re: Cover Letter for Omnibus Memorandum in Support of the Defendant's Supplemental Pretrial Motions Relating to the S2 Superseding Indictment. ENDORSEMENT: The Government is hereby ORDERED to propose and justify any redactions by May 12, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 5/10/2021) (lnl) (Entered: 05/10/2021)
05/10/2021	275	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 10, 2021 re: Proposed Trial Date Document filed by USA. (Pomerantz, Lara) (Entered: 05/10/2021)
05/11/2021	276	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 05/10/2021 re: Request for November 8th trial start date (Sternheim, Bobbi) (Entered: 05/11/2021)
05/11/2021	277	ORDER as to Ghislaine Maxwell: The Court has considered the parties' proposals regarding the commencement of trial. Dkt. Nos. 275, 276. For the reasons stated in the Government's letter, the Court will request November 29, 2021 from the Clerk's Office as the trial start datethat is the date (pending approval from the Clerk's Office consistent with the SDNY COVID protocols) that opening statements will be made to the jury. However, the Court will also request from the Clerk's Office that jury selection occur during the week of November 15. Counsel shall plan accordingly. The Court grants the Government's motion to exclude time until November 29, 2021. The Court finds that the ends of justice served by granting an exclusion from speedy trial computations for the period from today's date through November 29, 2021, outweigh the interests of the public and the Defendant in a speedy trial, because this time is necessary to permit the defense to continue to review discovery and other materials in light of the superseding indictment; to permit the parties to prepare and file motions in limine; to permit the parties to make and review additional pretrial disclosures; and to allow adequate time for the parties to prepare for trial. Time is therefore excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), until November 29, 2021. In order to ensure that there is no delay in the commencement of trial, the Court will adjust the current pre−trial schedule. So that the Court can resolve motions in limine in advance of the November 29th trial commencement date, any such motions shall be fully briefed no later than four weeks in advance of the anticipated trial commencement date of November 29. The parties shall meet and confer to propose adjustments to other pre−trial disclosures accordingly. The parties are hereby ORDERED to meet and confer for at least 30 minutes by phone regarding the overall pretrial disclosure schedule and submit a joint letter by May 14, 2021. The Court will accept only a joint letter with a joint proposal or with each sides views briefly stated. The letter must attest to the meet and confer. Any separately filed letters will be struck. SO ORDERED. (Time excluded from 5/11/2021 until 11/29/2021) (Signed by Judge Alison J. Nathan on 5/11/2021) (lnl) (Entered: 05/11/2021)
05/12/2021	278	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 12, 2021 re: Proposed Redactions to Defendant's Supplemental Pre−Trial Motions Document filed by USA. (Pomerantz, Lara) (Entered: 05/12/2021)
05/13/2021	279	ORDER as to Ghislaine Maxwell: On May 12, 2021, the Defendant submitted a response to the Government's May 4 and May 6 letters. See Dkt. Nos. 269, 271. She submitted it under temporary seal, though she noted that she is willing to file the response and its corresponding exhibits on the public docket. The Government is hereby ORDERED to notify the Court by May 14, 2021 whether it requests that any part of the Defendants submission be redacted or filed under seal; any such request must be justified by reference to the test articulated in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). SO ORDERED. (Signed by Judge Alison J. Nathan on 5/13/20201) (lnl) (Entered: 05/13/2021)

05/14/2021	280	JOINT LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 14, 2021 re: 277 Order to Continue − Interest of Justice, Terminate Motions, Set Deadlines/Hearings,,,

		Amodeo, 71 F.3d 1044, 1050 (2d Cir. 1995). Similarly, the Court concludes that the Government has shown that Exhibits E, F, G, H, and I should be filed under seal. With respect to Exhibit C, however, the Court concludes that narrowly tailored redactions are sufficient to advance the privacy interests the Government has identified. Accordingly, the Government is ORDERED to confer with defense counsel and submit proposed redactions to Exhibit C by May 20, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 5/17/21)(jbo) (Entered: 05/17/2021)
05/20/2021	285	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 139 MOTION to Suppress *Under the Fourth Amendment, Martindell, and the Fifth Amendment All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five And Six*. . (Attachments: # 1 Exhibit J, # 2 Exhibit K, # 3 Exhibit L, # 4 Exhibit M, # 5 Exhibit N, # 6 Exhibit O, # 7 Exhibit P, # 8 Exhibit Q)(Everdell, Christian) (Entered: 05/20/2021)
05/20/2021	286	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 145 MOTION to Strike *Surplusage from Superseding Indictment*. . (Everdell, Christian) (Entered: 05/20/2021)
05/20/2021	287	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 147 MOTION for Bill of Particulars *and Pretrial Disclosures*. . (Attachments: # 1 Exhibit A (Filed under seal))(Everdell, Christian) (Entered: 05/20/2021)
05/20/2021	288	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 20, 2021 re: Proposed Redactions to Exhibit C to Defendant's Supplemental Pre−Trial Motions Document filed by USA. (Pomerantz, Lara) (Entered: 05/20/2021)
05/21/2021	289	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated May 21, 2021 re: Reply to Government Letter dated May 14 Regarding Proposed Redactions to Ms. Maxwells May 12, 2021 Letter (DE 283) (Pagliuca, Jeffrey) (Entered: 05/21/2021)
05/21/2021	290	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 288 The Government respectfully submits this letter in response to the Courts Order dated May 17, 2021, which directed the Government to confer with defense counsel and submit proposed redactions to Exhibit C to the defendant's memorandum in support of her supplemental pretrial motions. (Dkt. No. 284). The Government seeks redactions that are narrowly tailored to protect the privacy interests of victims and third parties referenced in the document...ENDORSEMENT...The Government's proposed redactions are permitted for the reasons provided. By May 25, 2021, the Defendant is ORDERED to file her supplemental pretrial motions and supporting papers on the docket in accordance with Dkt. No. 284 and this order (Supplemental Pretrial Motions due by 5/25/2021.). (Signed by Judge Alison J. Nathan on 5/21/21)(jw) (Entered: 05/21/2021)
05/21/2021	291	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from All Counsel dated May 21, 2021 re: Joint Letter re Scheduling Document filed by USA. (Comey, Maurene) (Entered: 05/21/2021)
05/25/2021	292	MOTION to Dismiss *and to Obtain the Relief Specified in her Supplemental Pre−Trial Motions Relating to the S2 Superseding Indictment*. Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 05/25/2021)
05/25/2021	293	MEMORANDUM in Support by Ghislaine Maxwell re 292 MOTION to Dismiss *and to Obtain the Relief Specified in her Supplemental Pre−Trial Motions Relating to the S2 Superseding Indictment.. (OMNIBUS MEMORANDUM OF GHISLAINE MAXWELL IN SUPPORT OF HER SUPPLEMENTAL PRETRIAL MOTIONS RELATING TO THE S2 SUPERSEDING INDICTMENT)* (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C (Redacted), # 4 Exhibit D, # 5 Exhibit E (Filed Under Seal), # 6 Exhibit F (Filed Under Seal), # 7 Exhibit G (Filed Under Seal), # 8 Exhibit H (Filed Under Seal), # 9 Exhibit I (Filed Under Seal))(Everdell, Christian) (Entered: 05/25/2021)
05/25/2021	294	AFFIDAVIT of Christian Everdell in Support as to Ghislaine Maxwell re 292 MOTION to Dismiss *and to Obtain the Relief Specified in her Supplemental Pre−Trial Motions Relating to the S2 Superseding Indictment.. (AFFIDAVIT OF CERTIFICATION PURSUANT TO LOCAL CRIMINAL RULE 16.1)* (Everdell,

		Christian) (Entered: 05/25/2021)
05/25/2021	295	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 292 MOTION to Dismiss *and to Obtain the Relief Specified in her Supplemental Pre−Trial Motions Relating to the S2 Superseding Indictment*.. (Rohrbach, Andrew) (Entered: 05/25/2021)
05/28/2021	296	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated May 28, 2021 re: Cover Letter for Omnibus Reply Memorandum in Support of the Defendant's Supplemental Pretrial Motions Relating to the S2 Superseding Indictment. (Everdell, Christian) (Entered: 05/28/2021)
06/02/2021	297	ORDER as to Ghislaine Maxwell: Having considered the parties' respective proposals, Dkt. No. 291, the Court hereby sets the following disclosure schedule: September 13, 2021: Disclosure of alleged victims' identities (Government's proposal) October 11, 2021: Government's disclosure of Jencks Act and Giglio material, Rule 404(b) evidence and notice, co−conspirator statements, and Government witness list (Government's proposal) October 11, 2021: Government's disclosure of its proposed exhibit list (Defendant's proposal) October 18, 2021: Simultaneous filing of motions in limine (agreement of the parties) October 25, 2021: Simultaneous filing of proposed jury questionnaire and voir dire (agreement of the parties) November 1, 2021: Defense expert disclosures (Defendant's proposal) November 1, 2021: Responses to motions in limine (agreement of the parties) November 8, 2021: Simultaneous filing of requests to charge and verdict sheet (agreement of the parties) − November 8, 2021: Defense disclosures pursuant to Rules 16(b)(1)(A) and 16(b)(1)(B) materials (The Government proposed November 1, 2021; the Defendant proposed the close of the Government's case−in−chief) Close of the Government's case−in−chief: Defense witness list and 26.2 statements (Defendant's proposal) These dates establish a baseline for when the parties must disclose certain materials. Each of the parties has a continuing obligation to update all disclosures if they become aware of additional responsive materials. In addition, and as requested by the parties, the parties may bring issues to the Court's attention that arise after the deadline for motions in limine if the issues could not have been raised within the deadline set for in limine motions. (Motions due by 10/18/2021. Responses due by 11/1/2021) (Signed by Judge Alison J. Nathan on 6/2/2021) (ap) (Entered: 06/02/2021)
06/04/2021	298	ORDER as to Ghislaine Maxwell: The Defendant's motion for an order authorizing the subpoena pursuant to Rule 17(c)(3) is DENIED. (Signed by Judge Alison J. Nathan on 6/4/2021) (See ORDER set forth) (ap) (Entered: 06/04/2021)
06/07/2021	299	MANDATE of USCA (Certified Copy) as to Ghislaine Maxwell re: 173 Notice of Appeal, 113 Notice of Appeal. USCA Case Number 21−58; 21−770. Defendant−Appellant Ghislaine Maxwell appeals from orders of the District Court entered December 28, 2020 and March 22, 2021, which denied her renewed requests for bail pending trial. See Dkts. 1, 20. Upon due consideration, it is hereby ORDERED that the District Courts orders are AFFIRMED and that Appellants motion for bail, or in the alternative, temporary pretrial release pursuant to 18 U.S.C. § 3142(i), Dkt. 39, is DENIED. During oral argument, counsel for Appellant expressed concern that Appellant was improperly being deprived of sleep while incarcerated. To the extent Appellant seeks relief specific to her sleeping conditions, such request should be addressed to the District Court... Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 6/7/2021. (nd) (Entered: 06/08/2021)
06/08/2021		Transmission of USCA Mandate to the District Judge re: 299 USCA Mandate. (nd) (Entered: 06/08/2021)
06/15/2021	300	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 6/15/2021 re: Response to MDC Conditions Update (Sternheim, Bobbi) (Entered: 06/15/2021)
06/15/2021	301	ORDER as to Ghislaine Maxwell: On June 7, 2021, the Government submitted an update on the Defendants conditions of confinement. It submitted it under temporary seal to permit the Defendant to propose redactions. On June 15, 2021, the Defendant proposed narrowly tailored redactions, which the Court adopts after applying the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). The Government is ORDERED to publicly docket the redacted version of its June 7, 2021 letter by June 17, 2021. (Signed by

		Judge Alison J. Nathan on 6/16/2021) (ap) (Entered: 06/16/2021)
06/16/2021	302	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated June 7, 2021 re: MDC Conditions Update Document filed by USA. (Pomerantz, Lara) (Entered: 06/16/2021)
06/25/2021	303	ORDER as to Ghislaine Maxwell. Maxwell's motions to suppress evidence (Dkt. Nos. 133, 139) are DENIED. The Court sets out its reasoning in an opinion concurrently filed under temporary seal to allow Maxwell and the Government the opportunity to propose redactions. The parties may file under seal any proposed redactions to the opinion within three days. The Court further ORDERS that the April 9, 2019 memorandum decision and order on the Government's application to modify the protective order in Giuffre v. Maxwell, No. 15−cv−7433, as well as the transcripts of the March 26, 2019 and April 9, 2019 ex parte hearings on that application shall be unsealed. These documents were previously filed under seal as Exhibits D, E, F, and G to the memorandum of law in support of Maxwell's first motion to suppress (Dkt. No. 134). Within one week, the parties shall confer and file under seal any proposed redactions to the memorandum decision, order, and transcripts. Any proposed redactions shall be narrowly tailored and shall be supported with reference to the Second Circuit's opinion in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). The parties proposed redactions should not include any information that has already been made public. SO ORDERED (Signed by Judge Alison J. Nathan on 6/25/21)(jbo) (Entered: 06/25/2021)
06/25/2021	304	ORDER as to Ghislaine Maxwell. The Court grants the Defendant's request that going forward the Government shall only file updates if there are any material changes to Ms. Maxwell's conditions of confinement. See Dkt. No. 300 at 1. In the absence of any other specific or supported application for relief from the Defendant, the Court will take no further action at this time. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/25/2021)(bw) (Entered: 06/25/2021)
06/25/2021	307	OPINION & ORDER as to Ghislaine Maxwell. Maxwell moves to suppress evidence obtained through a grand jury subpoena to a law firm involved in earlier civil litigation against her. She contends that because the documents sought by the subpoena were previously subject to a protective order, the Government obtained them in violation of her rights against compelled self−incrimination, against unreasonable searches and seizures, and to due process of law. For the foregoing reasons, the Court finds that the Government did not violate Maxwell's constitutional rights when it obtained evidence covered by a protective order in her earlier civil case. It further finds that Maxwell is not entitled to suppression of any evidence or to an evidentiary hearing. The Court thus DENIES Maxwell's motions to suppress (Dkt. Nos. 133, 139) (Signed by Judge Alison J. Nathan on 6/25/21)(jw) (Entered: 07/01/2021)
06/30/2021	305	ORDER as to Ghislaine Maxwell: Pursuant to the Court's order of June 25, 2021 (Dkt. No. 303), any proposed redactions to the Court's opinion on Maxwell's motions to suppress evidence must be filed no later than today, June 30, 2021. Any proposed redactions to the other documents ordered unsealed in that order must be filed no later than July 2, 2021. The parties shall file a joint letter by each of these dates informing the Court if no redactions are sought. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/30/2021) (lnl) (Entered: 06/30/2021)
06/30/2021	306	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated June 30, 2021 re: Joint Letter re June 25, 2021 Opinion and Order and Defense Exhibits Document filed by USA. (Pomerantz, Lara) (Entered: 06/30/2021)
07/01/2021	308	ORDER as to Ghislaine Maxwell. No party has proposed redactions to the Court's opinion on Maxwell's motions to suppress evidence or the documents ordered unsealed in the Courts June 25, 2021 Order (Dkt. No. 303). Thus, the Court lifts the temporary seal on its June 25, 2021 opinion on Maxwells motions to suppress. It also unseals the April 9, 2019 memorandum decision and order on the Governments application to modify the protective order in Giuffre v. Maxwell, No. 15−cv−7433, as well as the transcripts of the March 26, 2019 and April 9, 2019 ex parte hearings on that application, originally filed under seal as Exhibits D, E, F, and G to the memorandum of law in support of Maxwell's first motion to suppress (Dkt. No. 134). Maxwell shall

		file those exhibits on the public docket without redaction by July 2, 2021 (Signed by Judge Alison J. Nathan on 7/1/21)(jw) (Entered: 07/01/2021)
07/01/2021	309	LETTER MOTION addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, and Lara Pomerantz dated July 1, 2021 re: Local Rule 23.1 . Document filed by USA as to Ghislaine Maxwell. (Moe, Alison) (Entered: 07/01/2021)
07/02/2021	310	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated July 2, 2021 re: Cosby Opinion (Attachments: # 1 Exhibit A)(Everdell, Christian) (Entered: 07/02/2021)
07/02/2021	311	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated July 2, 2021 re: Cover Letter Attaching Unsealed Exhibits for the Memorandum in Support of the Defendant's Motion Under the Due Process Clause to Suppress all Evidence Obtained from the Government's Subpoena to Boies Schiller and to Dismiss Counts Five and Six (Dkt. No. 134) (Attachments: # 1 Exhibit D, # 2 Exhibit E, # 3 Exhibit F, # 4 Exhibit G)(Everdell, Christian) (Entered: 07/02/2021)
07/02/2021	312	ORDER as to Ghislaine Maxwell re: Defense counsel, including David Markus, are ORDERED to respond to the Governments July 1, 2021 letter motion, Dkt. No. 309, by July 9, 2021 (Defense Counsel Responses due by 7/9/2021) (Signed by Judge Alison J. Nathan on 7/2/21)(jw) (Entered: 07/02/2021)
07/09/2021	313	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 07/09/2021 re: Counsel of Record reply to Court Order Dkt 312 (Sternheim, Bobbi) (Entered: 07/09/2021)
07/12/2021	314	LETTER addressed to Judge Alison J. Nathan from David Oscar Markus dated 7/9/21 re: The Governments request should be denied because (1) undersigned counsel does not currently represent Ms. Maxwell, and (2) the Op−Ed did not violate the local rules. (jw) (Entered: 07/12/2021)
07/30/2021	315	ORDER as to Ghislaine Maxwell. The Government has moved for an order requiring David Markus to comply with Local Criminal Rule 23.1 following an op−ed that he authored opining on the merits of this pending case. Dkt. No. 309. Mr. Markus is therefore ORDERED to comply with Local Criminal Rule 23.1. The Government does not ask the Court to discipline Mr. Markus based on his op−ed and the Court declines to consider whether it violated Rule 23.1 given the potential lack of clarity with respect to whether Mr. Markus was bound by the rule. The Court emphasizes that the rule provides illustrative examples of statements that "presumptively involve a substantial likelihood that their public dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice within the meaning of the rule." S.D.N.Y. Local Criminal Rule 23(d). Going forward, Mr. Markus and all lawyers associated with the pending case are now clearly on notice that their conduct falls under the purview of Local Criminal Rule 23.1. Indeed, the above concerns do not apply only to Mr. Markus. This Court has previously noted that counsel[,] agents for the parties and counsel for potential witnesses must take care to protect the Defendant's right to a fair trial by an impartial jury. Dkt. No. 28. This Court is cognizant that criminal matters heading toward trial are especially sensitive to extrajudicial statements. All those associated with this case must act to ensure the case is tried solely in court or else they risk being deemed responsible for any trial delay or for undermining the integrity of the upcoming trial. See S.D.N.Y. Local Criminal Rule 23.1(h). In addition to the impact it could have on this matter, failure to comply could also result in attorney discipline. Id. Rule 23.1(i). (Signed by Judge Alison J. Nathan on 7/30/21)(jw) Modified on 7/30/2021 (jw). (Entered: 07/30/2021)
07/30/2021		NOTICE OF MAILING as to Ghislaine Maxwell: Copy of Order dated 7/30/21 (dkt.315) was emailed to Mr. Markus on Friday, September 30. (jbo) (Entered: 08/03/2021)
08/05/2021	316	INTERNET CITATION NOTE as to Ghislaine Maxwell: Material from decision with Internet citation re: 315 Order. (sjo) (Entered: 08/05/2021)
08/13/2021	317	OPINION & ORDER as to Ghislaine Maxwell. For the reasons above and in this Courts April 16, 2021 Opinion & Order, the Court DENIES Maxwell's motion to obtain relief specified in her supplemental pre−trial motions relating to the S2 indictment. This resolves Dkt. No. 292. (Signed by Judge Alison J. Nathan on

		8/13/2021) (See ORDER set forth) (ap) (Entered: 08/13/2021)
08/13/2021	318	ORDER as to Ghislaine Maxwell: On March 19, 2021, Defendant Ghislaine Maxwell submitted a sealed and ex parte motion for an order authorizing four subpoenas pursuant to Rule 17(c)(3) of the Federal Rules of Criminal Procedure. By sealed order dated March 22, 2021, the Court provided an opportunity for recipients of the subpoenas to respond to the requests by March 30, 2021, but it received no responses. In an Opinion and Order temporarily filed under seal, the Court DENIES Maxwell's motion without prejudice. It does so after concluding that none of the proposed subpoenas conform to the factors first set out in United States v. Nixon, 418 U.S. 683, 69870 (1974). The Court will send the temporarily sealed Opinion and Order to defense counsel. By August 18, 2021, Maxwell is ORDERED to inform the Court whether she seeks sealing or limited redactions of the Court's opinion and of her original motion papers, justifying any such request by reference to the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). In addition, by that date Maxwell shall inform the Court whether she seeks full sealing or redactions of the original motion, again justifying any such request by reference to the Lugosch test. (Signed by Judge Alison J. Nathan on 8/13/2021) (ap) (Entered: 08/13/2021)
08/13/2021	334	OPINION & ORDER as to Ghislaine Maxwell. Maxwell's motion is, at this time, DENIED without prejudice. She may renew any Rule 17(c) applications upon a proper showing that each of the requested materials satisfies the Nixon test, as described above and in the Court's April 27, 2021 and June 2, 2021 Orders. The Court will file this Opinion & Order under temporary seal to allow consideration of any sealing or redaction requests. (Signed by Judge Alison J. Nathan on 8/13/2021) (See ORDER set forth) (ap) (Entered: 09/03/2021)
08/18/2021	319	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 08/18/2021 re: Disruption of MDC attorney−client video teleconferences (Sternheim, Bobbi) (Entered: 08/18/2021)
08/18/2021	320	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated August 18, 2021 re: Identification of co−conspirators Document filed by USA. (Rohrbach, Andrew) (Entered: 08/18/2021)
08/19/2021	321	ENDORSED LETTER as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim, dated 8/18/2021, re: Counsel writes: I write to update the Court regarding MDC ongoing interference with attorney−client communication between Ghislaine Maxwell and her counsel. ENDORSEMENT: The Government is hereby ORDERED to confer with BOP and MDC Legal and file a response to Defendant's letter on or before August 23, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 8/19/2021) (lnl) (Entered: 08/19/2021)
08/19/2021	322	MEMO ENDORSEMENT as to Ghislaine Maxwell on 320 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated August 18, 2021 re: Identification of co−conspirators. ENDORSEMENT: The parties are hereby ORDERED to meet and confer in an effort to reach an agreement on the disclosure issues raised in this letter. If the parties reach an agreement, they shall inform the Court by August 26, 2021. If the parties do not reach agreement, the Defendant may file a response to the arguments made here by the Government on or before August 30, 2021. Any response letter shall confirm that the meet and confer occurred. SO ORDERED. (Signed by Judge Alison J. Nathan on 8/19/2021) (lnl) (Entered: 08/19/2021)
08/19/2021	323	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 19, 2021 re: Redactions to Motion for 17(c) Subpoenas. (Everdell, Christian) (Entered: 08/19/2021)
08/20/2021	324	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated August 20, 2021 re: Limited unsealing . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 08/20/2021)

08/23/2021	325	ORDER re: 324 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated August 20, 2021 re: Limited unsealing. Defense counsel is ORDERED to provide this Order and the temporarily sealed Opinion and Order to the intended recipients of the subpoenas. By August 25, 2021, defense counsel is ORDERED to confirm service of this Order and the temporarily sealed Opinion and Order. The Court GRANTS the Governments request for a limited unsealing of the Court's August 13 Opinion and Order and the underlying motion papers. Dkt. No. 324. The Court will send the temporarily sealed Opinion and Order and motion papers to the Government. This resolves Dkt. No. 324. (Signed by Judge Alison J. Nathan on 8/23/21) (jw) (Entered: 08/23/2021)
08/23/2021		Transmission to Sealed Records Clerk: as to Ghislaine Maxwell. Transmitted re: 325 Order on Letter Motion to the Sealed Records Clerk for the sealing or unsealing of document or case. (jw) (Entered: 08/23/2021)
08/23/2021	326	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated August 23, 2021 re: Response to Defense August 18, 2021 Letter Document filed by USA. (Comey, Maurene) (Entered: 08/23/2021)
08/24/2021	327	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 08/24/2021 (Sternheim, Bobbi) (Entered: 08/24/2021)
08/25/2021	328	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 25, 2021 re: Service of Order. (Everdell, Christian) (Entered: 08/25/2021)
08/25/2021	329	ORDER as to Ghislaine Maxwell. Defendant submitted a letter on August 18 informing the Court about disruptions of attorney−client video teleconferences. Dkt. No. 319. After conferring with MDC Legal, the Government responded on August 23. Dkt. No. 326. According to the Government and MDC Legal, the Defendant's difficulties in communicating with her counsel via video teleconference have been resolved, and the Government's letter sufficiently addresses her other requests. The Court finds MDC Legal's assurance that Defendant's communications have not been interfered with, recorded, or listened to sufficient. No further application for relief was made in Defendant's August 24 reply. Dkt. No. 327. The Court remains confident that Ms. Maxwell is fully able to communicate with her defense counsel and to prepare for trial. If Defendant experiences further issues in communicating with her counsel, she should promptly notify the Court after conferring in good faith with the Government and MDC Legal. (Signed by Judge Alison J. Nathan on 8/25/21)(jw) (Entered: 08/25/2021)
08/27/2021	330	ORDER as to Ghislaine Maxwell. The Clerk's Office has now confirmed that a jury trial in this case has been scheduled to commence on November 29, 2021. This is a firm trial date. When the information is available, the Court will provide courtroom location and public access information by separate order. In light of the firm dates discussed above, it is hereby ORDERED that the parties appear for a telephone conference to discuss jury selection matters on October 21, 2021 at 12:00 P.M. Dial−in information for the parties and for public access will be provided when it is available by separate order. In light of the jury selection dates provided by the Clerks Office, the Court amends theschedule that it set on June 2, 2021 as follows. The parties shall meet and confer and submit a joint proposed juror questionnaire and joint proposed voir dire by October 11, 2021. The parties shall file a joint proposed charge and verdict sheet, with any differing proposals supported by authority or other justification, by October 27, 2021. Any motions in limine must be simultaneously filed by October 18, 2021, and any responses to motions in limine are due by October 25, 2021. Otherwise, the parties shall continue to follow the schedule that the Court set on June 2, 2021. Dkt. No. 297. IT IS FURTHER ORDERED that the parties appear for an in−person pretrial conference on November 1, 2021 at 11:00 A.M. (Pretrial Conference set for 11/1/2021 at 11:00 AM before Judge Alison J. Nathan., Telephone Conference set for 10/21/2021 at 12:00 PM before Judge Alison J. Nathan.). (Signed by Judge Alison J. Nathan on 8/27/21)(jw) (Entered: 08/27/2021)
08/30/2021	331	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated August 30, 2021 re: Response to Government Letter dated August 18, 2021, Dkt. 320 (Pagliuca, Jeffrey) (Entered: 08/30/2021)

09/01/2021	332	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated September 1, 2021 re: Proposed Redactions Document filed by USA. (Comey, Maurene) (Entered: 09/01/2021)
09/03/2021	333	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 332 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated September 1, 2021 re: Proposed Redactions. ENDORSEMENT: The Court has reviewed the proposed redactions and finds that they are narrowly tailored and necessary to protect the privacy and identities of third parties not identified on the record in this case. The intended recipients of the subpoenas did not file proposed redactions by September 1, 2021, per this Court's August 23 Order. Dkt. No. 325. The Court accordingly ORDERS Defendant to file the redacted Motion and Exhibits 1, 3, and 4, and unredacted Exhibit 2, by September 7, 2021. The Court hereby unseals the August 13 Opinion, and the Court will file the Opinion on the public docket. (Signed by Judge Alison J. Nathan on 9/2/2021) (ap) (Entered: 09/03/2021)
09/03/2021	335	ORDER as to Ghislaine Maxwell: The Court ORDERS that at the same time that the Government discloses Jencks Act material, the Government shall also disclose to the defense the identities of any unnamed co−conspirators who allegedly participated in the conspiracies charged in the S2 indictment to whom the Government will refer at trial. The Government is FURTHER ORDERED to disclose all co−conspirator statements it intends to offer at trial no later than October 11, as consistent with this Court's scheduling order. Dkt. No. 297 at 1. (Signed by Judge Alison J. Nathan on 9/3/2021) (See ORDER set forth) (ap) (Entered: 09/03/2021)
09/07/2021	336	MOTION for Discovery *(Ex Parte and In Camera for an Order Authorizing a Subpoena Pursuant to Fed. R. Crim. P. 17(c)(3))*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4)(Everdell, Christian) (Entered: 09/07/2021)
10/05/2021	337	ORDER as to Ghislaine Maxwell. The Court is currently in the process of planning logistics for trial in this matter and requires the parties' best and current estimate of length of trial. The Court plans to have the jury sit 5 days a week from 9am until 5pm. Given that jury selection will be complete by November 19 and opening statements will occur on November 29, the Court requests that the parties provide their best estimate as to when the jury is likely to begin deliberations. This will allow the Court to assess the likelihood that trial may continue after the Christmas holiday and therefore whether the jury may be required to sit some days during the week between Christmas and New Year's Day. Accordingly, on or before October 12, 2021, the parties are ORDERED to confer and submit a joint letter with their best and current estimate as to when the jury is likely to begin deliberations. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/5/2021)(bw) (Entered: 10/05/2021)
10/12/2021	338	MEMO ENDORSEMENT as to Ghislaine Maxwell re: Motion to Intervene....ENDORSEMENT...The motion to intervene is DENIED. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/12/21)(jw) (Entered: 10/12/2021)
10/12/2021	339	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 11, 2021 re: Sealing of Joint Proposed Juror Questionnaire and Voir Dire . Document filed by USA as to Ghislaine Maxwell. (Pomerantz, Lara) (Entered: 10/12/2021)
10/12/2021	340	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 12, 2021 re: Trial length Document filed by USA. (Rohrbach, Andrew) (Entered: 10/12/2021)
10/13/2021	341	MOTION Individual Sequestered Voir Dire and Limited Attorney−Conducted Voir Dire re 339 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 11, 2021 re: Sealing of Joint Proposed Juror Questionnaire and Voir Dire . . Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 10/13/2021)
10/13/2021	342	MEMORANDUM in Support by Ghislaine Maxwell re 341 MOTION Individual Sequestered Voir Dire and Limited Attorney−Conducted Voir Dire re 339 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara

		Pomerantz, and Andrew Rohrbach dated October 11, 2021 re: Sealing of Joint. (Sternheim, Bobbi) (Entered: 10/13/2021)
10/13/2021	343	ORDER as to Ghislaine Maxwell. The Court is in receipt of Defendant's motion for an order granting individual sequestered juror voir dire and limited counsel−conducted voir dire. Dkt. No. 341. The Government is hereby ORDERED to respond by Monday, October 18, 2021 (Government Responses due by 10/18/2021) (Signed by Judge Alison J. Nathan on 10/13/21)(jw) (Entered: 10/14/2021)
10/14/2021	344	ORDER as to Ghislaine Maxwell. The Court received a letter via email from a lawyer for an alleged victim regarding victim attendance at the upcoming trial. The Court will file the letter under seal and forward a copy to counsel for both sides. Consistent with the Districts COVID−19 protocols, the Court will ensure public access for pretrial proceedings and trial, including several overflow rooms at the courthouse with live feeds of the proceedings. Additional information will be provided as soon as it is available. Access for alleged victims will be coordinated between the Victim Witness Unit and the District Executives Office. The contact information for each office is provided below. Furthermore, Defense counsel may coordinate access for the Defendant's family members with the District Executives Office (Signed by Judge Alison J. Nathan on 10/14/21)(jw) (Entered: 10/14/2021)
10/14/2021	345	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated October 14, 2021 re: Deadline for Filing Motion under Federal Rule of Evidence 412 (Pagliuca, Jeffrey) (Entered: 10/14/2021)
10/14/2021	346	MOTION to Direct MDC to deliver legal mail within one day of receipt . Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 10/14/2021)
10/14/2021	347	ORDER as to Ghislaine Maxwell: The Court is in receipt of Defendant's letter regarding the deadline for filing a motion under Federal Rule of Evidence 412. Dkt. No. 345. The Government is hereby ORDERED to respond by 5:00 p.m. tomorrow, October 15, 2021. (Signed by Judge Alison J. Nathan on 10/14/2021) (ap) (Entered: 10/15/2021)
10/15/2021	348	ORDER as to Ghislaine Maxwell: The Court is in receipt of Defendant's letter regarding delivery of Defendant's legal mail at MDC. Dkt. No. 346. The Government is hereby ORDERED to respond as soon as possible but by no later than today, October 15, 2021 at 5:00 p.m. (Signed by Judge Alison J. Nathan on 10/15/2021) (ap) (Entered: 10/15/2021)
10/15/2021	349	SEALED DOCUMENT placed in vault. (jus) (Entered: 10/15/2021)
10/15/2021	350	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 15, 2021 re: Delivery of Legal Mail at MDC Document filed by USA. (Pomerantz, Lara) (Entered: 10/15/2021)
10/15/2021	351	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 15, 2021 re: Federal Rule of Evidence 412 Document filed by USA. (Pomerantz, Lara) (Entered: 10/15/2021)
10/15/2021	352	LETTER RESPONSE in Support of Motion by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 10/15/2021 re: 346 MOTION to Direct MDC to deliver legal mail within one day of receipt .. (Sternheim, Bobbi) (Entered: 10/15/2021)
10/15/2021	353	ENDORSED LETTER as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Counsels of record for the Government dated 10/15/21 re: Government response to Order of The Court dated 10/15/21 (Dkt No. 348).ENDORSEMENT: Based on the information in this letter the Court will not enter the Defendant's requested order. See Dkt. 346. However, it is the Court's firm expectation that a defendant in a pre−trial posture like Ms. Maxwell will in most circumstances receive legal mail within approximately 1 business day. Going forward, if another delay occurs, the Defendant may renew the request for a specific order requiring delivery within the time frame. With this understanding and in light of the unusually early pre−trial disclosure schedule set by the Court, the Court remains confident that Ms. Maxwell and her

		attorneys are fully able to prepare for trial. This resolves Dkt. No. 346. SO Ordered.. (Signed by Judge Alison J. Nathan on 10/15/21)(jm) (Entered: 10/15/2021)
10/15/2021	354	MEMO ENDORSEMENT as to Ghislaine Maxwell on 351 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 15, 2021 re: Federal Rule of Evidence 412. ENDORSEMENT: For the reasons stated in this letter, the Court finds that there is good cause for any motion under Federal Rule of Evidence 412 to be filed no later than October 27, 2021. Any response will be due November 1, 2021. Any hearing will tentatively be scheduled for November 5, 2021.Additional details will be provided if and when any motions are filed. SO ORDERED. (Motions due by 10/27/2021. Responses due by 11/1/2021) (Signed by Judge Alison J. Nathan on 10/15/2021) (lnl) (Entered: 10/18/2021)
10/18/2021		*****DELETED DOCUMENT. Deleted document number 354 Rule 5(f) as to Ghislaine Maxwell. The document was incorrectly filed in this case. (jm)** (Entered: 10/18/2021)
10/18/2021	355	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 18, 2021 re: Response to Defense Motion for Limited Attorney−Conducted Voir Dire and Individual Sequestered Voir Dire Document filed by USA. (Pomerantz, Lara) (Entered: 10/18/2021)
10/18/2021	356	REPLY TO RESPONSE to Motion by Ghislaine Maxwell re 341 MOTION Individual Sequestered Voir Dire and Limited Attorney−Conducted Voir Dire re 339 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 11, 2021 re: Sealing of Joint. (Sternheim, Bobbi) (Entered: 10/18/2021)
10/18/2021	357	NOTICE of Defendant Ghislaine Maxwell's Motions in Limine as to Ghislaine Maxwell (Pagliuca, Jeffrey) (Entered: 10/18/2021)
10/18/2021	358	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated October 18, 2021 re: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN) (Pagliuca, Jeffrey) (Entered: 10/18/2021)
10/18/2021	359	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 18, 2021 re: Cover letter for Government Motions in Limine Document filed by USA. (Rohrbach, Andrew) (Entered: 10/18/2021)
10/19/2021	360	ORDER as to Ghislaine Maxwell. As noted in its previous order, the Court will hold a telephone conference to discuss jury selection matters on October 21, 2021 at 12:00 p.m. Dkt. No. 330. Members of the press and the public in the United States may access the live audio feed of the proceeding by calling 844−721−7237 and using access code 9991787. Those outside of the United States may access the live audio feed by calling 409−207−6951 and using the same access code. The Court will provide counsel for both sides an additional dial−in number to be used by counsel, the Defendant, alleged victims, and any family members of the Defendant. Any photographing, recording, or rebroadcasting of federal court proceedings is prohibited by law. Violation of these prohibitions may result in fines or sanctions, including monetary fines, 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 10/19/2021)(bw) (Entered: 10/19/2021)
10/20/2021	361	ORDER as to Ghislaine Maxwell: At the telephone conference scheduled to take place on October 21, 2021, in which the Court will discuss jury selection matters and logistics with the parties, the Court will hear from counsel regarding the unopposed request to seal their joint proposed juror questionnaire and voir dire. See Dkt. No. 339. The Court will also inquire as to whether the sealing request extends to the Court's draft questionnaire and voir dire and any justification for such sealing. In the meantime, the Court will today transmit via email its draft questionnaire and draft voir dire to the parties so that the drafts can be discussed at the conference tomorrow. After the Court explains how jury selection will proceed, the parties should be prepared to raise any objections to the Court's draft questionnaire and voir dire. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/20/2021) (lnl) (Entered: 10/20/2021)

10/20/2021	362	LETTER RESPONSE in Opposition by Reporters Committee for Freedom of the Press as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Reporters Committee for Freedom of the Press and 17 News Media Organizations dated October 20, 2021 re: 339 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 11, 2021 re: Sealing of Joint Proposed Juror Questionnaire and Voir Dire .. (Townsend, Katielynn) (Entered: 10/20/2021)
10/21/2021	363	LETTER as to USA v. Ghislaine Maxwell addressed to Judge Alison J. Nathan from Pete Brush, reporter, New York federal courts, dated Thu 10/21/2021 11:28 AM re: members of SDNY press corps join RCFP in opposition to secret jury selection in USA v. Maxwell. (bw) (Entered: 10/21/2021)
10/21/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Pretrial Conference as to Ghislaine Maxwell held on 10/21/2021. Defendant Ghislaine Maxwell present via telephone with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger via telephone. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government via telephone. Court Reporter Carol Ganley via telephone. Pretrial Conference held via telephone. Defendant remains remanded. See Transcript. (jbo) (Entered: 10/25/2021)
10/22/2021	364	ORDER as to Ghislaine Maxwell: For the reasons stated on the record at yesterday's conference, the Court will implement the following procedures for jury selection: A screening questionnaire will be administered on November 4, 5, and 12. The Clerk's Office will create a corresponding list of names and randomly assigned juror numbers. The list will be provided to counsel and the Court for use throughout jury selection. Jurors will be identified on the questionnaire and in court throughout the process by their assigned number only. Completed questionnaires will be copied and distributed to defense counsel by the U.S. Attorney's Office. After reviewing the completed questionnaires, counsel must confer in good faith and jointly submit four lists: (1) prospective jurors that both sides agree should proceed to voir dire; (2) prospective jurors that both sides agree should be excused; (3) prospective jurors that the defense, but not the Government believes should be excused; and (4) prospective jurors that the Government, but not the defense believes should be excused. Lists for questionnaires completed on November 4 and 5 will be due to the Court via email by November 7. Lists for questionnaires completed on November 12 will be due to the Court via email by November 13. If necessary, there will be an in−person conference on November 15 at 9:30 a.m. to resolve any disputes. Voir dire will proceed on November 16−19. The Court will conduct one−on−one voir dire with each prospective juror in the presence of the parties and with public access to the proceeding. At the conference, both sides indicated the potential need for additional procedures during voir dire under certain circumstances. See Transcript at 1011. As the Court indicated, it will consider proposed narrowly tailored measures that may be necessary during voir dire on a case−by−case basis. See id. at 12. The Court will decide in due course whether the exercise of peremptory strikes will proceed on November 19 or November 29. The Court implements these procedures taking into account the significant publicity this case has garnered, the nature of the charges, and the District's COVID−19 protocols. These procedures are carefully balanced and tailored to ensure the safety of the parties and prospective jurors in light of the continuing pandemic; to ensure juror candor, impartiality, and privacy; and to ensure the First Amendment right to public access of criminal proceedings. Also for the reasons stated on the record at yesterday's conference, the request to seal the parties' proposed questionnaire and voir dire and the Court's draft questionnaire and voir dire until after jury selection is completed is denied. Although the Court has and will continue to implement tailored measures to ensure a fair trial despite significant media interest, see Dkt. Nos. 28, 81, 95, 99, 101, 232, 241, 284, 301, 315, the defense did not justify sealing the entirety of the proposed and draft questionnaires and voir dire. See Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). The Court's planned individual voir dire process is designed to carefully probe the prior exposure to and the potential influence of any pre−trial media. As noted at the conference, the parties may continue to propose for the Court's consideration, any appropriate and tailored procedures in light of the specific factors related to this case and upcoming trial. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/22/2021) (lnl) (Entered: 10/22/2021)
10/22/2021	365	ORDER as to Ghislaine Maxwell: Attached are the Court's draft jury questionnairewith changes adopted at yesterday's proceeding in redlineand draft voir

		dire. In light of the District's COVID−19 protocols, the Court has proposed an additional question on page 6 of the questionnaire, which is also indicated in redline. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/22/2021) (lnl) (Entered: 10/22/2021)
10/22/2021	366	ORDER as to Ghislaine Maxwell: As discussed at yesterday's conference, attached is the Courts draft preliminary remarks to be recorded and played before each questionnaire session. The parties may suggest any proposed edits by letter on or before October 26, 2021, or they shall indicate by that date that they have no objections or suggestions. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/22/2021) (lnl) (Entered: 10/22/2021)
10/22/2021	367	PROPOSED EXAMINATION OF JURORS by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit Joint Proposed Examination of Prospective Jurors)(Pomerantz, Lara) (Entered: 10/22/2021)
10/25/2021	368	ORDER as to Ghislaine Maxwell. On October 18, 2021, the parties filed their respective motions in limine. Dkt. Nos. 355, 357, 358. Responses are due today, October 25, 2021. The parties are further ORDERED that reply briefs, if any, are due by October 27, 2021. Each sides' responses and any replies must be filed as a single document. The parties are ORDERED to file on the public docket all briefing with both parties proposed redactions, and a joint letter justifying any requested redactions by reference to the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006), on or before October 29, 2021. (Replies due by 10/27/2021.) (Signed by Judge Alison J. Nathan on 10/25/21)(jw) (Entered: 10/25/2021)
10/25/2021	369	LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated 10/25/21 re: Extension of Time to File Joint Proposed Jury Charge and Verdict Sheet . Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 10/25/2021)
10/25/2021	370	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated October 25, 2021 re: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN) (Pagliuca, Jeffrey) (Entered: 10/25/2021)
10/26/2021	371	MEMO ENDORSEMENT 369 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated 10/25/21 re: Extension of Time to File Joint Proposed Jury Charge and Verdict Sheet. To request a one−week extension until November 3, 2021, to file the joint proposed jury charge and verdict sheet, which are currently due on October 27, 2021...ENDORSEMENT...SO ORDERED. (Signed by Judge Alison J. Nathan on 10/26/21) (jw) (Entered: 10/26/2021)
10/26/2021	372	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 26, 2021 re: the Court's draft preliminary remarks Document filed by USA. (Pomerantz, Lara) (Entered: 10/26/2021)
10/26/2021	373	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 10/26/2021 re: Response to court order (Sternheim, Bobbi) (Entered: 10/27/2021)
10/27/2021	375	REPLY by Ghislaine Maxwell re: 372 Letter filed by USA . (Sternheim, Bobbi) (Entered: 10/27/2021)
10/27/2021	376	ORDER as to Ghislaine Maxwell. The Court is receipt of the parties' letters regarding the jury questionnaire and voir dire. See Dkt. Nos. 372, 373, 375. The Court will provide counsel the corresponding list of juror names and assigned juror numbers on November 16 at the commencement of voir dire. The placeholder for the juror information sheet in the Courts draft questionnaire refers to the information sheet required by the Jury Department. See Dkt. No. 365. The information sheet will be removed and collected by the Jury Department from the packet before the parties review of the questionnaires. The Court is still considering the logistics of when peremptory strikes will be exercised, but the Court anticipates peremptory strikes will be exercised on November 29. Assuming so, the swearing in of the jury, preliminary instructions, and opening statements would commence immediately following the simultaneous (via submission of lists) exercise of peremptory challenges. (Signed by

		Judge Alison J. Nathan on 10/27/21)(jw) (Entered: 10/27/2021)
10/27/2021	377	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated October 27, 2021 re: Ms. Maxwell's Fed. R. Evid. 412 Motion (Pagliuca, Jeffrey) (Entered: 10/27/2021)
10/27/2021	378	NOTICE of of Motion Under Federal Rule of Evidence 412 as to Ghislaine Maxwell (Pagliuca, Jeffrey) (Entered: 10/27/2021)
10/28/2021	379	ORDER as to Ghislaine Maxwell. As noted in its previous order, the Court will hold an in−person pretrial conference on November 1, 2021 at 11:00 a.m. Dkt. No. 330. The conference will take place in Courtroom 518 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. In accordance with its prior Order, the Court will ensure access for alleged victims and any members of the Defendants family. Dkt. No. 344. Two pool reporters will be permitted in the courtroom proper. (Pretrial Conference set for 11/1/2021 at 11:00 AM in Courtroom 518, 40 Centre Street, New York, NY 10007 before Judge Alison J. Nathan.) (Signed by Judge Alison J. Nathan on 10/28/21)(jw) (Entered: 10/28/2021)
10/29/2021	380	MOTION in Limine . Document filed by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit Exhibit A)(Rohrbach, Andrew) (Entered: 10/29/2021)
10/29/2021	381	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 10/29/2021 re: Legal Mail Delivery Request (Sternheim, Bobbi) (Entered: 10/29/2021)
10/29/2021	382	RESPONSE to Motion by Ghislaine Maxwell re: 380 MOTION in Limine .. (Attachments: # 1 Exhibit A (Filed Under Seal), # 2 Exhibit B (Filed Under Seal), # 3 Exhibit C (Filed Under Seal), # 4 Exhibit D (Filed Under Seal), # 5 Exhibit E, # 6 Exhibit F (Filed Under Seal), # 7 Exhibit G, # 8 Exhibit H (Filed Under Seal), # 9 Exhibit I (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	383	REPLY MEMORANDUM OF LAW in Support by USA as to Ghislaine Maxwell re: 380 MOTION in Limine . . (Rohrbach, Andrew) (Entered: 10/29/2021)
10/29/2021	384	MOTION in Limine *to Preclude the Introduction of Alleged Co−Conspirator Statements as a Sanction for Failing to Comply with This Court's September 3, 2021 Order*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1)(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	385	MOTION in Limine *to Exclude Any Evidence Offered by the Government Pursuant to Fed. R. Evid. 404(b) for Failure to Comply with the Rule's Notice Requirement*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A)(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	386	MOTION in Limine *to Exclude Under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Request for Daubert Hearing*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	387	MOTION in Limine *to Exclude Evidence Related to Accuser−3*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A − Filed Under Seal, # 2 Exhibit B − Filed Under Seal)(Everdell, Christian) (Entered: 10/29/2021)
10/29/2021	388	MOTION in Limine *to Exclude Evidence of Alleged Flight*. Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 10/29/2021)
10/29/2021	389	MOTION in Limine *to Exclude Evidence of Alleged False Statement Evidence*. Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 10/29/2021)
10/29/2021	390	MOTION in Limine *to Exclude Government Exhibit 52, an Unauthenticated Hearsay Document from Suspect Sources*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	391	MOTION in Limine *to Exclude Items Purportedly Seized During Search of 358 El Brillo Way on October 20, 2005*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A)(Pagliuca, Jeffrey) (Entered: 10/29/2021)

10/29/2021	392	MOTION in Limine *to Suppress Identification*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A)(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	393	MOTION in Limine *to Preclude Law Enforcement Witnesses from Offering Expert Opinion Testimony*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	394	MOTION in Limine *to Preclude Testimony About Any Alleged "Rape" by Jeffrey Epstein*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	395	MOTION in Limine *to Preclude Reference to the Accusers as "Victims" or "Minor Victims"*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	396	MOTION in Limine *to Preclude Introduction of Government's Exhibits 251, 288, 294, 313 and 606*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A)(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	397	RESPONSE in Opposition by USA as to Ghislaine Maxwell re: 386 MOTION in Limine *to Exclude Under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Request for Daubert Hearing.*, 396 MOTION in Limine *to Preclude Introduction of Government's Exhibits 251, 288, 294, 313 and 606.*, 390 MOTION in Limine *to Exclude Government Exhibit 52, an Unauthenticated Hearsay Document from Suspect Sources.*, 389 MOTION in Limine *to Exclude Evidence of Alleged False Statement Evidence.*, 388 MOTION in Limine *to Exclude Evidence of Alleged Flight.*, 387 MOTION in Limine *to Exclude Evidence Related to Accuser−3.*, 384 MOTION in Limine *to Preclude the Introduction of Alleged Co−Conspirator Statements as a Sanction for Failing to Comply with This Court's September 3, 2021 Order.*, 395 MOTION in Limine *to Preclude Reference to the Accusers as "Victims" or "Minor Victims".*, 385 MOTION in Limine *to Exclude Any Evidence Offered by the Government Pursuant to Fed. R. Evid. 404(b) for Failure to Comply with the Rule's Notice Requirement.*, 394 MOTION in Limine *to Preclude Testimony About Any Alleged "Rape" by Jeffrey Epstein.*, 391 MOTION in Limine *to Exclude Items Purportedly Seized During Search of 358 El Brillo Way on October 20, 2005.*, 392 MOTION in Limine *to Suppress Identification.*, 393 MOTION in Limine *to Preclude Law Enforcement Witnesses from Offering Expert Opinion Testimony.*. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B)(Rohrbach, Andrew) (Entered: 10/29/2021)
10/29/2021	398	REPLY TO RESPONSE to Motion by Ghislaine Maxwell re 386 MOTION in Limine *to Exclude Under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Request for Daubert Hearing.*, 396 MOTION in Limine *to Preclude Introduction of Government's Exhibits 251, 288, 294, 313 and 606.*, 390 MOTION in Limine *to Exclude Government Exhibit 52, an Unauthenticated Hearsay Document from Suspect Sources.*, 389 MOTION in Limine *to Exclude Evidence of Alleged False Statement Evidence.*, 388 MOTION in Limine *to Exclude Evidence of Alleged Flight.*, 387 MOTION in Limine *to Exclude Evidence Related to Accuser−3.*, 384 MOTION in Limine *to Preclude the Introduction of Alleged Co−Conspirator Statements as a Sanction for Failing to Comply with This Court's September 3, 2021 Order.*, 395 MOTION in Limine *to Preclude Reference to the Accusers as "Victims" or "Minor Victims".*, 385 MOTION in Limine *to Exclude Any Evidence Offered by the Government Pursuant to Fed. R. Evid. 404(b) for Failure to Comply with the Rule's Notice Requirement.*, 394 MOTION in Limine *to Preclude Testimony About Any Alleged "Rape" by Jeffrey Epstein.*, 391 MOTION in Limine *to Exclude Items Purportedly Seized During Search of 358 El Brillo Way on October 20, 2005.*, 392 MOTION in Limine *to Suppress Identification.*, 393 MOTION in Limine *to Preclude Law Enforcement Witnesses from Offering Expert Opinion Testimony.*. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	399	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated Oct. 28, 2021 re: Justifications for redactions Document filed by USA. (Rohrbach, Andrew) (Entered: 10/29/2021)

10/29/2021	402	ORDER as to Ghislaine Maxwell. The Court is in receipt of Defendant's letter regarding delivery of Defendant's legal mail at MDC. Dkt. No. 381. The Government is hereby ORDERED to respond by Tuesday, November 2, 2021 at 12:00 p.m. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/29/2021)(bw) (Entered: 11/02/2021)
10/31/2021	400	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Defendant's motion under Federal Rule of Evidence 412, Dkt. No. 378, and the Defendant's motion in limine to exclude under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), Dkt. No. 386. The issues raised in the two motions overlap significantly. The Court is required under Federal Rule of Evidence 412 to conduct an in camera hearing. Fed. R. Evid. 412 ("Before admitting evidence under this rule, the court must conduct an in camera hearing and give the victim and parties a right to attend and be heard. Unless the court orders otherwise, the motion, related materials, and the record of the hearing must remain under seal.). In addition, the Court has determined it will conduct a Daubert hearing with respect to the Defendant's motion under Federal Rule of Evidence 702. Because of the overlap in the substance of the motions, the Court will conduct the two proceedings back to back. The Court previously set a tentative date for the Rule 412 Motion hearing as November 5, 2021. Dkt. No. 354. The Court is prepared to proceed with both hearings on that date. Alternatively, the proceedings could be held on either the afternoon of November 9 or the afternoon of November 10. The Government shall confer with its proposed expert regarding availability for the Daubert hearing as well as with alleged victims who wish to attend and be heard at the Rule 412 Motion hearing. After doing so, the parties shall confer with each other as to availability. On or before November 2, 2021, the parties shall jointly file a letter with the Court indicating whether the parties request that the hearings be held on November 5, 9, or 10. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/31/2021)(bw) (Entered: 11/01/2021)
11/01/2021	401	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' proposed redactions to the parties' motions in limine, responses in opposition, replies in support, and related exhibits. As the Court indicated at today's conference, some of the parties' proposed redactions are overbroad considering the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). In particular, for the reasons stated at today's conference, the Court denies the Government's request to redact section ten of the Government's motion in limine. See Dkt. No. 380. The Court will also not permit redactions pertaining to the general description of evidence or anticipated testimony as such redactions are unnecessary to protect the privacy interests of the individuals implicated. Accordingly, the parties must propose more tailored redactions consistent with the Court's discussion at today's conference. The parties are ORDERED to submit the proposals to the Court via email by November 4, 2021. In order to facilitate the Court's review of the requests, the Court requires the parties to submit the proposed redactions as a single document and with the proposed redactions highlighted. The Defendant's proposed redactions should be highlighted in one color, and the Government's a different color. The Court will rule on the proposed redactions expeditiously. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/1/2021)(bw) (Entered: 11/02/2021)
11/01/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Pretrial Conference as to Ghislaine Maxwell held on 11/1/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Pamela Utter and Michael McDaniel. Pretrial Conference held. Defendant remains remanded. See Transcript. (jbo) (Entered: 11/02/2021)
11/02/2021	403	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 2, 2021 re: Delivery of Legal Mail at MDC Document filed by USA. (Pomerantz, Lara) (Entered: 11/02/2021)
11/02/2021	404	ORDER as to Ghislaine Maxwell. As discussed at yesterday's conference, attached is the Court's draft preliminary remarks to be recorded and played before each voir dire session. The parties may suggest any proposed edits or additions by letter on or before November 8, 2021, or they shall indicate by that date that they have no objections or suggestions. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/2/2021)(bw)

		(Entered: 11/02/2021)
11/02/2021	405	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 2, 2021 re: Trial length Document filed by USA. (Rohrbach, Andrew) (Entered: 11/02/2021)
11/02/2021	406	JOINT LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated November 2, 2021 re: Fed. R. Evid. 412 and 702 Motions Hearing Date (Pagliuca, Jeffrey) (Entered: 11/02/2021)
11/03/2021	407	MOTION for Reconsideration *Re: Disclosure of Juror Names to Counsel Only upon completion of Questionnaire*. Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 11/03/2021)
11/03/2021	408	MOTION for Reconsideration *re: Release on Bond*. Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 11/03/2021)
11/03/2021	409	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' joint letter in response to this Court's order dated October 31, 2021. Dkt. No. 406. The Court will hold a hearing on November 10, 2021 at 9:00 a.m. on the Defendant's motion under Federal Rule of Evidence 412, Dkt. No. 378, the Defendant's motion in limine to exclude under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), Dkt. No. 386, and the other outstanding issues that overlap with these two motions as discussed at the November 1, 2021 conference. The proceeding will take place in Courtroom 110 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. The Court will provide information on public access (for the portion of the Daubert hearing that does not overlap with the Rule 412 issues) as soon as it is available. Otherwise, the Court will order the following briefing schedule if the Government seeks to exclude any of the Defendant's anticipated witness testimony as disclosed in her November 1, 2021 notice. See Dkt. No. 406: Government brief to be filed on ECF: November 8, 2021; Defense response brief to be filed on ECF: November 11, 2021. The parties are further ORDERED to docket Exhibit A to Dkt. No. 406 with any proposed redactions on or before November 8, 2021. In order to facilitate the Court's review of any proposed redactions, the parties must also submit via email a highlighted copy. SO ORDERED. (Status Conference set for 11/10/2021 at 09:00 AM in Courtroom 110, 40 Centre Street, New York, NY 10007 before Judge Alison J. Nathan.) (Signed by Judge Alison J. Nathan on 11/3/2021)(bw) (Entered: 11/03/2021)
11/03/2021	412	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's letter dated November 2, 2021. Dkt. No. 403. The Government is hereby ORDERED to confer further with MDC legal counsel and file a letter regarding Defendant's transportation to the courthouse for proceedings in this matter on or before November 8, 2021. The Court hereby authorizes the letter to be filed under seal because such information may implicate security concerns. The Court will also confer with the United States Marshal for the Southern District of New York and with the District Executive regarding transportation of the Defendant for upcoming in court proceedings and trial. With respect to legal mail, the Court requires MDC Legal Counsel to consider what additional steps can be taken (including what steps by counsel for the Government or the Defendant) to ensure that within the weeks leading up to trial, Ms. Maxwell promptly receives her legal mail. The Government shall docket a letter with MDC Legal Counsel's proposal on or before November 8, 2021. The Court will also transmit this Order to Chief Judge Brodie, who is overseeing the litigation and mediation in Case No. 19−cv−660 (E.D.N.Y.) regarding access to counsel for pre−trial detainees being held at the MDC so that the issue can be discussed as to all MDC pre−trial detainees who require prompt access to legal mail in the weeks leading up to their trials. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/3/2021)(bw) (Entered: 11/04/2021)
11/03/2021		Transmission to Sealed Records Clerk: as to Ghislaine Maxwell. Transmitted re: 412 Order, to the Sealed Records Clerk for the sealing of document. (bw) (Entered: 11/04/2021)

11/03/2021	413	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Defendant's motions for reconsideration. See Dkt. Nos. 407, 408. The Government is hereby ORDERED to respond to Defendant's motion for reconsideration, Dkt. No. 408, on or before November 8, 2021. As to the motion for reconsideration regarding the disclosure of juror names, the Court reminds counsel of the following. First, as the Court previously indicated, the lawyers will be provided the names of jurors on November 16, prior to the commencement of the voir dire process. Second, the Court has now resolved the logistical issues regarding the ability to conduct peremptory challenges on November 29 and the Court can now confirm that peremptory strikes will not be exercised until November 29. Finally, as previously indicated, although only 40 qualified jurors are needed for the exercise of peremptory strikes, the Court will seek to qualify approximately 50 to 60 prospective jurors to return on November 29 for the exercise of peremptory strikes. If counsel for either side learns of any additional information that would be a basis for a strike for cause prior to November 29, they shall immediately raise the issue with the Court. Bearing in mind this information, the Government is ORDERED to respond to Defendant's motion for reconsideration, Dkt. No. 407, on or before November 4, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/3/2021)(bw) (Entered: 11/04/2021)
11/04/2021	410	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 3, 2021 re: RTC and Verdict Sheet Document filed by USA. (Attachments: # 1 Exhibit Request to Charge, # 2 Exhibit Verdict sheet)(Rohrbach, Andrew) (Entered: 11/04/2021)
11/04/2021	411	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 4, 2021 re: Reconsideration of Court Order (Dkt. 409) . Document filed by USA as to Ghislaine Maxwell. (Pomerantz, Lara) (Entered: 11/04/2021)
11/04/2021	414	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 411 LETTER MOTION filed by USA addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 4, 2021 re: Reconsideration of Court Order (Dkt. 409). ENDORSEMENT: The Court hereby DENIES the Government's request as to Dr. Park Dietz and Dr. Elizabeth Loftus. Pursuant to this Court's Order, if the Government seeks to exclude these anticipated witnesses, briefing must be submitted by November 8, 2021. Dkt. No. 409. As to the remaining individuals disclosed in Defendant's notice, the Court GRANTS the Government's request. If the Government seeks to exclude those anticipated witnesses, briefing must be submitted by November 15, 2021, with a response by Defendant due November 19, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/4/2021)(bw) (Entered: 11/04/2021)
11/04/2021	415	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 4, 2021 re: Reply to Defendant's Motion for Reconsideration regarding Disclosure of Juror Names Document filed by USA. (Pomerantz, Lara) (Entered: 11/04/2021)
11/05/2021	416	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 415 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 4, 2021 re: Reply to Defendant's Motion for Reconsideration regarding Disclosure of Juror Names. ENDORSEMENT: For the reasons stated in the Government's letter, the motion for reconsideration, Dkt. No. 407, is DENIED. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/5/2021) (ap) (Entered: 11/05/2021)
11/08/2021	417	ORDER as to Ghislaine Maxwell: The Court is in receipt of the Government's supplemental letter regarding its opposition to the defense motion to exclude evidence of Minor Victim−3. See Dkt. No. 387. The letter is submitted temporarily under seal to allow defense counsel the opportunity to propose any additional redactions beyond what the Government proposes. At the November 1, 2021 conference, the Court asked the Government to provide its position as to whether Alleged "Victim−3" could be considered a "victim" of the crimes charged in the indictment for any legal purpose, including for purposes of restitution under 18 U.S.C. § 3663(a)(2). See Transcript at 71−72. The Government's supplemental letter does not address this issue. While acknowledging that the Court's request may have been unclear, the Government is now

		ORDERED to file a supplemental letter responsive to the Court's question on or before 12:00 p.m. on November 7, 2021. For the sake of clarity, the Government is directed to state its position as to whether this anticipated witness could be deemed a victim of any of the crimes charged in the indictment for any legal purpose, including for purposes of restitution under 18 U.S.C. § 3663(a)(2). SO ORDERED. (Signed by Judge Alison J. Nathan on 11/6/2021) (lnl) (Entered: 11/08/2021)
11/08/2021	418	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 8, 2021 re: Dkt. No. 406 Ex. A Document filed by USA. (Attachments: # 1 Exhibit Exhibit A)(Rohrbach, Andrew) (Entered: 11/08/2021)
11/08/2021	419	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/8/2021 re: Suggestions to Dkt 404 (Sternheim, Bobbi) (Entered: 11/08/2021)
11/08/2021	420	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 8, 2021 re: the Court's draft preliminary remarks for voir dire (Dkt. 404) Document filed by USA. (Pomerantz, Lara) (Entered: 11/08/2021)
11/08/2021	421	ORDER as to Ghislaine Maxwell: A conference is scheduled for November 10, 2021 to address the Defendant's motion under Federal Rule of Evidence 412, Dkt. No. 378, the Defendant's motion in limine to exclude under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), Dkt. No. 386, and the other outstanding issues that overlap with these two motions as discussed at the November 1, 2021 conference. Dkt. No. 409. The parties are ORDERED to confirm by 12:00 p.m. tomorrow, November 9, 2021, that the alleged victims referenced in the Defendant's Rule 412 Motion have been notified of the November 10 hearing and of their right to attend. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/8/2021) (lnl) (Entered: 11/08/2021)
11/08/2021	422	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 8, 2021 re: Delivery of Legal Mail (Dkt. 412) Document filed by USA. (Pomerantz, Lara) (Entered: 11/08/2021)
11/08/2021	423	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 8, 2021 re: Opposition to Motion for Bail Reconsideration Document filed by USA. (Pomerantz, Lara) (Entered: 11/08/2021)
11/08/2021	424	MOTION to Preclude *Expert Testimony of Dr. Dietz and Dr. Loftus*. Document filed by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Rohrbach, Andrew) (Entered: 11/08/2021)
11/09/2021	425	MEMO ENDORSEMENT as to Ghislaine Maxwell on 422 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 8, 2021 re: Delivery of Legal Mail (Dkt. 412). ENDORSEMENT: SO ORDERED. (Signed by Judge Alison J. Nathan on 11/9/2021) (lnl) (Entered: 11/09/2021)
11/09/2021	426	ORDER as to Ghislaine Maxwell: The Court is in receipt of the Defendant's motion for reconsideration regarding release on bond, Dkt. No. 408, and the parties' letters regarding the delivery of the Defendant's legal mail and transport to the courthouse for pretrial conferences and trial in this case, Dkt. Nos. 381, 403, 422. For the reasons stated in this Court's prior bail determinations, Dkt. Nos. 93, 106, 169, and the Government's letter in opposition, Dkt. No. 423, the renewed request for bail is denied. Moreover, based on the representations from MDC legal counsel regarding the delivery of the Defendant's legal mail, Dkt. No. 422, the Court concludes that the Defendant has adequate access to legal counsel and legal mail in order to prepare for trial. MDC legal counsel and the Government are ordered to take the steps outlined in the Dkt. No. 422 between now and the completion of trial. As to the Defendant's transport, the Court concludes that she will be transported to and from the courthouse for pretrial conferences and trial in a way that is humane, proper, and consistent with security protocols. This conclusion is based on representations from MDC legal counsel in the letter submitted under seal because it discusses BOP security protocols,

		see Dkt. No. 412, as well as the Court's communication with the United States Marshal for the Southern District of New York. The Government, BOP, and USMS shall continue to take all available measures consistent with security protocols to ensure the Defendant has sufficient rest, nutrition, and comfort in order to be able to prepare for and participate in trial. This resolves Dkt. No. 408. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/9/2021) (lnl) (Entered: 11/09/2021)
11/09/2021	427	ORDER as to Ghislaine Maxwell: Attached is the Court's revised draft preliminary remarks to be recorded and played before each voir dire session. The Court is in receipt of the Government's letter approving of the remarks, Dkt. No. 420, and the Defendant's proposed additions, Dkt. No. 419. The revised remarks adopt all but one of the Defendant's proposals because the Court's subsequent revisions eliminated that portion of the script. In particular, the Court has made three additional changes in order to accurately explain the logistics of voir dire. Each of these changes is reflected in redline. The parties are ORDERED to indicate by letter on or before November 11, 2021 at 12:00 p.m. whether or not they have any objections or suggestions the Court's revised preliminary remarks to be played before each voir dire session. Attached is also the Court's revised draft voir dire in redline. The Court's revisions simplify the phrasing of questions 1, 2, 3, 10, 13, 25, and 37 in an effort to maximize the time dedicated to questioning each prospective juror. The revision to question 11 reflects the Court's oral ruling on November 1, 2021 regarding the use of pseudonyms for certain witnesses. The revisions to questions 9, 13, 14, 15, 20, 21, and 33 are non−substantive changes to question numbers in order to accurately reference the corresponding question numbers on the jury questionnaire or are grammatical changes. Attached is also the Court's draft instruction sheet for those jurors who are not struck for cause and will return for the exercise of peremptory strikes, as discussed at the November 1 conference. The parties are FURTHER ORDERED to indicate by letter on or before November 12, 2021 whether or not they have any objections or suggestions to the revised voir dire and draft instruction sheet. Finally, the parties are ORDERED to jointly submit the list of individuals and locations who may be mentioned at trial for questions 11 and 12 of the voir dire on or before November 14, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/9/2021) (lnl) (Entered: 11/09/2021)
11/09/2021	428	SEALED DOCUMENT placed in vault. (nmo) (Entered: 11/09/2021)
11/09/2021	429	LETTER REPLY TO RESPONSE to Motion by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/9/2021 re 408 MOTION for Reconsideration *re: Release on Bond*.. (Sternheim, Bobbi) (Entered: 11/09/2021)
11/09/2021	430	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated November 9, 2021 re: victim notification Document filed by USA. (Moe, Alison) (Entered: 11/09/2021)
11/09/2021	431	ORDER as to Ghislaine Maxwell: As noted in its previous Order, the Court will hold an in−person proceeding on November 10, 2021 at 9:00 a.m. Dkt. No. 409. The proceeding will take place in Courtroom 110 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. The purpose of the proceeding is to address the Defendant's motion under Federal Rule of Evidence 412, Dkt. No. 378, the Defendant's motion in limine to exclude under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), Dkt. No. 386, and the other outstanding issues that overlap with these two motions as discussed at the November 1, 2021 conference. As is expressly required by Federal Rule of Evidence 412, the Court must conduct a hearing on this motion in camera and seal the record of the hearing. Fed. R. Evid. 412(c)(2). Accordingly, this portion of the hearing will be sealed and in camera. The Government confirmed that the attorneys for the alleged victims implicated by the Defendants motion have been notified of their right to attend the hearing pursuant to Federal Rule of Evidence 412. Dkt. No. 430. For the public portions of the proceeding, the Court will ensure access for alleged victims and any members of the Defendant's family, in accordance with its prior Order. Dkt. No. 344. Space will be available in the courtroom proper for members of the media. In order to comply with the District's COVID−19 protocols, the public and additional members of the media will be able to access the proceeding in overflow Courtrooms 506 and 905 of the Thurgood Marshall U.S. Courthouse. These overflow rooms will have live video

		and audio feeds of the proceeding. The use of any electronic devices during the proceeding in the overflow rooms is strictly prohibited. The Court anticipates seating capacity in the overflow rooms for 50 members of the public. If capacity is reached, no additional persons will be admitted. Per the S.D.N.Y. Response to COVID−19, anyone who appears at any S.D.N.Y. courthouse must complete a questionnaire on the date of the proceeding prior to entering the courthouse. All visitors must also have their temperature taken when they arrive at the courthouse. 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. All visitors must wear a mask that covers the person's nose and mouth. Bandannas, gaiters, and masks with valves are not permitted. If a person does not have an approved mask, a screener will provide one. 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. For more information, please see https://www.nysd.uscourts.gov/covid−19−coronavirus. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/9/2021) (lnl) (Entered: 11/09/2021)
11/10/2021	432	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 10, 2021 re: Pseudonym logistics Document filed by USA. (Attachments: # 1 Exhibit A)(Rohrbach, Andrew) (Entered: 11/10/2021)
11/10/2021	437	ORDER as to Ghislaine Maxwell: The Court hereby revises the schedule for the supplemental briefing as to Defendant's first and seventh motions in limine, which was previously set at the November 1, 2021 conference, as follows: Government submission due Friday, November 12, 2021 Defense submission due Monday, November 15, 2021 At today's conference, the parties inquired about the start time for voir dire on November 16, 2021. The parties are ORDERED to appear at 8:30 a.m. on November 16, 2021 in Courtroom 518 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York, for the start of voir dire. SO ORDERED. (Voir Dire set for 11/16/2021 at 08:30 AM in Courtroom 518, 40 Centre Street, New York, NY 10007 before Judge Alison J. Nathan) (Signed by Judge Alison J. Nathan on 11/10/2021) (lnl) (Entered: 11/12/2021)
11/10/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Pretrial Conference as to Ghislaine Maxwell held on 11/10/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Paula Speer and Sadie Herbert. Pretrial Conference held. See transcript. Defendant remains remanded. (jbo) (Entered: 11/15/2021)
11/11/2021	433	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated November 11, 2021 re: preliminary remarks, voir dire, and instruction sheet Document filed by USA. (Moe, Alison) (Entered: 11/11/2021)
11/11/2021	434	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Laura A. Menninger dated November 11, 2021 re: Court's revised proposed remarks, voir dire and instruction sheet (Dkt. 427) (Menninger, Laura) (Entered: 11/11/2021)
11/11/2021	435	OPINION & ORDER as to Ghislaine Maxwell: The Court therefore denies the Defense's motion to exclude Dr. Rocchio's testimony except as to the opinion that the presence of a third party can facilitate grooming. This resolves docket number 386. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/11/2021) (lnl) (Entered: 11/12/2021)
11/11/2021	450	ORDER as to Ghislaine Maxwell: The Court is in receipt of the parties' proposed redactions in accordance with Dkt. No. 401. The Court concludes that the proposed redactions and requests to seal certain exhibits are consistent with the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006) and narrowly tailored to protect the pre−trial privacy interests of alleged victims, anticipated witnesses, and non−parties. See United States v. Amodeo, 71 F.3d 1044, 1050−51 (2d Cir. 1995). The parties are hereby ORDERED to file the proposed redactions and accompanying exhibits on the public docket on or before

		November 12, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/11/2021) (lnl) (Entered: 11/12/2021)
11/12/2021	436	MEMO ENDORSEMENT as to Ghislaine Maxwell on 432 JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 10, 2021 re: Pseudonym logistics. ENDORSEMENT: The parties are ORDERED to submit the lists referenced in this letter on or before November 14, 2021, in accordance with Dkt. No. 427. The parties may continue submitting proposed redactions in accordance with the procedures this Court has previously set. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/11/2021) (lnl) (Entered: 11/12/2021)
11/12/2021	438	MOTION in Limine . Document filed by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit Exhibit A)(Rohrbach, Andrew) (Entered: 11/12/2021)
11/12/2021	439	RESPONSE to Motion by Ghislaine Maxwell re: 438 MOTION in Limine .. (Attachments: # 1 Exhibit A (Filed Under Sealed), # 2 Exhibit B (Filed Under Seal), # 3 Exhibit C (Filed Under Seal), # 4 Exhibit D (Filed Under Seal), # 5 Exhibit E, # 6 Exhibit F (Filed Under Seal), # 7 Exhibit G, # 8 Exhibit H (Filed Under Seal), # 9 Exhibit I (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	440	REPLY MEMORANDUM OF LAW in Support by USA as to Ghislaine Maxwell re: 438 MOTION in Limine . . (Rohrbach, Andrew) (Entered: 11/12/2021)
11/12/2021	441	MOTION in Limine *to Preclude the Introduction of Alleged Co−Conspirator Statements as a Sanction for Failing to Comply with This Court's September 3, 2021 Order*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1)(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	442	MOTION in Limine *to Exclude Any Evidence Offered by the Government Pursuant to Fed. R. Evid. 404(b) for Failure to Comply with the Rule's Notice Requirement*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A)(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	443	MOTION in Limine *to Exclude Under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Request for Daubert Hearing*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	444	MOTION in Limine *to Exclude Evidence Related to Accuser−3*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A − Filed under Seal, # 2 Exhibit B − Filed under Seal)(Everdell, Christian) (Entered: 11/12/2021)
11/12/2021	445	MOTION in Limine *to Exclude Government Exhibit 52, an Unauthenticated Hearsay Document from Suspect Sources*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1 (Filed Under Seal), # 2 Exhibit 2 (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	446	MOTION in Limine *to Exclude Items Purportedly Seized During Search of 358 El Brillo Way on October 20, 2005*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	447	MOTION in Limine *to Suppress Identification*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	448	MOTION in Limine *to Preclude Law Enforcement Witnesses from Offering Expert Opinion Testimony*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	449	MOTION in Limine *to Preclude Introduction of Government's Exhibits 251, 288, 294, 313 and 606*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	451	ENDORSED LETTER as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Matthew Russell Lee, dated 10/29/2021, re: timely opposition to blanket requests

		to seal portions of motions in limine, trial exhibits, public access. ENDORSEMENT: The Court received the attached letters via email. This District no longer permits public access by telephone for in−court criminal proceedings, including trials. The memorandum can be found here − https:// nysd.uscourts.gov/covid−19−coronavirus. The Courts public access orders for all proceedings in the case can be found here − https://www.nysd.uscourts.gov/usa−vsghislaine−maxwell−20−cr−330−ajn−caseinformation. The Court has implemented a procedure for docketing filings with proposed redactions and is ruling on the proposals as expeditiously as possible. See Dkt. No. 401. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/12/2021) (lnl) (Entered: 11/12/2021)
11/12/2021	452	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 449 MOTION in Limine *to Preclude Introduction of Government's Exhibits 251, 288, 294, 313 and 606.*, 444 MOTION in Limine *to Exclude Evidence Related to Accuser−3.*, 447 MOTION in Limine *to Suppress Identification.*, 443 MOTION in Limine *to Exclude Under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Request for Daubert Hearing.*, 448 MOTION in Limine *to Preclude Law Enforcement Witnesses from Offering Expert Opinion Testimony.*, 445 MOTION in Limine *to Exclude Government Exhibit 52, an Unauthenticated Hearsay Document from Suspect Sources.*, 442 MOTION in Limine *to Exclude Any Evidence Offered by the Government Pursuant to Fed. R. Evid. 404(b) for Failure to Comply with the Rule's Notice Requirement.*, 446 MOTION in Limine *to Exclude Items Purportedly Seized During Search of 358 El Brillo Way on October 20, 2005.*, 441 MOTION in Limine *to Preclude the Introduction of Alleged Co−Conspirator Statements as a Sanction for Failing to Comply with This Court's September 3, 2021 Order.*. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B)(Rohrbach, Andrew) (Entered: 11/12/2021)
11/12/2021	453	REPLY TO RESPONSE to Motion by Ghislaine Maxwell re 449 MOTION in Limine *to Preclude Introduction of Government's Exhibits 251, 288, 294, 313 and 606.*, 444 MOTION in Limine *to Exclude Evidence Related to Accuser−3.*, 447 MOTION in Limine *to Suppress Identification.*, 443 MOTION in Limine *to Exclude Under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Request for Daubert Hearing.*, 448 MOTION in Limine *to Preclude Law Enforcement Witnesses from Offering Expert Opinion Testimony.*, 445 MOTION in Limine *to Exclude Government Exhibit 52, an Unauthenticated Hearsay Document from Suspect Sources.*, 442 MOTION in Limine *to Exclude Any Evidence Offered by the Government Pursuant to Fed. R. Evid. 404(b) for Failure to Comply with the Rule's Notice Requirement.*, 446 MOTION in Limine *to Exclude Items Purportedly Seized During Search of 358 El Brillo Way on October 20, 2005.*, 441 MOTION in Limine *to Preclude the Introduction of Alleged Co−Conspirator Statements as a Sanction for Failing to Comply with This Court's September 3, 2021 Order.*. (Attachments: # 1 Exhibit A (Filed Under Seal), # 2 Exhibit B (Filed Under Seal), # 3 Exhibit C (Filed Under Seal), # 4 Exhibit D (Filed Under Seal), # 5 Exhibit E)(Pagliuca, Jeffrey) (Main Document 453 replaced on 11/22/2021) (jw). (Entered: 11/12/2021)
11/12/2021	454	ORDER as to Ghislaine Maxwell: As discussed at Wednesday's conference, the Court will hold an in−person proceeding on November 15, 2021 at 9:30 a.m. The proceeding will take place in Courtroom 518 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. In accordance with its prior Order, the Court will ensure access for alleged victims and any members of the Defendant's family. Dkt. No. 344. In order to comply with the District's COVID−19 protocols, the public will be able to access the proceeding in overflow Courtrooms 110 and 506 of the Thurgood Marshall U.S. Courthouse. These overflow rooms will have live video and audio feeds of the proceeding. The use of any electronic devices during the proceeding in the overflow rooms is strictly prohibited. The Court anticipates seating capacity in the overflow rooms for at least 50 members of the public. If capacity is reached, no additional persons will be admitted. Per the S.D.N.Y. Response to COVID−19, anyone who appears at any S.D.N.Y. courthouse must complete a questionnaire on the date of the proceeding prior to entering the courthouse. All visitors must also have their temperature taken when they arrive at the courthouse. 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. All visitors must wear a mask

		that covers the person's nose and mouth. Bandannas, gaiters, and masks with valves are not permitted. If a person does not have an approved mask, a screener will provide one. 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. For more information, please see https://www.nysd.uscourts.gov/covid−19−coronavirus. SO ORDERED. (Status Conference set for 11/15/2021 at 09:30 AM in Courtroom 518, 40 Centre Street, New York, NY 10007 before Judge Alison J. Nathan) (Signed by Judge Alison J. Nathan on 11/12/2021) (lnl) (Entered: 11/12/2021)
11/12/2021	455	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 12, 2021 re: Clarification re pseudonym order . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/12/2021)
11/12/2021	456	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 12, 2021 re: Co−Conspirator Statements Document filed by USA. (Comey, Maurene) (Entered: 11/12/2021)
11/12/2021	458	ORDER as to Ghislaine Maxwell: The Court is in receipt of the Government's letter motion seeking clarification on two items from the November 1, 2021 pretrial conference. Dkt. No. 455. As to the first item, the Government seeks clarification about the line between permissible and impermissible cross−examination for witnesses testifying under a pseudonym. The Government's suggested level of generality as to permissible cross−examination of the witnesses' careers would unduly curtail the Defendant's Sixth Amendment right to meaningful cross−examination. See United States v. Figueroa, 548 F.3d 222, 227 (2d Cir. 2008). The line of questioning the Government identifies may be relevant to a juror's credibility determination and thus the Court will not limit the Defendant's ability to pursue such questioning on cross−examination. As the Court noted at the November 1 conference, the Defendant may not elicit the name of a specific employer, but the type and genre of employment may be relevant to the jury's assessment of credibilty. Nov. 1, 2021 Transcript at 11−12. As to the second item, the Government is ORDERED to submit a proposed order regarding sketch artist depictions of certain witnesses on or before November 18, 2021. (Signed by Judge Alison J. Nathan on 11/12/2021) (ap) (Entered: 11/15/2021)
11/13/2021	457	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated November 12, 2021 re: Government Exhibit 52 Document filed by USA. (Moe, Alison) (Entered: 11/13/2021)
11/15/2021	459	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 10/21/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Carol Ganley, (212) 805−0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/6/2021. Redacted Transcript Deadline set for 12/16/2021. Release of Transcript Restriction set for 2/14/2022. (Moya, Goretti) (Entered: 11/15/2021)
11/15/2021	460	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 10/21/21 has been filed by the court reporter/transcriber in the above−captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 11/15/2021)
11/15/2021	461	SEALED DOCUMENT placed in vault. (nmo) (Entered: 11/15/2021)
11/15/2021	462	ORDER as to Ghislaine Maxwell: Attached is a copy of the final jury questionnaire, which is the same as Dkt. No. 365, docketed on October 22, 2021, except that it incorporates the redline changes. (Signed by Judge Alison J. Nathan on 11/15/2021) (ap) (Entered: 11/15/2021)
11/15/2021	463	ORDER as to Ghislaine Maxwell: Voir dire for this matter is set to begin on November 16, 2021 at 8:30 a.m. in Courtroom 518 of the United States District Court

		for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. In accordance with its prior Order, the Court will ensure access for alleged victims and any members of the Defendants family. Dkt. No. 344. In order to comply with the Districts COVID−19 protocols, a number of pool reporters will be permitted in the courtroom proper as managed by the District Executives Office. Press will also be able to access the proceeding in dedicated overflow press rooms. The public will be able to access the proceeding in overflow Courtrooms 110 and 906 of the Thurgood Marshall U.S. Courthouse. These overflow rooms will have live video and audio feeds of the proceeding. The use of any electronic devices during the proceeding in the overflow rooms is strictly prohibited. (Signed by Judge Alison J. Nathan on 11/15/2021) (See ORDER set forth) (ap) (Entered: 11/15/2021)
11/15/2021	464	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/15/2021 re: Late Receipt of Govt Disclosures to MDC (Sternheim, Bobbi) (Entered: 11/15/2021)
11/15/2021	465	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 11/1/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Michael McDaniel, (212) 805−0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/6/2021. Redacted Transcript Deadline set for 12/16/2021. Release of Transcript Restriction set for 2/14/2022. (Moya, Goretti) (Entered: 11/15/2021)
11/15/2021	466	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 11/1/21 has been filed by the court reporter/transcriber in the above−captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 11/15/2021)
11/15/2021	467	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 11/10/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Sonya Ketter Moore, (212) 805−0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/6/2021. Redacted Transcript Deadline set for 12/16/2021. Release of Transcript Restriction set for 2/14/2022. (Moya, Goretti) (Entered: 11/15/2021)
11/15/2021	468	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 11/10/21 has been filed by the court reporter/transcriber in the above−captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 11/15/2021)
11/15/2021	469	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 464 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/15/2021 re: Late Receipt of Govt Disclosures to MDC. ENDORSEMENT: It appears that the mail referenced in this letter was sent prior to the Court's memo endorsement of the Government's November 8, 2021 letter. Dkt. Nos. 422, 425. In any event, as this matter is less than two weeks before trial, the Government is ordered to send materials via FedEx and provide the tracking number to defense counsel. (Signed by Judge Alison J. Nathan on 11/15/2021) (ap) (Entered: 11/16/2021)
11/15/2021		Minute Entry for proceedings held before Judge Alison J. Nathan:Pretrial Conference as to Ghislaine Maxwell held on 11/15/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter Rebecca Forman. See Transcript. (jw) (Entered: 12/09/2021)

11/15/2021		Terminate Deadlines and Hearings as to Ghislaine Maxwell: (jw) (Entered: 12/09/2021)
11/16/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Voir Dire held on 11/16/2021 as to Ghislaine Maxwell. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell, Laura Menninger and Renato Stabile. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Eve Giniger and Khris Sellin. Jury selection began. Jury selection adjourned to Wednesday, November 17, 2021 at 8:30 AM. See transcript. (jbo) (Entered: 11/19/2021)
11/17/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: (Jury Selection) Jury Trial as to Ghislaine Maxwell held on 11/17/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell, Laura Menninger and Renato Stabile. AUSA Lara Pomerantz, Maurene Comey, and Alison Moe for the government. Court Reporters Eve Giniger and Khris Sellin. Jury selection held. Jury selection adjourned to Thursday, November 18, 2021 at 8:30 AM. See transcript. (jbo) (Entered: 11/19/2021)
11/18/2021	470	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 18, 2021 re: Courtroom sketch artists Document filed by USA. (Attachments: # 1 Text of Proposed Order Proposed Order)(Rohrbach, Andrew) (Entered: 11/18/2021)
11/18/2021	471	ORDER as to Ghislaine Maxwell: IT HEREBY IS ORDERED: 1. That courtroom sketch artists whether in the courtroom or overflow rooms may not draw exact likenesses of the Protected Witnesses; and 2. For avoidance of doubt, courtroom sketch artists may confer with the Court or counsel for either party to determine whether a witness is a Protected Witness. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/18/2021) (lnl) (Entered: 11/18/2021)
11/18/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: (Jury Selection) Jury Trial as to Ghislaine Maxwell held on 11/18/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell, Laura Menninger and Renato Stabile. AUSA Lara Pomerantz, Maurene Comey and Alison Moe for the government. Court Reporters Eve Giniger and Khris Sellin. Jury selection held. Jury selection adjourned until Monday, November 29, 2021 at 9:00 AM. See transcript. (jbo) (Entered: 11/19/2021)
11/19/2021	472	ENDORSED LETTER as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Patrick J. Smith dated 11/18/21 re: We respectfully request that the Court approve Jordana H. Feldman being added to the ECF docket in this case as a movant....ENDORSEMENT: The Clerk of Court is respectfully directed to add Jordana H. Feldman to the ECF docket in this case as a "movant". SO ORDERED. (Signed by Judge Alison J. Nathan on 11/19/21)(jw) (Entered: 11/19/2021)
11/19/2021	473	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's letter motion to quash the Defendants Rule 17(c)(3) subpoena. That motion has been filed temporarily under seal to allow the parties the opportunity to propose limited redactions. The parties are hereby ORDERED to file any proposed redactions on the public docket on or before November 22, 2021, and to justify any requested redactions by reference to the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006) (Signed by Judge Alison J. Nathan on 11/19/21)(jw) (Entered: 11/19/2021)
11/19/2021	474	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's letter motion dated November 18, 2021. That motion has been filed temporarily under seal to allow the parties the opportunity to propose limited redactions. Defendant is hereby ORDERED to file a response on or before November 20, 2021. The parties are FURTHER ORDERED to file any proposed redactions to the motion papers on the public docket on or before November 22, 2021, justifying any requested redactions by reference to the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006) (Defendant Responses due by 11/20/2021) (Signed by Judge Alison J. Nathan on 11/19/21)(jw) (Entered: 11/19/2021)

11/19/2021	475	JOINT LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 11/19/21 re: Video Monitor (Everdell, Christian) (Entered: 11/19/2021)
11/19/2021	476	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's supplemental letter regarding Government Exhibit 52, Dkt. No. 457, and the Defendants response, which has been temporarily filed under seal to allow the parties the opportunity to request limited redactions. The Government is hereby ORDERED to file a reply to Defendants response on or before 12:00 p.m. on November 21, 2021. The letter reply should address the Defendants argument that Employee−1 cannot authenticate Government Exhibit 52 because Mr. Rodriguez, a former employee, purportedly removed the document from the property before Employee−1 began working for Mr. Epstein. The parties are FURTHER ORDERED to file any proposed redactions to the motion papers on the public docket on or before November 22, 2021, justifying any requested redactions by reference to the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006) (Government Replies due by 11/21/2021.). (Signed by Judge Alison J. Nathan on 11/19/21)(jw) (Entered: 11/19/2021)
11/19/2021	477	ORDER as to Ghislaine Maxwell. On October 29, 2021, Defendant filed a motion in limine to exclude evidence related to Accuser−3. Dkt. Nos. 387, 444. The Court twice heard argument related to this motion, including extensive argument at the November 10, 2021 in camera hearing that was sealed pursuant to Federal Rule of Evidence 412. See generally Nov. 1, 2021 Transcript; Nov. 10, 2021 Transcript. The Court has also considered supplemental briefing from the parties. That briefing has been filed temporarily under seal to permit the parties the opportunity to propose redactions in accordance with Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). In a Memorandum Opinion & Order filed under temporary seal, the Court GRANTS in part and DENIES in part the Defendant's motion. The Memorandum Opinion & Order lays out the permissible and impermissible testimony that may be offered by this witness based on Rules 412, 404, 401, and 403. The Court will send the temporarily sealed Memorandum Opinion & Order to the parties. By November 21, 2021, the parties are ORDERED to inform the Court whether either seeks sealing or limited redactions of the Courts Memorandum Opinion & Order and of the supplemental briefing, justifying any such request by reference to Federal Rule of Evidence 412(c)(2) and/or the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). (Signed by Judge Alison J. Nathan on 11/19/2021)(jw) (Entered: 11/19/2021)
11/19/2021	478	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 19, 2021 re: Courtroom Connect Document filed by USA. (Comey, Maurene) (Entered: 11/19/2021)
11/19/2021	690	MEMORANDUM OPINION & ORDER as to Ghislaine Maxwell. Before the Court is the Defendant's fourth motion in limine to "exclude evidence related to Accuser−3," to whom the Court refers as Witness−3, on the grounds that the testimony is not direct evidence of the charged conspiracies and is inadmissible under Federal Rules of Evidence 404(b) and 403. Dkt. Nos. 387, 444. The Court has twice heard argument related to this motion, including argument at the November 10, 2021 in camera hearing that was sealed pursuant to Federal Rule of Evidence 412. See generally Nov. 1, 2021 Transcript; Nov. 10, 2021 Transcript. At the November 1, 2021 hearing, the Court provided a brief explanation of its current position based on the information then before it, but the Court ultimately reserved ruling pending additional briefing. The Court is now in receipt of the parties' additional briefing and accordingly is prepared to resolve the motion.(See Footnote 1 on this Memorandum Opinion & Order). The Government now proffers that the anticipated testimony of Witness−3 will describe how she met the Defendant and her relationship with the Defendant and Mr. Epstein. In particular, Witness−3 is anticipated to testify how Defendant introduced her to Mr. Epstein, how massages progressed to involve sexual activity, and Ms. Maxwell's role in facilitating those massages. Based on all of the information now before the Court, including a substantially more detailed proffer by the Government as to the anticipated testimony, see Gov. Supp. Ltr. at 2−3 (Nov. 5, 2021); see also Dkt. No. 452 at 42−43, the Court concludes that some of the anticipated testimony may serve as direct evidence of the Mann Act counts....[*** See this Memorandum Opinion & Order ***]... The parties may submit any requested edits to the proposed limiting instructions

		that are consistent with the Court's ruling or indicate that they have none on or before November 21, 2021. This resolves Dkt. Nos. 387, 444. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/19/2021)(bw) (Entered: 06/29/2022)
11/21/2021	479	LETTER by Jordana H. Feldman as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Patrick J. Smith dated 11/15/2021 re: Rule 17(c) Subpoena to Jordana H. Feldman Document filed by Jordana H. Feldman. (Smith, Patrick) (Entered: 11/21/2021)
11/21/2021	480	MOTION Authorizing a Subpoena Pursuant to Fed. R. Crim. P 17(c)(3) . Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1)(Pagliuca, Jeffrey) (Entered: 11/21/2021)
11/21/2021	481	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 21, 2021 re: Redactions related to Witness−3 . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/21/2021)
11/21/2021	482	ORDER as to Ghislaine Maxwell. On November 1, 2021, the Defense noticed eight expert witnesses. Def. Br., Ex. 1 ("Notice"). On November 8, 2021, the Government filed a motion to partially preclude the testimony of two of those experts, Dr. Dietz and Dr. Loftus. Gov't Br., Dkt. No. 424. The Defense filed a response via email on November 12, 2021, to permit the Government the opportunity to propose redactions. In an Opinion and Order temporarily filed under seal, the Court DENIES in part and GRANTS in part the Governments motion to preclude Dr. Dietz's testimony and DENIES in part and GRANTS in part the Governments motion to preclude Dr. Loftus's testimony. It doesso after considering the admissibility of the anticipated testimony under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993). The Court will send the temporarily sealed Opinion & Order to the parties. By November 23, 2021, the parties are ORDERED to inform the Court whether either seeks sealing or limited redactions of the Court's Opinion & Order, justifying any such request by reference to the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). In addition, by that date, the parties are FURTHER ORDERED to file any proposed redactions to the Defenses response brief and/or supporting exhibits on the public docket, again justifying any such request by reference to the Lugosch test (Signed by Judge Alison J. Nathan on 11/21/21)(jw) (Entered: 11/22/2021)
11/21/2021	516	OPINION & ORDER as to Ghislaine Maxwell. The Court therefore denies in part and grants in part the Government's motion to preclude Dr. Dietz's testimony and denies in part and grants in part the Government's motion to preclude Dr. Loftus's testimony. This resolves docket number 424. (Signed by Judge Alison J. Nathan on 11/21/2021) (See ORDER set forth) (ap) (Entered: 11/29/2021)
11/22/2021	483	ORDER as to Ghislaine Maxwell. The Court will hold final pretrial conference on November 23, 2021 at 9:30 a.m. The proceeding will take place in Courtroom 318 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. In accordance with its prior Order, the Court will ensure access for alleged victims and any members of the Defendants family. Dkt. No. 344. The public will be able to access the proceeding in overflow Courtrooms 110, 506, 905, and 906 of the Thurgood Marshall U.S. Courthouse. These overflow rooms will have live video and audio feeds of the proceeding. (Pretrial Conference set for 11/23/2021 at 09:30 AM in Courtroom 318, 40 Centre Street, New York, NY 10007 before Judge Alison J. Nathan.). (Signed by Judge Alison J. Nathan on 11/22/21)(jw) (Entered: 11/22/2021)
11/22/2021	484	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 475 Pursuant to the Court's email of November 15, 2021, the parties respectfully submit this joint letter to request video monitors with a live feed to the trial proceedings in each of the parties' counsel rooms...ENDORSEMENT...To the extent that the Government is requesting that a video monitor be provided in a counsel room at 40 Foley Square, the request is granted to the extent the District Executive can accommodate the request. If the Government is requesting a video monitor in its own offices, the request is denied.The request is granted as to defense counsel's room. SO ORDERED (Signed by Judge Alison J. Nathan on 11/22/21)(jw) (Entered: 11/22/2021)

11/22/2021	485	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's proposed redactions to the parties supplemental briefing and the Court's Memorandum Opinion & Order regarding the admissibility of the anticipated testimony of Witness−3. Dkt. No. 481; see also Dkt. No. 477. Accordingly, the parties are ORDERED to file the redacted papers on the public docket by November 22, 2021, including the Government's supplemental letter regarding Witness−3 dated November 7, 2021 in response to Dkt. No. 417. The Court will file the redacted Memorandum Opinion & Order (Signed by Judge Alison J. Nathan on 11/22/21)(jw) (Entered: 11/22/2021)
11/22/2021	486	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 22, 2021 re: Proposed Redactions . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/22/2021)
11/22/2021	487	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 18, 2021 re: Motion to quash Rule 17(c) subpoena . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/22/2021)
11/22/2021	488	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 18, 2021 re: Authenticate birth certificates . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/22/2021)
11/22/2021	489	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 11/20/21 re: Birth Certificates (Everdell, Christian) (Entered: 11/22/2021)
11/22/2021	490	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated November 15, 2021 re: Government Exhibit 52 (Pagliuca, Jeffrey) (Entered: 11/22/2021)
11/22/2021	491	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 21, 2021 re: Reply re GX−52 Document filed by USA. (Rohrbach, Andrew) (Entered: 11/22/2021)
11/22/2021	492	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 5, 2021 re: Supplemental letter re Witness−3 Document filed by USA. (Rohrbach, Andrew) (Entered: 11/22/2021)
11/22/2021	493	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 7, 2021 re: Witness−3 and Definitions of "Victim" Document filed by USA. (Rohrbach, Andrew) (Entered: 11/22/2021)
11/22/2021	494	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 11/11/21 re: Accuser−3 Evidence (Everdell, Christian) (Entered: 11/22/2021)
11/22/2021	495	ORDER as to Ghislaine Maxwell. The Court will send the temporarily sealed Memorandum Opinions and Orders to the parties. By November 24, 2021, the parties are ORDERED to inform the Court whether either seeks sealing or limited redactions of the Memorandum Opinions and Orders, justifying any such request by reference to the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). In addition, by that date, the parties are FURTHER ORDERED to file any proposed redactions to the moving papers and/or supporting exhibits on the public docket, again justifying any such request by reference to the Lugosch test. (Signed by Judge Alison J. Nathan on 11/22/21)(jw) (Entered: 11/23/2021)
11/22/2021	496	ORDER 486 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 22, 2021 re: Proposed Redactions. The Court is in receipt of the Government's, Administrator Feldman's, and two anticipated witnesses' motions to quash the Defendant's Rule 17(c)(3) subpoena. Dkt. No. 486. The motions to quash are

		DENIED. The Court hereby ORDERS the Administrator of the Epstein Victims' Compensation Program to produce to the Court via electronic thumb drive any materials responsive to the subpoena as soon as possible, but no later than 12:00 p.m. on November 24, 2021. Accordingly, the parties shall negotiate a protective order and submit the proposal for approval by the Court no later than 12:00 p.m. on November 24, 2021 (Signed by Judge Alison J. Nathan on 11/22/21) (jw) (Entered: 11/23/2021)
11/22/2021	691	MEMORANDUM OPINION & ORDER as to Ghislaine Maxwell. The Defense on November 1, 2021, noticed eight expert witnesses. Def. Br., Ex. 1 ("Notice"). Two of those experts, Dr. Park Dietz and Dr. Elizabeth Loftus, are expected to offer opinions that rebut opinions of the Government's expert witness, Dr. Lisa Rocchio. The Government on November 8, 2021, filed a motion to partially preclude the testimony of Dr. Dietz and Dr. Loftus. Dkt. No. 424. The Court has already addressed that motion. On November 15, 2021, the Government moved to fully or partially preclude the testimony of the remaining six experts. The Defense filed a response on November 19, 2021. The Court addressed the admissibility of Dr. Ryan Hall in a separate written opinion. In this opinion, the Court addresses the preliminary admissibility of Bennett Gershman based on the parties' current proffers....[*** See this Memorandum Opinion & Order ***]... III. Conclusion. The Court therefore grants the Government's motion to preclude Gershman's expert testimony. Because this is a preliminary pre−trial ruling, it is possible that facts and circumstances at trial would alter the Court's analysis. In that event, the Defense must re−raise its request to admit Gershman as an expert witness. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/22/2021)(bw) (Entered: 06/29/2022)
11/22/2021	692	MEMORANDUM OPINION & ORDER as to Ghislaine Maxwell. The Defense on November 1, 2021, noticed eight expert witnesses. Def. Br., Ex. 1 ("Notice"). Two of those experts, Dr. Park Dietz and Dr. Elizabeth Loftus, are expected to offer opinions that rebut opinions of the Government's expert witness, Dr. Lisa Rocchio. The Government on November 8, 2021, filed a motion to partially preclude the testimony of Dr. Dietz and Dr. Loftus. Dkt. No. 424. The Court has already addressed that motion. On November 15, 2021, the Government moved to fully or partially preclude the testimony of the remaining six experts. The Defense filed a response on November 19, 2021. The Court addresses the motion to preclude Dr. Hall in this separate opinion. It will address the other five experts in public rulings....[*** See this Memorandum Opinion & Order ***]... III. Conclusion. The Court therefore grants the Government's motion to preclude Dr. Hall's expert testimony. Because this is a preliminary pre−trial ruling, it is possible that facts and circumstances at trial would alter the Court's analysis. In that event, the Defense must re−raise its request to admit Dr. Hall as an expert witness. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/22/2021)(bw) (Entered: 06/29/2022)
11/23/2021	497	ORDER as to Ghislaine Maxwell. As discussed at today's conference, attached is the Courts draft preliminary instructions for the sworn jury. The Court has considered both parties proposed instructions as to the Courts order that certain witnesses be permitted to testify or be referred to by first name only or pseudonym. Dkt. No. 432. The draft preliminary instructions include a limiting instruction regarding this process. The parties may suggest any proposed edits to the preliminary instructions by letter on or before November 27, 2021, or they shall indicate by that date that they have no objections or suggestions. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/23/21)(jw) (Entered: 11/23/2021)
11/23/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: (Final) Pretrial Conference as to Ghislaine Maxwell held on 11/23/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter Paula Speers. Final Pretrial Conference held. See Transcript. (jbo) (Entered: 11/23/2021)
11/23/2021	498	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 23, 2021 re: Proposed redactions to Dietz/Loftus materials . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/23/2021)
11/23/2021	499	RESPONSE to Motion by Ghislaine Maxwell re: 424 MOTION to Preclude *Expert Testimony of Dr. Dietz and Dr. Loftus.*. (Attachments: # 1 Exhibit 1, # 2 Exhibit

		2)(Pagliuca, Jeffrey) (Entered: 11/23/2021)
11/24/2021	500	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 24, 2021 re: Proposed protective order Document filed by USA. (Attachments: # 1 Text of Proposed Order Proposed Protective Order)(Rohrbach, Andrew) (Entered: 11/24/2021)
11/24/2021	501	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 24, 2021 re: Corrected proposed protective order Document filed by USA. (Attachments: # 1 Text of Proposed Order Corrected Proposed Protective Order)(Rohrbach, Andrew) (Entered: 11/24/2021)
11/24/2021	502	ORDER as to Ghislaine Maxwell. As noted in this Court's prior order, trial in this case will commence on November 29, 2021. Dkt. No. 330. The trial will take place in Courtroom 318 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. In accordance with its prior Order, the Court will ensure access for alleged victims and members of the Defendants family. Dkt. No. 344. Per the S.D.N.Y. Response to COVID−19, anyone who appears at any S.D.N.Y. courthouse must complete a questionnaire on the date of the proceeding prior to entering the courthouse. All visitors must also have their temperature taken when they arrive at the courthouse. 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. All visitors must wear a mask that covers the persons nose and mouth. Bandannas, gaiters, and masks with valves are not permitted. If a person does not have an approved mask, a screener will provide one. 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. For more information, please see https://www.nysd.uscourts.gov /covid−19−coronavirus (Signed by Judge Alison J. Nathan on 11/24/21)(jw) (Entered: 11/24/2021)
11/24/2021	503	ORDER as to Ghislaine Maxwell re: 501 The Court is in receipt of the initial production of the Epstein Victims' Compensation Program pursuant to the Rule 17(c) subpoena. See Dkt. No. 496. The Court is also in receipt of the parties' proposed protective order. Dkt. No. 501. The Court will enter the proposed protective order. Consistent with its prior Order, Dkt. No. 496, the Court determines that the parties may review the materials under the provisions of the protective order. Dkt. No. 501. In doing so, the Court has made no determination as to the admissibility of any of the material. Accordingly, the Administrator of the Epstein Victims Compensation Program is ORDERED to produce the materials contained in the initial production to the parties as soon as possible, but no later than 7:00 p.m. on November 24, 2021. (Signed by Judge Alison J. Nathan on 11/24/21)(jw) (Entered: 11/24/2021)
11/24/2021	504	LETTER by Jordana H. Feldman as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Patrick J. Smith dated 11/23/2021 re: Document Production from Jordana H. Feldman (with proposed redactions) Document filed by Jordana H. Feldman. (Smith, Patrick) (Entered: 11/24/2021)
11/24/2021	505	PROTECTIVE ORDER as to Ghislaine Maxwell...regarding procedures to be followed that shall govern the handling of confidential material.... (Signed by Judge Alison J. Nathan on 11/24/21)(jw) (Entered: 11/24/2021)
11/24/2021	506	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 24, 2021 re: Proposed redactions to Hall et al. materials . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/24/2021)
11/24/2021	507	MOTION to Preclude *Expert Testimony of Dr. Ryan Hall et al.*. Document filed by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B)(Rohrbach, Andrew) (Entered: 11/24/2021)
11/24/2021	508	RESPONSE to Motion by Ghislaine Maxwell re: 507 MOTION to Preclude *Expert Testimony of Dr. Ryan Hall et al...* (Pagliuca, Jeffrey) (Entered: 11/24/2021)

11/24/2021	509	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 22, 2021 re: 507 MOTION to Preclude *Expert Testimony of Dr. Ryan Hall et al.*. re: File reply brief . Document filed by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit Proposed reply brief, # 2 Exhibit Proposed Exhibit C)(Rohrbach, Andrew) (Entered: 11/24/2021)
11/27/2021	510	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 27, 2021 re: Preliminary instructions Document filed by USA. (Rohrbach, Andrew) (Entered: 11/27/2021)
11/27/2021	511	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/27/2021 re: Trial document procedure (Sternheim, Bobbi) (Entered: 11/27/2021)
11/27/2021	512	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated November 27, 2021 re: Court's Proposed Preliminary Instructions to the Jury (Pagliuca, Jeffrey) (Entered: 11/27/2021)
11/28/2021	515	ORDER as to Ghislaine Maxwell: The Court is in receipt of the third production of the Epstein Victims Compensation Program pursuant to the Rule 17(c) subpoena. See Dkt. Nos. 496, 503. Consistent with its prior orders, Dkt. Nos. 496, 503, the Court determines that the parties may review the materials under the provisions of the protective order. Dkt. No. 505. In doing so, the Court has made no determination as to the admissibility of any of the material. Accordingly, the Administrator of the Epstein Victims' Compensation Program is ORDERED to produce the materials contained in the third production to the parties as soon as possible, but no later than 8:30 p.m. on November 28, 2021. (Signed by Judge Alison J. Nathan on 11/28/2021) (ap) (Entered: 11/29/2021)
11/29/2021	513	ORDER as to Ghislaine Maxwell: The Court is in receipt of the second production of the Epstein Victims Compensation Program pursuant to the Rule 17(c) subpoena. See Dkt. Nos. 496, 503. The Administrator provided the materials via a secure FTP site, which the Court concludes is sufficient. Consistent with its prior orders, Dkt. Nos. 496, 503, the Court determines that the parties may review the materials under the provisions of the protective order. Dkt. No. 505. In doing so, the Court has made no determination as to the admissibility of any of the material. Accordingly, the Administrator of the Epstein Victims Compensation Program is ORDERED to produce the materials contained in the second production to the parties as soon as possible, but no later than 5:00 p.m. on November 27, 2021. (Signed by Judge Alison J. Nathan on 11/27/2021) (ap) (Entered: 11/29/2021)
11/29/2021	514	ORDER as to Ghislaine Maxwell: The Court is in receipt of the Government's letter motion to preclude certain lines of cross−examination of Government witnesses. The Court hereby GRANTS the Government's request to file the letter motion under seal in order to protect the privacy interests of anticipated witnesses, including those who are subject to the Court's pseudonym order. See Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110, 120 (2d Cir. 2006). The Defendant is hereby ORDERED to respond by today, November 28, 2021, at 2:00 p.m. (Responses due by 11/28/2021) (Signed by Judge Alison J. Nathan on 11/28/2021) (ap) (Entered: 11/29/2021)
11/29/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Selection / Jury Trial as to Ghislaine Maxwell held on 11/29/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski Jury selection held. Jury trial begins. See Transcript. (jbo) (Entered: 12/02/2021)
11/30/2021	517	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 30, 2021 re: Defense exhibits Document filed by USA. (Rohrbach, Andrew) (Entered: 11/30/2021)
11/30/2021	518	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated November 30, 2021 re: Fed. R. Crim. P. 16(b)(1)(A) (Pagliuca, Jeffrey) (Entered: 11/30/2021)

11/30/2021	519	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated November 30, 2021 re: Pseudonyms (Pagliuca, Jeffrey) (Entered: 11/30/2021)
11/30/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 11/30/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski. Jury trial held. See Transcript. (jbo) (Entered: 12/02/2021)
11/30/2021	693	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' letters regarding the issue of potential cross−examination that might elicit identifying information in violation of this Court's order. See Dkt. No. 519. The Government is hereby ORDERED to provide to the Defense the information it believes falls within the categories of specifically identifying information for the current testifying witness no later than 7:00 a.m. tomorrow morning, December 1, 2021. The Defense is ORDERED to alert the Government of any issues concerning the current testifying witness by the same time7:00 a.m. tomorrow morning, December 1, 2021. The Defense shall remain cognizant not only of its duty to avoid revealing the names of witnesses testifying under pseudonyms, but also any specifically identifying information of the protected witnesses. See Transcript, at 10−11 (Nov. 1, 2021). The parties shall then meet and confer on any disagreements. If the parties cannot reach a resolution, they may raise any issues with the Court when the parties are scheduled to appear at 8:45 a.m. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/30/2021)(bw) (Entered: 06/29/2022)
12/02/2021	520	ORDER as to Ghislaine Maxwell: The Clerk of Court is respectfully directed to pay the invoices received in connection with the transportation of jurors in this matter. (Signed by Judge Alison J. Nathan on 12/2/2021) (ap) (Entered: 12/03/2021)
12/02/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/2/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and Alena Lynch. Jury trial held. See Transcript. (jbo) (Entered: 12/07/2021)
12/03/2021	521	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 3, 2021 re: Witness Jane's Testimony (Attachments: # 1 Exhibit 1 (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 12/03/2021)
12/03/2021	522	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 3, 2021 re: Witness Dawson Document filed by USA. (Rohrbach, Andrew) (Entered: 12/03/2021)
12/03/2021	526	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 522 Accordingly, the parties jointly and respectfully request that the Court release Michael Dawson from his obligation to return to Court on Monday...ENDORSEMENT...SO ORDERED (Signed by Judge Alison J. Nathan on 12/3/21)(jw) (Entered: 12/06/2021)
12/03/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/3/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters George Malinowski and Andrew Walker. Jury trial held. See Transcript. (jbo) (Entered: 12/07/2021)
12/04/2021	523	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 4, 2021 re: 900 Series of Exhibits Document filed by USA. (Rohrbach, Andrew) (Entered: 12/04/2021)
12/05/2021	524	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 5, 2021 re: Edit to Witness−3 instruction . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 12/05/2021)

12/05/2021	525	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 5, 2021 re: Response to the Government's Letter Regarding 900 Series of Exhibits (Pagliuca, Jeffrey) (Entered: 12/05/2021)
12/05/2021	527	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's letter motion regarding the limiting instruction for Witness−3's anticipated testimony. The Government is hereby ORDERED to file an additional letter explaining what details regarding the alleged sexual activity the Government would seek to elicit absent instruction from the Court and in light of the Defenses opening. The Government's letter must be submitted no later than today, December 5, 2021, at 4:00 p.m. With that information, the Defense can respond to and the Court can analyze the Government's requested addition in the limiting instruction. Accordingly, the Defense is ORDERED to respond to the Government's letter motion and further response letter no later than today, December 5, 2021, at 7:00 p.m. In their letter responses the parties shall be mindful of Rule 412s requirement regarding sealing (Signed by Judge Alison J. Nathan on 12/5/21)(jw) (Entered: 12/06/2021)
12/06/2021	528	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 6, 2021 re: Attorney−Client Privilege Document filed by USA. (Rohrbach, Andrew) (Entered: 12/06/2021)
12/06/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/6/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski. Jury trial held. See Transcript. (jbo) (Entered: 12/07/2021)
12/07/2021		Minute Entry for proceedings held before Judge Alison J. Nathan:Jury Trial as to Ghislaine Maxwell held on 12/7/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski. See Transcript. (jw) (Entered: 12/13/2021)
12/08/2021	529	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 11/15/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Rebecca Forman, (212) 805−0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/29/2021. Redacted Transcript Deadline set for 1/10/2022. Release of Transcript Restriction set for 3/8/2022. (Moya, Goretti) (Entered: 12/08/2021)
12/08/2021	530	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 11/15/21 has been filed by the court reporter/transcriber in the above−captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 12/08/2021)
12/08/2021	531	ORDER as to Ghislaine Maxwell. Juror Number 70 is directed to submit the receipts associated with the transportation cost incurred on Wednesday 8, 2021, to the Jury Administrator. Upon receipt, the Clerk of Court is directed to reimburse Juror Number 70 for said cost. SO ORDERED (Signed by Judge Alison J. Nathan on 12/8/21)(jw) (Entered: 12/08/2021)
12/08/2021		Minute Entry for proceedings held before Judge Alison J. Nathan:Jury Trial as to Ghislaine Maxwell held on 12/8/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski. See Transcript (jw) (Entered: 12/13/2021)
12/09/2021	532	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 8, 2021 re: Exhibit 52 (Pagliuca, Jeffrey) (Entered:

		12/09/2021)
12/09/2021	533	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 8, 2021 re: Admission of GX 52 . Document filed by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Rohrbach, Andrew) (Entered: 12/09/2021)
12/09/2021	534	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 9, 2021 re: Proposed redactions to Dkt. No. 533 . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 12/09/2021)
12/09/2021	535	MEMORANDUM OPINION & ORDER as to Ghislaine Maxwell. The Government seeks to admit what has been identified as Government Exhibit 52 ("GX 52"), and submit to the jury a redacted version of GX 52. The Defense objects to the admission of GX 52 on authentication and hearsay grounds. The admissibility of the exhibit has been the subject of pretrial motion in limine briefing and extensive supplemental briefing. See Dkt. Nos. 390, 397, 398, 457, 476, 490. This includes supplemental briefing received on December 8, 2021, after the authenticating witness, Mr. Juan Alessi, underwent direct examination by the Government and voir dire by the Defense. The Court reserved ruling on the exhibit, pending what was anticipated to be additional testimony. Trial Tr. at 876. The Court now overrules the Defenses objections. The parties are ORDERED to confer and propose a limiting instruction consistent with this ruling on or before today, December 9, 2021, at 7:00 p.m. The parties are FURTHER ORDERED to confer and prepare a stipulation that Government Exhibits 52A, 52D, 52E, 52F, 52G, and 52H are true and correct photocopies of five pages from GX 52. See Trial Tr. at 858. (Signed by Judge Alison J. Nathan on 12/9/21)(jw) (Entered: 12/10/2021)
12/09/2021		Minute Entry for proceedings held before Judge Alison J. Nathan:Jury Trial as to Ghislaine Maxwell held on 12/9/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski. See transcript. (jw) (Entered: 12/13/2021)
12/10/2021	536	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 11/23/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Paula Speer, (212) 805−0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/3/2022. Redacted Transcript Deadline set for 1/10/2022. Release of Transcript Restriction set for 3/10/2022. (Moya, Goretti) (Entered: 12/10/2021)
12/10/2021	537	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 11/23/21 has been filed by the court reporter/transcriber in the above−captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 12/10/2021)
12/10/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/10/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski Jury trial held. See Transcript. (jbo) (Entered: 12/20/2021)
12/11/2021	538	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 9, 2021 re: Limiting instruction for GX 52 Document filed by USA. (Rohrbach, Andrew) (Entered: 12/11/2021)
12/12/2021	539	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 12, 2021 re: Defense witness order . Document filed by USA as to Ghislaine Maxwell.

		(Rohrbach, Andrew) (Entered: 12/12/2021)
12/12/2021	540	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 12/12/2021 re: Order of Defense Witnesses (Sternheim, Bobbi) (Entered: 12/12/2021)
12/13/2021	541	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 13, 2021 re: Privilege stipulation Document filed by USA. (Rohrbach, Andrew) (Entered: 12/13/2021)
12/14/2021	542	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Defense's letter dated December 13, 2021, regarding anticipated witnesses. The Government is ORDERED to submit a response no later than today, December 14, 2021, at 10:00 p.m. The Defense is FURTHER ORDERED to provide a copy of its anticipated witness order to the Court no later than today, December 14, 2021, at 12:00 p.m. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/14/2021)(bw) (Entered: 12/14/2021)
12/14/2021	543	SEALED DOCUMENT placed in vault. (jus) (Entered: 12/14/2021)
12/14/2021	544	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 13, 2021 re: Jack Scarola, Brad Edwards and Robert Glassman (Attachments: # 1 Exhibit 1 (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 12/15/2021)
12/15/2021	545	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 14, 2021 re: Testimony from Victim Counsel Document filed by USA. (Rohrbach, Andrew) (Entered: 12/15/2021)
12/15/2021	546	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 15, 2021 re: Proposed redactions *to Privilege Letters*. Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 12/15/2021)
12/15/2021	547	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 12/15/2021 re: Opposition to restriction on expert testimony (Sternheim, Bobbi) (Entered: 12/15/2021)
12/15/2021	548	MEMORANDUM OPINION & ORDER as to Ghislaine Maxwell. The Defense on December 12, 2021, moved to permit three anticipated witnesses to testify under a pseudonym or their first names only. The Government filed a letter opposing this request on December 14, 2021. The Defense's primary contention is that some form of anonymity for its witnesses is justified by the same reasons that the Court permitted three alleged victims and two related government witnesses to testify under pseudonyms. The Court disagrees with this basic premise and denies the Defense's motion....[*** See this Memorandum Opinion & Order ***]... Last, the Court emphasizes that while it currently denies the Defense's motion, the Defense may of course raise, and the Court will consider, objections that particular lines of questioning into witnesses' backgrounds or lives are irrelevant, cumulative, intended to harass, or otherwise inappropriate. See, e.g., Smith v. Illinois, 390 U.S. 129, 133 (1968) (emphasizing that even when anonymity is not warranted, the court has a duty to protect a witness "from questions which go beyond the bounds of proper cross−examination merely to harass, annoy or humiliate him"). SO ORDERED. (Signed by Judge Alison J. Nathan on 12/15/2021)(bw) (Entered: 12/16/2021)
12/15/2021	694	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's motion to preclude certain testimony of defense witnesses, dated December 15, 2021. The Defense is ORDERED to submit a response as follows: − A response to the motion with respect to Dr. Loftus by today, December 15, 2021, at 7:45 p.m. − A response to the motion with respect to Alexander Hamilton by tomorrow, December 16, 2021, at 7:00 a.m. − A response to the motion with respect to the other anticipated witnesses by tomorrow, December 16, 2021, at 5:00 p.m. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/15/2021)(bw) (Entered: 06/29/2022)
12/16/2021	551	ORDER as to Ghislaine Maxwell: The Court is in receipt of the parties' joint letter regarding the admission of prior inconsistent statements. The parties' letter notes "that

		many of these statements raise one of two questions: (1) must counsel show the witness the prior inconsistent statement under Rule 613(b), and (2) is a statement admissible when the witness affirms that the 3500 material contains the inconsistent statement and also expresses disagreement with the substance." The parties are hereby ORDERED to submit a letter citing authority (beyond the rule itself) for their respective positions. The parties are FURTHER ORDERED to indicate each disputed prior inconsistent statement that was read into the record. Letters must be submitted as soon as possible but no later than today, December 16, 2021, at 10:15 p.m. The parties are FURTHER ORDERED to docket their respective letters by tomorrow, December 17, 2021, at 8:00 a.m. (Signed by Judge Alison J. Nathan on 12/16/2021) (ap) Modified on 12/17/2021 (ap). (Entered: 12/17/2021)
12/16/2021	552	ORDER as to Ghislaine Maxwell: The Court denies the motion for the remaining witnesses the Government seeks to preclude. (Signed by Judge Alison J. Nathan on 12/16/2021) (ap) (Entered: 12/17/2021)
12/16/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/16/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski Jury trial held. See Transcript. (jbo) (Entered: 12/20/2021)
12/17/2021	549	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 17, 2021 re: Law enforcement witness testimony Document filed by USA. (Attachments: # 1 Exhibit A)(Rohrbach, Andrew) (Entered: 12/17/2021)
12/17/2021	550	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 16, 2021 re: Prior inconsistent statements Document filed by USA. (Rohrbach, Andrew) (Entered: 12/17/2021)
12/17/2021	553	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 16, 2021 re: Prior Inconsistent Statements (Pagliuca, Jeffrey) (Entered: 12/17/2021)
12/17/2021	562	ORDER as to Ghislaine Maxwell. Attached is the draft jury charge and draft verdict sheet. Counsel shall be prepared to provide at the charging conference tomorrow, December 18, 2021, specific suggestions (with supporting authority if available) for any requested changes (Signed by Judge Alison J. Nathan on 12/17/21)(jw) (Entered: 12/20/2021)
12/17/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/17/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski Jury trial held. See Transcript. (jbo) (Entered: 12/20/2021)
12/18/2021	554	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 18, 2021 re: Jury instructions Document filed by USA. (Rohrbach, Andrew) (Entered: 12/18/2021)
12/18/2021	555	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 15, 2021 re: Ms. Maxwell's Response to Government's Motion to Preclude Certain Testimony by Alexander Hamilton (Pagliuca, Jeffrey) (Entered: 12/18/2021)
12/18/2021	563	ORDER as to Ghislaine Maxwell. The charging conference for this matter was held today, December 18, 2021. Attached to this Order are redline and clean copies of the draft jury charge and draft verdict form that incorporate all changes discussed at the conference, or by the Government's subsequent letter, Dkt. No. 554, and adopted by the Court. The Court also edited "a minor" to be "an individual under the age of 18" on page 38, line 19, and deleted "or foreign" on page 28, line 5, as consistent with the agreed upon edits at conference. No later than tomorrow, December 19, 2021, at 12:00

		p.m., the parties may inform the Court in writing of any errors that were the result of the Court's inputting the changes from todays charging conference. (Signed by Judge Alison J. Nathan on 12/18/21)(jw) (Entered: 12/20/2021)
12/18/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/18/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Khris Sellin and Paula Speers. Jury trial held. See Transcript. (jbo) (Entered: 12/22/2021)
12/19/2021	556	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 19, 2021 re: Jury charge Document filed by USA. (Rohrbach, Andrew) (Entered: 12/19/2021)
12/19/2021	557	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 12/19/2021 re: Letter re: Jury Charge (Sternheim, Bobbi) (Entered: 12/19/2021)
12/19/2021	558	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 19, 2021 re: Closing logistics Document filed by USA. (Rohrbach, Andrew) (Entered: 12/19/2021)
12/19/2021	559	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 19, 2021 re: Redacted exhibits . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 12/19/2021)
12/19/2021	560	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 558 The parties respectfully submit this letter regarding the logistics for public access for closing arguments. The parties propose that they will release a public version of their slides (to the extent they do not contain sealed materials) following the conclusion of the trial day on the same basis that they have been releasing public exhibits during trial....ENDORSEMENT...The parties previously indicated to the Court that they did not intend to make the visuals of the closing argument presentations public. The Court accordingly ordered the parties to confer on a proposal so as to ensure public access. For the reasons provided by the parties, the Court adopts the parties' proposal. Versions of the closing argument visual presentations with narrowly tailored redactions (e.g., redactions to protect the anonymity of witnesses the Court has permitted to testify under pseudonyms) shall be made available to the public within two hours of the completion of closing arguments. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/19/2021)(jw) (Entered: 12/20/2021)
12/19/2021	561	MEMO ENDORSEMENT 559 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 19, 2021 re: Redacted exhibits...ENDORSEMENT...SO ORDERED (Signed by Judge Alison J. Nathan on 12/19/21) (jw) (Entered: 12/20/2021)
12/19/2021	564	ORDER as to Ghislaine Maxwell. The parties are hereby ORDERED by 9:00 a.m. tomorrow, December 20, 2021, to docket or otherwise make publicly available all admitted exhibits. The parties shall confer on and propose narrowly tailored redactions for any exhibits admitted temporarily under seal. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/19/21)(jw) (Entered: 12/20/2021)
12/19/2021	565	ORDER as to Ghislaine Maxwell. Attached to this Order are the final versions of the jury charge and verdict form. Per the parties' letters, the Court adopted the Government's proposed edit to Instruction No. 19. See Dkt. Nos. 556, 557. (Signed by Judge Alison J. Nathan on 12/19/21)(jw) (Entered: 12/20/2021)
12/20/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/20/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski. Jury trial held.

		See Transcript. (jbo) (Entered: 12/22/2021)
12/21/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/21/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter Martha Martin. Jury trial held. See Transcript. (jbo) (Entered: 12/22/2021)
12/22/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/22/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter George Malinowski. Jury trial held. See Transcript. (jbo) (Entered: 01/10/2022)
12/27/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/27/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter Martha Martin. Jury trial held. See Transcript. (jbo) (Entered: 01/10/2022)
12/28/2021	566	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated December 27, 2021 re: Supplemental Instruction (Everdell, Christian) (Entered: 12/28/2021)
12/28/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/28/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter George Malinowski. Jury trial held. See Transcript. (jbo) (Entered: 01/10/2022)
12/29/2021		Minute Entry for proceedings held before Judge Alison J. Nathan:Jury Trial as to Ghislaine Maxwell held on 12/29/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter Khris Sellin. Defendant found GUILTY on Counts 1, 3, 4, 5, 6. Defendant found NOT GUILTY on Count 2. Jury trial concluded. (jw) (Entered: 01/11/2022)
12/29/2021		JURY VERDICT as to Ghislaine Maxwell (1) Guilty on Count 1ss,3ss,4ss,5ss,6ss; Not Guilty on Count 2ss. (jw) (Entered: 06/29/2022)
01/03/2022	567	ORDER as to Ghislaine Maxwell. The parties are ORDERED to submit a joint letter by January 10, 2022, proposing a briefing schedule for the Defendant's Rule 29 motion and proposing a schedule for sentencing. The joint letter should also propose a schedule for the severed perjury counts. The Defense also inquired about a booster shot for the Defendant. The Court has been advised that MDC is making booster shots available within a week of receiving a request from an inmate. Defense counsel is accordingly advised to follow the MDC's instructions for requesting a booster. If a request is made and a booster not provided, Defense counsel may make a further application to the Court. SO ORDERED. (Signed by Judge Alison J. Nathan on 1/3/2022)(bw) (Entered: 01/03/2022)
01/05/2022	568	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated January 5, 2022 re: Inquiry . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 01/05/2022)
01/05/2022	569	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 1/5/22 re: Juror Issue (Redacted) (Everdell, Christian) (Entered: 01/05/2022)
01/05/2022	570	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated January 5, 2022 re: Ms. Maxwell's Response to Government's Letter re.

		Juror's Statements (Dkt. 568) (Pagliuca, Jeffrey) (Entered: 01/05/2022)
01/05/2022	571	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' letters. Dkt. Nos. 568, 569, 570. The Court hereby sets the following briefing schedule for the Defense to move for a new trial in light of the issues raised in the parties' letters: Defense motion: January 19, 2022; Government response: February 2, 2022; Defense reply: February 9, 2022. The parties' briefing should address whether an inquiry of some kind is permitted and/or required, and, if so, the nature of such an inquiry. Although the Court reserves decision on whether an inquiry of any kind is warranted, the Court grants the Government's request, Dkt. No. 568, to offer court−appointed counsel to the juror in issue. Subject to the juror's right to decline court−appointed counsel, the Court will appoint the on−duty CJA counsel to represent the juror. If counsel for the juror wishes to be heard on the issue of the appropriateness of an inquiry, briefing by the juror's counsel may be filed by January 26, 2022. The Court will not adjourn post−trial briefing on other issues as requested by the Defense, Dkt. No. 569, but sets the following schedule for any other post−verdict motion by the Defense: Defense motion: February 4, 2022; Government opposition: February 18, 2022; Defense reply: March 4, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 1/5/2022) (bw) (Entered: 01/05/2022)
01/05/2022	572	NOTICE of Notice of Appearance for Jury Number 50 as to Ghislaine Maxwell (Spodek, Todd) (Entered: 01/05/2022)
01/05/2022	573	ORDER as to Ghislaine Maxwell. A notice of appearance has been filed by retained counsel on behalf of Juror Number 50. See Dkt. No. 572. Retained counsel has communicated to the Court that the juror does not wish to have counsel appointed. Accordingly, the Court will not appoint CJA counsel as indicated in its prior order. See Dkt. No. 571. Counsel for Juror Number 50 is directed to review Dkt. No. 571. SO ORDERED. (Signed by Judge Alison J. Nathan on 1/5/2022)(bw) (Entered: 01/06/2022)
01/10/2022	574	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated January 10, 2022 re: Scheduling Document filed by USA. (Rohrbach, Andrew) (Entered: 01/10/2022)
01/12/2022	575	ORDER as to Ghislaine Maxwell. The parties are ORDERED to submit via email any proposed redactions on or before January 13, 2022, justifying any such request by reference to the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). If any redactions are proposed, the Court will determine whether any are appropriate and then docket the motion. The parties shall respond to Juror 50s motion on or before January 20, 2022. Upon further reflection, unless and until Juror No. 50 is permitted to intervene, he may have no standing to be heard on the question of whether an inquiry should be conducted. Accordingly, the Court withdraws the aspect of its prior order setting January 26, 2022, as the date by which counsel for Juror 50 should file a submission on the issue of the appropriateness of an inquiry. Dkt. No. 571. The Court will hear from the parties first regarding Juror 50's pending motion. Depending on the resolution of that motion, the Court will provide further guidance to counsel for Juror 50 regarding any permitted submission. If a further submission is permitted, the Court will provide ECF docketing access to counsel for Juror 50 at that time (Signed by Judge Alison J. Nathan on 1/12/22)(jw) (Entered: 01/12/2022)
01/14/2022	576	ORDER as to Ghislaine Maxwell. The Court required the parties to indicate whether Juror 50's motion to intervene and to be provided a copy of the jurors completed questionnaire and voir dire should be redacted. Dkt. No. 575. In response, the parties have submitted letters to the Court indicating their differing views on whether Juror 50s motion should be docketed at all. Upon further reflection, the Courtconcludes that it must first address the threshold question of whether an inquiry is permittedand/or required before considering Juror 50s requests. Accordingly, the Court will not consider or act on Juror 50's request to intervene and to be provided a copy of the jurors completed questionnaire and voir dire until the Court receives the parties briefing on the appropriateness of an inquiry and the nature of any such inquiry. The Court will maintain Juror 50's motion temporarily under seal until the Court considers the parties arguments and determines the appropriate next steps. Consistent with this and to (Signed by Judge Alison J. Nathan on 1/14/22)(jw) (Entered: 01/14/2022)

01/14/2022	577	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' joint letter regarding a schedule for sentencing and resolution of the severed perjury counts. Dkt. No. 574. The Court hereby schedules the sentencing in this matter for June 28, 2022, at 11:00 a.m. The Court will delay ordering the preparation of a presentence investigation report until April 2022. The Court previously set the schedule for briefing on the new trial motion as well as all other post−verdict motions. Dkt. No. 571. That schedule remains in place. The Court adopts the parties proposal that the scheduling of any proceedings related to the severed perjury counts be deferred until the post−verdict motions are resolved. By January 18, 2022, the Government shall indicate in a joint letter whether it is seeking an exclusion of time under the Speedy Trial Act for the perjury counts and the basis for any requested exclusion. In the joint letter, the defense shall indicate whether it consents to the proposed exclusion of time (Sentencing set for 6/28/2022 at 11:00 AM before Judge Alison J. Nathan.) (Signed by Judge Alison J. Nathan on 1/14/22)(jw) (Entered: 01/14/2022)
01/18/2022	578	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated January 18, 2022 re: Speedy Trial Act Document filed by USA. (Moe, Alison) (Entered: 01/18/2022)
01/19/2022	579	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 578 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated January 18, 2022 re: Speedy Trial Act. ENDORSEMENT: With respect to Counts 7 and 8, the Court hereby excludes time under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), from todays date through April 1, 2022. The Court finds that the ends of justice served by granting this exclusion from speedy trial computations outweigh the interests of the public and the defendant in a speedy trial on these counts because the time is necessary for the parties to research and brief post−trial motions. (Signed by Judge Alison J. Nathan on 1/19/2022) (ap) (Entered: 01/19/2022)
01/19/2022	580	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 01/19/2022 re: Letter to Court re: Motion for New Trial (Sternheim, Bobbi) (Entered: 01/19/2022)
01/24/2022	581	LETTER addressed to Judge Alison J. Nathan from Christine N. Walz, Sanford L. Bohrer and Cynthia A. Gierhart dated 1/21/22 re: Miami Herald letter regarding the Filing of Ms. Maxwell's Motion for a New Trial Under Seal (Dkt. 580) (jw) (Entered: 01/24/2022)
01/25/2022	582	**FILING ERROR − DEFICIENT DOCKET ENTRY − WRONG FILER −** LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Nathan Siegel dated 1/25/2022 re: Letter from Nathan Siegel on behalf of American Broadcasting Companies, Inc., and NBCUniversal News Group to Hon. Alison J. Nathan Joining the Requests of The Miami Herald (Dkt. No. 581) and the New York Times to Oppose Sealing, and Requesting Additional Unsealing Document filed by USA. (Siegel, Nathan) Modified on 1/26/2022 (lb). (Entered: 01/25/2022)
01/25/2022	583	LETTER addressed to Judge Alison J. Nathan from David E. McCraw dated 1/24/2022 re: Letter by the NY Times Company.(jw) Modified on 1/25/2022 (jw). (Entered: 01/25/2022)
01/26/2022	584	ORDER as to Ghislaine Maxwell. As a post−trial housekeeping matter, Court staff directed the parties via email to complete the process of providing copies of Court Exhibits with narrowly tailored redactions (e.g., redactions to protect the anonymity of jurors and of witnesses the Court permitted to testify under pseudonyms) for the Court to docket. The Government subsequently submitted one court exhibit with the name unredacted of a witness subject to the Court's anonymity order. Subsequently the Defense indicated in a temporarily sealed letter why the name was unredacted. The Government is accordingly ORDERED to docket a letter on ECF on or before January 28, 2022, indicating why a redaction is no longer being sought for the name of this witness. Once the Government confirms in that letter that it no longer seeks redaction of the name, then the Defense may file the temporarily sealed letter on the docket without redaction of the name. The Court will then docket all Court Exhibits. (Signed by Judge Alison J. Nathan on 1/26/22)(jw) (Entered: 01/26/2022)

01/26/2022	585	ORDER as to Ghislaine Maxwell. The Court is in receipt of Defendant's motion for a new trial and accompanying exhibits, which she requests to file under seal. See Dkt. No. 580. The Court has also received requests from media organizations to unseal the motion. The Court is aware there is substantial public interest in this matter and will ensure that the First Amendment right to public access is fully safeguarded. At the same time, the Court must act deliberately and hear from the parties in considering these sealing issues in order to ensure the integrity of any potential inquiry process going forward, should one be ordered. That too is in the public, as well as the Defendant's and the Government's, interest. Accordingly, to the extent the Defense requests that arguments in favor of sealing should themselves be sealed, that request is DENIED. Arguments in favor of sealing can be made in such a way so as not to undermine the grounds for seeking sealing or redaction in the first instance. The Defense is therefore ORDERED to file a letter on the public docket on or before February 1, 2022, that justifies the proposed sealing by reference to the three−part test in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). The Government may file on ECF a response to the Defenses justification letter on or before February 4, 2022. The Government's opposition to the Defenses new trial motion is due February 2, 2022. Dkt. No. 571. Per the established practice in this case, the Government must provide a copy via email to the Defense to allow the Defense the opportunity to propose narrowly tailored redactions and/or sealing. If either party proposes redactions to or sealing of the Government's anticipated opposition, a letter justifying such redactions or sealing must be filed on the public docket. The Defense letter must be filed on or before February 8, 2022, and the Government letter must be filed by February 11, 2022. The same process will apply for any Defense reply in support, which is due February 9, 2022. Dkt. No. 571. If redactions or sealing are proposed, the Defense letter justifying such requests would be due February 15, 2022, and the Government letter would be due February 18, 2022. The parties are FURTHER ORDERED to address the New York Times Company's motion to unseal the filled−out questionnaires for the twelve seated jurors. See Dkt. No. 583. Letters by both parties must be submitted via ECF on or before February 11, 2022. SO ORDERED (Signed by Judge Alison J. Nathan on 1/26/2022)(jw) (Entered: 01/26/2022)
01/26/2022	586	LETTER addressed to Judge Alison J. Nathan from Matthew A. Leish dated 1/26/2022 re: I write on behalf of Daily News, L.P. (jw) (Entered: 01/26/2022)
01/27/2022	587	LETTER addressed to Judge Alison J. Nathan from Nathan Siegel dated 1/26/2022 re: Letter addressed to Judge Alison J. Nathan on behalf of American Broadcasting Companies, Inc and NBC Universal News Group (jw) (Entered: 01/27/2022)
01/28/2022	588	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated January 28, 2022 re: Redaction of Witness Name Document filed by USA. (Pomerantz, Lara) (Entered: 01/28/2022)
01/28/2022	589	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 1/28/22 re: Redaction (Everdell, Christian) (Entered: 01/28/2022)
02/01/2022	590	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 2/1/22 re: Sealing Motion for New Trial (Everdell, Christian) (Entered: 02/01/2022)
02/01/2022	591	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 2/1/22 re: Extension of Time (Everdell, Christian) (Entered: 02/01/2022)
02/02/2022	592	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 591 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 2/1/22 re: Extension of Time. ENDORSEMENT: The extension request is hereby GRANTED. The briefing schedule for other post−verdict motions is revised as follows: − Defense submission: February 11, 2022. Government response: February 25, 2022. Defense reply: March 11, 2022. (Motions due by 2/11/2022. Responses due by 2/25/2022. Replies due by 3/11/2022) (Signed by Judge Alison J. Nathan on 2/2/2022) (ap) (Entered: 02/02/2022)
02/04/2022	593	ORDER as to Ghislaine Maxwell: As a post−trial house−keeping matter, attached to this Order are the Court Exhibits. The parties have proposed redactions to several

		exhibits and the sealing of Court Exhibit 4. The Court concludes that the proposed redactions are consistent with the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006), and narrowly tailored. The redactions serve the purpose of protecting the anonymity of jurors and of victim−witnesses subject to the Court's anonymity order. With respect to Court Exhibit 4, rather than seal the entire document, the Court has redacted the information that would potentially identify the victim−witness who testified pursuant to the Court's anonymity order. Unredacted copies of the Court Exhibits will be filed under seal. (Signed by Judge Alison J. Nathan on 2/4/2022)(ap) (Entered: 02/04/2022)
02/04/2022	594	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated February 4, 2022 re: Opposition to Defendant's Sealing Request Document filed by USA. (Pomerantz, Lara) (Entered: 02/04/2022)
02/08/2022	595	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 2/8/2022 re: Request for Sealing (Sternheim, Bobbi) (Entered: 02/08/2022)
02/11/2022	596	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' letters addressing the Defendant's request to temporarily seal her motion for a new trial and accompanying exhibits, and the Governments response in opposition and accompanying exhibits. See Dkt. Nos. 590, 594, 595. Several media organizations have also filed letters seeking unsealing. The Court is also in receipt of Juror 50's motion to intervene. Both the Government and the Defendant oppose intervention. The Defendant seeks to strike or, in the alternative, seal Juror 50's motion. For the reasons outlined more fully below, the Court rules as follows. First, the Defendant's motion to temporarily seal in their entirety all documents related to the motion for a new trial is DENIED. Any sealing of judicial documents must be narrowly tailored to serve competing interests. (Signed by Judge Alison J. Nathan on 2/11/22)(jw) (Entered: 02/11/2022)
02/11/2022	597	ORDER as to Ghislaine Maxwell. The Court's chambers received the attached letter via email from counsel for the National Association of Criminal Defense Lawyers (NACDL) seeking leave to file an amicus brief regarding the Defendant's motion for a new trial. The Court issues this Order in response. If any party wishes to file an amicus brief concerning the Defendant's motion for a new trial, it may submit to the Court via email a motion for leave to do so on or before February 18, 2022. The Court will only consider such a motion if: It is timely submitted by February 18, 2022; (Amicus Brief due by 2/18/2022) (Signed by Judge Alison J. Nathan on 2/11/22)(jw) (Entered: 02/11/2022)
02/11/2022	598	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated February 11, 2022 re: motion by the New York Times Company. Document filed by USA. (Moe, Alison) (Entered: 02/11/2022)
02/11/2022	599	MOTION for New Trial *to Obtain Relief Requested in Memorandum in Support of Post−Trial Motions*. Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 02/11/2022)
02/11/2022	600	MEMORANDUM in Support by Ghislaine Maxwell re 599 MOTION for New Trial *to Obtain Relief Requested in Memorandum in Support of Post−Trial Motions.*. *OMNIBUS MEMORANDUM in Support by Ghislaine Maxwell re Post−Trial Motions* (Everdell, Christian) (Entered: 02/12/2022)
02/15/2022	601	SEALED DOCUMENT placed in vault. (jus) (Entered: 02/15/2022)
02/16/2022	602	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 02/16/2022 re: Letter in Response to Dkt. 596 (Sternheim, Bobbi) (Entered: 02/16/2022)
02/16/2022	603	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated February 16, 2022 re: Letter regarding proposed redactions. Document filed by USA. (Moe, Alison) (Entered: 02/16/2022)

02/17/2022	604	MEMO ENDORSEMENT as to Ghislaine Maxwell on MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF. ENDORSEMENT: The request for leave to file an amicus brief in accordance with this Court's February 11, 2022 order is GRANTED. SO ORDERED. (Signed by Judge Alison J. Nathan on 2/17/2022) (lnl) (Entered: 02/17/2022)
02/18/2022	605	ORDER as to Ghislaine Maxwell: The parties are hereby ORDERED to re−submit via email revised redactions to the parties' briefing on the Defendant's motion for a new trial by February 22, 2022. The revised proposed redactions shall be consistent with this Order. SO ORDERED. (Signed by Judge Alison J. Nathan on 2/18/2022) (lnl) (Entered: 02/18/2022)
02/21/2022	606	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 02/21/2022 re: Letter in Response to Dkt. 605 (Sternheim, Bobbi) (Entered: 02/21/2022)
02/24/2022	607	ORDER as to Ghislaine Maxwell: The Court is in receipt of the Defendant's proposed redactions revised in response to this Court's order. See Dkt. Nos. 605, 606. The Court has reviewed the proposed redactions and concludes that they are in accordance with its prior orders. See Dkt. Nos. 596, 605. The narrowly tailored redactions further the important interests of helping ensure the integrity of any inquiry and maintaining juror anonymity and privacy. As the Court explained in its February 11 Order, these interests justify redaction of the questions the parties propose be asked at any hearing and specific factual information developed by the parties that has not been publicly reported in the press and that the parties propose be inquired about at any forthcoming hearing. Dkt. No. 596 at 4 (citing United States v. McCoy et al., No. 14 Cr. 6181 (EAW), Dkt. No. 312 (text order) (W.D.N.Y. May 26, 2017); id. Dkt. No. 329 at 38−39; Press−Enter. Co. v. Superior Ct. of Cal., Riverside Cnty., 464 U.S. 501, 511−12 (1984)). Accordingly, the parties are ORDERED to docket the redacted briefs, accompanying exhibits, and their January 13 letters, by February 25, 2022. The Court will docket Juror 50's motion. As noted in its prior Order, following the Court's resolution of the Defendant's motion or a hearing, all redactions will be promptly unsealed except those necessary to protect any continuing interest in juror anonymity and privacy. See United States v. Amodeo, 44 F.3d 141, 146−47 (2d Cir. 1995); see also Press−Enter. Co., 478 U.S. at 14. (Signed by Judge Alison J. Nathan on 2/24/2022) (ap) (Entered: 02/24/2022)
02/24/2022	608	NOTICE OF MOTIONTO INTERVENE AND FOR THE RELEASE OF DOCUMENTS UNDER SEAL. Document filed as to Ghislaine Maxwell. (ap) (Entered: 02/24/2022)
02/24/2022	609	MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE AND FOR RELEASE OF SEALED JURY QUESTIONNAIRE AND TRANSCRIPT, ON BEHALF OF PROPOSED INTERVENOR, JUROR 50 as to Ghislaine Maxwell re: 608 MOTION. (ap) (Entered: 02/24/2022)
02/24/2022	610	ORDER as to Ghislaine Maxwell: for the reasons fully explained in the Opinion & Order, a hearing is necessary to resolve the Defendant's motion. Because of the important interest in the finality of judgments, the standard for obtaining a post−verdict hearing is high. The Court concludes, and the Government concedes, that the demanding standard for holding a post−verdict evidentiary hearing is met as to whether Juror 50 failed to respond truthfully during the jury selection process to whether he was a victim of sexual abuse. Following trial, Juror 50 made several direct, unambiguous statements to multiple media outlets about his own experience that do not pertain to jury deliberations and that cast doubt on the accuracy of his responses during jury selection. Juror 50's post−trial statements are "clear, strong, substantial and incontrovertible evidence that a specific, non−speculative impropriety"namely, a false statement during jury selection has occurred. United States v. Baker, 899 F.3d 123, 130 (2d Cir. 2018). To be clear, the potential impropriety is not that someone with a history of sexual abuse may have served on the jury. Rather, it is the potential failure to respond truthfully to questions during the jury selection process that asked for that material information so that any potential bias could be explored. In contrast, the demanding standard for ordering an evidentiary hearing is not met as to the conduct of any other juror. The Court DENIES the request to conduct a hearing with respect to the other jurors. The Court also DENIES the Defendant's request for a broader hearing and pre−hearing discovery. The Court therefore ORDERS that a hearing take place at

		which the Court will question Juror 50 under oath. The Court further ORDERS that Juror 50's questionnaire be unsealed, for the reasons explained in the Opinion & Order. The Court will email counsel for Juror 50 a copy of his questionnaire and a copy of this Order. As also explained in the Opinion & Order, the Court will conduct the questioning at the public hearing with input from counsel for the Defendant and the Government. The parties may submit by email proposed questions in accordance with the Opinion & Order on or before March 1, 2022. The hearing will take place on March 8, 2022, at 10:00 a.m. The Court ORDERS Juror 50 to appear in Courtroom 906 of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York at that date and time to give testimony under oath in response to the Court's questions. The Court will ensure public access and will provide information on public access as soon as it is available. The Court will send the temporarily sealed Opinion & Order to the parties. By noon on February 25, 2022, the parties are ORDERED to inform the Court whether either seeks limited redactions to the Opinion & Order, conforming any requests to this Court's prior order, Dkt. No. 596, and justifying any such request by reference to the three−part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). (Status Conference set for 3/8/2022 at 10:00 AM in Courtroom 906, 40 Centre Street, New York, NY 10007 before Judge Alison J. Nathan) (Signed by Judge Alison J. Nathan on 2/24/2022) (ap) Modified on 2/25/2022 (ap). (Entered: 02/24/2022)
02/24/2022	611	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated February 24, 2022 re: Court's February 24, 2022 Order (Dkt. No. 610) Document filed by USA. (Pomerantz, Lara) (Entered: 02/24/2022)
02/24/2022	612	LETTER MOTION addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated January 13, 2022 re: Ms. Maxwell's Request for Juror 50's Memorandum of Law in Support of Motion to Intervene, Jury Questionnaire and Transcript Remain Under Seal Upon Resolution of Her Motion for a New Trial . Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 02/24/2022)
02/24/2022	613	MOTION for New Trial . Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Pagliuca, Jeffrey) (Entered: 02/24/2022)
02/24/2022	614	AMICUS CURIAE BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS. The Court should not allow any juror to thwart its screening process by giving inaccurate answers and thereby create such a grave potential, realized in this case, for depriving the defendant of her right to a fair trial. A new trial is required. Document filed as to Ghislaine Maxwell. (See BRIEF set forth) (ap) (Entered: 02/24/2022)
02/24/2022	615	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 613 MOTION for New Trial .. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Pomerantz, Lara) (Entered: 02/24/2022)
02/24/2022	616	REPLY TO RESPONSE to Motion by Ghislaine Maxwell re 613 MOTION for New Trial .. (Attachments: # 1 Exhibit 3 (1 of 3), # 2 Exhibit 3 (2 of 3), # 3 Exhibit 3 (3of 3))(Pagliuca, Jeffrey) (Entered: 02/24/2022)
02/24/2022	617	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated January 13, 2022 re: Juror 50's Motion to Intervene Document filed by USA. (Pomerantz, Lara) (Entered: 02/24/2022)
02/24/2022	618	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 02/24/2022 re: Letter in Response to Dkt 610 (Sternheim, Bobbi) (Entered: 02/24/2022)
02/25/2022	619	MEMO ENDORSEMENT as to Ghislaine Maxwell on 618 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 02/24/2022 re: Letter in Response to Dkt 610. ENDORSEMENT: The Court approves the Defense's proposed redactions, which are narrowly tailored to redact specific categories of questions the Court may ask at the forthcoming hearing. Consistent with this Court's prior order, such redactions help ensure the integrity of the forthcoming hearing. See Dkt. No. 596. The Court will docket the redacted Opinion & Order. As noted in the prior order, the redactions will be promptly unsealed following the

		hearing. SO ORDERED. (Signed by Judge Alison J. Nathan on 2/25/2022)(lnl) (Entered: 02/25/2022)
02/25/2022	620	OPINION & ORDER as to Ghislaine Maxwell: For the reasons stated above, the Court will hold a hearing regarding Juror 50's answers to Questions 25 and 48 of the questionnaire. The public proceeding will take place on March 8, 2022, at 10:00 a.m. Juror 50 is hereby ORDERED to appear in Courtroom 906 of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York at that date and time to give testimony under oath in response to the Court's questions. Counsel for the Defendant and the Government are ORDERED to submit via email proposed questions in accordance with this Opinion & Order on or before March 1, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 2/24/2022) (lnl) (Main Document 620 replaced on 3/9/2022) (jw). (Entered: 02/25/2022)
02/25/2022	621	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 599 MOTION for New Trial *to Obtain Relief Requested in Memorandum in Support of Post−Trial Motions*.. (Rohrbach, Andrew) (Entered: 02/25/2022)
02/28/2022	622	SEALED DOCUMENT placed in vault. (nmo) (Entered: 02/28/2022)
02/28/2022	623	SEALED DOCUMENT placed in vault. (nmo) (Entered: 02/28/2022)
03/01/2022	635	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSA Maurene Comey/Alison Moe/Lara Pomerantz/Andrew Rohrbach dated 3/1/22 re: Dear Judge Nathan: In accordance with the Courts February 24, 2022 Opinion and Order (Dkt. No. 620), the Government respectfully submits this letter to propose questions for the public hearing at which the Court will question Juror 50 under oath..... Document filed by USA. (jbo) (Entered: 03/09/2022)
03/01/2022	636	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from defense counsel Christian R. Everdell dated 3/1/22 re: Dear Judge Nathan: We write in response to the Courts order, dated February 24, 2022, permitting the parties to submit proposed questions to the Court for the hearing related to Ms. Maxwells Motion for a New Trial. Dkt. 610..... (jbo) (Entered: 03/09/2022)
03/02/2022	624	LETTER as to USA v. Ghislaine Maxwell addressed to Judge Alison J. Nathan from Attorney Todd A. Spodek dated March 1, 2022 re: Please be advised that I represent Juror 50. I am writing in response to Your Honor's February 24, 2022 Order (ECF No.: 610) directing Juror 50 to appear for a hearing on March 8, 2022. I write to inform the Court that Juror 50 will invoke his Fifth Amendment privilege against self−incrimination at the hearing. (bw) (Entered: 03/02/2022)
03/02/2022	625	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, Andrew Rohrbach, dated March 1, 2022 re: By letter dated March 1, 2022, counsel for Juror 50 informed the Court that Juror 50 will invoke his Fifth Amendment privilege against self−incrimination at the hearing scheduled for March 8, 2022. The Government writes to notify the Court that it is in the process of seeking internal approval to seek an order, pursuant to 18 U.S.C. §§ 6002 and 6003, compelling Juror 50's testimony at the hearing. The Government will, subject to internal approval, submit a proposed order to the Court in advance of the hearing.(bw) (Entered: 03/02/2022)
03/02/2022		*****DELETED DOCUMENT. Deleted document number 626 SEALED DOCUMENT placed in vault, as to Ghislaine Maxwell. The document was incorrectly filed in this case. (nmo)** (Entered: 03/02/2022)
03/02/2022	626	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 03/02/2022 re: Juror 50's intent to assert 5th Amendment and potential immunity (Sternheim, Bobbi) (Entered: 03/02/2022)
03/02/2022	627	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated March 2, 2022 re: Ms. Maxwells Request for adjournment of hearing on Motion for New Trial (Pagliuca, Jeffrey) (Entered: 03/02/2022)
03/02/2022	628	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated March 2, 2022 re: Opposition to Defendant's Adjournment Request Document filed by USA. (Pomerantz, Lara) (Entered: 03/02/2022)

03/03/2022	629	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 626 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Attorney Bobbi C Sternheim dated 03/02/2022 re: Juror 50's intent to assert 5th Amendment and potential immunity. ENDORSEMENT: No grounds are offered for entitlement to the requested proffer, and the Court is not aware of any basis for granting the request. DENIED. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/3/2022)(bw) (Entered: 03/03/2022)
03/03/2022	630	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 627 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Attorney Jeffrey S. Pagliuca dated March 2, 2022 re: Ms. Maxwells Request for adjournment of hearing on Motion for New Trial. ENDORSEMENT: The requested two−month adjournment to May is not justified and is therefore DENIED. Two of the Defendant's four attorneys are able to be present and represent the Defendant at the March 8 hearing. The Court will conduct the questioning at the hearing, and the parties have already submitted briefing and proposed questions. The public interest in a reasonably prompt hearing outweighs the Defendant's preference for an adjournment. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/3/2022)(bw) (Entered: 03/03/2022)
03/03/2022	631	ORDER as to Ghislaine Maxwell. As noted in this Court's prior order, a hearing on the Defendant's motion for a new trial is scheduled for March 8, 2022, at 10:00 a.m. Dkt. No. 610. The hearing location is hereby changed to Courtroom 110 of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York....[*** See this Order ***]... Per the S.D.N.Y. Response to COVID−19, anyone who appears at any S.D.N.Y. courthouse must complete a questionnaire on the date of the proceeding prior to entering the courthouse. Only persons who meet the entry requirements established by the questionnaire will be allowed to enter the courthouse. All visitors must wear an N95, KN95, or KF94 mask at all times. Surgical masks, cloth masks, bandannas, gaiters, and masks with valves are not permitted. If a person does not have an approved mask, a screener will provide one. 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. For more information, please see https://www.nysd.uscourts.gov/covid−19−coronavirus. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/3/2022)(bw) (Entered: 03/03/2022)
03/07/2022	632	MOTION Application under 18 U.S.C. §§ 6002 and 6003 . Document filed by USA as to Ghislaine Maxwell. (Pomerantz, Lara) (Entered: 03/07/2022)
03/08/2022		Minute Entry for proceedings held before Judge Alison J. Nathan:Motion Hearing as to Ghislaine Maxwell held on 3/8/2022. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim and Christian Everdell, AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Juror 50 present with retained counsel Todd Spodek. Court Reporters Mike McDaniel and Kelly Surina. See transcript. Defendant remains remanded. (jw) (Entered: 03/09/2022)
03/09/2022	633	SEALED DOCUMENT placed in vault. (nmo) (Entered: 03/09/2022)
03/09/2022	634	SEALED DOCUMENT placed in vault. (nmo) (Entered: 03/09/2022)
03/09/2022	637	ORDER as to Ghislaine Maxwell... ORDERED that, pursuant to Title 18, United States Code, Sections 6002 and 6003, −−−−− give testimony at said hearing; and IT IS FURTHER ORDERED that, pursuant to Title 18, United States Code, Sections 6002 and 6003, no testimony or other information compelled under this Order, or any information directly or indirectly derived from such testimony or other information, may be used against −−−−− in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this Order. This Order shall become effective only if after the date of this Order −−−−− −−−−− refuses to testify on the basis of his privilege against self−incrimination. (Signed by Judge Alison J. Nathan on 3/8/22)(jbo) (Entered: 03/09/2022)
03/09/2022	638	HEARING EXHIBIT 1 as to Ghislaine Maxwell. (jbo) (Entered: 03/09/2022)
03/09/2022	639	ORDER as to Ghislaine Maxwell. As indicated at yesterday's hearing, the Court has docketed the unredacted copy of the Court's February 24, 2022, Opinion & Order, the Government's proposed questions, the Defendant's proposed questions with limited redactions, the signed immunity order with limited redactions, and Hearing Exhibit 1. The limited redactions to the signed immunity order and the Defendants proposed

		questions are narrowly tailored to further the interest of protecting juror anonymity. The Court will file the unredacted documents under seal. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/9/22)(jbo) (Entered: 03/09/2022)
03/10/2022	640	ORDER as to Ghislaine Maxwell. Per the Court's instruction at the March 8 hearing, the parties submitted revised redactions to their briefing on the Defendants motion for a new trial. The Court rejects the Defendant's proposed redaction to page 8, lines 6−7 of her reply because it is not necessary to protect any continuing interest in juror anonymity and privacy. See Dkt. No. 607. The Court concludes that the remaining proposed redactions are narrowly tailored to further the important interest of protecting juror anonymity and privacy. Press−Enter. Co. v. Superior Ct. of Cal., Riverside Cnty., 464 U.S. 501, 511−12 (1984). The parties are ORDERED to file the redacted briefs (with the above noted line unredacted) on the docket on or before March 11, 2022. The Court will file the unredacted briefs under seal. (Signed by Judge Alison J. Nathan on 3/10/2022)(jw) (Entered: 03/10/2022)
03/10/2022	641	SEALED DOCUMENT placed in vault. (nmo) (Entered: 03/10/2022)
03/11/2022	642	MOTION for New Trial . Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, Exhibit 3)(Pagliuca, Jeffrey); Modified on 6/29/2022 (bw). (Entered: 03/11/2022)
03/11/2022	643	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 642 MOTION for New Trial .. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Pomerantz, Lara) (Entered: 03/11/2022)
03/11/2022	644	REPLY TO RESPONSE to Motion by Ghislaine Maxwell re 642 MOTION for New Trial .. (Attachments: # 1 Exhibit 3 (1 of 3), # 2 Exhibit 3 (2 of 3), # 3 Exhibit 3 (3of 3))(Pagliuca, Jeffrey) (Entered: 03/11/2022)
03/11/2022	645	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 3/8/22 before Judge Alison J. Nathan. Court Reporter/Transcriber: Michael McDaniel, (212) 805−0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/1/2022. Redacted Transcript Deadline set for 4/11/2022. Release of Transcript Restriction set for 6/9/2022. (Moya, Goretti) (Entered: 03/11/2022)
03/11/2022	646	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 3/8/22 has been filed by the court reporter/transcriber in the above−captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 03/11/2022)
03/11/2022	647	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 599 MOTION for New Trial *to Obtain Relief Requested in Memorandum in Support of Post−Trial Motions*. . (Everdell, Christian) (Entered: 03/11/2022)
03/15/2022	648	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 642 MOTION for New Trial .. (Pomerantz, Lara) (Entered: 03/15/2022)
03/15/2022	649	MEMORANDUM in Support by Ghislaine Maxwell re 642 MOTION for New Trial .. (Sternheim, Bobbi) (Entered: 03/15/2022)
04/01/2022	650	LETTER MOTION addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated April 1, 2022 re: Speedy Trial Act . Document filed by USA as to Ghislaine Maxwell. (Moe, Alison) (Entered: 04/01/2022)
04/01/2022	651	MOTION to Stay re: 649 Memorandum in Support of Motion, 642 MOTION for New Trial ., 644 Reply to Response to Motion . Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 04/01/2022)
04/01/2022	652	LETTER by USA as to Ghislaine Maxwell addressed to Judge Vernon S. Broderick from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated April 1, 2022 re: opposition to defendant's April 1, 2022 letter. Document filed by

		USA. (Moe, Alison) (Entered: 04/01/2022)
04/01/2022		*****DELETED DOCUMENT. Deleted docket entry, no document number. NOTICE OF CASE REASSIGNMENT, as to Ghislaine Maxwell. The document was incorrectly filed in this case. (bw)** (Entered: 04/01/2022)
04/01/2022		REMARK as to USA v. Ghislaine Maxwell. Case reassigned to Judge Broderick due to an administrative error. Case returned to Judge Nathan. (bw) (Entered: 04/01/2022)
04/01/2022	653	OPINION & ORDER as to Ghislaine Maxwell. The Court concludes that Juror 50 testified credibly and truthfully at the post−trial hearing. His failure to disclose his prior sexual abuse during the jury selection process was highly unfortunate, but not deliberate. The Court further concludes that Juror 50 harbored no bias toward the Defendant and could serve as a fair and impartial juror. The requirements for a new trial under McDonough are not satisfied. The Defendant's motion for a new trial pursuant to Rule 33 is therefore DENIED. The Court orders the preparation of the presentence investigation report. With respect to Counts 7 and 8, the Court hereby excludes time under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), from today's date through April 22, 2022. The Court finds that the ends of justice served by granting this exclusion from speedy trial computations outweigh the interests of the public and the Defendant in a speedy trial on these counts because the pending post−trial motions affect the scheduling considerations set forth in the Government's January 10, 2022 letter. See Dkt. No. 574. The Defendant consents to this exclusion. Dkt. No. 650. The Court will rule on the Defendant's remaining post−verdict motions in due course. Sentencing remains scheduled for June 28, 2022. This resolves docket numbers 613, 614, 642, 650, and 651. (Signed by Judge Alison J. Nathan on 4/1/2022) (See ORDER set forth) (ap) (Entered: 04/01/2022)
04/04/2022	654	SEALED DOCUMENT placed in vault. (nmo) (Entered: 04/04/2022)
04/25/2022	655	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 25, 2022 re: Advance PSR Deadline . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 04/25/2022)
04/26/2022	656	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's letter regarding the deadline for the disclosure of the Presentence Investigation Report. Dkt. No. 655. After conferring with the Probation Office, the Court determines that advancing the PSR disclosure schedule will aid the parties in preparing their sentencing submissions. Further the Court hereby adjusts its standard sentencing submission schedule to ensure sufficient time to prepare for sentencing. Accordingly, the Court ORDERS the following schedule for sentencing: May 24, 2022 − First PSR disclosure; May 31, 2022 − Defendant objections due; June 6, 2022 − Government response due; June 9, 2022 − Second PSR disclosure; June 15, 2022 − Defendant sentencing submission due; June 22, 2022 − Government sentencing submission due; June 28, 2022 − Sentencing. This resolves Dkt. No. 655. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/26/2022)(bw) (Entered: 04/26/2022)
04/29/2022	657	OPINION & ORDER as to Ghislaine Maxwell....[*** See this Opinion & Order ***]... V. Conclusion. For the foregoing reasons, the Court denies the Defendant's Rule 29 motion because the jury's guilty verdicts were supported by the witness testimony and documentary evidence presented at trial. The Court denies the Defendant's motion based on constructive amendment or variance because the jury instructions, the Government's evidence at trial, and summation all captured the core of criminality charged in the Indictment, and the Defendant was not prejudiced by any alleged variance. Further, because the Government neither intentionally delayed its prosecution nor was the Defendant prejudiced by any delay, the Court also denies the Defendant's motion based on pre−indictment delay. Finally, the Court grants the Defendant's motion as to multiplicity. The Government concedes that Count One is multiplicitous with Count Three, and the Court further concludes that Count Five is multiplicitous with Count Three. Count Five, like Counts One and Three, charged the Defendant's participation in the same decade−long unlawful agreement with the Defendant's continuous coconspirator, Jeffrey Epstein, to groom and sexually abuse underage girls. Accordingly, the Court will enter judgment of conviction on Counts Three, Four, and Six. The Defendant's sentencing date remains scheduled for June 28, 2022. The Court previously set a schedule for sentencing submissions that remains in

		effect. Dkt. No. 656. This resolves Dkt. No. 599. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/29/2022)(bw) (Entered: 04/29/2022)
05/10/2022	658	LETTER MOTION addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 05/10/2022 re: 2−day extension to file sentencing submission . Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 05/10/2022)
05/11/2022	659	MEMO ENDORSEMENT 658 LETTER MOTION addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 05/10/2022 re: 2−day extension to file sentencing submission...ENDORSEMENT..The request is DENIED. SO ORDERED (Signed by Judge Alison J. Nathan on 5/11/22) (jw) (Entered: 05/11/2022)
05/11/2022	660	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 11, 2022 re: Speedy Trial Exclusion . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 05/11/2022)
05/11/2022	661	MEMO ENDORSEMENT as to Ghislaine Maxwell (1) on 660 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 11, 2022 re: Speedy Trial Exclusion. ENDORSEMENT: SO ORDERED. (Signed by Alison J. Nathan, U.S. Circuit Judge Sitting by designation on 5/11/2022) (ap) (Entered: 05/11/2022)
06/15/2022	662	MEMORANDUM OF LAW in Support by Ghislaine Maxwell *Memorandum of Ghislaine Maxwell in Support of Her Objections to the Presentence Investigation Report*. (Everdell, Christian) (Entered: 06/15/2022)
06/15/2022	663	SENTENCING SUBMISSION by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 06/15/2022)
06/17/2022	664	ORDER as to Ghislaine Maxwell: As noted in this Court's prior order, sentencing in this matter is scheduled for June 28, 2022, at 11:00 a.m. Dkt. No. 577. The sentencing proceeding will take place in Courtroom 318 of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York. Substantial seating for members of the press and public will be available in Courtroom 318. Overflow courtrooms will be available if needed. The overflow rooms will have live video and audio feeds of the proceeding. The use of any electronic devices in Courtroom 318 or the overflow courtrooms is prohibited. The District Executive's Office will coordinate seating in Courtroom 318 and the overflow courtrooms. The Court will ensure access for any victims. Victim access will be coordinated between the Victim Witness Unit and the District Executives Office. Defense counsel may coordinate access for members of the Defendant's family with the District Executive's Office. Wendy Olson, Coordinator, Victim Witness Unit, United States Attorney's Office, (212) 637−1028, Wendy.Olson@usdoj.gov; Joseph Pecorino, District Executive's Office, United States District Court, Southern District of New York, (212) 805−0513, Joseph_Pecorino@nysd.uscourts.gov. For information on Courthouse entry protocols, please see https://www.nysd.uscourts.gov/covid−19−coronavirus. (Signed by Judge Alison J. Nathan on 6/17/2022) (ap) (Entered: 06/17/2022)
06/21/2022	665	ORDER as to Ghislaine Maxwell: The Court is in receipt of a letter submitted by an attorney for two individuals seeking to speak as victims at sentencing. The Defendant submitted a letter in response. No party requested redactions or sealing of the letters. The Court will docket the letters. Any victim seeking to make a statement at sentencing shall contact the Victim Witness Unit of the United States Attorneys Office: Wendy Olson, Coordinator Victim Witness Unit United States Attorneys Office, (212) 637−1028, Wendy.Olson@usdoj.gov. A victim seeking to make a statement must submit a written statement by email to the Victim Witness Unit by noon on Thursday, June 23, 2022. In addition to submitting the written statement, the submission must note whether the victim seeks to make an oral statement at sentencing and provide a basis for entitlement to make a statement under the Crime Victims Rights Act, 18 U.S.C. § 3771. Statements that do not conform to this process will not be permitted. The Government is ORDERED to inform the Defendant of any anticipated victim impact statements by 2:00 p.m. on Thursday, June 23, 2022. If either party objects to any statement, the objection and statement being objected to must be filed with the Court by 2:00 p.m. on Friday, June 24, 2022. Any statements to which the parties do not object must be submitted to the Court by 5:00 p.m. on that same date. The Government is FURTHER ORDERED to confirm with the Court by

		noon tomorrow, June 22, 2022, that victims have been notified of the rights described in the CVRA, consistent with 18 U.S.C. § 3771(c)(1). (Signed by Judge Alison J. Nathan on 6/21/2022) (ap) (Entered: 06/21/2022)
06/21/2022	666	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan, from Robert Y. Lewis dated 6/14/2022 re: Victims' counsel writes a letter regarding sentencing. (ap) (Entered: 06/21/2022)
06/21/2022	667	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan, from Bobbi C. Sternheim dated 6/17/2022 re: Defense counsel writes regarding sealing of certain documents. (ap) (Entered: 06/21/2022)
06/21/2022	668	ORDER as to Ghislaine Maxwell: This order corrects the contact information for Wendy Olsen contained in the Court's original order, Dkt. No. 665. The Court is in receipt of a letter submitted by an attorney for two individuals seeking to speak as victims at sentencing. The Defendant submitted a letter in response. No party requested redactions or sealing of the letters. The Court will docket the letters. Any victim seeking to make a statement at sentencing shall contact the Victim Witness Unit of the United States Attorney's Office: Wendy Olsen, Coordinator Victim Witness Unit United States Attorney's Office, (212) 637−1028, Wendy.Olsen@usdoj.gov. A victim seeking to make a statement must submit a written statement by email to the Victim Witness Unit by noon on Thursday, June 23, 2022. In addition to submitting the written statement, the submission must note whether the victim seeks to make an oral statement at sentencing and provide a basis for entitlement to make a statement under the Crime Victims' Rights Act, 18 U.S.C. § 3771. Statements that do not conform to this process will not be permitted. The Government is ORDERED to inform the Defendant of any anticipated victim impact statements by 2:00 p.m. on Thursday, June 23, 2022. If either party objects to any statement, the objection and statement being objected to must be filed with the Court by 2:00 p.m. on Friday, June 24, 2022. Any statements to which the parties do not object must be submitted to the Court by 5:00 p.m. on that same date. The Government is FURTHER ORDERED to confirm with the Court by noon tomorrow, June 22, 2022, that victims have been notified of the rights described in the CVRA, consistent with 18 U.S.C. § 3771(c)(1). (Signed by Judge Alison J. Nathan on 6/21/20221) (ap) (Entered: 06/21/2022)
06/22/2022	669	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated June 22, 2022 re: CVRA Notice Document filed by USA. (Comey, Maurene) (Entered: 06/22/2022)
06/22/2022	670	SENTENCING SUBMISSION by USA as to Ghislaine Maxwell. (Moe, Alison) (Entered: 06/22/2022)
06/24/2022	671	ORDER as to Ghislaine Maxwell: The Government is ORDERED to provide its position on the proposed victim impact statements and the Defendant's objections and redaction requests by 5:00 p.m. today, June 24, 2022. The Government's letter should be docketed with any proposed redactions. Defense counsel is ORDERED to docket its letter regarding proposed victim impact statements and accompanying exhibits with any proposed redactions by 5:00 p.m. today, June 24, 2022. (Signed by Judge Alison J. Nathan on 6/24/2022) (ap) (Entered: 06/24/2022)
06/24/2022	672	LETTER MOTION addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 06/24/2022 re: 668 Order,,,,,,, 671 Order,, 665 Order,,,,,, re: Challenge to standing under CVRA . Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 06/24/2022)
06/24/2022	673	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated June 24, 2022 re: CVRA submissions Document filed by USA. (Rohrbach, Andrew) (Entered: 06/24/2022)
06/24/2022	674	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Lara Pomerantz, Alison Moe, and Andrew Rohrbach dated June 24, 2022 re: Victim Impact Statements Document filed by USA. (Comey, Maurene) (Entered: 06/24/2022)

06/24/2022	682	ORDER as to Ghislaine Maxwell. The Crime Victims' Rights Act (CVRA) "guarantees to the victims of federal crimes an array of substantive and participatory rights, including the rights to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding, to confer with the attorney for the Government in the case, and to receive full and timely restitution as provided in law." United States v. Murillo−Bejerano (In re Rendon Galvis), 564 F.3d 170, 174 (2d Cir. 2009) (per curiam) (cleaned up). "In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded th[ose] rights." 18 U.S.C. § 3771(b)(1). In accordance with the procedure required by this Court's prior order, Dkt. No. 671, the Government has provided statements from seven individuals asserting they are crime victims under the CVRA. As explained below, the Court will permit all seven individuals to provide statements and the Defendant's request for redactions is denied....[*** See this Order ***]... In sum, all seven written statements received by the Court are deemed part of the record. The Court will consider them only for what they permissibly may be considered. The Government shall promptly docket the written statements without redactions. Annie Farmer, Kate, and Virginia Giuffre may present an in−person statement at sentencing if they wish to do so. The Government shall provide copies of this Order to counsel for the seven individuals who submitted statements by no later than today, June 24, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/24/22, United States Circuit Judge, Sitting by Designation)(bw) (Entered: 06/27/2022)
06/25/2022	675	NOTICE of Motion to be Heard at Sentencing as to Ghislaine Maxwell re: 668 Order,,,,,,,. (Attachments: # 1 Affidavit Declaration of RYL ISO Motion, # 2 Exhibit Victim Impact Statement of Sarah Ransome, # 3 Exhibit Victim Impact Statement of Elizabeth Stein)(Marsh, James) (Entered: 06/25/2022)
06/25/2022	676	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 06/25/2022 re: Opposition to Dkt 675 (Sternheim, Bobbi) (Entered: 06/25/2022)
06/25/2022	677	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 06/25/2022 re: Notice of Possible Request for Adjournment of Sentencing (Sternheim, Bobbi) (Entered: 06/25/2022)
06/25/2022	683	ORDER as to Ghislaine Maxwell. The parties are ORDERED to submit their positions on Ms. Ransome and Ms. Stein's motion, Dkt. No. 675, which the Court received for the first time today, by 10:00 a.m. tomorrow, June 26, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/25/2022, United States Circuit Judge, Sitting by Designation)(bw) (Entered: 06/27/2022)
06/25/2022	685	ORDER as to Ghislaine Maxwell. Immediately upon receipt of the Defendant's letter, Dkt. No. 677, the Court directly contacted the Warden for MDC. He informed the Court that after meeting with defense counsel today, the Defendant was permitted to retain legal documents and a writing implement, to which she has had continuous access. Further, the Warden represented to the Court that first thing tomorrow morning (Sunday, June 26) he will confirm that the Defendant has access to requested legal materials to prepare for sentencing. The Government is ORDERED to confer with the Warden for MDC or MDC Legal Counsel as follow−up to the Court's conversation and to provide an update to the Court by 2:00 p.m. tomorrow, June 26, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/25/2022, United States Circuit Judge, Sitting by Designation)(bw) (Entered: 06/27/2022)
06/26/2022	678	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan re: CVRA. Document filed by USA. (Moe, Alison) (Entered: 06/26/2022)
06/26/2022	679	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Lara Pomerantz, Alison Moe, and Andrew Rohrbach dated June 26, 2022 re: Update from MDC Document filed by USA. (Comey, Maurene) (Entered: 06/26/2022)
06/26/2022	680	Sentencing Letter by Ghislaine Maxwell addressed to Honorable Alison J. Nathan from Bobbi C Sternheim dated 06/26/2022 re: Supplemental Exhibit to Dkt. 663. (Sternheim, Bobbi) (Entered: 06/26/2022)

06/26/2022	681	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated June 26, 2022 re: Kate Motion Document filed by USA. (Attachments: # 1 Exhibit Kate Motion)(Pomerantz, Lara) (Entered: 06/26/2022)
06/26/2022	684	ORDER as to Ghislaine Maxwell. The Defendant's letter in response to the Court's order regarding the CVRA references a motion by Kate's attorney that accompanied her impact statement. Dkt. No. 672 at 2 n.1. The Court is not in receipt of this motion. The Government is ORDERED to docket the motion referenced by the Defendant as soon as possible but no later than midnight tonight, June 26, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/26/2022, United States Circuit Judge, Sitting by Designation)(bw) (Entered: 06/27/2022)
06/27/2022	686	ORDER as to Ghislaine Maxwell. The Court has now received and docketed the full set of submissions related to victim impact statements that were filed in accordance with this Court's prior order. Dkt. No. 668. The Court received statements from Annie Farmer, Kate, Virginia Giuffre, Maria Farmer, Sarah Ransome, Teresa Helm, Juliette Bryant, and Elizabeth Stein. As indicated in its prior order, the Court will exercise its discretion to permit all of these individuals to be heard in writing. Dkt. No. 682. The Court also denied the Defendants redaction requests. Id. All unredacted statements are now part of the record. Dkt. Nos. 674, 675−1. Also as previously indicated in its order, the Court will permit Annie Farmer, Kate, and Virginia Giuffre to make an oral statement at sentencing if they wish to do so. Dkt. No. 682. Further, having now reviewed the full set of requests, and having heard from the Government that it does not object, Dkt. No. 678, the Court deems it feasible to exercise its discretion to permit the remaining individuals who seek to themselves make an oral statement at sentencing to do so. They are: Teresa Helm, Sarah Ransome, and Elizabeth Stein. In order to feasibly accomplish this in light of the anticipated length of the sentencing proceeding, while ensuring fairness and avoiding delay of sentencing, each individual speaking orally may read a shortened version of their previously submitted written statement. The Court deems counsel for the individuals to be responsible for ensuring that anticipated statements conform to this requirement. The Government shall promptly provide copies of this order to counsel for the eight individuals who submitted statements. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/27/2022, United States Circuit Judge, sitting by designation)(bw) (Entered: 06/27/2022)
06/27/2022	687	ENDORSED LETTER as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid S. McCawley dated June 27, 2022 re: I am in receipt of the Court's Order, Dkt. No. 686. As explained in our submission, due to a medical issue, Ms. Giuffre is not able to be present physically in the courtroom, but has asked that I be able to read her statement at the hearing. I seek clarification of Your Honor's Order that I will be allowed to read a portion of Ms. Guiffre's statement at the hearing. ENDORSEMENT: The Court anticipates permitting counsel for CVRA victim Virginia Giuffre to read a shortened version of Ms. Giuffre's previously submitted written statement. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/27/2022, U.S. Circuit Judge, Sitting by designation)(bw) (Entered: 06/28/2022)
06/28/2022		Minute Entry for proceedings held before Judge Alison J. Nathan: Sentencing held on 6/28/2022 for Ghislaine Maxwell (1) Count 1ss,3ss,4ss,5ss,6ss. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim and Christian Everdell. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Alena Lynch and Kristen Carannante. See transcript. (jw) Modified on 6/29/2022 (jw). (Entered: 06/29/2022)
06/29/2022	688	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 583 LETTER filed by Ghislaine Maxwell addressed to Judge Alison J. Nathan from David E. McCraw dated 1/24/2022 re: Letter by the NY Times Company. ENDORSEMENT: The motion to unseal the questionnaires of the twelve seated jurors is GRANTED. The motion to unseal the Defendant's motion for a new trial is moot as the Defendant's motion for a new trial is docketed at Dkt. No. 613. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/29/2022)(bw) (Entered: 06/29/2022)
06/29/2022	689	ORDER as to Ghislaine Maxwell. As a post−trial house−keeping matter, the Court has determined that a few miscellaneous court orders failed to be docketed during trial: − November 19, 2021 Memorandum Opinion & Order re Witness−3 (Kate); −

		November 22, 2021 Memorandum Opinion & Order re Expert Witness Gershman; − November 22, 2021 Memorandum Opinion & Order re Expert Witness Hall; − November 30, 2021 Scheduling Order re Pseudonym Conferral; − December 15, 2021 Order re Response Schedule. The Court is now docketing those items. In order to ensure a complete docket, the parties are ORDERED to confer and determine whether any letters or briefing submitted to the Court without a redaction or sealing request remain to be docketed. The Court has determined, for example, that the parties failed to file on the docket their December 15 letter briefing and December 16 joint letter regarding witness prior inconsistent statements. Any outstanding items, including any proposed redactions, must be filed on ECF by July 12, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/29/2022, United States Circuit Judge, Sitting by Designation)(bw) (Entered: 06/29/2022)
06/29/2022	695	SEALED DOCUMENT placed in vault. (jus) (Entered: 06/29/2022)
06/29/2022	696	JUDGMENT In A Criminal Case (S2 20−Cr−330). Date of Imposition of Judgment: 6/29/2022. Defendant Ghislaine Maxwell (1) was found guilty on Count(s) 1ss, 3ss, 4ss, 5ss, 6ss (judgment not entered on 1 & 5 as multiplicitous, Dkt. No. 657), after a plea of not guilty. The defendant has been found not guilty on Count(s) 2ss. Count(s) 7ss−8ss, and underlying indictments are dismissed on the motion of the United States. IMPRISONMENT: The Defendant is sentenced to a term of 240 Months. Count 3 a sentence of 60 Months. Count 4 a sentence of 120 Months. Count 6 a sentence of 240 Months. All Counts to run concurrently. − Defendant was notified of her right to Appeal. − The court makes the following recommendations to the Bureau of Prisons: Defendant to be considered for designation to FCI Danbury. Defendant to be considered for enrollment in FIT program. SUPERVISED RELEASE: 3 Years on Counts 3 and 4. 5 Years on Count 6 to run concurrently. Standard Conditions of Supervision (See page 5 of Judgment). Special Conditions of Supervision (See page 6 of Judgment). ASSESSMENT: $300.00, due immediately. FINE: $750,000.00. Schedule of Payments (See page 8 of Judgment). (Signed by Judge Alison J. Nathan on 6/29/2022)(bw) (Entered: 06/29/2022)
06/29/2022		DISMISSAL OF COUNTS on Government Motion as to Ghislaine Maxwell (1) Count 1s,1,2s,2,3s,3,4s,4,5s−6s,5−6,7ss−8ss. (bw) (Entered: 06/29/2022)
07/07/2022	697	NOTICE OF APPEAL by Ghislaine Maxwell from 696 Judgment. Filing fee $ 505.00, receipt number 2280. (nd) (Entered: 07/07/2022)
07/07/2022		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Ghislaine Maxwell to US Court of Appeals re: 697 Notice of Appeal − Final Judgment. (nd) (Entered: 07/07/2022)
07/07/2022		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to Ghislaine Maxwell re: 697 Notice of Appeal were transmitted to the U.S. Court of Appeals. (nd) (Entered: 07/07/2022)

U.S. District Court

New York Southern - Manhattan

Receipt Date: Jul 7, 2022 11:56AM

BOBBI C. STERNHEIM FBO GHISLAINE MAXWELL

Rcpt. No: 2280 Trans. Date: Jul 7, 2022 11:56AM Cashier ID: #ST

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
203	Notice of Appeal/Docketing Fee		1	505.00	505.00

CD	Tender	Amt
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Total Due:	$505.00
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Total Cash Received:	$0.00
Cash Change Amount:	$0.00

Comments: 20CR330-1 AJN

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A $53 fee will be charged for a returned check.

NOTICE OF APPEARANCE FOR SUBSTITUTE, ADDITIONAL, OR AMICUS COUNSEL

Short Title: United States v. Maxwell Docket No.: 22-1426

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 November 5, 2020 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.: 22-1426

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

Name: Andrew Rohrbach

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

Address: One St. Andrew's Plaza

Telephone: (212) 637-2345 Fax:

E-mail: Andrew.Rohrbach@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 December 3, 2019 OR

☐ I applied for admission on .

Signature of Counsel: /s/ Andrew A. Rohrbach

Type or Print Name: Andrew A. Rohrbach

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): 22-1426

Caption [use short title]
USA v. MAXWELL

Motion for: continued counsel to be relieved

Set forth below precise, complete statement of relief sought:
for relief of Bobbi C. Sternheim, Esq.
as continued counsel on appeal

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

☐ Plaintiff ☑ Defendant
☑ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: Bobbi C. Sternheim **OPPOSING ATTORNEY:** AUSA Maurene Comey, AUSA Andrew Rohrbach

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

Law Offices of Bobbi C. Sternheim
225 Broadway, Suite 715, NY, NY 10007
212-243-1100, bcsternheim@mac.com

U.S. Attorney for the Southern District of New York
One Saint Andrew's Plaza, New York, NY 10007
212-673-2324, maurene.comey@usdoj.gov; 212-637-0926, andrew.rohrbach@usdoj.gov

Court- Judge/ Agency appealed from: SDNY - Hon. Alison J. Nathan

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:

Bobbi C. Sternheim **Date:** 7/15/2022 Service by: ☑ CM/ECF ☑ Other [Attach proof of service]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------x

UNITED STATES OF AMERICA,

-v.-

DECLARATION
22-1426

GHISLAINE MAXWELL,

Defendant-Appellant.

----------x

BOBBI C. STERNHEIM, ESQ. declares under penalty of perjury, pursuant to 28 U.S.C. §1746, as follows:

1. I am the attorney assigned by the Court to continue representation of appellant Ghislaine Maxwell on appeal and make this declaration in support of a motion to be relieved.

2. I was retained to represent Ms. Maxwell in the United States District Court for the Southern District of New York in connection with Indictment No. 20 Cr. 330 (AJN). Following jury trial, Ms. Maxwell was convicted of violations of 18 U.S.C. 371, 1591, and 2423.

3. On June 28, 2022, the district court sentenced Ms. Maxwell to a term of imprisonment of 20 years, followed by a five-year term of supervised release, and imposed a fine of $750,000.00. Detained since the date of arrest, Ms. Maxwell is presently serving her sentence.

4. I represented Ms. Maxwell throughout prosecution of her district court case, including jury trial and sentencing. On July 7, 2022, I timely filed her Notice of Appeal. (*See* Exhibit A.)

5. I have not been retained to represent Ms. Maxwell on appeal, as indicated on the Notice of Appeal. (*See Id*.)

6. I am informed that Hon. John M. Leventhal (Ret.) of Aidala, Bertuna & Kamins, PC has been retained to represent Ms. Maxwell on appeal and will be filing notice of appearance today.

7. Since new counsel has been retained to represent Ms. Maxwell on appeal, I move to be relieved.

WHEREFORE, it is respectfully requested that the Court relieve Bobbi C. Sternheim, Esq. as continued counsel on appeal for appellant Ghislaine Maxwell.

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

Executed on: July 15, 2022.

Bobbi C. Sternheim

BOBBI C. STERNHEIM

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing motion with exhibit was served on the following:

AUSA Maurene Comey
AUSA Andrew Rohrbach
One Saint Andrew's Plaza
New York, NY 10007
maurene.comey@usdoj.gov
andrew.rohrbach@usdoj.gov
(*via email*)

Ghislaine Maxwell
02879-509
(Defendant-Appellant)
MDC-Brooklyn
Metropolitan Detention Center
PO Box 329002
Brooklyn, NY 11232
(*via U.S. mail*- postage prepaid)

Hon. John M. Leventhal (Ret.)
Aidala, Bertuna & Kamins PC
546 5th Avenue
New York, NY 10036
judgeleventhal@aidalalaw.com
(*via email*)

Dated: New York, NY
July 15, 2022

/s/
BOBBI C. STERNHEIM

EXHIBIT A

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 7/7/2022

FILED
U.S. DISTRICT COURT
2022 JUL -7
S.D. OF N.Y.

Criminal Notice of Appeal - Form A

NOTICE OF APPEAL

United States District Court

Southern District of New York

Caption:

United States of America

v.

Ghislaine Maxwell

Docket No. S2 20 Cr. 330

Alison J. Nathan (SBD)
(District Court Judge)

Notice is hereby given that Ghislaine Maxwell appeals to the United States Court of Appeals for the Second Circuit from the judgment [✓], other [ ] _____ (specify) entered in this action on 6/29/2022 (date).

This appeal concerns: Conviction only [ ] Sentence only [ ] Conviction & Sentence [✓] Other [ ]

Defendant found guilty by plea [ ] trial [✓] N/A [ ].

Offense occurred after November 1, 1987? Yes [✓] No [ ] N/A [ ]

Date of sentence: 6/28/2022 N/A [ ]

Bail/Jail Disposition: Committed [✓] Not committed [ ] N/A [ ]

Appellant is represented by counsel? Yes [✓*] No [✓**] If yes, provide the following information:

Defendant's Counsel: Bobbi C. Sternheim, Law Offices of Bobbi C. Sternheim

Counsel's Address: 225 Broadway, Suite 715
New York, NY 10007

Counsel's Phone: 212-243-1100

Assistant U.S. Attorney: Maurene Comey

AUSA's Address: One Saint Andrew's Plaza
New York, NY 10007

AUSA's Phone: 212-637-2324

Bobbi C. Sternheim

* FOR FILING OF NOTICE OF APPEAL *ONLY*
** *NOT RETAINED* FOR REPRESENTATION ON APPEAL
Signature

ST
7/7/22
$505.00
2280

U.S. District Court

New York Southern - Manhattan

Receipt Date: Jul 7, 2022 11:56AM

BOBBI C. STERNHEIM FBO GHISLAINE MAXWELL

Rcpt. No: 2280 Trans. Date: Jul 7, 2022 11:56AM Cashier ID: #ST

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Comments: 20CR330-1 AJN

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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: July 15, 2022
Docket #: 22-1426
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 July 15, 2022 the Notice of Appearance as Substitute Counsel, 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
    _____ Served to an incorrect address
    _____ Incomplete service *(Anders v. California 386 U.S. 738 (1967))*
_____ Failure to submit document in digital format *(Local Rule 25.1)*
___x__ Not Text-Searchable *(Local Rule 25.1, Local Rules 25.2),* click here for instructions on how to make PDFs text searchable
_____ Failure to file appendix on CD-ROM *(Local Rule 25.1, Local Rules 25.2)*
_____ Failure to file special appendix *(Local Rule 32.1)*
_____ Defective cover *(FRAP 32)*
    _____ Incorrect caption *(FRAP 32)*
    _____ Wrong color cover *(FRAP 32)*
    _____ Docket number font too small *(Local Rule 32.1)*
_____ 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

_____ Incorrect Filing Event
_____ Other: _____

Please cure the defect(s) and resubmit the document, with the required copies if necessary, no later than July 19, 2022. 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 212-857-8503.

NOTICE OF APPEARANCE FOR SUBSTITUTE, ADDITIONAL, OR AMICUS COUNSEL

Short Title: USA v MAXWELL Docket No.: 22-1426

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

Name: John M. Leventhal

Firm: Aidala, Bertuna & Kamins, PC

Address: 546 Fifth Avenue, Sixth Floor, New York, New York 10036

Telephone: 212-486-0011 Fax: 917-261-4832

E-mail: judgeleventhal@aidalalaw.com

Appearance for: Ghislaine Maxwell
(party/designation)

Select One:

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

☑ Substitute counsel (replacing other counsel: Bobbi C. Sternheim, Esq.)
(name/firm)

☐ Additional counsel (co-counsel with: _____)
(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 05/04/2021 OR

☐ I applied for admission on _____.

Signature of Counsel: John M. Leventhal

Type or Print Name: John M.Leventhal

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 15th day of July, two thousand twenty-two.

United States of America,

Appellee,

v.

Ghislaine Maxwell, AKA Sealed Defendant 1,

Defendant - Appellant.

ORDER

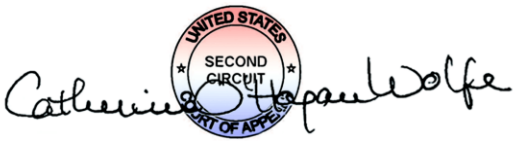
Docket No. 22-1426

Bobbi C. Sternheim moves to be relieved as counsel because Appellant has retained new counsel for this appeal.

IT IS HEREBY ORDERED that the motion to be relieved is GRANTED.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court



ACKNOWLEDGMENT AND NOTICE OF APPEARANCE

Short Title: USA V Maxwell Docket No.: 22-1426

Lead Counsel of Record (name/firm) or Pro se Party (name): John M Leventhal/Aidala, Bertuna & Kamins, PC

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

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: _____
Firm: _____
Address: _____
Telephone: _____ Fax: _____
Email: _____

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: _____

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 05/04/2021 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: John M Leventhal
Type or Print Name: John M. Leventhal

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: USA v. Maxwell

DOCKET NUMBER: 22-1426

COUNSEL'S NAME: John M. Leventhal

COUNSEL'S ADDRESS: 546 Fifth Avenue, 6th Floor
New York, New York 10036

COUNSEL'S PHONE: 212-486-0011

QUESTIONNAIRE

☐ I am ordering a transcript.

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

TRANSCRIPT ORDER

Prepare transcript of

☐ Pre-trial proceedings: _____
(Description & Dates)

☐ Trial: _____
(Description & Dates)

☐ Sentencing: _____
(Description & Dates)

☐ Post-trial proceedings: _____
(Description & Dates)

I, _____, 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

John M Leventhal
Counsel's Signature

07/15/22
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.

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: July 15, 2022
Docket #: 22-1426
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.

LAW OFFICES OF
Aidala, Bertuna & Kamins, P.C.

ARTHUR L. AIDALA*
MARIANNE E. BERTUNA*
HON. BARRY KAMINS (RET.)
HON. JOHN M. LEVENTHAL (RET.)
JOHN S. ESPOSITO*
MICHAEL T. JACCARINO
IMRAN H. ANSARI
DIANA FABI SAMSON**
ANDREA M. ARRIGO*
LINO J. DE MASI
MICHAEL F. DIBENEDETTO*

*ALSO ADMITTED IN NEW JERSEY
**ALSO ADMITTED IN CONNECTICUT

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OF COUNSEL
JOSEPH A. BARATTA
ANTOINETTE LANTERI
WILLIAM R. SANTO
PETER S. THOMAS
LAWRENCE SPASOJEVICH

SENIOR COUNSEL
LOUIS R. AIDALA
JOSEPH P. BARATTA

July 28, 2022

Catherine O'Hagan Wolfe
Clerk of Court
Thurgood Marshall United States Court House
40 Foley Square
New York, New York 10007

Re: Briefing Schedule Request, USA v. Ghislaine Maxwell, Case 22-1426

Dear Ms. O'Hagan Wolfe,

I am appellate counsel for Defendant-Appellant Ghislaine Maxwell. I was not trial counsel for Ms. Maxwell. I filed an Acknowledgement and Notice of Appearance on July 15, 2022. The Clerk required that I file a Form B on that date, as well, although I did not, at that time, have any information concerning the transcripts.

Pursuant to Local Rule 31.2(a)(1)(A), the ready date for this case was July 15, 2022. Accordingly, I have until July 29, 2022, to file this briefing schedule request. Pursuant to Local Rule 31.2(a)(1)(A), I can request no more than 91 days from the ready date as the deadline for filing Appellant's Brief. That date would be October 14, 2022.

Pursuant to Local Rule 31.2(a)(1)(D), however, I am permitted to request a later deadline to file Appellant's Brief if the case involves a voluminous record or extreme hardship would result. I request that the Court permit me to file Appellant's Brief on Monday, January 30, 2023, for the following reasons which I believe satisfy both preconditions identified by the rule. First, as noted, I am new counsel and have obtained access to the complete file on this case only this week. As new counsel unfamiliar with the case, I must therefore scrutinize the entire record in order to provide my client with the most competent and effective representation on appeal. Second, the record is voluminous in that it involves at least 3,824 pages of transcript including pretrial hearings, *voir dire*, trial, sentence, and post-conviction proceedings. In addition, the Docket Report consists of 738 entries, including but not limited to dozens of fully briefed pretrial motions and motions *in limine,* comprising hundreds of pages of legal analysis on important issues. Third, I must conduct my own research in order to determine what issues I believe provide my client with the best chance of prevailing on appeal. This is especially important given this Court's rules concerning the size of Appellant's Brief. Fourth, I have not been able to meet with my client as she was prematurely transferred to Tallahassee, Florida by the Federal Bureau of Prisons over this past weekend, a

matter of hours before my scheduled visit to the Metropolitan Detention Center in Brooklyn. Meeting with my client is a critical precondition to my work on this case. Fifth, I have other matters that I must work on as well, as Ms. Maxwell is not my only client.

For these reasons, I respectfully request that the Court permit me to file Appellant's Brief on January 30, 2023.

Sincerely,

John M. Leventhal
Aidala, Bertuna & Kamins, P.C.
546 Fifth Avenue, 6th Floor
New York, New York 10036
(212) 486-0011
judgeleventhal@aidalalaw.com

NOTICE OF APPEARANCE FOR SUBSTITUTE, ADDITIONAL, OR AMICUS COUNSEL

Short Title: United States of America v. Maxwell Docket No.: 22-1426

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 December 3, 2020 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

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 1st day of August, two thousand twenty-two.

Before: José A. Cabranes,
Circuit Judge,

United States of America,

Appellee,

v.

Ghislaine Maxwell, AKA Sealed Defendant 1,

Defendant - Appellant.

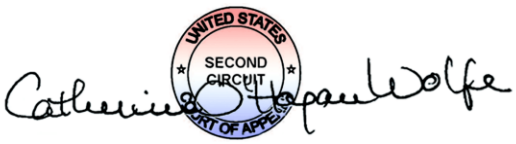
ORDER

Docket No. 22-1426

Appellant filed a scheduling notification pursuant to Local Rule 31.2(a)(1)(D), requesting an extended briefing deadline of January 30, 2023.

The scheduling request is GRANTED. Further extensions of time will be disfavored.

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



NOTICE OF APPEARANCE FOR SUBSTITUTE, ADDITIONAL, OR AMICUS COUNSEL

Short Title: USA v. Maxwell Docket No.: 22-1426

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

Name: Arthur L. Aidala

Firm: Aidala, Bertuna & Kamins, P.C.

Address: 546 Fifth Avenue, 6th Floor

Telephone: (212) 486-0011 Fax: (718) 921-3292

E-mail: aidalaesq@aidalalaw.com

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

Select One:

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

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

☑ Additional counsel (co-counsel with: John M. Leventhal / Aidala, Bertuna & Kamins, 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: Arthur L. Aidala

Type or Print Name: Arthur L. Aidala

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
CRIMINAL APPEAL TRANSCRIPT INFORMATION - FORM B

TO BE COMPLETED BY ATTORNEY:

CASE NAME: USA v Maxwell

DOCKET NUMBER: 22-1426

COUNSEL'S NAME: Arthur L. Aidala

COUNSEL'S ADDRESS: 546 Fifth Avenue, 6th Floor
New York, New York 10036

COUNSEL'S PHONE: (212) 486-0011

QUESTIONNAIRE

___ I am ordering a transcript

✓ I am not ordering a transcript Reason ___ Daily copy available ___ U S Atty placed order ___ Other (attach explanation)

TRANSCRIPT ORDER

Prepare transcript of

Pre-trial proceedings _____
(Description & Dates)

___ Trial _____
(Description & Dates)

___ Sentencing _____
(Description & Dates)

___ Post-trial proceedings _____
(Description & Dates)

I, _____, 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

_____ 1/05/2023
Counsel's Signature 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.

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): 22-1426

Caption [use short title]

United States of America v. Ghislaine Maxwell

Motion for: Extension of time to file Appellant's brief

Set forth below precise, complete statement of relief sought:

Appellant seeks permission to file her brief, currently due on January 30, 2023, to be filed on or beofre February 28, 2023.

MOVING PARTY: Ghislaine Maxwell

OPPOSING PARTY: United States of America

☐ Plaintiff ☐ Defendant

☑ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: John M. Leventhal

OPPOSING ATTORNEY: Lara Pomerantz

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

John M. Leventhal, Aidala, Bertuna & Kamins, P.C.
546 Fifth Avenue, 6th Floor
New York, New York 10036

Lara Pomerantz, United States Attorney's Office
One St. Andrew's Plaza
New York, New York 10007

Court- Judge/ Agency appealed from:

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:
We respectfully request the return date be as soon as possible for the court. The emergency is that Appellant needs additional time to perfect her appeal due to unforeseen circumstances not known at the time of entering into the schedling order.

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: John M. Leventhal **Date:** 1/12/23 Service by: ☑ CM/ECF ☐ Other [Attach proof of service]

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

----------X

UNITED STATES OF AMERICA,

Appellee,

- against -

GHISLAINE MAXWELL,

Defendant-Appellant.

----------X

Docket No.: 22-1426

AFFIRMATION IN SUPPORT OF DEFENDANT-APPELLANT'S MOTION TO EXTEND TIME TO FILE BRIEF

JOHN M. LEVENTHAL, an attorney duly admitted to practice law in the State of New York and a partner of the law firm of **AIDALA, BERTUNA & KAMINS PC.**, attorneys for Defendant-Appellant, **GHISLAINE MAXWELL**, hereby affirms the following statements, under penalties of perjury:

1. That I am a partner at the law firm of AIDALA, BERTUNA & KAMINS P.C., attorneys for Defendant-Appellant, Ghislaine Maxwell (hereinafter "Appellant"), and as such, am fully familiar with the facts and circumstances of this action.

3. On July 15, 2022, I filed a Notice of Appearance in this matter so that trial counsel could withdraw.

4. On July 28, 2022, I filed a scheduling request asking that Appellant's brief be due on January 30, 2023, based on the size of the record.

5. Soon after this Court granted our scheduling request, we were notified that the New York Court of Appeals had granted us leave on another matter which also involved a voluminous record and several issues of law which required substantial time and resources.

6. The work of our small team of experienced appellate attorneys has been divided between these two cases. In addition, one of our appellate attorneys is dealing with a serious health condition. This has impacted his ability to work on the case.

7. Another factor that has affected our ability to complete this brief by the current

deadline of January 30, 2023, is the difficulty we have had communicating with our client who is incarcerated in Tallahassee, Florida, with limited phone access.

8. We have been working diligently on this case and have identified several issues that we believe merit appellate review. However, there is still considerable work to be done. We find that we need an additional month beyond the current deadline to complete this important work responsibly.

9. We believe that the above represents extraordinary circumstances that justify the relief sought. Denial of this application would cause irreparable harm to our client.

10. Assistant United States Attorney Andrew Rohrbach informed me today that Respondent United States Attorney's Office of the Southern District of New York does not object to the Court granting our motion for an additional one-month extension of time to file Appellant's brief.

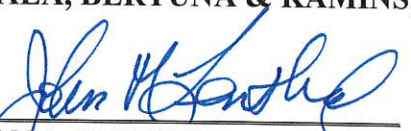
11. We respectfully request that the Court extend our time to file our brief to February 28, 2023. We are cognizant that the Court warned that "[f]urther extensions of time will be disfavored." For this reason, we request only the additional time that we believe is absolutely necessary in order to effectively represent our client.

WHEREFORE, it is respectfully requested that this Court issue an Order granting Appellant's motion in its entirety, and for such other and further relief as this Court deems just and proper.

Dated: January 12, 2023
New York, New York

Respectfully Submitted,

AIDALA, BERTUNA & KAMINS, PC

By: 

JOHN M. LEVENTHAL, ESQ. (Ret.)
Attorney for Defendant-Appellant

546 5th Avenue, 6th Floor
New York, New York 10036

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): 22-1426 Caption [use short title] U.S.A. v. Ghislaine Maxwell

Motion for: Oversized Brief

Set forth below precise, complete statement of relief sought:

Appellant requests that the Court grant her permission to file an oversized brief. Specifically, Appellant requests permission to file a brief containing no more than 20,000 words. Appellant makes this request so that her attorneys can fully brief the issues they intend to raise on appeal.

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

☐ Plaintiff ☐ Defendant

☑ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: John M. Leventhal **OPPOSING ATTORNEY:** Lara Pomerantz

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

Aidala, Bertuna & Kamins, PC
546 Fifth Avenue, New York, New York 10036
judgeleventhal@aidalalaw.com 212-486-0011

United States Attorney's Office for the Southern District of NY
One St. Andrews Plaza
212-637-2343 Lara.Pomerantz@usdoj.gov

Court- Judge/ Agency appealed from:

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 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:

As soon as possible, unless this Court grants our pending motion for an extension of time to file Appellant's brief. If the Court grants our motion for an extension of time to file our brief, then Appellant requests a return date of January 30, 2023.

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/ John M. Leventhal **Date:** January 16, 2023 Service by: ☑ CM/ECF ☐ Other [Attach proof of service]

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

----------X

UNITED STATES OF AMERICA,

Appellee,

- against -

GHISLAINE MAXWELL,

Defendant-Appellant.

----------X

Docket No.: 22-1426

AFFIRMATION IN SUPPORT OF DEFENDANT-APPELLANT'S MOTION TO FILE AN OVERSIZED BRIEF

JOHN M. LEVENTHAL, an attorney duly admitted to practice law in the State of New York and a partner of the law firm of **AIDALA, BERTUNA & KAMINS PC**., attorneys for Defendant-Appellant, **GHISLAINE MAXWELL**, hereby affirms the following statements, under penalties of perjury:

1. That I am a partner at the law firm of AIDALA, BERTUNA & KAMINS P.C., attorneys for Defendant-Appellant, Ghislaine Maxwell (hereinafter "Appellant"), and as such, am fully familiar with the facts and circumstances of this action.

3. On July 15, 2022, I filed a Notice of Appearance in this matter.

4. On July 28, 2022, I filed a scheduling request asking that Appellant's brief be due on January 30, 2023, based on the size of the record.

5. On January 12, 2023, I filed a motion to extend time to file Appellant's brief to February 28, 2023, to which Appellee United States Attorney's Office for the Southern District of New York had no objection. This motion is still pending.

6. Pursuant to Local Rule 32.1(a)(4), Appellant's principal brief must be no longer than 14,000 words.

7. Pursuant to Local Rule 27.1(e)(2), a party seeking to file an oversized brief must state the requested length and the reasons for exceeding this Court's limitations.

8. We request that the Court permit us to file a brief of no more than 20,000 words for the following reasons.

9. We plan to raise issues concerning evidentiary rulings by the trial court that we believe were erroneous. The rulings at issue require a detailed discussion of the evidence. The transcript is over 3000 pages and contains the allegations of multiple complainants. The legal issues cannot be raised by reference to a few discrete pages of the transcript; rather they go to cumulative prejudice resulting from the trial court's erroneous application of the Federal Rules of Evidence to the case.

10. In addition, we plan to raise issues pertaining to juror misconduct. This issue involves an exposition of facts and legal analysis pertaining to a juror questionnaire, voir dire, and a post-verdict hearing. It is, in itself, its own mini-trial.

11. We also intend to raise issues pertaining to a non-prosecution agreement; certain instructions to the jury; and sentencing.

12. A motion to file an oversized brief must be made no less than 14 days before the brief is due. Local Rule 27.1(e)3. Thus, we make this motion now, although our motion to extend time to file our brief is pending.

13. We have notified Appellee United States Attorney's Office for the Southern District of New York today, by email to Assistant United States Attorneys Andrew Rohrbach, Lara Pomerantz, Alison Moe, and Maureen Comey, that we are making this motion and have asked their position and if they intend to file a response. We have not received a reply as of the time of filing.

14. For the reasons stated, we respectfully request that the Court permit us to file a principal brief of no more than 20,000 words and would consent to Appellee filing a brief of

the same length.

WHEREFORE, it is respectfully requested that this Court issue an Order granting Appellant's motion in its entirety, and for such other and further relief as this Court deems just and proper.

Dated: January 16, 2023
New York, New York

Respectfully Submitted,

AIDALA, BERTUNA & KAMINS, PC

By: _____

JOHN M. LEVENTHAL, ESQ.
Attorney for Defendant-Appellant
546 5th Avenue, 6th Floor
New York, New York 10036

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 17th day of January, two thousand twenty-three.

Before: José A. Cabranes,
Circuit Judge,

United States of America,

Appellee,

v.

Ghislaine Maxwell, AKA Sealed Defendant 1,

Defendant - Appellant.

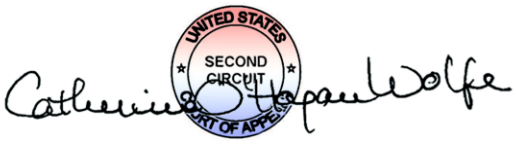
ORDER

Docket No. 22-1426

Appellant moves for an extension of time to February 28, 2023 to file her brief and appendix.

IT IS HEREBY ORDERED that the motion is GRANTED, absent objection.

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



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 18th day of January, two thousand twenty-three.

Before: Michael H. Park,
Circuit Judge,

United States of America,

Appellee,

v.

Ghislaine Maxwell, AKA Sealed Defendant 1,

Defendant - Appellant.

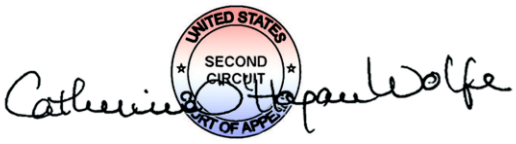
ORDER

Docket No. 22-1426

Appellant moves for leave to file an oversized principal brief of up to 20,000 words.

IT IS HEREBY ORDERED that the motion is GRANTED.

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



UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

----------X

UNITED STATES OF AMERICA,

Appellee,

- against -

GHISLAINE MAXWELL,

Defendant-Appellant.

----------X

Docket No.: 22-1426

AFFIRMATION IN SUPPORT OF DEFENDANT-APPELLANT'S MOTION TO FILE AN OVERSIZED BRIEF

JOHN M. LEVENTHAL, an attorney duly admitted to practice law in the State of New York and a partner of the law firm of **AIDALA, BERTUNA & KAMINS PC**., attorneys for Defendant-Appellant, **GHISLAINE MAXWELL**, hereby affirms the following statements, under penalties of perjury:

1. That I am a partner at the law firm of AIDALA, BERTUNA & KAMINS P.C., attorneys for Defendant-Appellant, Ghislaine Maxwell (hereinafter "Appellant"), and as such, am fully familiar with the facts and circumstances of this action.

2. On July 15, 2022, I filed a Notice of Appearance in this matter.

3. On July 28, 2022, I filed a scheduling request asking that Appellant's brief be due on January 30, 2023, based on the size of the record.

4. On January 12, 2023, I filed a motion to extend time to file Appellant's brief from January 30, 2023, to February 28, 2023, to which Appellee United States Attorney's Office for the Southern District of New York had no objection.

5. On January 16, 2023, the motion to extend time was still pending.

6. Because a motion to file an oversized brief must be made no less than 14 days before the brief is due (Local Rule 27.1(e)3), pursuant to Local Rule 27.1(e)(2), I filed a

motion to file an oversized brief in which we estimated that we would need permission to file a brief of no more than 20,000 words to fully brief the issues for appeal.

7. On January 17, 2023, the Court granted our motion for an enlargement of time to file Appellant's brief.

8. On January 18, 2023, the Court granted our request to file a brief of no more than 20,000 words.

9. We have completed a draft of our brief and are now in a more definite position to request from the Court an additional 15,000 words so that we be permitted to file a brief of no more than 35,000 words.

10. Our brief contains five points. These points raise issues pertaining to statute of limitations; a non-prosecution agreement; juror misconduct and a post-verdict hearing; and sentence. Some of these issues involve detailed analysis of case law, statutory interpretation and legislative history, while others involve an explication of the evidence and procedural posture relevant to the issues raised. In an effort to shorten our brief, we have already omitted what was a lengthy summary of the evidence at trial in favor of marshalling only the evidence essential to an analysis of the issues being raised.

11. We have notified Appellee United States Attorney's Office for the Southern District of New York today, by email to Assistant United States Attorneys Andrew Rohrbach, Lara Pomerantz, Alison Moe, and Maureen Comey, that we are making this motion and have asked their position and if they intend to file a response. We have not received a reply as of the time of filing.

12. For the reasons stated, we respectfully request that the Court permit us to file a principal brief of no more than 35,000 words and would consent to Appellee filing a brief of

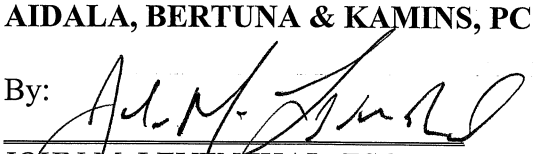
the same length.

WHEREFORE, it is respectfully requested that this Court issue an Order granting Appellant's motion in its entirety, and for such other and further relief as this Court deems just and proper.

Dated: February 14, 2023
New York, New York

Respectfully Submitted,

AIDALA, BERTUNA & KAMINS, PC

By: 

JOHN M. LEVENTHAL, ESQ.
Attorney for Defendant-Appellant
546 5th Avenue, 6th Floor
New York, New York 10036

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): 22-1426 Caption [use short title] U.S.A. v. Ghislaine Maxwell

Motion for: Oversized Brief

Set forth below precise, complete statement of relief sought:

Appellant requests that the court grant her permission to file an oversized brief. Specifically, Appellant requests permission to file a brief containing no more than 20,000 words. Appellant makes this request so that her attorneys can fully brief the issues they intend to raise on appeal.

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

☐ Plaintiff ☐ Defendant

☑ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: John M. Leventhal **OPPOSING ATTORNEY:** Lara Pomerantz

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

Aidala, Bertuna & Kamins, P.C.
546 Fifth Avenue, 6th Floor, New York, NY 10036
212-486-0011judgeleventhal@aidalalaw.com

United States Attorney's Office for the Southern District of NY
One St. Andrews Plaza
212-637-2343 Lara.Pomerantz@usdoj.gov

Court- Judge/ Agency appealed from:

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:
As soon as possible.

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:

Date: 2/14/23 Service by: ☑ CM/ECF ☐ Other [Attach proof of service]

NOTICE OF APPEARANCE FOR SUBSTITUTE, ADDITIONAL, OR AMICUS COUNSEL

Short Title USA v Maxwell Docket No.: 22-1426

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

Name: Diana Fabi Samson

Firm: Aidala, Bertuna & Kamins, P.C.

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Telephone: (212) 486-0011 Fax: (718) 921-3292

E-mail: diana@aidalalaw.com

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

Select One:

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

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

☑ Additional counsel (co-counsel with: John M Leventhal, Arthur L. Aidala / Aidala, Bertuna & Kamins, 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: Diana Fabi Samson

Type or Print Name: Diana Fabi Samson

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
CRIMINAL APPEAL TRANSCRIPT INFORMATION - FORM B

TO BE COMPLETED BY ATTORNEY:

CASE NAME. USA v. Maxwell

DOCKET NUMBER: 22-1426

COUNSEL'S NAME. Diana Fabi Samson

COUNSEL'S ADDRESS: 546 Fifth Avenue, 6th Floor
New York, New York 10036

COUNSEL'S PHONE. (212) 486-0011

QUESTIONNAIRE

___ I am ordering a transcript

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

TRANSCRIPT ORDER

Prepare transcript of

___ Pre-trial proceedings _____
(Description & Dates)

___ Trial _____
(Description & Dates)

___ Sentencing _____
(Description & Dates)

___ Post-trial proceedings _____
(Description & Dates)

I, _____, 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

Diana Fabi Samson
Counsel's Signature

2/22/2023
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.

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 22nd day of February, two thousand twenty-three.

Before: Michael H. Park,
Circuit Judge,

United States of America,

Appellee,

v.

Ghislaine Maxwell, AKA Sealed
Defendant 1,

Defendant - Appellant.

ORDER

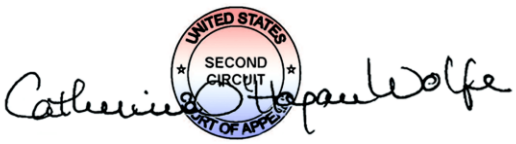
Docket No. 22-1426

Appellant moves for leave to file an oversized principal brief of up to 35,000 words.

IT IS HEREBY ORDERED that the motion is DENIED.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court



22-1426-cr

United States Court of Appeals

for the

Second Circuit

UNITED STATES OF AMERICA,

Appellee,

– v. –

GHISLAINE MAXWELL, AKA Sealed Defendant 1,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX
Volume 1 of 2 (Pages A-1 to A-204)

ARTHUR L. AIDALA
DIANA FABI SAMSON
JOHN M. LEVENTHAL
AIDALA BERTUNA & KAMINS PC
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New York, New York 10036
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CLOSED,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

Date Terminated: 06/29/2022

Movant

Jordana H. Feldman

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Assigned to: Judge Alison J. Nathan

Appeals court case numbers: 21-0058 U.S. Court of Appeals, 2nd Circ., 22-1426 U.S. Court of Appeals, 2nd Circ.

Defendant (1)

Ghislaine Maxwell
TERMINATED: 06/29/2022
also known as
Sealed Defendant 1
TERMINATED: 06/29/2022

represented by **Christian R. Everdell**
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A-2

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ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts	**Disposition**
18:371.F CONSPIRACY TO ENTICE MINORS TO TRAVEL TO ENGAGE IN ILLEGAL SEX ACTS (1ss)	Judgment not entered on 1 & 5 as multiplicitous, Dkt. No. 657.
18:371.F CONSPIRACY TO TRANSPORT MINORS WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY (3ss)	IMPRISONMENT: The Defendant is sentenced to a term of 240 Months. Count 3 a sentence of 60 Months. Count 4 a sentence of 120 Months. Count 6 a sentence of 240 Months. All Counts to run concurrently. SUPERVISED RELEASE: 3 Years on Counts 3 and 4. 5 Years on Count 6 to run concurrently. FINE: $750,000.00
18:2423.F COERCION OR ENTICEMENT OF MINOR FEMALE (TRANSPORTATION OF A MINOR WITH INTENT TO ENGAGE IN CRIMINAL	IMPRISONMENT: The Defendant is sentenced to a term of 240 Months. Count 3 a sentence of 60 Months. Count 4 a sentence of 120 Months. Count 6 a sentence of 240 Months. All Counts to run concurrently.

A-3

SEXUAL ACTIVITY) (4ss)	SUPERVISED RELEASE: 3 Years on Counts 3 and 4. 5 Years on Count 6 to run concurrently. FINE: $750,000.00
18:371.F SEX TRAFFICKING CONSPIRACY (5ss)	Judgment not entered on 1 & 5 as multiplicitous, Dkt. No. 657.
18:1591.F SEX TRAFFICKING OF CHILDREN OR BY FORCE, FRAUD OR COERCION (6ss)	IMPRISONMENT: The Defendant is sentenced to a term of 240 Months. Count 3 a sentence of 60 Months. Count 4 a sentence of 120 Months. Count 6 a sentence of 240 Months. All Counts to run concurrently. SUPERVISED RELEASE: 3 Years on Counts 3 and 4. 5 Years on Count 6 to run concurrently. FINE: $750,000.00

Highest Offense Level (Opening)

Felony

Terminated Counts	Disposition
18:371.F CONSPIRACY TO ENTICE MINORS TO TRAVEL TO ENGAGE IN ILLEGAL SEX ACTS (1)	Dismissed
18:371.F CONSPIRACY TO ENTICE MINORS TO TRAVEL TO ENGAGE IN ILLEGAL SEX ACTS (1s)	Dismissed
18:2422.F COERCION OR ENTICEMENT OFA MINOT TO TRAVEL TO ENGAGE IN ILLEGAL SEX ACTS (2)	Dismissed
18:2422.F COERCION OR ENTICEMENT OF MINOR TO ENGAGE IN ILLEGAL SEX ACTS (2s)	Dismissed
18:2422.F COERCION OR ENTICEMENT OF FEMALE (ENTICEMENT OF A MONOR TO TRAVEL TO ENGAGE IN ILLEGAL SEX ACTS) (2ss)	Acquitted by Jury
18:371.F CONSPIRACY TO TRANSPORT MINORS WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY (3)	Dismissed
18:371.F 18:371.F CONSPIRACY TO TRANSPORT MINORS WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY (3s)	Dismissed

18:2423.F COERCION OR ENTICEMENT OF MINOR FEMALE (TRANSPORTATION OF A MINOR WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY) (4)	Dismissed
18:2423.F TRANSPORTATION OF A MINOR WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY (4s)	Dismissed
18:1623.F FALSE DECLARATIONS BEFORE GRAND JURY/COURT (PERJURY) (5-6)	Dismissed
18:1623.F FALSE DECLARATIONS BEFORE GRAND JURY/COURT (5s-6s)	Dismissed
18:1623.F FALSE DECLARATIONS BEFORE GRAND JURY/COURT (PERJURY) (7ss-8ss)	Dismissed

Highest Offense Level (Terminated)

Felony

Complaints	**Disposition**
None	

Interested Party

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Boies Schiller Flexner LLP
And the Victims it Represents

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A-5

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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)
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)
09/24/2020	58	SEALED DOCUMENT placed in vault. (mhe) (Entered: 09/24/2020)
10/05/2020	59	NOTICE OF ATTORNEY APPEARANCE: Bobbi C Sternheim appearing for Ghislaine Maxwell. Appearance Type: Retained. (Sternheim, Bobbi) (Entered: 10/05/2020)
10/06/2020	60	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated October 6, 2020 re: Request to Delay Disclosure Document filed by USA. (Comey, Maurene) (Entered: 10/06/2020)
10/06/2020	61	AFFIDAVIT of Maurene Comey by USA as to Ghislaine Maxwell. (Comey, Maurene) (Entered: 10/06/2020)
10/07/2020	62	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 60 Accordingly, the Government respectfully requests that the Court approve the Government's request to delay disclosure of these Materials...ENDORSEMENT...The Defendant shall file any opposition to the Government's request by October 14, 2020. The Government's reply, if any, is due by October 20, 2020. SO ORDERED. (Government Replies due by 10/20/2020., Defendant Responses due by 10/14/2020) (Signed by Judge Alison J. Nathan on 10/7/20)(jw) (Entered: 10/07/2020)
10/07/2020	63	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated October 7, 2020 re: Review of Investigative Files from Other Offices and Agencies Document filed by USA. (Comey, Maurene) (Entered: 10/07/2020)
10/14/2020	64	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated October 14, 2020 re: Response to 60 LETTER addressed to Judge Alison J. Nathan from USA dated October 6, 2020 re: Request to Delay Disclosure. (Everdell, Christian) (Entered: 10/14/2020)

10/20/2020	65	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated October 20, 2020 re: Reply Letter in Further Support of Request to Delay Disclosure Document filed by USA. (Comey, Maurene) (Entered: 10/20/2020)
10/23/2020	66	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated October 23, 2020 re: Response to the Governments October 7, 2020 letter (Pagliuca, Jeffrey) (Entered: 10/23/2020)
10/30/2020	67	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated October 30, 2020 re: Reply to Defense's October 23, 2020 Letter Document filed by USA. (Comey, Maurene) (Entered: 10/30/2020)
11/05/2020	68	ORDER as to Ghislaine Maxwell: This Order is entered, pursuant to Federal Rule of Criminal Procedure 5(f) and the Due Process Protections Act, Pub. L. No 116182, 134 Stat. 894 (Oct. 21, 2020), to confirm the Government's disclosure obligations under Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, and to summarize the possible consequences of violating those obligations. (Signed by Judge Alison J. Nathan on 11/5/2020) (See ORDER set forth) (ap) (Entered: 11/05/2020)
11/06/2020	69	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated November 6, 2020 re: Request to Extend Discovery Deadline for Portion of Electronic Discovery Document filed by USA. (Comey, Maurene) (Entered: 11/06/2020)
11/06/2020	70	AFFIDAVIT of Maurene Comey by USA as to Ghislaine Maxwell. (Comey, Maurene) (Entered: 11/06/2020)
11/09/2020	71	MANDATE of USCA (Certified Copy) as to Ghislaine Maxwell re: 55 Notice of Appeal. USCA Case Number 20-3061-cr. 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.. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 11/09/2020. (nd) (Entered: 11/09/2020)
11/09/2020	72	MEMO ENDORSEMENT as to Ghislaine Maxwell on 69 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated November 6, 2020 re: Request to Extend Discovery Deadline for Portion of Electronic Discovery. ENDORSEMENT: The Court hereby extends the deadline for the Government's production of electronic discovery from November 9, 2020 to November 23, 2020. The Court also grants the parties' request for an extension of the motions deadlines as follows: the Defendant's motions are due by January 11, 2021, the Government's responses are due by February 12, 2021, and any replies are due by February 19, 2021. SO ORDERED. (Discovery due by 11/23/2020. Motions due by 1/11/2021. Responses due by 2/12/2021. Replies due by 2/19/2021.) (Signed by Judge Alison J. Nathan on 11/9/2020) (lnl) (Entered: 11/10/2020)
11/18/2020	73	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 60 Letter filed by USA as to Ghislaine Maxwell re: The Government respectfully requests that the Court approve the Government's request to delay disclosure of these Materials...ENDORSEMENT...There is no dispute that the materials referenced in the Government's letter will be turned over to the defense. The Government has indicated that it will do so. The only dispute, then, relates to the timing of such disclosure. See Dkt. Nos. 64, 65. Because the Government has articulated plausible reasons for some delay of disclosure, see Dkt. No. 65 at 4, the Court grants the Government's request to delay disclosure. However, the Governments proposal to delay disclosure until 8 weeks in advance of trial is insufficient. In order to

		ensure that the defense can adequately prepare for trial, the Government shall produce the referenced materials, which are not voluminous, to the defense by March 12, 2021. Disclosure of the materials will of course be subject to the protective order entered by the Court, see Dkt. No. 36. (Government Responses due by 3/12/2021) (Signed by Judge Alison J. Nathan on 11/18/20)(jw) (Entered: 11/18/2020)
11/23/2020	74	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated November 23, 2020 re: Update Regarding Conditions of Confinement Document filed by USA. (Comey, Maurene) (Entered: 11/23/2020)
11/24/2020	75	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/24/2020 re: Response to 90-day MDC conditions report (Sternheim, Bobbi) (Entered: 11/24/2020)
11/24/2020	76	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 75 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/24/2020 re: Response to 90-day MDC conditions report. ENDORSEMENT: The parties are hereby ORDERED to meet and confer regarding Defendant's request that Warden Heriberto Tellez directly address Defendant's concerns regarding the conditions of her detention. The parties shall jointly submit a status update within one week of this Order. (Signed by Judge Alison J. Nathan on 11/24/2020) (ap) (Entered: 11/24/2020)
12/01/2020	77	ORDER as to Ghislaine Maxwell. On November 25, 2020, the Defendant filed a letter request under seal. On November 30, 2020, she filed a second letter request in which she proposed redactions on both letters. The Government is hereby ORDERED to respond to the Defendant's November 25, 2020 letter request and to the request for proposed redactions by no later than December 2, 2020. The letters shall be temporarily sealed while the Court resolves the redaction request. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/1/2020)(bw) (Entered: 12/01/2020)
12/01/2020	78	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated December 1, 2020 re: Joint Letter regarding Conditions of Confinement Document filed by USA. (Pomerantz, Lara) (Entered: 12/01/2020)
12/02/2020	79	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 78 LETTER by USA addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated December 1, 2020 re: Joint Letter regarding Conditions of Confinement. ENDORSEMENT: MDC legal counsel shall submit their letter to the Court by December 4, 2020. Upon review of that letter, the Court will determine whether any additional information is required, either orally or in writing. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/2/2020)(bw) (Entered: 12/02/2020)
12/02/2020	80	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated December 2, 2020 re: Defense Requests for Sealing Document filed by USA. (Comey, Maurene) (Entered: 12/02/2020)
12/03/2020	81	ORDER as to Ghislaine Maxwell. On November 25, 2020, counsel for Defendant Ghislaine Maxwell filed a letter request seeking an in camera conference for the presentation of a renewed motion for release on bail and a request to seal the November 25, 2020 letter in its entirety. The Court required justification for the sealing request. On November 30, 2020, the defense counsel filed a second letter no longer fully pressing the unsupported request to file the letter entirely under seal and instead proposing redactions to both the November 25th and November 30th letters. The Government has indicated that it does not oppose the redactions. Dkt. No. 80. After due consideration, the Court will

		adopt the Defendant's proposed redactions, which are consented to by the Government. The Court's decision 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 11920. "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, 1050 (2d Cir. 1995) ("Amodeo II")). The proposed redactions satisfy this test. First, the Court finds that the Defendant's letter motions are "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). And while the Court assumes that the common law presumption of access attaches, in balancing competing considerations against the presumption of access, the Court finds that the arguments the Defendant has put forthincluding, most notably, the privacy interests of the individuals referenced in the lettersfavor her proposed and tailored redactions. The Defendant is hereby ORDERED to docket the redacted versions of the two letters by December 4, 2020. For the reasons outlined in the Government's letter dated December 2, 2020, Dkt. No. 80, the Court DENIES the Defendant's request for an in camera conference. In order to protect the privacy interests referenced in the Defendant's November 25, 2020 letter, the Court will permit the Defendant to make her submission in writing and to propose narrowly tailored redactions. The parties are hereby ORDERED to meet and confer and to jointly prepare a briefing schedule for the Defendant's forthcoming renewed motion for release on bail. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/3/2020)(bw) (Entered: 12/03/2020)
12/03/2020	82	SEALED DOCUMENT placed in vault. (jus) (Entered: 12/03/2020)
12/03/2020	83	SEALED DOCUMENT placed in vault. (jus) (Entered: 12/03/2020)
12/03/2020	84	SEALED DOCUMENT placed in vault. (jus) (Entered: 12/03/2020)
12/04/2020	85	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated December 4, 2020 re: Briefing Schedule (Everdell, Christian) (Entered: 12/04/2020)
12/04/2020	86	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 11/25/2020 re: Sealing (Everdell, Christian) (Entered: 12/04/2020)
12/04/2020	87	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 11/30/2020 re: Sealing (Everdell, Christian) (Entered: 12/04/2020)
12/07/2020	88	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sophia Papapetru and John Wallace dated 12/4/20 re: This letter is written in response to your order dated December 2, 2020, concerning Ghislaine Maxwell, Reg. 02879-509., an inmate currently confined at the Metropolitan Detention center in Brooklyn, New York. You expressed various concerns regarding Ms. Maxwells confinement and well-being. (jw) (Entered: 12/07/2020)
12/07/2020	89	ORDER as to Ghislaine Maxwell re: 85 Letter filed by Ghislaine Maxwell. The Court is in receipt of the Defendant's December 4, 2020 letter, Dkt. No. 85, and hereby sets the following schedule: The Defendants submission is due December 8, 2020; The Government's response is due December 16, 2020; The Defendant's reply is due December 18, 2020. After reviewing these submissions, the Court will determine whether a hearing on the renewed bail motion is necessary. The Court grants the Defendants request that the Government shall file its submission under seal with proposed redactions.

		Any objections to proposed redactions are due within 24 hours after any brief has been filed. Finally, the Defendant is granted leave to file a motion not to exceed 40 pages. The Governments response shall also be limited to 40 pages. The Defendant's reply shall not exceed 10 pages (Defendant submission due by 12/8/2020., Defendant Replies due by 12/18/2020., Government Responses due by 12/16/2020) (Signed by Judge Alison J. Nathan on 12/7/20)(jw) (Entered: 12/07/2020)
12/07/2020	90	ENDORSED LETTER as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Mark S. Cohen and Christian R. Everdell dated 11/25/20 re: On behalf of my client, Ghislaine Maxwell, we plan to file a Renewed Motion for Release on Bail (the "Motion") and respectfully request an in camera conference, with all counsel present, to address the appropriate procedures for the filing and consideration of the Motion. For the reasons explained below, we intend to request, pursuant to Fed. R. Crim. P. 49.l(d), that the Court permit the filing of portions of the Motion and certain supporting materials under seal and require that any responsive materials be filed under seal....ENDORSEMENT: The Court sees no basis for the sealing of this letter. On or before December 2, 2020, Defendant shall justify why this letter should be sealed (or redacted). Alternatively, the Defendant may file the letter on the public docket by that date. The Court will take no action on the request pending resolution of the initial sealing question. The Defendant's letter and this memorandum endorsement will be temporarily sealed pending resolution of the sealing request. (Signed by Judge Alison J. Nathan on 11/25/20)(jw) (Entered: 12/07/2020)
12/07/2020	91	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 12/07/2020 re: Response to MDC Report to Court re: conditions (Sternheim, Bobbi) (Entered: 12/07/2020)
12/08/2020	92	ORDER as to Ghislaine Maxwell: On December 4, 2020, the Court received a letter from MDC legal counsel responding to the concerns that the Defendant raised in her November 24, 2020 letter. See Dkt. Nos. 75, 88; see also Dkt. No. 78. The Defendant responded to the MDC legal counsel's letter on December 7, 2020, reiterating her request that the Court summon Warden Heriberto Tellez to personally respond to questions from the Court regarding the Defendant's conditions of confinement. See Dkt. No. 91. Having carefully reviewed the parties' submissions, along with the MDC legal counsel's December 4, 2020 letter, the Court DENIES the Defendant's request to summon the Warden to personally appear and respond to questions. This resolves Dkt. No. 75. Notwithstanding this, as originally provided in Dkt. No. 49, the Government shall continue to submit written status updates detailing any material changes to the conditions of Ms. Maxwell's confinement, with particular emphasis on her access to legal materials, including legal mail and email, and her ability to communicate with defense counsel. The updates shall also include information on the frequency of searches of the Defendant. The Court hereby ORDERS the Government to submit these written updates every 60 days. Furthermore, the Government shall take all necessary steps to ensure that the Defendant continues to receive adequate access to her legal materials and her ability to communicate with defense counsel. (Signed by Judge Alison J. Nathan on 12/8/2020) (ap) (Entered: 12/08/2020)
12/10/2020	93	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 7/14/2020 before Judge Alison J. Nathan. Court Reporter/Transcriber: Kristen Carannante, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/31/2020. Redacted Transcript Deadline set for 1/11/2021. Release of Transcript Restriction set for 3/10/2021. (McGuirk, Kelly) (Entered: 12/10/2020)
12/10/2020	94	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 7/14/2020 has

		been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 12/10/2020)
12/14/2020	95	ORDER as to Ghislaine Maxwell: On December 8, 2020, Defendant Ghislaine Maxwell filed her renewed application for bail under seal with proposed redactions, in accordance with this Court's December 7, 2020 Order, see Dkt. No. 89. The Government did not file any opposition to the Defendant's proposed redactions. After due consideration, the Court will adopt the Defendant's proposed redactions. The Court's decision to adopt those 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 11920. "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 proposed redactions satisfy this test. The Court finds that Defendant's letter motions are "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). And the Court also finds that the common law presumption of access attaches. Id. at 146; see also Nixon v. Warner Commc'ns, Inc., 435 U.S. 589, 602 (1978). Nevertheless, in balancing competing considerations against the presumption of access, the Court finds that the redactions are narrowly tailored to properly guard the privacy interests of the individuals referenced in the Defendant's submission and in the corresponding exhibits The Defendant is hereby ORDERED to docket the redacted documents and corresponding exhibits. (Signed by Judge Alison J. Nathan on 12/14/2020) (ap) (Entered: 12/14/2020)
12/14/2020	96	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated December 8, 2020 re: Cover Letter for Renewed Bail Application (Everdell, Christian) (Entered: 12/14/2020)
12/14/2020	97	MEMORANDUM OF LAW in Support by Ghislaine Maxwell *re: Renewed Motion for Bail*. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O, # 16 Exhibit P, # 17 Exhibit Q, # 18 Exhibit R, # 19 Exhibit S, # 20 Exhibit T, # 21 Exhibit U, # 22 Exhibit V, # 23 Exhibit W, # 24 Exhibit X)(Everdell, Christian) (Entered: 12/14/2020)
12/17/2020	98	NOTICE OF ATTORNEY APPEARANCE Andrew Rohrbach appearing for USA. (Rohrbach, Andrew) (Entered: 12/17/2020)
12/18/2020	99	ORDER as to Ghislaine Maxwell: On December 16, 2020, the Government filed its opposition to Defendant Ghislaine Maxwell's renewed application for bail. In accordance with this Court's December 7, 2020 Order, see Dkt. No. 89, the Government filed its materials under seal and proposed narrowly tailored redactions on those materials. The Defendant did not file any opposition to the Government's proposed redactions. The Court will adopt the Government's proposed redactions after applying 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 access to the materials; and (iii) balance competing considerations against the

		presumption of access. Id. at 11920. "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 ("Amodeo II"), 71 F.3d 1044, 1050 (2d Cir. 1995)). The proposed redactions satisfy this test. The Court finds that the Governments submissions are "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). And the Court also finds that the common law presumption of access attaches. Id. at 146; see also Nixon v. Warner Commc'ns, Inc., 435 U.S. 589, 602 (1978). Nevertheless, the proposed redactions are narrowly tailored to serve substantial interests, including, most importantly, third parties' personal privacy interests. See Under Seal v. Under Seal, 273 F. Supp. 3d 460 467 (S.D.N.Y.2017). The Government is hereby ORDERED to docket the redacted documents and corresponding exhibits by no later than December 18, 2 (Signed by Judge Alison J. Nathan on 12/18/2020) (ap) (Entered: 12/18/2020)
12/18/2020	100	MEMORANDUM OF LAW in Opposition by USA as to Ghislaine Maxwell *Renewed Bail Motion*. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Comey, Maurene) (Entered: 12/18/2020)
12/23/2020	101	ORDER as to Ghislaine Maxwell: On December 18, 2020, the Defendant filed her reply to the Government's opposition to her renewed application for bail. In accordance with this Court's December 7, 2020 Order, see Dkt. No. 89, she filed these materials under seal and proposed narrowly tailored redactions on those materials. The Government did not file any opposition to the Defendant's proposed redactions. The Court will adopt the Defendant's proposed redactions after applying 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 11920. "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 ("Amodeo II"), 71 F.3d 1044, 1050 (2d Cir. 1995)). The proposed redactions satisfy this test. The Court finds that the Defendant's submissions are "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). And the Court also finds that the common law presumption of access attaches. Id. at 146; see also Nixon v. Warner Commc'ns, Inc., 435 U.S. 589, 602 (1978). As with the redactions to her renewed motion for bail, the proposed redactions here are narrowly tailored to serve substantial interests, including, most importantly, third parties personal privacy interests. See Under Seal v. Under Seal, 273 F. Supp. 3d 460, 467 (S.D.N.Y. 2017). See also Dkt. No. 95. The Defendant is hereby ORDERED to docket the redacted documents and corresponding exhibits by no later than December 23, 2020. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/23/2020) (lnl) (Entered: 12/23/2020)
12/23/2020	102	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated December 18, 2020 re: Cover Letter for Reply Memorandum for Renewed Bail Application (Everdell, Christian) (Entered: 12/23/2020)
12/23/2020	103	REPLY MEMORANDUM OF LAW in Support by Ghislaine Maxwell *re: Renewed Motion for Bail*. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Everdell, Christian) (Entered: 12/23/2020)

12/28/2020	104	ORDER as to Ghislaine Maxwell. On December 8, 2020, Defendant Ghislaine Maxwell filed a renewed motion for releaseon bail. Dkt No. 97. In an Opinion and Order concurrently filed under temporary seal, the Court DENIES the Defendant's motion. In light of the fact that the Opinion includes potentially confidential information that should not be filed on the public docket, the Court will permit the parties 48 hours to propose any redactions to the Courts Opinion and Order and to justify those redactions by reference tothe Second Circuits decision in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110(2d Cir. 2006). After determining which, if any, portions of the Opinion and Order should be redacted, the Court will file the Opinion and Order on the public docket. As a result, the Court concludes that the Government has met its burden of persuasion that the Defendant poses a flight risk and that pretrial detention continues to be warranted. On or before December 30, 2020, the parties are ORDERED to submit a joint letter indicating whether they propose any redactions and the justification for any such proposal. This resolves Dkt No. 97. (Signed by Judge Alison J. Nathan on 12/28/20)(jw) (Entered: 12/28/2020)
12/30/2020	105	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated December 30, 2020 re: Joint Letter re December 28, 2020 Opinion and Order Document filed by USA. (Comey, Maurene) (Entered: 12/30/2020)
12/30/2020	106	OPINION AND ORDER as to Ghislaine Maxwell. Defendant Ghislaine Maxwell has been indicted by a grand jury on charges of conspiracy to entice minors to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 371; enticing a minor to travel to engage in illegal sex acts, in violation of 18 U.S.C. §§ 2422 and 2; conspiracy to transport minors to participate in illegal sex acts, in violation of 18 U.S.C. § 371; transporting minors to participate in illegal sex acts, in violation of 18 U.S.C. §§ 2423 and 2; and two charges of perjury, in violation of 18 U.S.C. § 1623. The Court held a lengthy bail hearing on July 14, 2020. After extensive briefing and argument at the hearing, the Court concluded that the Defendant was a clear risk of flight and that no conditions or combination of conditions would ensure her appearance. Defendant Ghislaine Maxwells renewed motion for release on bail, Dkt. No. 97, is DENIED. (Signed by Judge Alison J. Nathan on 12/28/20)(jw) (Entered: 12/30/2020)
12/31/2020	107	LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated December 31, 2020 re: Extension of Time . Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 12/31/2020)
01/05/2021	108	MEMO ENDORSEMENT as to Ghislaine Maxwell (1) on 107 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated December 31, 2020 re: Extension of Time. ENDORSEMENT: SO ORDERED. (Signed by Judge Alison J. Nathan on 1/5/2021) (ap) (Entered: 01/05/2021)
01/05/2021		Set/Reset Deadlines as to Ghislaine Maxwell: Motions due by 1/25/2021. Responses due by 2/26/2021. Replies due by 3/5/2021. (ap) (Entered: 01/05/2021)
01/08/2021	109	LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated January 8, 2021 re: Extension of Time to File Notice of Appeal . Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 01/08/2021)
01/11/2021	110	SEALED DOCUMENT placed in vault. (jus) (Entered: 01/11/2021)
01/11/2021	111	SEALED DOCUMENT placed in vault. (jus) (Entered: 01/11/2021)
01/11/2021	112	MEMO ENDORSEMENT as to Ghislaine Maxwell (1) denying 109 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated January 8, 2021 re: Extension of Time to File Notice of Appeal. ENDORSEMENT: The request is denied.

		Good cause for an extension of time to file a notice of appeal has not been provided. SO ORDERED. (Signed by Judge Alison J. Nathan on 1/11/2021) (lnl) (Entered: 01/11/2021)
01/11/2021	113	NOTICE OF APPEAL by Ghislaine Maxwell from 104 Order. (nd) (Entered: 01/12/2021)
01/11/2021		Appeal Remark as to re: 113 Notice of Appeal by Ghislaine Maxwell. $505.00 Appeal filing fee due. (nd) (Entered: 01/12/2021)
01/12/2021		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Ghislaine Maxwell to US Court of Appeals re: 113 Notice of Appeal. (nd) (Entered: 01/12/2021)
01/12/2021		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to Ghislaine Maxwell re: 113 Notice of Appeal were transmitted to the U.S. Court of Appeals. (nd) (Entered: 01/12/2021)
01/13/2021	114	INTERNET CITATION NOTE as to Ghislaine Maxwell: Material from decision with Internet citation re: 106 Memorandum & Opinion. (sjo) (Entered: 01/13/2021)
01/14/2021	115	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated January 14, 2021 re: Laptop Access (Everdell, Christian) (Entered: 01/14/2021)
01/15/2021	116	MEMO ENDORSEMENT as to Ghislaine Maxwell on 115 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated January 14, 2021 re: Laptop Access. ENDORSEMENT: The unobjected-to request is GRANTED. The Bureau of Prisons is ORDERED to give the Defendant access to the laptop computer on weekends and holidays during the hours that she is permitted to review discovery. SO ORDERED. (Signed by Judge Alison J. Nathan on 1/15/2021) (lnl) (Entered: 01/15/2021)
01/15/2021		USCA Case Number 21-0058 from the U.S. Court of Appeals, 2nd Circ. as to Ghislaine Maxwell, assigned to 113 Notice of Appeal filed by Ghislaine Maxwell. (nd) (Entered: 01/15/2021)
01/15/2021		USCA Appeal Fees received $ 505.00, receipt number 465401271727 as to Ghislaine Maxwell on 01/15/2021 re: 113 Notice of Appeal filed by Ghislaine Maxwell. (nd) (Entered: 01/15/2021)
01/25/2021	117	ORDER as to Ghislaine Maxwell: On January 25, 2021, the Court received by email the attached letter from the Bureau of Prisons ("BOP"). In the letter, the BOP requests that the Court vacate its January 15, 2021 Order, Dkt. No. 116, which directed the BOP to give the Defendant access to her Government provided laptop computer on weekends and holidays during the hours that she is permitted to review discovery. The Defendant and the Government may respond to the BOP's letter within one week of this Order. (Signed by Judge Alison J. Nathan on 1/25/2021) (ap) (Entered: 01/25/2021)
01/25/2021	118	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Mark S. Cohen dated January 25, 2021 re: Pretrial Motions (Cohen, Mark) (Entered: 01/25/2021)
01/25/2021	119	MOTION for Separate Trial on Counts Ghislaine Maxwell (1) Count 5s-6s,5-6 . Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 01/25/2021)
01/25/2021	120	MEMORANDUM in Support by Ghislaine Maxwell re 119 MOTION for Separate Trial on Counts Ghislaine Maxwell (1) Count 5s-6s,5-6 .. (Pagliuca, Jeffrey) (Entered: 01/25/2021)
01/25/2021	121	MOTION to Dismiss *Either Count One Or Count Three of the Superseding Indictment as Multiplicitous*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 01/25/2021)

01/25/2021	122	MEMORANDUM in Support by Ghislaine Maxwell re 121 MOTION to Dismiss *Either Count One Or Count Three of the Superseding Indictment as Multiplicitous*.. (Pagliuca, Jeffrey) (Entered: 01/25/2021)
01/25/2021	123	MOTION to Dismiss *Counts One through Four of the Superseding Indictment for Lack of Specificity*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 01/25/2021)
01/25/2021	124	MEMORANDUM in Support by Ghislaine Maxwell re 123 MOTION to Dismiss *Counts One through Four of the Superseding Indictment for Lack of Specificity*.. (Pagliuca, Jeffrey) (Entered: 01/25/2021)
01/25/2021	125	MOTION to Dismiss *the Superseding Indictment as it was Obtained in Violation of the Sixth Amendment*. Document filed by Ghislaine Maxwell. (Cohen, Mark) (Entered: 01/25/2021)
01/25/2021	126	MEMORANDUM in Support by Ghislaine Maxwell re 125 MOTION to Dismiss *the Superseding Indictment as it was Obtained in Violation of the Sixth Amendment*.. (Cohen, Mark) (Entered: 01/25/2021)
01/26/2021	127	ORDER as to Ghislaine Maxwell: On January 25, 2021, the Defendant filed twelve pre-trial motions. Because there is a request to redact sensitive or confidential information, several of the motions have been filed under temporary seal. The Government may respond to the Defendant's proposed redactions within two days of this Order. (Signed by Judge Alison J. Nathan on 1/26/2021) (ap) (Entered: 01/26/2021)
01/28/2021	128	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated January 28, 2021 re: Defendant's Proposed Redactions to Pre-Trial Motions Document filed by USA. (Pomerantz, Lara) (Entered: 01/28/2021)
02/01/2021	129	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated February 1, 2021 re: MDC Laptop Access Document filed by USA. (Comey, Maurene) (Entered: 02/01/2021)
02/01/2021	130	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 02/02/2021 re: Opposition to MDC letter (Sternheim, Bobbi) (Entered: 02/01/2021)
02/02/2021	131	MEMO ENDORSEMENT as to Ghislaine Maxwell on Letter addressed to Judge Alison J. Nathan from Sophia Papapetru (Staff Attorney, MDC Brooklyn, Federal Bureau of Prisons) dated January 25, 2021. ENDORSEMENT: Having considered the request submitted by the Bureau of Prisons ("BOP") that the Court vacate its January 15, 2021 Order, Dkt. No. 117, as well as the Government's and the Defendant's responses, Dkt. Nos. 129, 130, the Court hereby DENIES the BOP's request to vacate the Order. SO ORDERED. (Signed by Judge Alison J. Nathan on 2/2/2021)(bw) (Entered: 02/02/2021)
02/04/2021	132	ORDER as to Ghislaine Maxwell: The Defendant is hereby ORDERED to docket the redacted documents and corresponding exhibits by no later than February 5, 2021. With respect to Motion 3, the Defendant is ORDERED to docket the version that includes the Government's proposed redactions in addition to her own. SO ORDERED. (Signed by Judge Alison J. Nathan on 2/4/2021)(See ORDER as set forth) (lnl) (Entered: 02/04/2021)
02/04/2021	133	MOTION to Suppress *Under the Due Process Clause All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five and Six*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 02/04/2021)

02/04/2021	134	MEMORANDUM in Support by Ghislaine Maxwell re 133 MOTION to Suppress *Under the Due Process Clause All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five and Six*.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I)(Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	135	MOTION to Dismiss *Counts Five and Six of the Superseding Indictment Because the Alleged Misstatements are Not Perjurious as a Matter of Law*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	136	MEMORANDUM in Support by Ghislaine Maxwell re 135 MOTION to Dismiss *Counts Five and Six of the Superseding Indictment Because the Alleged Misstatements are Not Perjurious as a Matter of Law*.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K)(Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	137	MOTION to Dismiss *Counts One Through Six of the Superseding Indictment for Pre-Indictment Delay*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	138	MEMORANDUM in Support by Ghislaine Maxwell re 137 MOTION to Dismiss *Counts One Through Six of the Superseding Indictment for Pre-Indictment Delay*.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	139	MOTION to Suppress *Under the Fourth Amendment, Martindell, and the Fifth Amendment All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five And Six*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	140	MEMORANDUM in Support by Ghislaine Maxwell re 139 MOTION to Suppress *Under the Fourth Amendment, Martindell, and the Fifth Amendment All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five And Six*.. (Pagliuca, Jeffrey) (Entered: 02/04/2021)
02/04/2021	141	MOTION to Dismiss *the Superseding Indictment for Breach of Non-Prosecution Agreement*. Document filed by Ghislaine Maxwell. (Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	142	MEMORANDUM in Support by Ghislaine Maxwell re 141 MOTION to Dismiss *the Superseding Indictment for Breach of Non-Prosecution Agreement*.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C (Sealed), # 4 Exhibit D (Sealed), # 5 Exhibit E (Sealed), # 6 Exhibit F (Sealed), # 7 Exhibit G (Sealed), # 8 Exhibit H (Sealed))(Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	143	MOTION to Dismiss *Counts One Through Four of the Superseding Indictment as Time-Barred*. Document filed by Ghislaine Maxwell. (Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	144	MEMORANDUM in Support by Ghislaine Maxwell re 143 MOTION to Dismiss *Counts One Through Four of the Superseding Indictment as Time-Barred*.. (Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	145	MOTION to Strike *Surplusage from Superseding Indictment*. Document filed by Ghislaine Maxwell. (Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	146	MEMORANDUM in Support by Ghislaine Maxwell re 145 MOTION to Strike *Surplusage from Superseding Indictment*.. (Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	147	MOTION for Bill of Particulars *and Pretrial Disclosures*. Document filed by Ghislaine

		Maxwell. (Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	148	MEMORANDUM in Support by Ghislaine Maxwell re 147 MOTION for Bill of Particulars *and Pretrial Disclosures*.. (Attachments: # 1 Exhibit A, # 2 Exhibit B (Sealed), # 3 Exhibit C (Sealed), # 4 Exhibit D (Sealed), # 5 Exhibit E)(Cohen, Mark) (Entered: 02/04/2021)
02/04/2021	149	AFFIDAVIT of Bobbi C. Sternheim in Support as to Ghislaine Maxwell re 147 MOTION for Bill of Particulars *and Pretrial Disclosures*.. (Cohen, Mark) (Entered: 02/04/2021)
02/05/2021	150	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	151	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	152	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	153	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	154	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	155	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	156	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	157	SEALED DOCUMENT placed in vault. (jri) (Entered: 02/05/2021)
02/05/2021	158	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated February 5, 2021 re: MDC Conditions Update Document filed by USA. (Comey, Maurene) (Entered: 02/05/2021)
02/16/2021	159	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 02/16/2021 re: Conditions of Pretrial Confinement (Sternheim, Bobbi) (Entered: 02/16/2021)
02/23/2021	160	THIRD MOTION for Bond . Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 02/23/2021)
02/24/2021	161	ORDER as to Ghislaine Maxwell: On February 23, 2021, Defendant Ghislaine Maxwell filed a third motion for release on bail. Dkt. No. 160. The Government's response is due March 9, 2021, and the Defendants reply is due March 16, 2021. SO ORDERED. (Responses due by 3/9/2021. Replies due by 3/16/2021.) (Signed by Judge Alison J. Nathan on 2/24/2021) (lnl) (Entered: 02/24/2021)
02/26/2021	162	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated February 26, 2021 re: Cover Letter for Government Opposition to Defense Pretrial Motions Document filed by USA. (Comey, Maurene) (Entered: 02/26/2021)
03/01/2021	163	LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated March 1, 2021 re: Extension of Time to File Reply to Government Opposition to Defense Pretrial Motions . Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 03/01/2021)
03/01/2021	164	MEMO ENDORSEMENT 163 LETTER MOTION To request a 10-day extension of time until Monday, March 15, 2021 to file our reply re: 163 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated March 1, 2021 re: Extension of Time to File Briefing Schedule...ENDORSEMENT...The Defendant's request is GRANTED. Her reply to the Government's Omnibus Memorandum in

		Opposition to the Defendants Pretrial Motions is now due on March 15, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/1/21) (jw) (Entered: 03/01/2021)
03/01/2021		Set/Reset Deadlines/Hearings as to Ghislaine Maxwell: Defendant Replies due by 3/15/2021 (jw) (Entered: 03/01/2021)
03/09/2021	165	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated March 9, 2021 re: Opposition to Third Bail Motion Document filed by USA. (Attachments: # 1 Exhibit A) (Pomerantz, Lara) (Entered: 03/09/2021)
03/15/2021	166	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated March 15, 2021 re: Pretrial Motion Replies (Everdell, Christian) (Entered: 03/15/2021)
03/16/2021	167	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 03/16/2021 re: Letter regarding Reply to Bail Motion (Sternheim, Bobbi) (Entered: 03/16/2021)
03/18/2021	168	ORDER as to Ghislaine Maxwell. On February 26, 2021, the Government filed its omnibus memorandum of law opposing Defendants' twelve pretrial motions. It filed the brief, along with the corresponding exhibits, under temporary seal pending the Court's resolution of its request to redact sensitive or confidential information. See Dkt. No. 162. On March 9, 2021, the Defendant objected to certain of the redactions that the Government had proposed, and she proposed additional redactions. Having considered the parties' respective positions, the Court will grant the Government's requests for redactions and sealing, as well as the Defendant's additional redaction requests, with the exceptions discussed below. Finally, the Court denies the Governments request to file Exhibit 11 entirely under seal. While portions of that transcript have been redacted, other portions are part of the public record. See Giuffre v. Maxwell, Case No. 15-cv-7433, Dkt. No. 1212-1. In light of this, the Court sees no basis to file the transcript entirely under seal rather than by redacting the relevant portions. In light of the above, the Government is hereby ORDERED to either docket on ECF their brief and the corresponding exhibits, consistent with this Order, or to file a letter with the Court justifying more tailored redaction and sealing requests regarding pages 1128 and 187188 and Exhibits 8 and 9 by no later than March 22, 2021. The parties are further ORDERED to meet, confer, and jointly propose redactions to the Defendant's cover letter objecting to the Government's proposed redactions by March 22, 2021. Finally, the parties are ORDERED to meet, confer, and propose redactions to Exhibit 11 of the Government's submission by March 22, 2021 (Signed by Judge Alison J. Nathan on 3/18/21)(jw) (Entered: 03/18/2021)
03/22/2021	169	ORDER as to Ghislaine Maxwell: Defendant Ghislaine Maxwell's third motion for release on bail, Dkt. No. 160, is DENIED. The parties are ORDERED to meet and confer and propose and justify any redactions to the Defendant's reply brief by March 24, 2021. If they conclude that redactions are unnecessary, the Defendant is ORDERED to docket the unredacted version of the brief by March 24, 2021. (Signed by Judge Alison J. Nathan on 3/22/2021) (See ORDER set forth) (ap) Modified on 3/23/2021 (ap). (Entered: 03/22/2021)
03/22/2021	170	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated March 22, 2021 re: Redactions to Government Opposition to Defense Pretrial Motions Document filed by USA. (Pomerantz, Lara) (Entered: 03/22/2021)
03/23/2021	171	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 160 THIRD MOTION for Bond . . (Sternheim, Bobbi) (Entered: 03/23/2021)

03/24/2021	172	ORDER as to Ghislaine Maxwell. On March 5, 2021, Defendant Ghislaine Maxwell submitted to the Court an application for an order authorizing a subpoena pursuant to Rule 17(c)(3) of the Federal Rules of Criminal Procedure. The proposed subpoena was directed at a law firm that represents alleged victims of the Defendant. As is standard for Rule 17(c) subpoenas, the application was made ex parte and under seal on the ground that it reveals defense strategy....[*** See this Order ***]... Rule 17(c)(3) provides that "[a]fter [an indictment] is filed, a subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order," but "before entering the order and unless there are exceptional circumstances, the court must require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object." Fed. R. Crim. P. 17(c)(3). Consistent with the Rule, on March 12, 2021, in a sealed ex parte Order, the Court required defense counsel to provide notice to alleged victims whose personal or confidential information may be disclosed by the proposed subpoena. The Court also gave the alleged victims an opportunity to object to or request modifications of the subpoena as required by Rule 17(c)(3). On March 19, 2021, the Court received a letter from the law firm indicating that it can provide notice to alleged victims whose personal or confidential information may be elicited by the subpoena. The law firm shall provide notice to any such alleged victims it represents. In that letter, the law firm also interposed substantial objections on behalf of the law firm and the alleged victims it represents. Those objections are functionally the equivalent of a motion to quash, even though the subpoena has not yet issued. So that the Court can receive adversarial briefing on the proposed subpoena comparable to a motion to quash, the law firm shall enter an appearance and file its objections on the public docket. See United States v. Ray, No. 20-CR-110 (LJL), 2020 WL 6939677, at *10 (S.D.N.Y. Nov. 25, 2020) ("[I]f the Court determines that the subpoena calls for personal or confidential information about a victim, it requires the requesting party have given notice to the victim before it permits the service of the subpoena. If the victim objects, the Court will then determine whether to modify or quash the subpoena, including on grounds that Nixon was not satisfied."). In advance of noticing an appearance and filing, the law firm shall meet and confer with defense counsel to see if any issues can be narrowed before formal briefing. Moreover, prior to filing, the law firm shall confer with defense counsel as to any proposed, necessary, and tailored redactions to the objections. The law firm's objections with any proposed redactions shall be filed on or before March 26, 2021. Any redactions must be justified consistent with Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). Within one week of the filing of objections, defense counsel may respond to the subpoena objections. The law firm may reply within three days of the Defendant's response.(See Citation 1 on this Order). Counsel shall confer regarding any proposed redactions for all briefing. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/24/2021)(bw) (Entered: 03/24/2021)
03/24/2021	173	NOTICE OF APPEAL by Ghislaine Maxwell from 169 Order, Terminate Motions. (tp) (Additional attachment(s) added on 4/1/2021: # 1 Appeal Fee) (tp). (Entered: 03/24/2021)
03/24/2021		Appeal Remark as to Ghislaine Maxwell re: 173 Notice of Appeal. $505.00 Appeal Fee Due. (tp) (Entered: 03/24/2021)
03/24/2021		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Ghislaine Maxwell to US Court of Appeals re: 173 Notice of Appeal. (tp) (Entered: 03/24/2021)
03/24/2021		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to Ghislaine Maxwell re: 173 Notice of Appeal were transmitted to the U.S. Court of Appeals. (tp) (Entered: 03/24/2021)
03/24/2021	174	SEALED DOCUMENT placed in vault. (dn) (Entered: 03/24/2021)
03/24/2021	175	SEALED DOCUMENT placed in vault. (dn) (Entered: 03/24/2021)

03/24/2021	176	SEALED DOCUMENT placed in vault. (dn) (Entered: 03/24/2021)
03/24/2021	177	SEALED DOCUMENT placed in vault. (dn) (Entered: 03/24/2021)
03/24/2021	178	SEALED DOCUMENT placed in vault. (dn) (Entered: 03/24/2021)
03/24/2021	179	SEALED DOCUMENT placed in vault. (dn) (Entered: 03/24/2021)
03/26/2021	180	NOTICE of Appearance of David Boies for Boies Schiller Flexner LLP and the Victims it Represents as to Ghislaine Maxwell (Boies, David) (Entered: 03/26/2021)
03/26/2021	181	NOTICE of Appearance of Sigrid S. McCawley for Boies Schiller Flexner LLP and the Victims it Represents as to Ghislaine Maxwell (McCawley, Sigrid) (Entered: 03/26/2021)
03/26/2021	182	MOTION for Sigrid S. McCawley to Appear Pro Hac Vice . Filing fee $ 200.00, receipt number ANYSDC-24312691. **Motion and supporting papers to be reviewed by Clerk's Office staff.** Document filed by Boies Schiller Flexner LLP as to Ghislaine Maxwell. (Attachments: # 1 Declaration of Sigrid S. McCawley, # 2 Florida Certificate of Good Standing, # 3 District of Columbia Certificate of Good Standing, # 4 Text of Proposed Order)(McCawley, Sigrid) (Entered: 03/26/2021)
03/26/2021		**>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. 182 MOTION for Sigrid S. McCawley to Appear Pro Hac Vice . Filing fee $ 200.00, receipt number ANYSDC-24312691. Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (wb)** (Entered: 03/26/2021)
03/26/2021	183	LETTER by Boies Schiller Flexner LLP as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid S. McCawley dated March 22, 2021 re: Objection to Defendant Ghislaine Maxwell's motion for an order authorizing a Rule 17(c) subpoena. Document filed by Boies Schiller Flexner LLP. (McCawley, Sigrid) (Entered: 03/26/2021)
03/26/2021	184	LETTER by Boies Schiller Flexner LLP as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid S. McCawley dated March 26, 2021 re: Proposed redactions to March 22, 2021 Letter (ECF No. 183) Document filed by Boies Schiller Flexner LLP. (McCawley, Sigrid) (Entered: 03/26/2021)
03/26/2021	185	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated March 26, 2021 re: Recent decision in United States v. Schulte, 17 Cr. 548 (PAC) Document filed by USA. (Attachments: # 1 Exhibit 1)(Comey, Maurene) (Entered: 03/26/2021)
03/26/2021	186	ORDER as to Ghislaine Maxwell: The Court sees no reason to maintain the redactions on Boies Schiller Flexner LLP's March 26, 2021 letter. Dkt. No. 183. Unless the Government indicates an objection to removing those redactions by March 29, 2021, BSF shall file the unredacted version on the docket on March 30, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/26/2021) (lnl) (Entered: 03/26/2021)
03/29/2021	187	(S2) SUPERSEDING INDICTMENT FILED as to Ghislaine Maxwell (1) count(s) 1ss, 2ss, 3ss, 4ss, 5ss, 6ss, 7ss-8ss. (jm) (Entered: 03/29/2021)
03/29/2021	188	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated March 29, 2021 re: S2 Superseding Indictment Document filed by USA. (Comey, Maurene) (Entered: 03/29/2021)

03/29/2021	189	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's letter responding to its March 18, 2021 order regarding redactions to its omnibus memorandum of law in opposition to the Defendants twelve pretrial motions. Dkt. No. 170. the Court ORDERS that the information contained on pages 129134 of the Governments brief be unredacted. With respect to the proposed redactions to pages 118119 and Exhibit 11, the Court now understands that the parties seek redactions on the basis that the material has been maintained under seal in Giuffre v. Maxwell, Case No 15-cv-7433 (S.D.N.Y.). By April 1, 2021, the parties must meet and confer and either submit to the Court justification for those redactionsbeyond that it has been ordered redacted in the civil matteror, in the alternative, notify the Court that the parties are no longer seeking those redactions. If the parties disagree, they shall indicate their separate views in the joint letter. (Signed by Judge Alison J. Nathan on 3/29/21)(jw) (Entered: 03/29/2021)
03/29/2021	190	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated March 29, 2021 re: Clarification re October 7, 2020 Letter Document filed by USA. (Comey, Maurene) (Entered: 03/29/2021)
03/29/2021		USCA Appeal Fees received $ 505.00, receipt number 465401276762 as to Ghislaine Maxwell on 3/25/2021 re: 173 Notice of Appeal - Final Judgment filed by Ghislaine Maxwell. (tp) (Entered: 04/01/2021)
03/30/2021	191	LETTER by Boies Schiller Flexner LLP as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid S. McCawley dated March 22,2021 re: Unredacted Objection to Defendant Ghislaine Maxwell's motion for an order authorizing a Rule 17(c) subpoena. Document filed by Boies Schiller Flexner LLP. (McCawley, Sigrid) (Entered: 03/30/2021)
03/31/2021	192	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 03/31/2021 re: Filing of Second Superseding Indictment (Sternheim, Bobbi) (Entered: 03/31/2021)
04/02/2021		ORDER granting 182 Motion for Sigrid S. McCawley to Appear Pro Hac Vice as to Ghislaine Maxwell (1). (Signed by Judge Alison J. Nathan on 4/2/2021) (kwi) (Entered: 04/02/2021)
04/02/2021	193	ORDER as to Ghislaine Maxwell. An arraignment on the S2 Superseding Indictment and a status conference is hereby tentatively scheduled for April 16, 2021. As requested by the Defendant, the proceeding will take place in person. The Court is making logistical arrangements and will provide more information when it is available. The Government is ORDERED to respond to the issues raised in the Defendants March 31, 2021 letter, Dkt. No. 192, by April 9, 2021(Government Responses due by 4/9/2021) (Signed by Judge Alison J. Nathan on 4/2/21)(jw) (Entered: 04/02/2021)
04/05/2021	194	LETTER MOTION addressed to Judge Alison J. Nathan from Laura A. Menninger dated April 5, 2021 re: Unopposed Request for One-Week Continuance of Arraignment . Document filed by Ghislaine Maxwell. (Menninger, Laura) (Entered: 04/05/2021)
04/05/2021	195	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 5, 2021 re: Notice of Rule 17(c) subpoenas . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 04/05/2021)
04/06/2021	196	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated April 6, 2021 re: MDC Conditions Update Document filed by USA. (Comey, Maurene) (Entered: 04/06/2021)

04/07/2021	197	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/07/2021 re: Response to Government MDC Update (Sternheim, Bobbi) (Entered: 04/07/2021)
04/08/2021	198	ORDER as to Ghislaine Maxwell: The Defendant's request to adjourn the arraignment on the S2 Superseding Indictment is GRANTED. Dkt. No. 194. The arraignment is RE-SCHEDULED to occur on April 23, 2021 at 2:30 p.m. It will take place at the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, Courtroom 24B, New York, NY 10007. It is ORDERED that the parties ensure that all participants comply with the Southern District of New Yorks COVID-19-related orders that govern entry into and behavior within SDNY courthouses. These materials may be found at: https://www.nysd.uscourts.gov/covid-19-coronavirus. Court staff are working on the logistical arrangements related to public access (including a public dial-in number), and as soon as that information is available it will be provided in a public order. SO ORDERED. (Arraignment set for 4/23/2021 at 02:30 PM in Courtroom 24B, 500 Pearl Street, New York, NY 10007 before Judge Alison J. Nathan) (Signed by Judge Alison J. Nathan on 4/8/2021) (lnl) (Entered: 04/08/2021)
04/09/2021	199	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 9, 2021 re: Response to Defense March 31, 2021 Letter Document filed by USA. (Comey, Maurene) (Entered: 04/09/2021)
04/14/2021	200	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/13/2021 re: Proposed Order to Marshal (Sternheim, Bobbi) (Entered: 04/14/2021)
04/14/2021	201	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 200 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/13/2021 re: Proposed Order to Marshal. ENDORSEMENT: After conferring with the District Executive and the United States Marshal for the Southern District of New York, the Court denies the request. The U.S. Marshall has a generally applicable policy that prohibits inmates being held in the Courthouse cellblocks from possessing any materials or items. The circumstances do not warrant an exception to that policy. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/14/2021)(bw) (Entered: 04/14/2021)
04/15/2021	202	MOTION to Continue *Trial Date*. Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 04/15/2021)
04/16/2021	203	ORDER as to Ghislaine Maxwell: The Court is in receipt of the parties' joint letter responding to the Court's March 29, 2021 Order. The parties agree that the redactions to pages 118 and 119 are no longer necessary. The Defendant continues to press for the redactions on pages 129134. However, for the reasons stated in the Court's March 29, 2021 Order, the information is already part of the public record in this case and accordingly the proposed redactions are unnecessary and overbroad. Dkt. No. 189; see also United States v. Nejad, No. 18-CR-224 (AJN), 2021 WL 681427, at *11 (S.D.N.Y. Feb. 22, 2021). For the reasons stated in the Court's March 18, 2021 and March 29, 2021 Orders, the Court approves the limited redactions to Exhibit 11 to the Government's brief, except for the language quoted in the Indictment, which is already part of the public record. The Government is therefore ORDERED to docket its omnibus memorandum of law, along with the corresponding exhibits, by 3:00 p.m. today, consistent with the Court's orders regarding redactions. The parties are further ORDERED to docket their April 1, 2021 joint letter; if either side believes that portions of that letter should be redacted, they shall propose redactions by April 19, 2021. (Signed by Judge Alison J. Nathan on 4/16/2021) (ap) (Entered: 04/16/2021)

04/16/2021	204	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 139 MOTION to Suppress *Under the Fourth Amendment, Martindell, and the Fifth Amendment All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five And Six*., 123 MOTION to Dismiss *Counts One through Four of the Superseding Indictment for Lack of Specificity*., 135 MOTION to Dismiss *Counts Five and Six of the Superseding Indictment Because the Alleged Misstatements are Not Perjurious as a Matter of Law*., 121 MOTION to Dismiss *Either Count One Or Count Three of the Superseding Indictment as Multiplicitous*., 125 MOTION to Dismiss *the Superseding Indictment as it was Obtained in Violation of the Sixth Amendment*., 147 MOTION for Bill of Particulars *and Pretrial Disclosures*., 119 MOTION for Separate Trial on Counts Ghislaine Maxwell (1) Count 5s-6s,5-6 ., 133 MOTION to Suppress *Under the Due Process Clause All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five and Six*., 145 MOTION to Strike *Surplusage from Superseding Indictment*., 143 MOTION to Dismiss *Counts One Through Four of the Superseding Indictment as Time-Barred*., 137 MOTION to Dismiss *Counts One Through Six of the Superseding Indictment for Pre-Indictment Delay*., 141 MOTION to Dismiss *the Superseding Indictment for Breach of Non-Prosecution Agreement*.. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12) (Pomerantz, Lara) (Entered: 04/16/2021)
04/16/2021	205	ORDER as to Ghislaine Maxwell: On March 15, 2021, the Defendant filed under seal her reply briefs to the Government memorandum of law opposing Defendants' twelve pre-trial motions. She filed the briefs, along with the corresponding exhibits, temporarily under seal in order to permit the Government and the Court to review certain proposed redactions. Of the twelve reply briefs, Reply Briefs 2, 4, 7, 8, 9, 11, and 12 did not contain any redaction or sealing requests. Reply Briefs 1, 3, 5, 6, and 10 contain limited proposed redactions. Reply Briefs 3, 6, and 10 also contain exhibits that the Defendant proposes be filed under seal. As set forth in the Defendant's cover letter, the premise of the proposed redactions is that the materials were produced in discovery and subject to the protective order that has been entered in this case. The mere existence of a confidentiality agreement or a protective order covering judicial documents is insufficient to overcome the presumption of access. See Aioi Nissay Dowa Ins. Co. v. Prosight Specialty Mgmt. Co., Inc., 12-cv-3274 (JPO), 2012 WL 3583176, at *6 (S.D.N.Y. Aug. 21, 2012). And the Court did not receive specific requests or justifications to redact or seal any of the materials. The Defendant is ORDERED to docket Reply Briefs 2, 4, 7, 8, 9, 11, and 12 on ECF today, as she did not propose any redactions to these and the Government has not voiced any opposition to these being filed without redactions. If either side is seeking these or any other redactions to the remaining reply briefs, they must file a letter indicating the redactions they request and providing specific justifications for the sealing requests or redactions, in line with the principles set forth in Lugosch. By April 20, 2021, the parties shall confer and submit a letter informing the Court whether any redactions are being sought. If no redactions are being sought, the Defendant is ORDERED to docket the remaining reply briefs on ECF by April 20, 2021. (Signed by Judge Alison J. Nathan on 4/16/2021) (ap) (Entered: 04/16/2021)
04/16/2021	206	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 143 MOTION to Dismiss *Counts One Through Four of the Superseding Indictment as Time-Barred*. . (Everdell, Christian) (Entered: 04/16/2021)
04/16/2021	207	OPINION & ORDER as to Ghislaine Maxwell. In June 2020, a grand jury returned a six-count indictment charging Ghislaine Maxwell with facilitating the late financier Jeffrey Epstein's sexual abuse of minor victims from around 1994 to 1997. The Government filed a first (S1) superseding indictment shortly thereafter, which contained only small, ministerial corrections. The S1 superseding indictment included two counts of enticement

		or transportation of minors to engage in illegal sex acts in violation of the Mann Act and two counts of conspiracy to commit those offenses. It also included two counts of perjury in connection with Maxwell's testimony in a civil deposition. Trial is set to begin on July 12, 2021. Maxwell filed twelve pretrial motions seeking to dismiss portions of the S1 superseding indictment, suppress evidence, and compel discovery. After the parties fully briefed those motions, a grand jury returned a second (S2) superseding indictment adding a sex trafficking count and another related conspiracy count. This Opinion resolves all of Maxwell's currently pending pretrial motions other than those seeking to suppress evidence, which the Court will resolve in due course. The motions, and this Opinion, deal exclusively with the S1 superseding indictment and do not resolve any issues related to the newly added sex trafficking charges. For the reasons that follow, the Court denies Maxwell's motions to dismiss the S1 superseding indictment in whole or in part. It grants her motion to sever the perjury charges for a separate trial. It denies her motion to further expedite discovery. The Court provides a brief summary of its conclusions here and its reasoning on the pages that follow:...[*** See this Opinion & Order ***]... Conclusion: The Court DENIES Maxwell's motions to dismiss the indictment as barred by Epstein's non-prosecution agreement (Dkt. No. 141), to dismiss the Mann Act counts as barred by the statute of limitations (Dkt. No. 143), to dismiss the indictment for pre-indictment delay (Dkt. No. 137), to dismiss the Mann Act counts for lack of specificity (Dkt. No. 123), to dismiss the perjury counts as legally untenable (Dkt. No. 135), to strike surplusage (Dkt. No. 145), to dismiss count one or count three as multiplicitous (Dkt. No. 121), and to expedite pretrial disclosures (Dkt. No. 147). The Court GRANTS Maxwell's motion to sever the perjury counts for a separate trial (Dkt. No. 119). The Court ORDERS the Government to confirm within one week whether it considers any evidence related to negotiation of the non-prosecution agreement to constitute Brady or Rule 16 material and, if so, to confirm that it has or will disclose such evidence. The Court further ORDERS the parties to negotiate a final schedule for all pretrial disclosures that remain outstanding, including: Brady, Giglio, and Jenks Act materials, including co-conspirator statements; non-testifying witness statements; testifying witness statements; the identity of victims alleged in the indictment; 404(b) material; and the Government's witness list. The Court also requires the parties to negotiate a schedule for any additional or supplemental motions briefing in light of the S2 indictment. The Court ORDERS a joint proposal to be submitted by April 21, 2021. If agreement is not reached, the parties shall submit their respective proposals. The Court further ORDERS Maxwell to show cause by April 21, 2021 why her motion to dismiss the S1 superseding indictment under the Sixth Amendment (Dkt. No. 125) should not be denied as moot. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/16/2021)(bw) (Entered: 04/16/2021)
04/16/2021	208	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 135 MOTION to Dismiss *Counts Five and Six of the Superseding Indictment Because the Alleged Misstatements are Not Perjurious as a Matter of Law*. . (Attachments: # 1 Exhibit L, # 2 Exhibit M, # 3 Exhibit N)(Everdell, Christian) (Entered: 04/16/2021)
04/16/2021	209	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 137 MOTION to Dismiss *Counts One Through Six of the Superseding Indictment for Pre-Indictment Delay*. . (Everdell, Christian) (Entered: 04/16/2021)
04/16/2021		Set/Reset Deadlines/Hearings as to Ghislaine Maxwell: Brief (Joint proposal by parties) due by 4/21/2021. Show Cause Response (by Defendant) due by 4/21/2021. [*** NOTE: Refer to Opinion & Order, doc.#207. ***] (bw) (Entered: 04/16/2021)
04/16/2021	210	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 121 MOTION to Dismiss *Either Count One Or Count Three of the Superseding Indictment as Multiplicitous*. . (Everdell, Christian) (Entered: 04/16/2021)

04/16/2021	211	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 125 MOTION to Dismiss *the Superseding Indictment as it was Obtained in Violation of the Sixth Amendment*. . (Everdell, Christian) (Entered: 04/16/2021)
04/16/2021	212	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 139 MOTION to Suppress *Under the Fourth Amendment, Martindell, and the Fifth Amendment All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five And Six*. . (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Everdell, Christian) (Entered: 04/16/2021)
04/16/2021	213	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 123 MOTION to Dismiss *Counts One through Four of the Superseding Indictment for Lack of Specificity*. . (Everdell, Christian) (Entered: 04/16/2021)
04/19/2021	214	ORDER as to Ghislaine Maxwell: An arraignment on the S2 Superseding Indictment is scheduled to take place on April 23, 2021 at 2:30 p.m. The proceeding will take place in Courtroom 24B of the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, NY. Given significant public interest, a video feed of the proceeding will be available for viewing in the Jury Assembly Room and Courtroom 9C at the Daniel Patrick Moynihan Courthouse. The use of any electronic devices during the proceeding in either the Courtroom or the overflow rooms is strictly prohibited. SO ORDERED. (Arraignment set for 4/23/2021 at 02:30 PM in Courtroom 24B, 500 Pearl Street, New York, NY 10007 before Judge Alison J. Nathan) (Signed by Judge Alison J. Nathan on 4/19/2021) (lnl) (Entered: 04/19/2021)
04/19/2021	215	ORDER as to Ghislaine Maxwell: IT IS ORDERED that any redaction requests for documents not already filed on the public docket must be made by April 21, 2021. Alternatively, the parties may file the unredacted versions by that date. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/19/2021) (lnl) (Entered: 04/19/2021)
04/19/2021	216	ORDER as to Ghislaine Maxwell: In its April 16, 2021 Opinion, the Court denied the Defendant's motions to dismiss the S1 superseding indictment in whole or in part and granted the Defendant' s motion to sever the perjury counts for a separate trial. Dkt. No. 207. The Court will try the non-perjury counts first. As the Court noted in its Opinion, it has not yet resolved the Defendant's two motions to suppress evidence. See Dkt. Nos. 133, 139. The Defendant contends in those motions that the Government obtained by subpoena documents covered by a protective order in violation of her rights against unreasonable searches and seizures, against self-incrimination, and to due process of law. The motions seek, at minimum, an evidentiary hearing to determine whether the Government knowingly misrepresented facts to procure an order modifying the protective order. The Court requires information from the Government for scheduling purposes. The Government is ORDERED to inform the Court by letter docketed on ECF no later than April 20, 2021, whether it intends to use any of the documents subject to the pending motions to suppress in the trial of the non-perjury counts in this case. If the Government does not intend to use any of the documents subject to the pending motions to suppress in the trial of the non-perjury counts, the Court will defer consideration of those motions until it has scheduled the trial of the perjury counts. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/19/2021) (lnl) (Entered: 04/19/2021)
04/19/2021	217	JOINT LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Laura A. Menninger dated April 1, 2021 re: Joint Letter Concerning Redactions to Omnibus Response & Exhibit 11 (Menninger, Laura) (Entered: 04/19/2021)
04/19/2021	218	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated April 15, 2021 re: Response to Government's April 5, 2021 Letter re. Ms. Maxwell's Rule 17 Subpoena (Pagliuca, Jeffrey) (Entered: 04/19/2021)

04/19/2021	219	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated April 19, 2021 re: request for extension of time to respond to the Court's April 19, 2021 Order . Document filed by USA as to Ghislaine Maxwell. (Moe, Alison) (Entered: 04/19/2021)
04/20/2021	220	MEMO ENDORSEMENT as to Ghislaine Maxwell (1) granting in part and denying in part 219 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated April 19, 2021 re: request for extension of time to respond to the Court's April 19, 2021 Order. ENDORSEMENT: The Government's request is granted in part and denied in part. It shall respond to Dkt. No. 216 by no later than 5:00 p.m. on April 21, 2021. (Signed by Judge Alison J. Nathan on 4/20/2021) (ap) (Entered: 04/20/2021)
04/20/2021	221	ORDER as to Ghislaine Maxwell: the Court hereby ORDERS counsel for the Defendant to file written answers to the following specific questions by 12:00 p.m. on Thursday, April 22, 2021: 1. Does defense counsel continue to seek an adjournment of the July 12th start date for trial on the non-perjury counts? 2. If the answer to question 1 is yes, what is the specific request being made as to length of adjournment? In particular, is the request for a 90-day adjournment? An adjournment until January 2022? Or something else? The Court requires a specific request be made and justified or it will not be considered. If Maxwell continues to seek an adjournment, the Government may submit any response by 5:00 pm on April 22, 2021. The Court will consider the submissions and resolve expeditiously. As noted, however, unless and until an adjournment is specifically requested and granted, the parties shall assume that the Court will request a jury selection date as close to July 12th as possible and shall plan accordingly. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/20/2021) (See ORDER as set forth) (lnl) (Entered: 04/20/2021)
04/20/2021	222	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 20, 2021 re: Redactions to Defense Reply Briefs and Exhibits Document filed by USA. (Pomerantz, Lara) (Entered: 04/20/2021)
04/20/2021	223	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 141 MOTION to Dismiss *the Superseding Indictment for Breach of Non-Prosecution Agreement*. . (Attachments: # 1 Exhibit A - Sealed)(Everdell, Christian) (Entered: 04/20/2021)
04/20/2021	224	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 119 MOTION for Separate Trial on Counts Ghislaine Maxwell (1) Count 5s-6s,5-6 . . (Everdell, Christian) (Entered: 04/20/2021)
04/21/2021	225	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated April 21, 2021 re: Grand Jury Motion (Everdell, Christian) (Entered: 04/21/2021)
04/21/2021	226	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Defendant's and Boies Schiller Flexner LLPs April 19, 2021 joint letter responding to the Courts April 19, 2021 Order, Dkt. No. 215. The letter proposes limited redactions on the basis that some of the information is covered by the terms of the protective order in this case. In light of this, by April 22, 2021, the Defendant and BSF are hereby ORDERED to confer with the Government regarding whether the Government requests redaction of any information contained in the Defendant's response to BSF's objections to the Defendant's proposed Rule 17(c) subpoena, BSFs reply, and the April 19, 2021 joint letter addressing the redactions to these documents. The Government may submit any redaction requests by April 23, 2021; in doing so, the Government shall justify any proposed redactions by

		reference to the test articulated in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). The Defendant, BSF, and the Government are further ORDERED to notify the Court whether any party seeks redactions to the April 19, 2021 joint letter. If not, the Defendant shall file the letter on the public docket by April 23, 2021 (Signed by Judge Alison J. Nathan on 4/21/21)(jw) (Entered: 04/21/2021)
04/21/2021	227	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated April 21, 2021 re: in response to the Court's April 19, 2021 Order Document filed by USA. (Moe, Alison) (Entered: 04/21/2021)
04/21/2021	228	MEMO ENDORSEMENT as to Ghislaine Maxwell re: 225 Letter Grand Jury Motion... ENDORSEMENT: The motion to dismiss the SI superseding indictment on the grounds that it was returned by a grand jury sitting at the White Plains courthouse (Dkt. No. 125) is DENIED as moot. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/21/21)(jbo) (Entered: 04/21/2021)
04/21/2021	229	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 21, 2021 re: Proposed Pretrial Schedule Document filed by USA. (Comey, Maurene) (Entered: 04/21/2021)
04/21/2021	230	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated April 21, 2021 re: Proposed Pretrial Schedule (Everdell, Christian) (Entered: 04/21/2021)
04/21/2021	231	ORDER as to Ghislaine Maxwell: The Court will schedule a trial date for the severed perjury counts after trial of the non-perjury counts is completed. Given that and in light of the representations in the Government's April 21, 2021 letter, see Dkt. No. 227, the Court intends to defer resolution of the pending motions to suppress (including resolution of the request for an evidentiary hearing) until after the trial on the non-perjury counts. If either side objects, counsel shall state the basis for any objection by letter on or before by 5pm on Thursday, April 22, 2021.SO ORDERED. (Signed by Judge Alison J. Nathan on 4/21/2021) (lnl) (Entered: 04/22/2021)
04/22/2021	232	MEMO ENDORSEMENT as to Ghislaine Maxwell on 222 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 20, 2021 re: Redactions to Defense Reply Briefs and Exhibits. ENDORSEMENT: The Court grants the Government's proposed redaction and sealing requests. This conclusion 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 11920. The Court concludes that these are judicial documents and that the First Amendment and common law presumptions of access attach. In balancing competing considerations against the presumption of access, however, the Court finds that the specific arguments the Government has put forward in this letter, including the need to protect the privacy interests of third parties and alleged victims, favor the narrowly tailored redactions. See United States v. Amodeo, 71 F.3d 1044, 1050 (2d Cir. 1995). The Government's letter does not discuss Exhibit L of Reply Brief 6. By April 23, 2021, the parties shall either propose redactions to Exhibit L of Reply Brief 6, which was originally filed under seal, or they shall indicate to the Court that they seek no redactions and file it on ECF. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/22/2021) (lnl) (Entered: 04/22/2021)

04/22/2021	233	LETTER by Boies Schiller Flexner LLP as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid McCawley dated 04-22-2021 re: Request to Bring Electronic Devices Document filed by Boies Schiller Flexner LLP. (Attachments: # 1 Exhibit Electronic Device Form)(McCawley, Sigrid) (Entered: 04/22/2021)
04/22/2021	234	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated April 22, 2021 re: Response to Dkt. No. 227, Governments April 21, 2021 Letter re Ms. Maxwells Motions to Suppress (Pagliuca, Jeffrey) (Entered: 04/22/2021)
04/22/2021	235	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 22, 2021 re: Response to Defense Request for Adjournment Document filed by USA. (Comey, Maurene) (Entered: 04/22/2021)
04/22/2021	236	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 22, 2021 re: Response to the Court's April 22, 2021 Order Document filed by USA. (Pomerantz, Lara) (Entered: 04/22/2021)
04/22/2021	237	MEMO ENDORSEMENT as to Ghislaine Maxwell on 233 LETTER by Boies Schiller Flexner LLP as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid McCawley dated 04-22-2021 re: Request to Bring Electronic Devices Document. ENDORSEMENT: Because remote access is available for tomorrow and because no electronic devices may be used in the courtroom or overflow rooms, Dkt. No. 214, to the extent the request is for tomorrow's arraignment, that request is denied. Counsel may renew their application in advance of future proceedings. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/22/2021) (lnl) (Entered: 04/23/2021)
04/23/2021	238	SEALED DOCUMENT placed in vault. (jus) (Entered: 04/23/2021)
04/23/2021	239	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated April 23, 2021 re: in response to the Court's April 16, 2021 Order. Document filed by USA. (Moe, Alison) (Entered: 04/23/2021)
04/23/2021	240	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 23, 2021 re: Proposed Redactions Document filed by USA. (Comey, Maurene) (Entered: 04/23/2021)
04/23/2021	241	MEMO ENDORSEMENT as to Ghislaine Maxwell on 240 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 23, 2021 re: Proposed Redactions. ENDORSEMENT: The Court grants the Government's redaction requests. Its conclusion 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 11920. The Court concludes that these are judicial documents and that the First Amendment and common law presumptions of access attach. But in balancing competing considerations against the presumption of access, the Court finds that the specific arguments the Government has put forward in this letter, including the need to protect the privacy interests of third parties referenced in the documents, favor the narrowly tailored redactions. See United States v. Amodeo, 71 F.3d 1044, 1050 (2d Cir. 1995). The Defendant and Boies Schiller are hereby ORDERED to docket the respective documents with the Government's

		proposed redactions by April 23, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/23/2021) (lnl) (Entered: 04/23/2021)
04/23/2021	242	ORDER as to Ghislaine Maxwell: On April 22, 2021, Defendant Ghislaine Maxwell filed her response to the Court's April 21, 2021 Order, Dkt. No. 221, under temporary seal with proposed redactions. The proposed redactions are GRANTED. The Court's conclusion 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 11920. The Court concludes that these are judicial documents and that the First Amendment and common law presumptions of access attach. In balancing competing considerations against the presumption of access, however, the Court finds that the proposed redactions are narrowly tailored to protect the privacy interests of defense lawyers' clients in other matters and to allow defense counsel to comply with their professional obligations under the rules of professional conduct. The Defendant is ORDERED to docket the redacted version of her letter by April 23, 2021. The Defendant is further ORDERED to docket the basis for the redaction request, originally sent by email, on ECF by April 23, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/23/2021) (lnl) (Entered: 04/23/2021)
04/23/2021	243	MEMO ENDORSEMENT as to Ghislaine Maxwell on 234 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated April 22, 2021 re: Response to Dkt. No. 227, Governments April 21, 2021 Letter re Ms. Maxwell's Motions to Suppress. ENDORSEMENT: The Court agrees with the position set forth in this letter that, unless the Government agrees to forgo any use of the documents subject to the motions to suppress at trial on the non-perjury counts, the Court must resolve those motions prior to that trial. The Court will resolve the motions in due course. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/23/2021) (lnl) (Entered: 04/23/2021)
04/23/2021	244	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated April 2, 2021 re: Response to Letter Motion to Quash Rule 17 Subpoena to Boies Schiller Flexner LLP (Pagliuca, Jeffrey) (Entered: 04/23/2021)
04/23/2021	245	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Laura A. Menninger dated April 19, 2021 re: Redactions to Pleadings Re: Rule 17 Subpoenas (Menninger, Laura) (Entered: 04/23/2021)
04/23/2021	246	LETTER MOTION addressed to Judge Alison J. Nathan from Laura A. Menninger dated April 22, 2021 re: 221 Order,,,, re: Request for Adjournment of 120 or 180 Days for Trial on the Non-Perjury Counts . Document filed by Ghislaine Maxwell. (Menninger, Laura) (Entered: 04/23/2021)
04/23/2021	247	LETTER by Boies Schiller Flexner LLP as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid S. McCawley dated April 5, 2021 re: Reply in Support of Objections to Rule 17 Subpoena Document filed by Boies Schiller Flexner LLP. (McCawley, Sigrid) (Entered: 04/23/2021)
04/23/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Arraignment as to Ghislaine Maxwell (1) Count 1ss,2ss,3ss,4ss,5ss,6ss,7ss-8ss held on 4/23/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Maurene Comey, Alison Moe, and Lara Pomerantz for the government. Defendant is arraigned on Superseding Indictment 2. Defendant enters a plea of Not Guilty to the S2 indictment. Defendant remains remanded. See Transcript. (Court Reporter Rebecca Forman) (ap) (Entered: 04/27/2021)

04/23/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: **Plea entered by Ghislaine Maxwell (1) Count 1ss,2ss,3ss,4ss,5ss,6ss,7ss-8ss Not Guilty.** (ap) (Entered: 04/27/2021)
04/26/2021	248	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/26/21 re: Confiscation of Legal Documents (Sternheim, Bobbi) (Entered: 04/26/2021)
04/26/2021	250	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' proposed schedules for pretrial disclosures and pretrial motions practice. Dkt. Nos. 229, 230. Having considered the parties respective positions, the Court hereby sets the schedule below, which it deems reasonable and fair: the Court hereby sets the following schedule: Government expert witness disclosure are due April 23, 2021 (agreement of the parties); Supplemental Pretrial Motions that pertain only to the new charges raised in the S2 indictment (agreement of the parties): Defense supplemental motions are due May 7, 2021; Governments response is due May 21, 2021; Defense replies are due May 28, 2021; Disclosure of the alleged victims referenced in the S2 Indictment: May 17, 2021 (agreement of the parties); The Court will address a process and schedule for the parties' proposals regarding a jury questionnaire by separate order. Finally, the parties are ORDERED to meet and confer on the Government's proposal that the Defendant submit witness statements pursuant to Federal Rule of Criminal Procedure 26.2 at least four weeks in advance of trial. The parties are further ORDERED to submit a joint letter laying out their respective positions and proposals within one week of this Order (Defense supplemental Motions due by 5/7/2021., Defense Replies due by 5/28/2021., Government's Responses due by 5/21/2021). (Signed by Judge Alison J. Nathan on 4/26/21)(jw) (Entered: 04/27/2021)
04/27/2021	249	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 248 Letter filed by Ghislaine Maxwell to report an incident stemming from an attorney-client conference with Ghislaine Maxwell: Guards on Ms. Maxwell's security detail wrongfully seized and reviewed her confidential legal documents...ENDORSEMENT...MDC legal counsel is hereby ORDERED to show cause by April 28, 2021 why an order directing the MDC to provide the information requested in this letter to the Defendant's counsel ought not issue. MDC legal counsel shall either docket it on ECF or email the letter to the Court so that the Court can docket it on ECF. Chambers will email a copy of this Order directly to legal counsel for the MDC (Signed by Judge Alison J. Nathan on 4/27/21)(jw) (Entered: 04/27/2021)
04/27/2021	251	SEALED DOCUMENT placed in vault. (jus) (Entered: 04/27/2021)
04/27/2021	252	ORDER re: 195 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 5, 2021 re: Notice of Rule 17(c) subpoenas. The Defendant's motion for an order authorizing the subpoena pursuant to Rule 17(c)(3) is DENIED. The Government is ORDERED to respond to Requests 9 through 11 of the proposed subpoena within one week of this Order. (Signed by Judge Alison J. Nathan on 4/27/21) (jw) (Entered: 04/27/2021)
04/28/2021	253	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/28/2021 re: Reply to MDC letter re: order to show cause re: confiscation of legal documents (Sternheim, Bobbi) (Entered: 04/28/2021)
04/29/2021	254	LETTER addressed to Judge Alison J. Nathan from Sophia Papapetru dated 4/28/21 re: I am writing in response to your April 26, 2021, Order seeking information regarding an alleged incident involving Ghislaine Maxwell, Register No. 02879-509, at the Metropolitan Detention Center in Brooklyn, New York (MDC Brooklyn) as relayed by

		her counsel in an April 26, 2021, letter. We respectfully request Your Honor deny defense counsel's proposed order. Please let us know if the Court requires any additional information, which we will be happy to provide (jw) (Entered: 04/29/2021)
04/29/2021	255	ORDER as to Ghislaine Maxwell. On April 26, 2021, defense counsel advised the Court of an incident that took place on April 24, 2021 in which Defendant Ghislaine Maxwell's legal materials were seized by staff at the Metropolitan Detention Center. Dkt. No. 248. The Court ordered legal counsel for the MDC to show cause why the requested order should not issue. Dkt. No. 249. The MDC filed its response with the Court. Dkt No. 254. In reply, Maxwell made additional requests. Dkt. No. 253. Defense counsels requests are GRANTED in part and DENIED in part. IT IS ORDERED that by April 30, 2021, legal counsel to the MDC must provide the following information: If known, an inventory of the items seized from Ms. Maxwell in the incident that occurred on April 24, 2021 shall be provided by email to defense counsel only; and A representation to this Court, to be filed on ECF, indicating: Whether any of the materials seized from Ms. Maxwell were duplicated in any fashion and what investigation was undertaken in order to determine this information; Whether Ms. Maxwell is permitted to bring confidential legal materials to in-person meetings with defense counsel without those materials being seized; What steps have been or will be taken to ensure the confidentiality of Ms. Maxwell's lawyer-client communications (Signed by Judge Alison J. Nathan on 4/29/21)(jw) (Entered: 04/29/2021)
04/29/2021	256	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/29/2021 re: Sleep Deprivation in MDC (Sternheim, Bobbi) (Entered: 04/29/2021)
04/29/2021	257	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 256 During oral argument of Ghislaine Maxwells bail appeal before the Circuit, Ms. Maxwell's appellate counsel expressed concern that she was improperly deprived of sleep while detained in the MDC, an issue that has been raised in filings before this Court. we ask the Court to address Ms. Maxwell's sleeping conditions by directing the MDC to cease 15-minute light surveillance of Ms. Maxwell or justify the need for the disruptive flashlight surveillance..ENDORSEMENT...By May 5, 2021, the Government is ORDERED to confer with MDC legal counsel and provide the Court responses to the following questions: Is Ms. Maxwell being subjected to flashlight surveillance every 15 minutes at night? Or any other atypical flashlight surveillance? If so, what is the basis for doing so? 3. And if so, can she be provided with appropriate eye covering? The Government is further ORDERED to share its response with defense counsel before filing it on ECF so that defense counsel can indicate whether they believe any private medical information needs to be redacted before public filing (Signed by Judge Alison J. Nathan on 4/29/21) (jw) (Entered: 04/29/2021)
04/29/2021	258	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 04/29/2021 re: Reply to MDC letter re: confiscation of legal documents (Sternheim, Bobbi) (Entered: 04/29/2021)
04/30/2021	259	LETTER addressed to Judge Alison J. Nathan from Sophia Papapetru dated 4/29/21 re: This letter is written in response to your April 28, 2021, Order seeking the following information regarding an alleged incident involving Ghislaine Maxwell, Register No. 02879-509, at the Metropolitan Detention Center in Brooklyn, New York (MDC Brooklyn) on April 24, 2021 (jw) (Entered: 04/30/2021)
04/30/2021	260	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated April 30, 2021 re: Hard Drives (Everdell, Christian) (Entered: 04/30/2021)
05/03/2021	261	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 4/23/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Rebecca Forman, (212) 805-

		0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/24/2021. Redacted Transcript Deadline set for 6/3/2021. Release of Transcript Restriction set for 8/2/2021. (McGuirk, Kelly) (Entered: 05/03/2021)
05/03/2021	262	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 4/23/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 05/03/2021)
05/03/2021	263	MEMO ENDORSEMENT as to Ghislaine Maxwell re: 260 Letter on Hard Drives... ENDORSEMENT: Counsel for the MDC may submit any objection to the Defendant's request by May 4, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 5/3/21) (jbo) (Entered: 05/03/2021)
05/03/2021	264	ORDER as to Ghislaine Maxwell. On April 21, 2021, the Court's Chambers received a letter from counsel for a non-party requesting assurances as to privacy protections for his client in any filings or proceedings in this case. The letter requests anonymity on behalf of the client as an alleged victim of a sexual crime. After receiving the letter, the Court forwarded it to the parties and required the Government to respond to counsel, which it has done. The Court will take no further action based on the April 21, 2021 letter but will file it under seal to protect the privacy interests of the non-party asserting that interest. The Government is requested to forward this order to counsel for the non-party. SO ORDERED. (Signed by Judge Alison J. Nathan on 5/3/21)(jbo) (Entered: 05/03/2021)
05/03/2021	265	ORDER as to Ghislaine Maxwell: The Court has received an exchange of letters that pertain to an incident that took place on April 24, 2021. Dkt. Nos. 248, 253, 254, 258, 259. Legal counsel for MDC, where Ms. Maxwell is detained pretrial, alleges that her lawyers violated Bureau of Prisons rules by providing Ms. Maxwell materials at an in-person attorney-client visit. Dkt. Nos. 254, 259. Ms. Maxwells lawyers categorically deny the allegations and threaten separate legal action against MDC staff based on the incident and the accusation. Dkt. Nos. 253, 258. The Court intimates no views as to whether some other action or process is appropriate or proper in light of either sides allegations. This Courts obligation in this case, and any other, is to ensure that the defendant is given an opportunity to meet with her lawyers, engage in confidential attorney-client communications, and prepare for trial. Mindful of that obligation, the Court declines to take further action at this time. After receiving the defenses first letter motion, the Court ordered MDC legal counsel to show cause why the Court should not grant the requested relief. Dkt. No. 249. The Court then granted in part defense counsels original request and ordered MDC legal counsel to respond to certain questions about the April 24, 2021 incident and the procedures in place to ensure the confidentiality of Ms. Maxwells lawyer-client communications. Dkt. No. 255. Defense counsels current application is that this Court order MDC to turn over copies of video tapes of the in-person attorney-client visit. Dkt. No. 258. Those video tapes must be preserved in light of defense counsels preservation letter. Dkt. No. 248, Ex. C. If Ms. Maxwell or defense counsel are entitled to view or receive copies of those materials as a matter of law, they should be provided. To the extent defense counsel is seeking entitlement to those materials from this Court, that application is denied. The Court has ensured and will continue to ensure that Ms. Maxwell has the opportunity to meet meaningfully and confidentially with her lawyers in light of all relevant circumstances and consistent with the treatment of all other detained inmates in BOP custody. The isolated incident that took place on April 24, 2021, and the serious allegations leveled by MDC legal counsel and defense counsel in no way

		undermine the Courts conclusion that Ms. Maxwell and her lawyers are fully able to prepare for trial. The Court is confident that all parties recognize the importance of this going forward and in advance of the upcoming trial. In furtherance of this, counsel for the Government are ORDERED to confer with legal counsel for MDC to ensure that Ms. Maxwell continues to have access to confidential attorney-client communications as she prepares for trial. If any additional incidents arise, defense counsel shall promptly confer with counsel for the Government regarding those incidents and seek to resolve any such issues swiftly, responsibly, reasonably, and amicably. If that fails, the parties may write to the Court jointly indicating their views, identifying and justifying any specific application being made. (Signed by Judge Alison J. Nathan on 5/3/2021) (ap) (Entered: 05/03/2021)
05/03/2021	266	ORDER as to Ghislaine Maxwell: The Court concludes that the interests of justice justify granting a short continuance. The Court deems an adjournment until fall 2021 to be reasonable. Such an adjournment would plainly give the defense team sufficient time to prepare for trial in light of the additional charges contained in the S2 indictment while also ensuring that the trial proceeds without undue delay. No additional delay is necessary or in the interests of justice. The parties are hereby ORDERED to meet and confer and by May 10, 2021, they shall jointly propose a trial start date for the Court to request of the Clerk's Office (as is required by COVID protocols). The Court urges counsel to agree to the earliest possible date this fall and to seek adjustments to other schedules in order to facilitate an early fall trial start date. The parties shall also discuss and propose any adjustments necessary to the pre-trial schedule in place. Dkt. No. 250. The Government may move in the letter for any requested exclusion of time under the Speedy Trial Act. (Signed by Judge Alison J. Nathan on 5/3/2021) (See ORDER set forth) (ap) (Entered: 05/03/2021)
05/03/2021	267	JOINT LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated May 3, 2021 re: defense witness disclosures, Dkt. No. 250 (Pagliuca, Jeffrey) (Entered: 05/03/2021)
05/04/2021	268	ORDER as to Ghislaine Maxwell: On April 30, 2021, defense counsel requested that the Court issue an order directing the MDC to accept two hard drives from defense counsel that contain the non-Highly Confidential discovery in this case for Ms. Maxwell's use. Dkt. No. 260. On May 4, 2021, the Court received the attached email from MDC legal counsel indicating that MDC does not oppose the defense's request and that MDC staff will coordinate with defense counsel so that Ms. Maxwell can receive the hard drives. In light of this, defense counsel's April 30, 2021 request appears moot. Defense counsel shall raise any further issues regarding their request within two weeks of this order. (Signed by Judge Alison J. Nathan on 5/4/2021) (ap) (Entered: 05/04/2021)
05/04/2021	269	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 4, 2021 re: Subpoena Requests 9 Through 11 Document filed by USA. (Rohrbach, Andrew) (Entered: 05/04/2021)
05/05/2021	270	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Lara Pomerantz dated May 5, 2021 re: Use of Flighlights at MDC Document filed by USA. (Pomerantz, Lara) (Entered: 05/05/2021)
05/06/2021		*****DELETED DOCUMENT. Deleted document number 271 LETTER, as to Ghislaine Maxwell. The document was incorrectly filed in this case, as per Supervisor. (ap)** (Entered: 05/06/2021)
05/06/2021	271	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May

		6, 2021 re: Subpoena Request 11 Document filed by USA. (Rohrbach, Andrew) (Entered: 05/06/2021)
05/07/2021	272	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 5/7/2021 re: MDC flashlight security checks (Sternheim, Bobbi) (Entered: 05/07/2021)
05/07/2021	273	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated May 7, 2021 re: Cover Letter for Omnibus Memorandum in Support of the Defendant's Supplemental Pretrial Motions Relating to the S2 Superseding Indictment (Everdell, Christian) (Entered: 05/07/2021)
05/10/2021	274	MEMO ENDORSEMENT as to Ghislaine Maxwell on 273 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated May 7, 2021 re: Cover Letter for Omnibus Memorandum in Support of the Defendant's Supplemental Pretrial Motions Relating to the S2 Superseding Indictment. ENDORSEMENT: The Government is hereby ORDERED to propose and justify any redactions by May 12, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 5/10/2021) (lnl) (Entered: 05/10/2021)
05/10/2021	275	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 10, 2021 re: Proposed Trial Date Document filed by USA. (Pomerantz, Lara) (Entered: 05/10/2021)
05/11/2021	276	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 05/10/2021 re: Request for November 8th trial start date (Sternheim, Bobbi) (Entered: 05/11/2021)
05/11/2021	277	ORDER as to Ghislaine Maxwell: The Court has considered the parties' proposals regarding the commencement of trial. Dkt. Nos. 275, 276. For the reasons stated in the Government's letter, the Court will request November 29, 2021 from the Clerk's Office as the trial start datethat is the date (pending approval from the Clerk's Office consistent with the SDNY COVID protocols) that opening statements will be made to the jury. However, the Court will also request from the Clerk's Office that jury selection occur during the week of November 15. Counsel shall plan accordingly. The Court grants the Government's motion to exclude time until November 29, 2021. The Court finds that the ends of justice served by granting an exclusion from speedy trial computations for the period from today's date through November 29, 2021, outweigh the interests of the public and the Defendant in a speedy trial, because this time is necessary to permit the defense to continue to review discovery and other materials in light of the superseding indictment; to permit the parties to prepare and file motions in limine; to permit the parties to make and review additional pretrial disclosures; and to allow adequate time for the parties to prepare for trial. Time is therefore excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), until November 29, 2021. In order to ensure that there is no delay in the commencement of trial, the Court will adjust the current pre-trial schedule. So that the Court can resolve motions in limine in advance of the November 29th trial commencement date, any such motions shall be fully briefed no later than four weeks in advance of the anticipated trial commencement date of November 29. The parties shall meet and confer to propose adjustments to other pre-trial disclosures accordingly. The parties are hereby ORDERED to meet and confer for at least 30 minutes by phone regarding the overall pretrial disclosure schedule and submit a joint letter by May 14, 2021. The Court will accept only a joint letter with a joint proposal or with each sides views briefly stated. The letter must attest to the meet and confer. Any separately filed letters will be struck. SO ORDERED. (Time excluded from 5/11/2021 until 11/29/2021) (Signed by Judge Alison J. Nathan on 5/11/2021) (lnl) (Entered: 05/11/2021)

05/12/2021	278	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 12, 2021 re: Proposed Redactions to Defendant's Supplemental Pre-Trial Motions Document filed by USA. (Pomerantz, Lara) (Entered: 05/12/2021)
05/13/2021	279	ORDER as to Ghislaine Maxwell: On May 12, 2021, the Defendant submitted a response to the Government's May 4 and May 6 letters. See Dkt. Nos. 269, 271. She submitted it under temporary seal, though she noted that she is willing to file the response and its corresponding exhibits on the public docket. The Government is hereby ORDERED to notify the Court by May 14, 2021 whether it requests that any part of the Defendants submission be redacted or filed under seal; any such request must be justified by reference to the test articulated in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). SO ORDERED. (Signed by Judge Alison J. Nathan on 5/13/20201) (lnl) (Entered: 05/13/2021)
05/14/2021	280	JOINT LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 14, 2021 re: 277 Order to Continue - Interest of Justice, Terminate Motions, Set Deadlines/Hearings,,,,,,,,,,,,,,,,,,,,,,,,,,,,, re: Extension of time . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 05/14/2021)
05/14/2021	281	MEMO ENDORSEMENT as to Ghislaine Maxwell (1) on 280 JOINT LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 14, 2021. ENDORSEMENT: The request for an extension of time until May 21, 2021 to respond to the Court's May 11, 2021 Order is GRANTED. SO ORDERED. (Signed by Judge Alison J. Nathan on 5/14/2021) (lnl) (Entered: 05/14/2021)
05/14/2021	282	ORDER as to Ghislaine Maxwell: On April 29, 2021, counsel for Ghislaine Maxwell wrote to the Court requesting that the Court address her sleeping conditions, with particular emphasis on counsel's representation, unsupported by affidavit or other factual showing, that guards are shining a flashlight in Maxwell's eyes every 15 minutes at night. Dkt. No. 256. Defense counsel claims that the flashlight surveillance in Maxwell's eyes is disrupting her sleep, which in turn is impacting her ability to prepare for and withstand trial. The Court sought more information by ordering the Government to confer with legal counsel for the Bureau of Prisons and to respond to certain questions. Dkt. No. 257. In response, the Government states that MDC staff conduct flashlight checks of all inmates as a matter of course. Dkt. No. 270. As reported by the Government, inmates housed with cell mates in the Special Housing Unit are checked with flashlights every 30 minutes. Inmates housed with others in the general population are checked multiple times per night at regular intervals. The Government further reports that to conduct the checks, flashlights are pointed at the ceiling of the cell to confirm that the inmate is present, breathing, and not in distress. As the Government explains, there are a number of neutral reasons why BOP's flashlight checks of Maxwell are relatively more frequent than those of other inmates, including that Maxwell is housed alone, the nature of the charges, and the potential stress for inmates that can arise in high-profile cases. The MDC has determined that these factors necessitate more frequent safety and security checks. The Government also indicates that the prohibition on eye masks is a generally applicable policy, but that Maxwell, like other inmates, may use other noncontraband items to cover her eyes. To the extent that Maxwell's April 29, 2021 letter asks the Court to override BOP's determination as to the frequency of appropriate safety and security check procedures, that request is denied as factually unsubstantiated and legally unsupported. Certainly nothing in the record plausibly establishes that current protocols interfere with Maxwell's ability to prepare for her trial and communicate with her lawyers. Defense counsel's May 7, 2021 letter, Dkt. No. 272, describes generalized grievances but makes

		no additional specific and supported application for relief. Nevertheless, the Court urges the MDC to consider whether sleep disruption for pretrial detainees can be reduced. The Court also admonishes the MDC and the Government to continue to ensure that Maxwell is subjected to only those security protocols that BOP determines are necessary for her safety and security, based upon neutral and applicable factors, and consistent with the treatment of similarly situated pre-trial detainees. The Government shall provide a copy of this Order to the Warden and General Counsel for the MDC. SO ORDERED. (Signed by Judge Alison J. Nathan on 5/14/2021) (lnl) (Entered: 05/14/2021)
05/14/2021	283	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 14, 2021 re: Proposed Redactions to Defendant's Letter re BSF Subpoena Document filed by USA. (Rohrbach, Andrew) (Entered: 05/14/2021)
05/17/2021	284	MEMO ENDORSEMENT as to Ghislaine Maxwell re: 278 Letter Proposed Redactions to Defendant's Supplemental Pre-Trial Motions... ENDORSEMENT: The Court grants in part the Government's redaction and sealing requests. Its conclusion 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). The Court concludes that these are judicial documents and that the First Amendment and common law presumptions of access attach. Id. at 11920. In balancing competing considerations against the presumption of access, the Court finds that the arguments the Government has put forward in this letter, including the need to protect the privacy interests of third parties and alleged victims, favor the narrowly tailored redactions. See United States v. Amodeo, 71 F.3d 1044, 1050 (2d Cir. 1995). Similarly, the Court concludes that the Government has shown that Exhibits E, F, G, H, and I should be filed under seal. With respect to Exhibit C, however, the Court concludes that narrowly tailored redactions are sufficient to advance the privacy interests the Government has identified. Accordingly, the Government is ORDERED to confer with defense counsel and submit proposed redactions to Exhibit C by May 20, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 5/17/21)(jbo) (Entered: 05/17/2021)
05/20/2021	285	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 139 MOTION to Suppress *Under the Fourth Amendment, Martindell, and the Fifth Amendment All Evidence Obtained from the Governments Subpoena to REDACTED and to Dismiss Counts Five And Six*. . (Attachments: # 1 Exhibit J, # 2 Exhibit K, # 3 Exhibit L, # 4 Exhibit M, # 5 Exhibit N, # 6 Exhibit O, # 7 Exhibit P, # 8 Exhibit Q)(Everdell, Christian) (Entered: 05/20/2021)
05/20/2021	286	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 145 MOTION to Strike *Surplusage from Superseding Indictment*. . (Everdell, Christian) (Entered: 05/20/2021)
05/20/2021	287	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 147 MOTION for Bill of Particulars *and Pretrial Disclosures*. . (Attachments: # 1 Exhibit A (Filed under seal))(Everdell, Christian) (Entered: 05/20/2021)
05/20/2021	288	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 20, 2021 re: Proposed Redactions to Exhibit C to Defendant's Supplemental Pre-Trial Motions Document filed by USA. (Pomerantz, Lara) (Entered: 05/20/2021)
05/21/2021	289	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated May 21, 2021 re: Reply to Government Letter dated May 14 Regarding Proposed Redactions to Ms. Maxwells May 12, 2021 Letter (DE 283) (Pagliuca, Jeffrey) (Entered: 05/21/2021)

05/21/2021	290	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 288 The Government respectfully submits this letter in response to the Courts Order dated May 17, 2021, which directed the Government to confer with defense counsel and submit proposed redactions to Exhibit C to the defendant's memorandum in support of her supplemental pretrial motions. (Dkt. No. 284). The Government seeks redactions that are narrowly tailored to protect the privacy interests of victims and third parties referenced in the document...ENDORSEMENT...The Government's proposed redactions are permitted for the reasons provided. By May 25, 2021, the Defendant is ORDERED to file her supplemental pretrial motions and supporting papers on the docket in accordance with Dkt. No. 284 and this order (Supplemental Pretrial Motions due by 5/25/2021.). (Signed by Judge Alison J. Nathan on 5/21/21)(jw) (Entered: 05/21/2021)
05/21/2021	291	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from All Counsel dated May 21, 2021 re: Joint Letter re Scheduling Document filed by USA. (Comey, Maurene) (Entered: 05/21/2021)
05/25/2021	292	MOTION to Dismiss *and to Obtain the Relief Specified in her Supplemental Pre-Trial Motions Relating to the S2 Superseding Indictment*. Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 05/25/2021)
05/25/2021	293	MEMORANDUM in Support by Ghislaine Maxwell re 292 MOTION to Dismiss *and to Obtain the Relief Specified in her Supplemental Pre-Trial Motions Relating to the S2 Superseding Indictment.. (OMNIBUS MEMORANDUM OF GHISLAINE MAXWELL IN SUPPORT OF HER SUPPLEMENTAL PRETRIAL MOTIONS RELATING TO THE S2 SUPERSEDING INDICTMENT)* (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C (Redacted), # 4 Exhibit D, # 5 Exhibit E (Filed Under Seal), # 6 Exhibit F (Filed Under Seal), # 7 Exhibit G (Filed Under Seal), # 8 Exhibit H (Filed Under Seal), # 9 Exhibit I (Filed Under Seal))(Everdell, Christian) (Entered: 05/25/2021)
05/25/2021	294	AFFIDAVIT of Christian Everdell in Support as to Ghislaine Maxwell re 292 MOTION to Dismiss *and to Obtain the Relief Specified in her Supplemental Pre-Trial Motions Relating to the S2 Superseding Indictment.. (AFFIDAVIT OF CERTIFICATION PURSUANT TO LOCAL CRIMINAL RULE 16.1)* (Everdell, Christian) (Entered: 05/25/2021)
05/25/2021	295	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 292 MOTION to Dismiss *and to Obtain the Relief Specified in her Supplemental Pre-Trial Motions Relating to the S2 Superseding Indictment*.. (Rohrbach, Andrew) (Entered: 05/25/2021)
05/28/2021	296	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated May 28, 2021 re: Cover Letter for Omnibus Reply Memorandum in Support of the Defendant's Supplemental Pretrial Motions Relating to the S2 Superseding Indictment. (Everdell, Christian) (Entered: 05/28/2021)
06/02/2021	297	ORDER as to Ghislaine Maxwell: Having considered the parties' respective proposals, Dkt. No. 291, the Court hereby sets the following disclosure schedule: September 13, 2021: Disclosure of alleged victims' identities (Government's proposal) October 11, 2021: Government's disclosure of Jencks Act and Giglio material, Rule 404(b) evidence and notice, co-conspirator statements, and Government witness list (Government's proposal) October 11, 2021: Government's disclosure of its proposed exhibit list (Defendant's proposal) October 18, 2021: Simultaneous filing of motions in limine (agreement of the parties) October 25, 2021: Simultaneous filing of proposed jury questionnaire and voir dire (agreement of the parties) November 1, 2021: Defense expert disclosures (Defendant's proposal) November 1, 2021: Responses to motions in limine (agreement of the parties) November 8, 2021: Simultaneous filing of requests to charge and verdict sheet (agreement of the parties) - November 8, 2021: Defense disclosures pursuant to

		Rules 16(b)(1)(A) and 16(b)(1)(B) materials (The Government proposed November 1, 2021; the Defendant proposed the close of the Government's case-in-chief) Close of the Government's case-in-chief: Defense witness list and 26.2 statements (Defendant's proposal) These dates establish a baseline for when the parties must disclose certain materials. Each of the parties has a continuing obligation to update all disclosures if they become aware of additional responsive materials. In addition, and as requested by the parties, the parties may bring issues to the Court's attention that arise after the deadline for motions in limine if the issues could not have been raised within the deadline set for in limine motions. (Motions due by 10/18/2021. Responses due by 11/1/2021) (Signed by Judge Alison J. Nathan on 6/2/2021) (ap) (Entered: 06/02/2021)
06/04/2021	298	ORDER as to Ghislaine Maxwell: The Defendant's motion for an order authorizing the subpoena pursuant to Rule 17(c)(3) is DENIED. (Signed by Judge Alison J. Nathan on 6/4/2021) (See ORDER set forth) (ap) (Entered: 06/04/2021)
06/07/2021	299	MANDATE of USCA (Certified Copy) as to Ghislaine Maxwell re: 173 Notice of Appeal, 113 Notice of Appeal. USCA Case Number 21-58; 21-770. Defendant-Appellant Ghislaine Maxwell appeals from orders of the District Court entered December 28, 2020 and March 22, 2021, which denied her renewed requests for bail pending trial. See Dkts. 1, 20. Upon due consideration, it is hereby ORDERED that the District Courts orders are AFFIRMED and that Appellants motion for bail, or in the alternative, temporary pretrial release pursuant to 18 U.S.C. § 3142(i), Dkt. 39, is DENIED. During oral argument, counsel for Appellant expressed concern that Appellant was improperly being deprived of sleep while incarcerated. To the extent Appellant seeks relief specific to her sleeping conditions, such request should be addressed to the District Court... Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 6/7/2021. (nd) (Entered: 06/08/2021)
06/08/2021		Transmission of USCA Mandate to the District Judge re: 299 USCA Mandate. (nd) (Entered: 06/08/2021)
06/15/2021	300	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 6/15/2021 re: Response to MDC Conditions Update (Sternheim, Bobbi) (Entered: 06/15/2021)
06/15/2021	301	ORDER as to Ghislaine Maxwell: On June 7, 2021, the Government submitted an update on the Defendants conditions of confinement. It submitted it under temporary seal to permit the Defendant to propose redactions. On June 15, 2021, the Defendant proposed narrowly tailored redactions, which the Court adopts after applying the three-part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). The Government is ORDERED to publicly docket the redacted version of its June 7, 2021 letter by June 17, 2021. (Signed by Judge Alison J. Nathan on 6/16/2021) (ap) (Entered: 06/16/2021)
06/16/2021	302	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated June 7, 2021 re: MDC Conditions Update Document filed by USA. (Pomerantz, Lara) (Entered: 06/16/2021)
06/25/2021	303	ORDER as to Ghislaine Maxwell. Maxwell's motions to suppress evidence (Dkt. Nos. 133, 139) are DENIED. The Court sets out its reasoning in an opinion concurrently filed under temporary seal to allow Maxwell and the Government the opportunity to propose redactions. The parties may file under seal any proposed redactions to the opinion within three days. The Court further ORDERS that the April 9, 2019 memorandum decision and order on the Government's application to modify the protective order in Giuffre v. Maxwell, No. 15-cv-7433, as well as the transcripts of the March 26, 2019 and April 9, 2019 ex parte hearings on that application shall be unsealed. These documents were

		previously filed under seal as Exhibits D, E, F, and G to the memorandum of law in support of Maxwell's first motion to suppress (Dkt. No. 134). Within one week, the parties shall confer and file under seal any proposed redactions to the memorandum decision, order, and transcripts. Any proposed redactions shall be narrowly tailored and shall be supported with reference to the Second Circuit's opinion in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). The parties proposed redactions should not include any information that has already been made public. SO ORDERED (Signed by Judge Alison J. Nathan on 6/25/21)(jbo) (Entered: 06/25/2021)
06/25/2021	304	ORDER as to Ghislaine Maxwell. The Court grants the Defendant's request that going forward the Government shall only file updates if there are any material changes to Ms. Maxwell's conditions of confinement. See Dkt. No. 300 at 1. In the absence of any other specific or supported application for relief from the Defendant, the Court will take no further action at this time. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/25/2021)(bw) (Entered: 06/25/2021)
06/25/2021	307	OPINION & ORDER as to Ghislaine Maxwell. Maxwell moves to suppress evidence obtained through a grand jury subpoena to a law firm involved in earlier civil litigation against her. She contends that because the documents sought by the subpoena were previously subject to a protective order, the Government obtained them in violation of her rights against compelled self-incrimination, against unreasonable searches and seizures, and to due process of law. For the foregoing reasons, the Court finds that the Government did not violate Maxwell's constitutional rights when it obtained evidence covered by a protective order in her earlier civil case. It further finds that Maxwell is not entitled to suppression of any evidence or to an evidentiary hearing. The Court thus DENIES Maxwell's motions to suppress (Dkt. Nos. 133, 139) (Signed by Judge Alison J. Nathan on 6/25/21)(jw) (Entered: 07/01/2021)
06/30/2021	305	ORDER as to Ghislaine Maxwell: Pursuant to the Court's order of June 25, 2021 (Dkt. No. 303), any proposed redactions to the Court's opinion on Maxwell's motions to suppress evidence must be filed no later than today, June 30, 2021. Any proposed redactions to the other documents ordered unsealed in that order must be filed no later than July 2, 2021. The parties shall file a joint letter by each of these dates informing the Court if no redactions are sought. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/30/2021) (lnl) (Entered: 06/30/2021)
06/30/2021	306	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated June 30, 2021 re: Joint Letter re June 25, 2021 Opinion and Order and Defense Exhibits Document filed by USA. (Pomerantz, Lara) (Entered: 06/30/2021)
07/01/2021	308	ORDER as to Ghislaine Maxwell. No party has proposed redactions to the Court's opinion on Maxwell's motions to suppress evidence or the documents ordered unsealed in the Courts June 25, 2021 Order (Dkt. No. 303). Thus, the Court lifts the temporary seal on its June 25, 2021 opinion on Maxwells motions to suppress. It also unseals the April 9, 2019 memorandum decision and order on the Governments application to modify the protective order in Giuffre v. Maxwell, No. 15-cv-7433, as well as the transcripts of the March 26, 2019 and April 9, 2019 ex parte hearings on that application, originally filed under seal as Exhibits D, E, F, and G to the memorandum of law in support of Maxwell's first motion to suppress (Dkt. No. 134). Maxwell shall file those exhibits on the public docket without redaction by July 2, 2021 (Signed by Judge Alison J. Nathan on 7/1/21) (jw) (Entered: 07/01/2021)
07/01/2021	309	LETTER MOTION addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, and Lara Pomerantz dated July 1, 2021 re: Local Rule 23.1 . Document filed by USA as to Ghislaine Maxwell. (Moe, Alison) (Entered: 07/01/2021)

07/02/2021	310	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated July 2, 2021 re: Cosby Opinion (Attachments: # 1 Exhibit A)(Everdell, Christian) (Entered: 07/02/2021)
07/02/2021	311	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated July 2, 2021 re: Cover Letter Attaching Unsealed Exhibits for the Memorandum in Support of the Defendant's Motion Under the Due Process Clause to Suppress all Evidence Obtained from the Government's Subpoena to Boies Schiller and to Dismiss Counts Five and Six (Dkt. No. 134) (Attachments: # 1 Exhibit D, # 2 Exhibit E, # 3 Exhibit F, # 4 Exhibit G)(Everdell, Christian) (Entered: 07/02/2021)
07/02/2021	312	ORDER as to Ghislaine Maxwell re: Defense counsel, including David Markus, are ORDERED to respond to the Governments July 1, 2021 letter motion, Dkt. No. 309, by July 9, 2021 (Defense Counsel Responses due by 7/9/2021) (Signed by Judge Alison J. Nathan on 7/2/21)(jw) (Entered: 07/02/2021)
07/09/2021	313	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 07/09/2021 re: Counsel of Record reply to Court Order Dkt 312 (Sternheim, Bobbi) (Entered: 07/09/2021)
07/12/2021	314	LETTER addressed to Judge Alison J. Nathan from David Oscar Markus dated 7/9/21 re: The Governments request should be denied because (1) undersigned counsel does not currently represent Ms. Maxwell, and (2) the Op-Ed did not violate the local rules. (jw) (Entered: 07/12/2021)
07/30/2021	315	ORDER as to Ghislaine Maxwell. The Government has moved for an order requiring David Markus to comply with Local Criminal Rule 23.1 following an op-ed that he authored opining on the merits of this pending case. Dkt. No. 309. Mr. Markus is therefore ORDERED to comply with Local Criminal Rule 23.1. The Government does not ask the Court to discipline Mr. Markus based on his op-ed and the Court declines to consider whether it violated Rule 23.1 given the potential lack of clarity with respect to whether Mr. Markus was bound by the rule. The Court emphasizes that the rule provides illustrative examples of statements that "presumptively involve a substantial likelihood that their public dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice within the meaning of the rule." S.D.N.Y. Local Criminal Rule 23(d). Going forward, Mr. Markus and all lawyers associated with the pending case are now clearly on notice that their conduct falls under the purview of Local Criminal Rule 23.1. Indeed, the above concerns do not apply only to Mr. Markus. This Court has previously noted that counsel[,] agents for the parties and counsel for potential witnesses must take care to protect the Defendant's right to a fair trial by an impartial jury. Dkt. No. 28. This Court is cognizant that criminal matters heading toward trial are especially sensitive to extrajudicial statements. All those associated with this case must act to ensure the case is tried solely in court or else they risk being deemed responsible for any trial delay or for undermining the integrity of the upcoming trial. See S.D.N.Y. Local Criminal Rule 23.1(h). In addition to the impact it could have on this matter, failure to comply could also result in attorney discipline. Id. Rule 23.1(i). (Signed by Judge Alison J. Nathan on 7/30/21)(jw) Modified on 7/30/2021 (jw). (Entered: 07/30/2021)
07/30/2021		NOTICE OF MAILING as to Ghislaine Maxwell: Copy of Order dated 7/30/21 (dkt.315) was emailed to Mr. Markus on Friday, September 30. (jbo) (Entered: 08/03/2021)
08/05/2021	316	INTERNET CITATION NOTE as to Ghislaine Maxwell: Material from decision with Internet citation re: 315 Order. (sjo) (Entered: 08/05/2021)
08/13/2021	317	OPINION & ORDER as to Ghislaine Maxwell. For the reasons above and in this Courts April 16, 2021 Opinion & Order, the Court DENIES Maxwell's motion to obtain relief specified in her supplemental pre-trial motions relating to the S2 indictment. This

		resolves Dkt. No. 292. (Signed by Judge Alison J. Nathan on 8/13/2021) (See ORDER set forth) (ap) (Entered: 08/13/2021)
08/13/2021	318	ORDER as to Ghislaine Maxwell: On March 19, 2021, Defendant Ghislaine Maxwell submitted a sealed and ex parte motion for an order authorizing four subpoenas pursuant to Rule 17(c)(3) of the Federal Rules of Criminal Procedure. By sealed order dated March 22, 2021, the Court provided an opportunity for recipients of the subpoenas to respond to the requests by March 30, 2021, but it received no responses. In an Opinion and Order temporarily filed under seal, the Court DENIES Maxwell's motion without prejudice. It does so after concluding that none of the proposed subpoenas conform to the factors first set out in United States v. Nixon, 418 U.S. 683, 69870 (1974). The Court will send the temporarily sealed Opinion and Order to defense counsel. By August 18, 2021, Maxwell is ORDERED to inform the Court whether she seeks sealing or limited redactions of the Court's opinion and of her original motion papers, justifying any such request by reference to the three-part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). In addition, by that date Maxwell shall inform the Court whether she seeks full sealing or redactions of the original motion, again justifying any such request by reference to the Lugosch test. (Signed by Judge Alison J. Nathan on 8/13/2021) (ap) (Entered: 08/13/2021)
08/13/2021	334	OPINION & ORDER as to Ghislaine Maxwell. Maxwell's motion is, at this time, DENIED without prejudice. She may renew any Rule 17(c) applications upon a proper showing that each of the requested materials satisfies the Nixon test, as described above and in the Court's April 27, 2021 and June 2, 2021 Orders. The Court will file this Opinion & Order under temporary seal to allow consideration of any sealing or redaction requests. (Signed by Judge Alison J. Nathan on 8/13/2021) (See ORDER set forth) (ap) (Entered: 09/03/2021)
08/18/2021	319	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 08/18/2021 re: Disruption of MDC attorney-client video teleconferences (Sternheim, Bobbi) (Entered: 08/18/2021)
08/18/2021	320	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated August 18, 2021 re: Identification of co-conspirators Document filed by USA. (Rohrbach, Andrew) (Entered: 08/18/2021)
08/19/2021	321	ENDORSED LETTER as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim, dated 8/18/2021, re: Counsel writes: I write to update the Court regarding MDC ongoing interference with attorney-client communication between Ghislaine Maxwell and her counsel. ENDORSEMENT: The Government is hereby ORDERED to confer with BOP and MDC Legal and file a response to Defendant's letter on or before August 23, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 8/19/2021) (lnl) (Entered: 08/19/2021)
08/19/2021	322	MEMO ENDORSEMENT as to Ghislaine Maxwell on 320 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated August 18, 2021 re: Identification of co-conspirators. ENDORSEMENT: The parties are hereby ORDERED to meet and confer in an effort to reach an agreement on the disclosure issues raised in this letter. If the parties reach an agreement, they shall inform the Court by August 26, 2021. If the parties do not reach agreement, the Defendant may file a response to the arguments made here by the Government on or before August 30, 2021. Any response letter shall confirm that the meet and confer occurred. SO ORDERED. (Signed by Judge Alison J. Nathan on 8/19/2021) (lnl) (Entered: 08/19/2021)

08/19/2021	323	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 19, 2021 re: Redactions to Motion for 17(c) Subpoenas. (Everdell, Christian) (Entered: 08/19/2021)
08/20/2021	324	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated August 20, 2021 re: Limited unsealing . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 08/20/2021)
08/23/2021	325	ORDER re: 324 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated August 20, 2021 re: Limited unsealing. Defense counsel is ORDERED to provide this Order and the temporarily sealed Opinion and Order to the intended recipients of the subpoenas. By August 25, 2021, defense counsel is ORDERED to confirm service of this Order and the temporarily sealed Opinion and Order. The Court GRANTS the Governments request for a limited unsealing of the Court's August 13 Opinion and Order and the underlying motion papers. Dkt. No. 324. The Court will send the temporarily sealed Opinion and Order and motion papers to the Government. This resolves Dkt. No. 324. (Signed by Judge Alison J. Nathan on 8/23/21) (jw) (Entered: 08/23/2021)
08/23/2021		Transmission to Sealed Records Clerk: as to Ghislaine Maxwell. Transmitted re: 325 Order on Letter Motion to the Sealed Records Clerk for the sealing or unsealing of document or case. (jw) (Entered: 08/23/2021)
08/23/2021	326	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated August 23, 2021 re: Response to Defense August 18, 2021 Letter Document filed by USA. (Comey, Maurene) (Entered: 08/23/2021)
08/24/2021	327	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 08/24/2021 (Sternheim, Bobbi) (Entered: 08/24/2021)
08/25/2021	328	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 25, 2021 re: Service of Order. (Everdell, Christian) (Entered: 08/25/2021)
08/25/2021	329	ORDER as to Ghislaine Maxwell. Defendant submitted a letter on August 18 informing the Court about disruptions of attorney-client video teleconferences. Dkt. No. 319. After conferring with MDC Legal, the Government responded on August 23. Dkt. No. 326. According to the Government and MDC Legal, the Defendant's difficulties in communicating with her counsel via video teleconference have been resolved, and the Government's letter sufficiently addresses her other requests. The Court finds MDC Legal's assurance that Defendant's communications have not been interfered with, recorded, or listened to sufficient. No further application for relief was made in Defendant's August 24 reply. Dkt. No. 327. The Court remains confident that Ms. Maxwell is fully able to communicate with her defense counsel and to prepare for trial. If Defendant experiences further issues in communicating with her counsel, she should promptly notify the Court after conferring in good faith with the Government and MDC Legal. (Signed by Judge Alison J. Nathan on 8/25/21)(jw) (Entered: 08/25/2021)
08/27/2021	330	ORDER as to Ghislaine Maxwell. The Clerk's Office has now confirmed that a jury trial in this case has been scheduled to commence on November 29, 2021. This is a firm trial date. When the information is available, the Court will provide courtroom location and public access information by separate order. In light of the firm dates discussed above, it is hereby ORDERED that the parties appear for a telephone conference to discuss jury selection matters on October 21, 2021 at 12:00 P.M. Dial-in information for the parties and for public access will be provided when it is available by separate order. In light of

		the jury selection dates provided by the Clerks Office, the Court amends theschedule that it set on June 2, 2021 as follows. The parties shall meet and confer and submit a joint proposed juror questionnaire and joint proposed voir dire by October 11, 2021. The parties shall file a joint proposed charge and verdict sheet, with any differing proposals supported by authority or other justification, by October 27, 2021. Any motions in limine must be simultaneously filed by October 18, 2021, and any responses to motions in limine are due by October 25, 2021. Otherwise, the parties shall continue to follow the schedule that the Court set on June 2, 2021. Dkt. No. 297. IT IS FURTHER ORDERED that the parties appear for an in-person pretrial conference on November 1, 2021 at 11:00 A.M. (Pretrial Conference set for 11/1/2021 at 11:00 AM before Judge Alison J. Nathan., Telephone Conference set for 10/21/2021 at 12:00 PM before Judge Alison J. Nathan.). (Signed by Judge Alison J. Nathan on 8/27/21)(jw) (Entered: 08/27/2021)
08/30/2021	331	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated August 30, 2021 re: Response to Government Letter dated August 18, 2021, Dkt. 320 (Pagliuca, Jeffrey) (Entered: 08/30/2021)
09/01/2021	332	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated September 1, 2021 re: Proposed Redactions Document filed by USA. (Comey, Maurene) (Entered: 09/01/2021)
09/03/2021	333	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 332 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated September 1, 2021 re: Proposed Redactions. ENDORSEMENT: The Court has reviewed the proposed redactions and finds that they are narrowly tailored and necessary to protect the privacy and identities of third parties not identified on the record in this case. The intended recipients of the subpoenas did not file proposed redactions by September 1, 2021, per this Court's August 23 Order. Dkt. No. 325. The Court accordingly ORDERS Defendant to file the redacted Motion and Exhibits 1, 3, and 4, and unredacted Exhibit 2, by September 7, 2021. The Court hereby unseals the August 13 Opinion, and the Court will file the Opinion on the public docket. (Signed by Judge Alison J. Nathan on 9/2/2021) (ap) (Entered: 09/03/2021)
09/03/2021	335	ORDER as to Ghislaine Maxwell: The Court ORDERS that at the same time that the Government discloses Jencks Act material, the Government shall also disclose to the defense the identities of any unnamed co-conspirators who allegedly participated in the conspiracies charged in the S2 indictment to whom the Government will refer at trial. The Government is FURTHER ORDERED to disclose all co-conspirator statements it intends to offer at trial no later than October 11, as consistent with this Court's scheduling order. Dkt. No. 297 at 1. (Signed by Judge Alison J. Nathan on 9/3/2021) (See ORDER set forth) (ap) (Entered: 09/03/2021)
09/07/2021	336	MOTION for Discovery *(Ex Parte and In Camera for an Order Authorizing a Subpoena Pursuant to Fed. R. Crim. P. 17(c)(3))*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4)(Everdell, Christian) (Entered: 09/07/2021)
10/05/2021	337	ORDER as to Ghislaine Maxwell. The Court is currently in the process of planning logistics for trial in this matter and requires the parties' best and current estimate of length of trial. The Court plans to have the jury sit 5 days a week from 9am until 5pm. Given that jury selection will be complete by November 19 and opening statements will occur on November 29, the Court requests that the parties provide their best estimate as to when the jury is likely to begin deliberations. This will allow the Court to assess the likelihood that trial may continue after the Christmas holiday and therefore whether the jury may be

		required to sit some days during the week between Christmas and New Year's Day. Accordingly, on or before October 12, 2021, the parties are ORDERED to confer and submit a joint letter with their best and current estimate as to when the jury is likely to begin deliberations. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/5/2021) (bw) (Entered: 10/05/2021)
10/12/2021	338	MEMO ENDORSEMENT as to Ghislaine Maxwell re: Motion to Intervene....ENDORSEMENT...The motion to intervene is DENIED. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/12/21)(jw) (Entered: 10/12/2021)
10/12/2021	339	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 11, 2021 re: Sealing of Joint Proposed Juror Questionnaire and Voir Dire . Document filed by USA as to Ghislaine Maxwell. (Pomerantz, Lara) (Entered: 10/12/2021)
10/12/2021	340	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 12, 2021 re: Trial length Document filed by USA. (Rohrbach, Andrew) (Entered: 10/12/2021)
10/13/2021	341	MOTION Individual Sequestered Voir Dire and Limited Attorney-Conducted Voir Dire re 339 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 11, 2021 re: Sealing of Joint Proposed Juror Questionnaire and Voir Dire . . Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 10/13/2021)
10/13/2021	342	MEMORANDUM in Support by Ghislaine Maxwell re 341 MOTION Individual Sequestered Voir Dire and Limited Attorney-Conducted Voir Dire re 339 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 11, 2021 re: Sealing of Joint. (Sternheim, Bobbi) (Entered: 10/13/2021)
10/13/2021	343	ORDER as to Ghislaine Maxwell. The Court is in receipt of Defendant's motion for an order granting individual sequestered juror voir dire and limited counsel-conducted voir dire. Dkt. No. 341. The Government is hereby ORDERED to respond by Monday, October 18, 2021 (Government Responses due by 10/18/2021) (Signed by Judge Alison J. Nathan on 10/13/21)(jw) (Entered: 10/14/2021)
10/14/2021	344	ORDER as to Ghislaine Maxwell. The Court received a letter via email from a lawyer for an alleged victim regarding victim attendance at the upcoming trial. The Court will file the letter under seal and forward a copy to counsel for both sides. Consistent with the Districts COVID-19 protocols, the Court will ensure public access for pretrial proceedings and trial, including several overflow rooms at the courthouse with live feeds of the proceedings. Additional information will be provided as soon as it is available. Access for alleged victims will be coordinated between the Victim Witness Unit and the District Executives Office. The contact information for each office is provided below. Furthermore, Defense counsel may coordinate access for the Defendant's family members with the District Executives Office (Signed by Judge Alison J. Nathan on 10/14/21)(jw) (Entered: 10/14/2021)
10/14/2021	345	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated October 14, 2021 re: Deadline for Filing Motion under Federal Rule of Evidence 412 (Pagliuca, Jeffrey) (Entered: 10/14/2021)
10/14/2021	346	MOTION to Direct MDC to deliver legal mail within one day of receipt . Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 10/14/2021)
10/14/2021	347	ORDER as to Ghislaine Maxwell: The Court is in receipt of Defendant's letter regarding the deadline for filing a motion under Federal Rule of Evidence 412. Dkt. No. 345. The

		Government is hereby ORDERED to respond by 5:00 p.m. tomorrow, October 15, 2021. (Signed by Judge Alison J. Nathan on 10/14/2021) (ap) (Entered: 10/15/2021)
10/15/2021	348	ORDER as to Ghislaine Maxwell: The Court is in receipt of Defendant's letter regarding delivery of Defendant's legal mail at MDC. Dkt. No. 346. The Government is hereby ORDERED to respond as soon as possible but by no later than today, October 15, 2021 at 5:00 p.m. (Signed by Judge Alison J. Nathan on 10/15/2021) (ap) (Entered: 10/15/2021)
10/15/2021	349	SEALED DOCUMENT placed in vault. (jus) (Entered: 10/15/2021)
10/15/2021	350	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 15, 2021 re: Delivery of Legal Mail at MDC Document filed by USA. (Pomerantz, Lara) (Entered: 10/15/2021)
10/15/2021	351	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 15, 2021 re: Federal Rule of Evidence 412 Document filed by USA. (Pomerantz, Lara) (Entered: 10/15/2021)
10/15/2021	352	LETTER RESPONSE in Support of Motion by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 10/15/2021 re: 346 MOTION to Direct MDC to deliver legal mail within one day of receipt .. (Sternheim, Bobbi) (Entered: 10/15/2021)
10/15/2021	353	ENDORSED LETTER as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Counsels of record for the Government dated 10/15/21 re: Government response to Order of The Court dated 10/15/21 (Dkt No. 348).ENDORSEMENT: Based on the information in this letter the Court will not enter the Defendant's requested order. See Dkt. 346. However, it is the Court's firm expectation that a defendant in a pre-trial posture like Ms. Maxwell will in most circumstances receive legal mail within approximately 1 business day. Going forward, if another delay occurs, the Defendant may renew the request for a specific order requiring delivery within the time frame. With this understanding and in light of the unusually early pre-trial disclosure schedule set by the Court, the Court remains confident that Ms. Maxwell and her attorneys are fully able to prepare for trial. This resolves Dkt. No. 346. SO Ordered.. (Signed by Judge Alison J. Nathan on 10/15/21)(jm) (Entered: 10/15/2021)
10/15/2021	354	MEMO ENDORSEMENT as to Ghislaine Maxwell on 351 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 15, 2021 re: Federal Rule of Evidence 412. ENDORSEMENT: For the reasons stated in this letter, the Court finds that there is good cause for any motion under Federal Rule of Evidence 412 to be filed no later than October 27, 2021. Any response will be due November 1, 2021. Any hearing will tentatively be scheduled for November 5, 2021.Additional details will be provided if and when any motions are filed. SO ORDERED. (Motions due by 10/27/2021. Responses due by 11/1/2021) (Signed by Judge Alison J. Nathan on 10/15/2021) (lnl) (Entered: 10/18/2021)
10/18/2021		*****DELETED DOCUMENT. Deleted document number 354 Rule 5(f) as to Ghislaine Maxwell. The document was incorrectly filed in this case. (jm)** (Entered: 10/18/2021)
10/18/2021	355	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 18, 2021 re: Response to Defense Motion for Limited Attorney-Conducted Voir Dire and Individual Sequestered Voir Dire Document filed by USA. (Pomerantz, Lara) (Entered: 10/18/2021)

10/18/2021	356	REPLY TO RESPONSE to Motion by Ghislaine Maxwell re 341 MOTION Individual Sequestered Voir Dire and Limited Attorney-Conducted Voir Dire re 339 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 11, 2021 re: Sealing of Joint. (Sternheim, Bobbi) (Entered: 10/18/2021)
10/18/2021	357	NOTICE of Defendant Ghislaine Maxwell's Motions in Limine as to Ghislaine Maxwell (Pagliuca, Jeffrey) (Entered: 10/18/2021)
10/18/2021	358	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated October 18, 2021 re: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN) (Pagliuca, Jeffrey) (Entered: 10/18/2021)
10/18/2021	359	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 18, 2021 re: Cover letter for Government Motions in Limine Document filed by USA. (Rohrbach, Andrew) (Entered: 10/18/2021)
10/19/2021	360	ORDER as to Ghislaine Maxwell. As noted in its previous order, the Court will hold a telephone conference to discuss jury selection matters on October 21, 2021 at 12:00 p.m. Dkt. No. 330. Members of the press and the public in the United States may access the live audio feed of the proceeding by calling 844-721-7237 and using access code 9991787. Those outside of the United States may access the live audio feed by calling 409-207-6951 and using the same access code. The Court will provide counsel for both sides an additional dial-in number to be used by counsel, the Defendant, alleged victims, and any family members of the Defendant. Any photographing, recording, or rebroadcasting of federal court proceedings is prohibited by law. Violation of these prohibitions may result in fines or sanctions, including monetary fines, 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 10/19/2021)(bw) (Entered: 10/19/2021)
10/20/2021	361	ORDER as to Ghislaine Maxwell: At the telephone conference scheduled to take place on October 21, 2021, in which the Court will discuss jury selection matters and logistics with the parties, the Court will hear from counsel regarding the unopposed request to seal their joint proposed juror questionnaire and voir dire. See Dkt. No. 339. The Court will also inquire as to whether the sealing request extends to the Court's draft questionnaire and voir dire and any justification for such sealing. In the meantime, the Court will today transmit via email its draft questionnaire and draft voir dire to the parties so that the drafts can be discussed at the conference tomorrow. After the Court explains how jury selection will proceed, the parties should be prepared to raise any objections to the Court's draft questionnaire and voir dire. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/20/2021) (lnl) (Entered: 10/20/2021)
10/20/2021	362	LETTER RESPONSE in Opposition by Reporters Committee for Freedom of the Press as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Reporters Committee for Freedom of the Press and 17 News Media Organizations dated October 20, 2021 re: 339 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 11, 2021 re: Sealing of Joint Proposed Juror Questionnaire and Voir Dire .. (Townsend, Katielynn) (Entered: 10/20/2021)
10/21/2021	363	LETTER as to USA v. Ghislaine Maxwell addressed to Judge Alison J. Nathan from Pete Brush, reporter, New York federal courts, dated Thu 10/21/2021 11:28 AM re: members of SDNY press corps join RCFP in opposition to secret jury selection in USA v. Maxwell. (bw) (Entered: 10/21/2021)

10/21/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Pretrial Conference as to Ghislaine Maxwell held on 10/21/2021. Defendant Ghislaine Maxwell present via telephone with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger via telephone. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government via telephone. Court Reporter Carol Ganley via telephone. Pretrial Conference held via telephone. Defendant remains remanded. See Transcript. (jbo) (Entered: 10/25/2021)
10/22/2021	364	ORDER as to Ghislaine Maxwell: For the reasons stated on the record at yesterday's conference, the Court will implement the following procedures for jury selection: A screening questionnaire will be administered on November 4, 5, and 12. The Clerk's Office will create a corresponding list of names and randomly assigned juror numbers. The list will be provided to counsel and the Court for use throughout jury selection. Jurors will be identified on the questionnaire and in court throughout the process by their assigned number only. Completed questionnaires will be copied and distributed to defense counsel by the U.S. Attorney's Office. After reviewing the completed questionnaires, counsel must confer in good faith and jointly submit four lists: (1) prospective jurors that both sides agree should proceed to voir dire; (2) prospective jurors that both sides agree should be excused; (3) prospective jurors that the defense, but not the Government believes should be excused; and (4) prospective jurors that the Government, but not the defense believes should be excused. Lists for questionnaires completed on November 4 and 5 will be due to the Court via email by November 7. Lists for questionnaires completed on November 12 will be due to the Court via email by November 13. If necessary, there will be an in-person conference on November 15 at 9:30 a.m. to resolve any disputes. Voir dire will proceed on November 16-19. The Court will conduct one-on-one voir dire with each prospective juror in the presence of the parties and with public access to the proceeding. At the conference, both sides indicated the potential need for additional procedures during voir dire under certain circumstances. See Transcript at 1011. As the Court indicated, it will consider proposed narrowly tailored measures that may be necessary during voir dire on a case-by-case basis. See id. at 12. The Court will decide in due course whether the exercise of peremptory strikes will proceed on November 19 or November 29. The Court implements these procedures taking into account the significant publicity this case has garnered, the nature of the charges, and the District's COVID-19 protocols. These procedures are carefully balanced and tailored to ensure the safety of the parties and prospective jurors in light of the continuing pandemic; to ensure juror candor, impartiality, and privacy; and to ensure the First Amendment right to public access of criminal proceedings. Also for the reasons stated on the record at yesterday's conference, the request to seal the parties' proposed questionnaire and voir dire and the Court's draft questionnaire and voir dire until after jury selection is completed is denied. Although the Court has and will continue to implement tailored measures to ensure a fair trial despite significant media interest, see Dkt. Nos. 28, 81, 95, 99, 101, 232, 241, 284, 301, 315, the defense did not justify sealing the entirety of the proposed and draft questionnaires and voir dire. See Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). The Court's planned individual voir dire process is designed to carefully probe the prior exposure to and the potential influence of any pre-trial media. As noted at the conference, the parties may continue to propose for the Court's consideration, any appropriate and tailored procedures in light of the specific factors related to this case and upcoming trial. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/22/2021) (lnl) (Entered: 10/22/2021)
10/22/2021	365	ORDER as to Ghislaine Maxwell: Attached are the Court's draft jury questionnairewith changes adopted at yesterday's proceeding in redlineand draft voir dire. In light of the District's COVID-19 protocols, the Court has proposed an additional question on page 6

		of the questionnaire, which is also indicated in redline. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/22/2021) (lnl) (Entered: 10/22/2021)
10/22/2021	366	ORDER as to Ghislaine Maxwell: As discussed at yesterday's conference, attached is the Courts draft preliminary remarks to be recorded and played before each questionnaire session. The parties may suggest any proposed edits by letter on or before October 26, 2021, or they shall indicate by that date that they have no objections or suggestions. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/22/2021) (lnl) (Entered: 10/22/2021)
10/22/2021	367	PROPOSED EXAMINATION OF JURORS by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit Joint Proposed Examination of Prospective Jurors)(Pomerantz, Lara) (Entered: 10/22/2021)
10/25/2021	368	ORDER as to Ghislaine Maxwell. On October 18, 2021, the parties filed their respective motions in limine. Dkt. Nos. 355, 357, 358. Responses are due today, October 25, 2021. The parties are further ORDERED that reply briefs, if any, are due by October 27, 2021. Each sides' responses and any replies must be filed as a single document. The parties are ORDERED to file on the public docket all briefing with both parties proposed redactions, and a joint letter justifying any requested redactions by reference to the three-part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006), on or before October 29, 2021. (Replies due by 10/27/2021.) (Signed by Judge Alison J. Nathan on 10/25/21)(jw) (Entered: 10/25/2021)
10/25/2021	369	LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated 10/25/21 re: Extension of Time to File Joint Proposed Jury Charge and Verdict Sheet . Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 10/25/2021)
10/25/2021	370	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated October 25, 2021 re: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN) (Pagliuca, Jeffrey) (Entered: 10/25/2021)
10/26/2021	371	MEMO ENDORSEMENT 369 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated 10/25/21 re: Extension of Time to File Joint Proposed Jury Charge and Verdict Sheet. To request a one-week extension until November 3, 2021, to file the joint proposed jury charge and verdict sheet, which are currently due on October 27, 2021...ENDORSEMENT...SO ORDERED. (Signed by Judge Alison J. Nathan on 10/26/21) (jw) (Entered: 10/26/2021)
10/26/2021	372	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated October 26, 2021 re: the Court's draft preliminary remarks Document filed by USA. (Pomerantz, Lara) (Entered: 10/26/2021)
10/26/2021	373	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 10/26/2021 re: Response to court order (Sternheim, Bobbi) (Entered: 10/27/2021)
10/27/2021	375	REPLY by Ghislaine Maxwell re: 372 Letter filed by USA . (Sternheim, Bobbi) (Entered: 10/27/2021)
10/27/2021	376	ORDER as to Ghislaine Maxwell. The Court is receipt of the parties' letters regarding the jury questionnaire and voir dire. See Dkt. Nos. 372, 373, 375. The Court will provide counsel the corresponding list of juror names and assigned juror numbers on November 16 at the commencement of voir dire. The placeholder for the juror information sheet in the Courts draft questionnaire refers to the information sheet required by the Jury Department. See Dkt. No. 365. The information sheet will be removed and collected by the Jury Department from the packet before the parties review of the questionnaires. The

		Court is still considering the logistics of when peremptory strikes will be exercised, but the Court anticipates peremptory strikes will be exercised on November 29. Assuming so, the swearing in of the jury, preliminary instructions, and opening statements would commence immediately following the simultaneous (via submission of lists) exercise of peremptory challenges. (Signed by Judge Alison J. Nathan on 10/27/21)(jw) (Entered: 10/27/2021)
10/27/2021	377	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated October 27, 2021 re: Ms. Maxwell's Fed. R. Evid. 412 Motion (Pagliuca, Jeffrey) (Entered: 10/27/2021)
10/27/2021	378	NOTICE of of Motion Under Federal Rule of Evidence 412 as to Ghislaine Maxwell (Pagliuca, Jeffrey) (Entered: 10/27/2021)
10/28/2021	379	ORDER as to Ghislaine Maxwell. As noted in its previous order, the Court will hold an in-person pretrial conference on November 1, 2021 at 11:00 a.m. Dkt. No. 330. The conference will take place in Courtroom 518 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. In accordance with its prior Order, the Court will ensure access for alleged victims and any members of the Defendants family. Dkt. No. 344. Two pool reporters will be permitted in the courtroom proper. (Pretrial Conference set for 11/1/2021 at 11:00 AM in Courtroom 518, 40 Centre Street, New York, NY 10007 before Judge Alison J. Nathan.) (Signed by Judge Alison J. Nathan on 10/28/21)(jw) (Entered: 10/28/2021)
10/29/2021	380	MOTION in Limine . Document filed by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit Exhibit A)(Rohrbach, Andrew) (Entered: 10/29/2021)
10/29/2021	381	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 10/29/2021 re: Legal Mail Delivery Request (Sternheim, Bobbi) (Entered: 10/29/2021)
10/29/2021	382	RESPONSE to Motion by Ghislaine Maxwell re: 380 MOTION in Limine .. (Attachments: # 1 Exhibit A (Filed Under Seal), # 2 Exhibit B (Filed Under Seal), # 3 Exhibit C (Filed Under Seal), # 4 Exhibit D (Filed Under Seal), # 5 Exhibit E, # 6 Exhibit F (Filed Under Seal), # 7 Exhibit G, # 8 Exhibit H (Filed Under Seal), # 9 Exhibit I (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	383	REPLY MEMORANDUM OF LAW in Support by USA as to Ghislaine Maxwell re: 380 MOTION in Limine . . (Rohrbach, Andrew) (Entered: 10/29/2021)
10/29/2021	384	MOTION in Limine *to Preclude the Introduction of Alleged Co-Conspirator Statements as a Sanction for Failing to Comply with This Court's September 3, 2021 Order*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1)(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	385	MOTION in Limine *to Exclude Any Evidence Offered by the Government Pursuant to Fed. R. Evid. 404(b) for Failure to Comply with the Rule's Notice Requirement*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A)(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	386	MOTION in Limine *to Exclude Under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Request for Daubert Hearing*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	387	MOTION in Limine *to Exclude Evidence Related to Accuser-3*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A - Filed Under Seal, # 2 Exhibit B - Filed

		Under Seal)(Everdell, Christian) (Entered: 10/29/2021)
10/29/2021	388	MOTION in Limine *to Exclude Evidence of Alleged Flight*. Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 10/29/2021)
10/29/2021	389	MOTION in Limine *to Exclude Evidence of Alleged False Statement Evidence*. Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 10/29/2021)
10/29/2021	390	MOTION in Limine *to Exclude Government Exhibit 52, an Unauthenticated Hearsay Document from Suspect Sources*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	391	MOTION in Limine *to Exclude Items Purportedly Seized During Search of 358 El Brillo Way on October 20, 2005*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A)(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	392	MOTION in Limine *to Suppress Identification*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A)(Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	393	MOTION in Limine *to Preclude Law Enforcement Witnesses from Offering Expert Opinion Testimony*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	394	MOTION in Limine *to Preclude Testimony About Any Alleged "Rape" by Jeffrey Epstein*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	395	MOTION in Limine *to Preclude Reference to the Accusers as "Victims" or "Minor Victims"*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	396	MOTION in Limine *to Preclude Introduction of Government's Exhibits 251, 288, 294, 313 and 606*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A) (Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	397	RESPONSE in Opposition by USA as to Ghislaine Maxwell re: 386 MOTION in Limine *to Exclude Under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Request for Daubert Hearing*., 396 MOTION in Limine *to Preclude Introduction of Government's Exhibits 251, 288, 294, 313 and 606*., 390 MOTION in Limine *to Exclude Government Exhibit 52, an Unauthenticated Hearsay Document from Suspect Sources*., 389 MOTION in Limine *to Exclude Evidence of Alleged False Statement Evidence*., 388 MOTION in Limine *to Exclude Evidence of Alleged Flight*., 387 MOTION in Limine *to Exclude Evidence Related to Accuser-3*., 384 MOTION in Limine *to Preclude the Introduction of Alleged Co-Conspirator Statements as a Sanction for Failing to Comply with This Court's September 3, 2021 Order*., 395 MOTION in Limine *to Preclude Reference to the Accusers as "Victims" or "Minor Victims"*., 385 MOTION in Limine *to Exclude Any Evidence Offered by the Government Pursuant to Fed. R. Evid. 404(b) for Failure to Comply with the Rule's Notice Requirement*., 394 MOTION in Limine *to Preclude Testimony About Any Alleged "Rape" by Jeffrey Epstein*., 391 MOTION in Limine *to Exclude Items Purportedly Seized During Search of 358 El Brillo Way on October 20, 2005*., 392 MOTION in Limine *to Suppress Identification*., 393 MOTION in Limine *to Preclude Law Enforcement Witnesses from Offering Expert Opinion Testimony*.. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B)(Rohrbach, Andrew) (Entered: 10/29/2021)
10/29/2021	398	REPLY TO RESPONSE to Motion by Ghislaine Maxwell re 386 MOTION in Limine *to Exclude Under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Request for Daubert Hearing*., 396

		MOTION in Limine *to Preclude Introduction of Government's Exhibits 251, 288, 294, 313 and 606*., 390 MOTION in Limine *to Exclude Government Exhibit 52, an Unauthenticated Hearsay Document from Suspect Sources*., 389 MOTION in Limine *to Exclude Evidence of Alleged False Statement Evidence*., 388 MOTION in Limine *to Exclude Evidence of Alleged Flight*., 387 MOTION in Limine *to Exclude Evidence Related to Accuser-3*., 384 MOTION in Limine *to Preclude the Introduction of Alleged Co-Conspirator Statements as a Sanction for Failing to Comply with This Court's September 3, 2021 Order*., 395 MOTION in Limine *to Preclude Reference to the Accusers as "Victims" or "Minor Victims"*., 385 MOTION in Limine *to Exclude Any Evidence Offered by the Government Pursuant to Fed. R. Evid. 404(b) for Failure to Comply with the Rule's Notice Requirement*., 394 MOTION in Limine *to Preclude Testimony About Any Alleged "Rape" by Jeffrey Epstein*., 391 MOTION in Limine *to Exclude Items Purportedly Seized During Search of 358 El Brillo Way on October 20, 2005*., 392 MOTION in Limine *to Suppress Identification*., 393 MOTION in Limine *to Preclude Law Enforcement Witnesses from Offering Expert Opinion Testimony*.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E) (Pagliuca, Jeffrey) (Entered: 10/29/2021)
10/29/2021	399	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated Oct. 28, 2021 re: Justifications for redactions Document filed by USA. (Rohrbach, Andrew) (Entered: 10/29/2021)
10/29/2021	402	ORDER as to Ghislaine Maxwell. The Court is in receipt of Defendant's letter regarding delivery of Defendant's legal mail at MDC. Dkt. No. 381. The Government is hereby ORDERED to respond by Tuesday, November 2, 2021 at 12:00 p.m. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/29/2021)(bw) (Entered: 11/02/2021)
10/31/2021	400	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Defendant's motion under Federal Rule of Evidence 412, Dkt. No. 378, and the Defendant's motion in limine to exclude under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), Dkt. No. 386. The issues raised in the two motions overlap significantly. The Court is required under Federal Rule of Evidence 412 to conduct an in camera hearing. Fed. R. Evid. 412 ("Before admitting evidence under this rule, the court must conduct an in camera hearing and give the victim and parties a right to attend and be heard. Unless the court orders otherwise, the motion, related materials, and the record of the hearing must remain under seal.). In addition, the Court has determined it will conduct a Daubert hearing with respect to the Defendant's motion under Federal Rule of Evidence 702. Because of the overlap in the substance of the motions, the Court will conduct the two proceedings back to back. The Court previously set a tentative date for the Rule 412 Motion hearing as November 5, 2021. Dkt. No. 354. The Court is prepared to proceed with both hearings on that date. Alternatively, the proceedings could be held on either the afternoon of November 9 or the afternoon of November 10. The Government shall confer with its proposed expert regarding availability for the Daubert hearing as well as with alleged victims who wish to attend and be heard at the Rule 412 Motion hearing. After doing so, the parties shall confer with each other as to availability. On or before November 2, 2021, the parties shall jointly file a letter with the Court indicating whether the parties request that the hearings be held on November 5, 9, or 10. SO ORDERED. (Signed by Judge Alison J. Nathan on 10/31/2021) (bw) (Entered: 11/01/2021)
11/01/2021	401	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' proposed redactions to the parties' motions in limine, responses in opposition, replies in support, and related exhibits. As the Court indicated at today's conference, some of the parties' proposed redactions are overbroad considering the three-part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). In

		particular, for the reasons stated at today's conference, the Court denies the Government's request to redact section ten of the Government's motion in limine. See Dkt. No. 380. The Court will also not permit redactions pertaining to the general description of evidence or anticipated testimony as such redactions are unnecessary to protect the privacy interests of the individuals implicated. Accordingly, the parties must propose more tailored redactions consistent with the Court's discussion at today's conference. The parties are ORDERED to submit the proposals to the Court via email by November 4, 2021. In order to facilitate the Court's review of the requests, the Court requires the parties to submit the proposed redactions as a single document and with the proposed redactions highlighted. The Defendant's proposed redactions should be highlighted in one color, and the Government's a different color. The Court will rule on the proposed redactions expeditiously. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/1/2021)(bw) (Entered: 11/02/2021)
11/01/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Pretrial Conference as to Ghislaine Maxwell held on 11/1/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Pamela Utter and Michael McDaniel. Pretrial Conference held. Defendant remains remanded. See Transcript. (jbo) (Entered: 11/02/2021)
11/02/2021	403	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 2, 2021 re: Delivery of Legal Mail at MDC Document filed by USA. (Pomerantz, Lara) (Entered: 11/02/2021)
11/02/2021	404	ORDER as to Ghislaine Maxwell. As discussed at yesterday's conference, attached is the Court's draft preliminary remarks to be recorded and played before each voir dire session. The parties may suggest any proposed edits or additions by letter on or before November 8, 2021, or they shall indicate by that date that they have no objections or suggestions. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/2/2021)(bw) (Entered: 11/02/2021)
11/02/2021	405	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 2, 2021 re: Trial length Document filed by USA. (Rohrbach, Andrew) (Entered: 11/02/2021)
11/02/2021	406	JOINT LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated November 2, 2021 re: Fed. R. Evid. 412 and 702 Motions Hearing Date (Pagliuca, Jeffrey) (Entered: 11/02/2021)
11/03/2021	407	MOTION for Reconsideration *Re: Disclosure of Juror Names to Counsel Only upon completion of Questionnaire*. Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 11/03/2021)
11/03/2021	408	MOTION for Reconsideration *re: Release on Bond*. Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 11/03/2021)
11/03/2021	409	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' joint letter in response to this Court's order dated October 31, 2021. Dkt. No. 406. The Court will hold a hearing on November 10, 2021 at 9:00 a.m. on the Defendant's motion under Federal Rule of Evidence 412, Dkt. No. 378, the Defendant's motion in limine to exclude under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), Dkt. No. 386, and the other outstanding issues that overlap with these two motions as discussed at the November 1, 2021 conference. The proceeding will take place in Courtroom 110 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. The Court will provide information on public access (for the portion of the Daubert

		hearing that does not overlap with the Rule 412 issues) as soon as it is available. Otherwise, the Court will order the following briefing schedule if the Government seeks to exclude any of the Defendant's anticipated witness testimony as disclosed in her November 1, 2021 notice. See Dkt. No. 406: Government brief to be filed on ECF: November 8, 2021; Defense response brief to be filed on ECF: November 11, 2021. The parties are further ORDERED to docket Exhibit A to Dkt. No. 406 with any proposed redactions on or before November 8, 2021. In order to facilitate the Court's review of any proposed redactions, the parties must also submit via email a highlighted copy. SO ORDERED. (Status Conference set for 11/10/2021 at 09:00 AM in Courtroom 110, 40 Centre Street, New York, NY 10007 before Judge Alison J. Nathan.) (Signed by Judge Alison J. Nathan on 11/3/2021)(bw) (Entered: 11/03/2021)
11/03/2021	412	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's letter dated November 2, 2021. Dkt. No. 403. The Government is hereby ORDERED to confer further with MDC legal counsel and file a letter regarding Defendant's transportation to the courthouse for proceedings in this matter on or before November 8, 2021. The Court hereby authorizes the letter to be filed under seal because such information may implicate security concerns. The Court will also confer with the United States Marshal for the Southern District of New York and with the District Executive regarding transportation of the Defendant for upcoming in court proceedings and trial. With respect to legal mail, the Court requires MDC Legal Counsel to consider what additional steps can be taken (including what steps by counsel for the Government or the Defendant) to ensure that within the weeks leading up to trial, Ms. Maxwell promptly receives her legal mail. The Government shall docket a letter with MDC Legal Counsel's proposal on or before November 8, 2021. The Court will also transmit this Order to Chief Judge Brodie, who is overseeing the litigation and mediation in Case No. 19-cv-660 (E.D.N.Y.) regarding access to counsel for pre-trial detainees being held at the MDC so that the issue can be discussed as to all MDC pre-trial detainees who require prompt access to legal mail in the weeks leading up to their trials. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/3/2021)(bw) (Entered: 11/04/2021)
11/03/2021		Transmission to Sealed Records Clerk: as to Ghislaine Maxwell. Transmitted re: 412 Order, to the Sealed Records Clerk for the sealing of document. (bw) (Entered: 11/04/2021)
11/03/2021	413	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Defendant's motions for reconsideration. See Dkt. Nos. 407, 408. The Government is hereby ORDERED to respond to Defendant's motion for reconsideration, Dkt. No. 408, on or before November 8, 2021. As to the motion for reconsideration regarding the disclosure of juror names, the Court reminds counsel of the following. First, as the Court previously indicated, the lawyers will be provided the names of jurors on November 16, prior to the commencement of the voir dire process. Second, the Court has now resolved the logistical issues regarding the ability to conduct peremptory challenges on November 29 and the Court can now confirm that peremptory strikes will not be exercised until November 29. Finally, as previously indicated, although only 40 qualified jurors are needed for the exercise of peremptory strikes, the Court will seek to qualify approximately 50 to 60 prospective jurors to return on November 29 for the exercise of peremptory strikes. If counsel for either side learns of any additional information that would be a basis for a strike for cause prior to November 29, they shall immediately raise the issue with the Court. Bearing in mind this information, the Government is ORDERED to respond to Defendant's motion for reconsideration, Dkt. No. 407, on or before November 4, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/3/2021) (bw) (Entered: 11/04/2021)
11/04/2021	410	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 3, 2021 re:

		RTC and Verdict Sheet Document filed by USA. (Attachments: # 1 Exhibit Request to Charge, # 2 Exhibit Verdict sheet)(Rohrbach, Andrew) (Entered: 11/04/2021)
11/04/2021	411	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 4, 2021 re: Reconsideration of Court Order (Dkt. 409) . Document filed by USA as to Ghislaine Maxwell. (Pomerantz, Lara) (Entered: 11/04/2021)
11/04/2021	414	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 411 LETTER MOTION filed by USA addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 4, 2021 re: Reconsideration of Court Order (Dkt. 409). ENDORSEMENT: The Court hereby DENIES the Government's request as to Dr. Park Dietz and Dr. Elizabeth Loftus. Pursuant to this Court's Order, if the Government seeks to exclude these anticipated witnesses, briefing must be submitted by November 8, 2021. Dkt. No. 409. As to the remaining individuals disclosed in Defendant's notice, the Court GRANTS the Government's request. If the Government seeks to exclude those anticipated witnesses, briefing must be submitted by November 15, 2021, with a response by Defendant due November 19, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/4/2021)(bw) (Entered: 11/04/2021)
11/04/2021	415	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 4, 2021 re: Reply to Defendant's Motion for Reconsideration regarding Disclosure of Juror Names Document filed by USA. (Pomerantz, Lara) (Entered: 11/04/2021)
11/05/2021	416	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 415 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 4, 2021 re: Reply to Defendant's Motion for Reconsideration regarding Disclosure of Juror Names. ENDORSEMENT: For the reasons stated in the Government's letter, the motion for reconsideration, Dkt. No. 407, is DENIED. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/5/2021) (ap) (Entered: 11/05/2021)
11/08/2021	417	ORDER as to Ghislaine Maxwell: The Court is in receipt of the Government's supplemental letter regarding its opposition to the defense motion to exclude evidence of Minor Victim-3. See Dkt. No. 387. The letter is submitted temporarily under seal to allow defense counsel the opportunity to propose any additional redactions beyond what the Government proposes. At the November 1, 2021 conference, the Court asked the Government to provide its position as to whether Alleged "Victim-3" could be considered a "victim" of the crimes charged in the indictment for any legal purpose, including for purposes of restitution under 18 U.S.C. § 3663(a)(2). See Transcript at 71-72. The Government's supplemental letter does not address this issue. While acknowledging that the Court's request may have been unclear, the Government is now ORDERED to file a supplemental letter responsive to the Court's question on or before 12:00 p.m. on November 7, 2021. For the sake of clarity, the Government is directed to state its position as to whether this anticipated witness could be deemed a victim of any of the crimes charged in the indictment for any legal purpose, including for purposes of restitution under 18 U.S.C. § 3663(a)(2). SO ORDERED. (Signed by Judge Alison J. Nathan on 11/6/2021) (lnl) (Entered: 11/08/2021)
11/08/2021	418	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 8, 2021 re: Dkt. No. 406 Ex. A Document filed by USA. (Attachments: # 1 Exhibit Exhibit A)(Rohrbach, Andrew) (Entered: 11/08/2021)
11/08/2021	419	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/8/2021 re: Suggestions to Dkt 404 (Sternheim, Bobbi) (Entered:

		11/08/2021)
11/08/2021	420	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 8, 2021 re: the Court's draft preliminary remarks for voir dire (Dkt. 404) Document filed by USA. (Pomerantz, Lara) (Entered: 11/08/2021)
11/08/2021	421	ORDER as to Ghislaine Maxwell: A conference is scheduled for November 10, 2021 to address the Defendant's motion under Federal Rule of Evidence 412, Dkt. No. 378, the Defendant's motion in limine to exclude under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), Dkt. No. 386, and the other outstanding issues that overlap with these two motions as discussed at the November 1, 2021 conference. Dkt. No. 409. The parties are ORDERED to confirm by 12:00 p.m. tomorrow, November 9, 2021, that the alleged victims referenced in the Defendant's Rule 412 Motion have been notified of the November 10 hearing and of their right to attend. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/8/2021) (lnl) (Entered: 11/08/2021)
11/08/2021	422	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 8, 2021 re: Delivery of Legal Mail (Dkt. 412) Document filed by USA. (Pomerantz, Lara) (Entered: 11/08/2021)
11/08/2021	423	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 8, 2021 re: Opposition to Motion for Bail Reconsideration Document filed by USA. (Pomerantz, Lara) (Entered: 11/08/2021)
11/08/2021	424	MOTION to Preclude *Expert Testimony of Dr. Dietz and Dr. Loftus*. Document filed by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Rohrbach, Andrew) (Entered: 11/08/2021)
11/09/2021	425	MEMO ENDORSEMENT as to Ghislaine Maxwell on 422 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 8, 2021 re: Delivery of Legal Mail (Dkt. 412). ENDORSEMENT: SO ORDERED. (Signed by Judge Alison J. Nathan on 11/9/2021) (lnl) (Entered: 11/09/2021)
11/09/2021	426	ORDER as to Ghislaine Maxwell: The Court is in receipt of the Defendant's motion for reconsideration regarding release on bond, Dkt. No. 408, and the parties' letters regarding the delivery of the Defendant's legal mail and transport to the courthouse for pretrial conferences and trial in this case, Dkt. Nos. 381, 403, 422. For the reasons stated in this Court's prior bail determinations, Dkt. Nos. 93, 106, 169, and the Government's letter in opposition, Dkt. No. 423, the renewed request for bail is denied. Moreover, based on the representations from MDC legal counsel regarding the delivery of the Defendant's legal mail, Dkt. No. 422, the Court concludes that the Defendant has adequate access to legal counsel and legal mail in order to prepare for trial. MDC legal counsel and the Government are ordered to take the steps outlined in the Dkt. No. 422 between now and the completion of trial. As to the Defendant's transport, the Court concludes that she will be transported to and from the courthouse for pretrial conferences and trial in a way that is humane, proper, and consistent with security protocols. This conclusion is based on representations from MDC legal counsel in the letter submitted under seal because it discusses BOP security protocols, see Dkt. No. 412, as well as the Court's communication with the United States Marshal for the Southern District of New York. The Government, BOP, and USMS shall continue to take all available measures consistent with security protocols to ensure the Defendant has sufficient rest, nutrition, and comfort in order to be

		able to prepare for and participate in trial. This resolves Dkt. No. 408. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/9/2021) (lnl) (Entered: 11/09/2021)
11/09/2021	427	ORDER as to Ghislaine Maxwell: Attached is the Court's revised draft preliminary remarks to be recorded and played before each voir dire session. The Court is in receipt of the Government's letter approving of the remarks, Dkt. No. 420, and the Defendant's proposed additions, Dkt. No. 419. The revised remarks adopt all but one of the Defendant's proposals because the Court's subsequent revisions eliminated that portion of the script. In particular, the Court has made three additional changes in order to accurately explain the logistics of voir dire. Each of these changes is reflected in redline. The parties are ORDERED to indicate by letter on or before November 11, 2021 at 12:00 p.m. whether or not they have any objections or suggestions the Court's revised preliminary remarks to be played before each voir dire session. Attached is also the Court's revised draft voir dire in redline. The Court's revisions simplify the phrasing of questions 1, 2, 3, 10, 13, 25, and 37 in an effort to maximize the time dedicated to questioning each prospective juror. The revision to question 11 reflects the Court's oral ruling on November 1, 2021 regarding the use of pseudonyms for certain witnesses. The revisions to questions 9, 13, 14, 15, 20, 21, and 33 are non-substantive changes to question numbers in order to accurately reference the corresponding question numbers on the jury questionnaire or are grammatical changes. Attached is also the Court's draft instruction sheet for those jurors who are not struck for cause and will return for the exercise of peremptory strikes, as discussed at the November 1 conference. The parties are FURTHER ORDERED to indicate by letter on or before November 12, 2021 whether or not they have any objections or suggestions to the revised voir dire and draft instruction sheet. Finally, the parties are ORDERED to jointly submit the list of individuals and locations who may be mentioned at trial for questions 11 and 12 of the voir dire on or before November 14, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/9/2021) (lnl) (Entered: 11/09/2021)
11/09/2021	428	SEALED DOCUMENT placed in vault. (nmo) (Entered: 11/09/2021)
11/09/2021	429	LETTER REPLY TO RESPONSE to Motion by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/9/2021 re 408 MOTION for Reconsideration *re: Release on Bond*.. (Sternheim, Bobbi) (Entered: 11/09/2021)
11/09/2021	430	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated November 9, 2021 re: victim notification Document filed by USA. (Moe, Alison) (Entered: 11/09/2021)
11/09/2021	431	ORDER as to Ghislaine Maxwell: As noted in its previous Order, the Court will hold an in-person proceeding on November 10, 2021 at 9:00 a.m. Dkt. No. 409. The proceeding will take place in Courtroom 110 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. The purpose of the proceeding is to address the Defendant's motion under Federal Rule of Evidence 412, Dkt. No. 378, the Defendant's motion in limine to exclude under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), Dkt. No. 386, and the other outstanding issues that overlap with these two motions as discussed at the November 1, 2021 conference. As is expressly required by Federal Rule of Evidence 412, the Court must conduct a hearing on this motion in camera and seal the record of the hearing. Fed. R. Evid. 412(c)(2). Accordingly, this portion of the hearing will be sealed and in camera. The Government confirmed that the attorneys for the alleged victims implicated by the Defendants motion have been notified of their right to attend the hearing pursuant to Federal Rule of Evidence 412. Dkt. No. 430. For the public portions of the proceeding, the Court will ensure access for alleged victims and any members of the Defendant's

		family, in accordance with its prior Order. Dkt. No. 344. Space will be available in the courtroom proper for members of the media. In order to comply with the District's COVID-19 protocols, the public and additional members of the media will be able to access the proceeding in overflow Courtrooms 506 and 905 of the Thurgood Marshall U.S. Courthouse. These overflow rooms will have live video and audio feeds of the proceeding. The use of any electronic devices during the proceeding in the overflow rooms is strictly prohibited. The Court anticipates seating capacity in the overflow rooms for 50 members of the public. If capacity is reached, no additional persons will be admitted. Per the S.D.N.Y. Response to COVID-19, anyone who appears at any S.D.N.Y. courthouse must complete a questionnaire on the date of the proceeding prior to entering the courthouse. All visitors must also have their temperature taken when they arrive at the courthouse. 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. All visitors must wear a mask that covers the person's nose and mouth. Bandannas, gaiters, and masks with valves are not permitted. If a person does not have an approved mask, a screener will provide one. 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. For more information, please see https://www.nysd.uscourts.gov/covid-19-coronavirus. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/9/2021) (lnl) (Entered: 11/09/2021)
11/10/2021	432	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 10, 2021 re: Pseudonym logistics Document filed by USA. (Attachments: # 1 Exhibit A)(Rohrbach, Andrew) (Entered: 11/10/2021)
11/10/2021	437	ORDER as to Ghislaine Maxwell: The Court hereby revises the schedule for the supplemental briefing as to Defendant's first and seventh motions in limine, which was previously set at the November 1, 2021 conference, as follows: Government submission due Friday, November 12, 2021 Defense submission due Monday, November 15, 2021 At today's conference, the parties inquired about the start time for voir dire on November 16, 2021. The parties are ORDERED to appear at 8:30 a.m. on November 16, 2021 in Courtroom 518 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York, for the start of voir dire. SO ORDERED. (Voir Dire set for 11/16/2021 at 08:30 AM in Courtroom 518, 40 Centre Street, New York, NY 10007 before Judge Alison J. Nathan) (Signed by Judge Alison J. Nathan on 11/10/2021) (lnl) (Entered: 11/12/2021)
11/10/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Pretrial Conference as to Ghislaine Maxwell held on 11/10/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Paula Speer and Sadie Herbert. Pretrial Conference held. See transcript. Defendant remains remanded. (jbo) (Entered: 11/15/2021)
11/11/2021	433	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated November 11, 2021 re: preliminary remarks, voir dire, and instruction sheet Document filed by USA. (Moe, Alison) (Entered: 11/11/2021)
11/11/2021	434	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Laura A. Menninger dated November 11, 2021 re: Court's revised proposed remarks, voir dire and instruction sheet (Dkt. 427) (Menninger, Laura) (Entered: 11/11/2021)
11/11/2021	435	OPINION & ORDER as to Ghislaine Maxwell: The Court therefore denies the Defense's motion to exclude Dr. Rocchio's testimony except as to the opinion that the presence of a

		third party can facilitate grooming. This resolves docket number 386. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/11/2021) (lnl) (Entered: 11/12/2021)
11/11/2021	450	ORDER as to Ghislaine Maxwell: The Court is in receipt of the parties' proposed redactions in accordance with Dkt. No. 401. The Court concludes that the proposed redactions and requests to seal certain exhibits are consistent with the three-part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006) and narrowly tailored to protect the pre-trial privacy interests of alleged victims, anticipated witnesses, and non-parties. See United States v. Amodeo, 71 F.3d 1044, 1050-51 (2d Cir. 1995). The parties are hereby ORDERED to file the proposed redactions and accompanying exhibits on the public docket on or before November 12, 2021. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/11/2021) (lnl) (Entered: 11/12/2021)
11/12/2021	436	MEMO ENDORSEMENT as to Ghislaine Maxwell on 432 JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 10, 2021 re: Pseudonym logistics. ENDORSEMENT: The parties are ORDERED to submit the lists referenced in this letter on or before November 14, 2021, in accordance with Dkt. No. 427. The parties may continue submitting proposed redactions in accordance with the procedures this Court has previously set. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/11/2021) (lnl) (Entered: 11/12/2021)
11/12/2021	438	MOTION in Limine . Document filed by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit Exhibit A)(Rohrbach, Andrew) (Entered: 11/12/2021)
11/12/2021	439	RESPONSE to Motion by Ghislaine Maxwell re: 438 MOTION in Limine .. (Attachments: # 1 Exhibit A (Filed Under Sealed), # 2 Exhibit B (Filed Under Seal), # 3 Exhibit C (Filed Under Seal), # 4 Exhibit D (Filed Under Seal), # 5 Exhibit E, # 6 Exhibit F (Filed Under Seal), # 7 Exhibit G, # 8 Exhibit H (Filed Under Seal), # 9 Exhibit I (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	440	REPLY MEMORANDUM OF LAW in Support by USA as to Ghislaine Maxwell re: 438 MOTION in Limine . . (Rohrbach, Andrew) (Entered: 11/12/2021)
11/12/2021	441	MOTION in Limine *to Preclude the Introduction of Alleged Co-Conspirator Statements as a Sanction for Failing to Comply with This Court's September 3, 2021 Order*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1)(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	442	MOTION in Limine *to Exclude Any Evidence Offered by the Government Pursuant to Fed. R. Evid. 404(b) for Failure to Comply with the Rule's Notice Requirement*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A)(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	443	MOTION in Limine *to Exclude Under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Request for Daubert Hearing*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	444	MOTION in Limine *to Exclude Evidence Related to Accuser-3*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A - Filed under Seal, # 2 Exhibit B - Filed under Seal)(Everdell, Christian) (Entered: 11/12/2021)
11/12/2021	445	MOTION in Limine *to Exclude Government Exhibit 52, an Unauthenticated Hearsay Document from Suspect Sources*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1 (Filed Under Seal), # 2 Exhibit 2 (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 11/12/2021)

11/12/2021	446	MOTION in Limine *to Exclude Items Purportedly Seized During Search of 358 El Brillo Way on October 20, 2005*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	447	MOTION in Limine *to Suppress Identification*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	448	MOTION in Limine *to Preclude Law Enforcement Witnesses from Offering Expert Opinion Testimony*. Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	449	MOTION in Limine *to Preclude Introduction of Government's Exhibits 251, 288, 294, 313 and 606*. Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 11/12/2021)
11/12/2021	451	ENDORSED LETTER as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Matthew Russell Lee, dated 10/29/2021, re: timely opposition to blanket requests to seal portions of motions in limine, trial exhibits, public access. ENDORSEMENT: The Court received the attached letters via email. This District no longer permits public access by telephone for in-court criminal proceedings, including trials. The memorandum can be found here - https:// nysd.uscourts.gov/covid-19-coronavirus. The Courts public access orders for all proceedings in the case can be found here - https://www.nysd.uscourts.gov/usa-vsghislaine- maxwell-20-cr-330-ajn-caseinformation. The Court has implemented a procedure for docketing filings with proposed redactions and is ruling on the proposals as expeditiously as possible. See Dkt. No. 401. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/12/2021) (lnl) (Entered: 11/12/2021)
11/12/2021	452	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 449 MOTION in Limine *to Preclude Introduction of Government's Exhibits 251, 288, 294, 313 and 606*., 444 MOTION in Limine *to Exclude Evidence Related to Accuser-3*., 447 MOTION in Limine *to Suppress Identification*., 443 MOTION in Limine *to Exclude Under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Request for Daubert Hearing*., 448 MOTION in Limine *to Preclude Law Enforcement Witnesses from Offering Expert Opinion Testimony*., 445 MOTION in Limine *to Exclude Government Exhibit 52, an Unauthenticated Hearsay Document from Suspect Sources*., 442 MOTION in Limine *to Exclude Any Evidence Offered by the Government Pursuant to Fed. R. Evid. 404(b) for Failure to Comply with the Rule's Notice Requirement*., 446 MOTION in Limine *to Exclude Items Purportedly Seized During Search of 358 El Brillo Way on October 20, 2005*., 441 MOTION in Limine *to Preclude the Introduction of Alleged Co-Conspirator Statements as a Sanction for Failing to Comply with This Court's September 3, 2021 Order*.. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B)(Rohrbach, Andrew) (Entered: 11/12/2021)
11/12/2021	453	REPLY TO RESPONSE to Motion by Ghislaine Maxwell re 449 MOTION in Limine *to Preclude Introduction of Government's Exhibits 251, 288, 294, 313 and 606*., 444 MOTION in Limine *to Exclude Evidence Related to Accuser-3*., 447 MOTION in Limine *to Suppress Identification*., 443 MOTION in Limine *to Exclude Under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Request for Daubert Hearing*., 448 MOTION in Limine *to Preclude Law Enforcement Witnesses from Offering Expert Opinion Testimony*., 445 MOTION in Limine *to Exclude Government Exhibit 52, an Unauthenticated Hearsay Document from Suspect Sources*., 442 MOTION in Limine *to Exclude Any Evidence Offered by the Government Pursuant to Fed. R. Evid. 404(b) for Failure to Comply with the Rule's Notice Requirement*., 446 MOTION in Limine *to Exclude Items Purportedly Seized During Search of 358 El Brillo Way on October 20, 2005*., 441 MOTION in Limine *to*

		Preclude the Introduction of Alleged Co-Conspirator Statements as a Sanction for Failing to Comply with This Court's September 3, 2021 Order.. (Attachments: # 1 Exhibit A (Filed Under Seal), # 2 Exhibit B (Filed Under Seal), # 3 Exhibit C (Filed Under Seal), # 4 Exhibit D (Filed Under Seal), # 5 Exhibit E)(Pagliuca, Jeffrey) (Main Document 453 replaced on 11/22/2021) (jw). (Entered: 11/12/2021)
11/12/2021	454	ORDER as to Ghislaine Maxwell: As discussed at Wednesday's conference, the Court will hold an in-person proceeding on November 15, 2021 at 9:30 a.m. The proceeding will take place in Courtroom 518 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. In accordance with its prior Order, the Court will ensure access for alleged victims and any members of the Defendant's family. Dkt. No. 344. In order to comply with the District's COVID-19 protocols, the public will be able to access the proceeding in overflow Courtrooms 110 and 506 of the Thurgood Marshall U.S. Courthouse. These overflow rooms will have live video and audio feeds of the proceeding. The use of any electronic devices during the proceeding in the overflow rooms is strictly prohibited. The Court anticipates seating capacity in the overflow rooms for at least 50 members of the public. If capacity is reached, no additional persons will be admitted. Per the S.D.N.Y. Response to COVID-19, anyone who appears at any S.D.N.Y. courthouse must complete a questionnaire on the date of the proceeding prior to entering the courthouse. All visitors must also have their temperature taken when they arrive at the courthouse. 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. All visitors must wear a mask that covers the person's nose and mouth. Bandannas, gaiters, and masks with valves are not permitted. If a person does not have an approved mask, a screener will provide one. 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. For more information, please see https://www.nysd.uscourts.gov/covid-19-coronavirus. SO ORDERED. (Status Conference set for 11/15/2021 at 09:30 AM in Courtroom 518, 40 Centre Street, New York, NY 10007 before Judge Alison J. Nathan) (Signed by Judge Alison J. Nathan on 11/12/2021) (lnl) (Entered: 11/12/2021)
11/12/2021	455	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 12, 2021 re: Clarification re pseudonym order . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/12/2021)
11/12/2021	456	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 12, 2021 re: Co-Conspirator Statements Document filed by USA. (Comey, Maurene) (Entered: 11/12/2021)
11/12/2021	458	ORDER as to Ghislaine Maxwell: The Court is in receipt of the Government's letter motion seeking clarification on two items from the November 1, 2021 pretrial conference. Dkt. No. 455. As to the first item, the Government seeks clarification about the line between permissible and impermissible cross-examination for witnesses testifying under a pseudonym. The Government's suggested level of generality as to permissible cross-examination of the witnesses' careers would unduly curtail the Defendant's Sixth Amendment right to meaningful cross-examination. See United States v. Figueroa, 548 F.3d 222, 227 (2d Cir. 2008). The line of questioning the Government identifies may be relevant to a juror's credibility determination and thus the Court will not limit the Defendant's ability to pursue such questioning on cross-examination. As the Court noted at the November 1 conference, the Defendant may not elicit the name of a specific employer, but the type and genre of employment may be relevant to the jury's assessment of credibilty. Nov. 1, 2021 Transcript at 11-12. As to the second item, the

		Government is ORDERED to submit a proposed order regarding sketch artist depictions of certain witnesses on or before November 18, 2021. (Signed by Judge Alison J. Nathan on 11/12/2021) (ap) (Entered: 11/15/2021)
11/13/2021	457	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated November 12, 2021 re: Government Exhibit 52 Document filed by USA. (Moe, Alison) (Entered: 11/13/2021)
11/15/2021	459	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 10/21/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Carol Ganley, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/6/2021. Redacted Transcript Deadline set for 12/16/2021. Release of Transcript Restriction set for 2/14/2022. (Moya, Goretti) (Entered: 11/15/2021)
11/15/2021	460	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 10/21/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 11/15/2021)
11/15/2021	461	SEALED DOCUMENT placed in vault. (nmo) (Entered: 11/15/2021)
11/15/2021	462	ORDER as to Ghislaine Maxwell: Attached is a copy of the final jury questionnaire, which is the same as Dkt. No. 365, docketed on October 22, 2021, except that it incorporates the redline changes. (Signed by Judge Alison J. Nathan on 11/15/2021) (ap) (Entered: 11/15/2021)
11/15/2021	463	ORDER as to Ghislaine Maxwell: Voir dire for this matter is set to begin on November 16, 2021 at 8:30 a.m. in Courtroom 518 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. In accordance with its prior Order, the Court will ensure access for alleged victims and any members of the Defendants family. Dkt. No. 344. In order to comply with the Districts COVID-19 protocols, a number of pool reporters will be permitted in the courtroom proper as managed by the District Executives Office. Press will also be able to access the proceeding in dedicated overflow press rooms. The public will be able to access the proceeding in overflow Courtrooms 110 and 906 of the Thurgood Marshall U.S. Courthouse. These overflow rooms will have live video and audio feeds of the proceeding. The use of any electronic devices during the proceeding in the overflow rooms is strictly prohibited. (Signed by Judge Alison J. Nathan on 11/15/2021) (See ORDER set forth) (ap) (Entered: 11/15/2021)
11/15/2021	464	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/15/2021 re: Late Receipt of Govt Disclosures to MDC (Sternheim, Bobbi) (Entered: 11/15/2021)
11/15/2021	465	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 11/1/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Michael McDaniel, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/6/2021. Redacted Transcript Deadline set for 12/16/2021. Release of Transcript Restriction set for 2/14/2022. (Moya, Goretti) (Entered: 11/15/2021)

11/15/2021	466	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 11/1/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 11/15/2021)
11/15/2021	467	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 11/10/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Sonya Ketter Moore, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/6/2021. Redacted Transcript Deadline set for 12/16/2021. Release of Transcript Restriction set for 2/14/2022. (Moya, Goretti) (Entered: 11/15/2021)
11/15/2021	468	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 11/10/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 11/15/2021)
11/15/2021	469	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 464 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/15/2021 re: Late Receipt of Govt Disclosures to MDC. ENDORSEMENT: It appears that the mail referenced in this letter was sent prior to the Court's memo endorsement of the Government's November 8, 2021 letter. Dkt. Nos. 422, 425. In any event, as this matter is less than two weeks before trial, the Government is ordered to send materials via FedEx and provide the tracking number to defense counsel. (Signed by Judge Alison J. Nathan on 11/15/2021) (ap) (Entered: 11/16/2021)
11/15/2021		Minute Entry for proceedings held before Judge Alison J. Nathan:Pretrial Conference as to Ghislaine Maxwell held on 11/15/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter Rebecca Forman. See Transcript. (jw) (Entered: 12/09/2021)
11/15/2021		Terminate Deadlines and Hearings as to Ghislaine Maxwell: (jw) (Entered: 12/09/2021)
11/16/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Voir Dire held on 11/16/2021 as to Ghislaine Maxwell. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell, Laura Menninger and Renato Stabile. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Eve Giniger and Khris Sellin. Jury selection began. Jury selection adjourned to Wednesday, November 17, 2021 at 8:30 AM. See transcript. (jbo) (Entered: 11/19/2021)
11/17/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: (Jury Selection) Jury Trial as to Ghislaine Maxwell held on 11/17/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell, Laura Menninger and Renato Stabile. AUSA Lara Pomerantz, Maurene Comey, and Alison Moe for the government. Court Reporters Eve Giniger and Khris Sellin. Jury selection held. Jury selection adjourned to Thursday, November 18, 2021 at 8:30 AM. See transcript. (jbo) (Entered: 11/19/2021)

11/18/2021	470	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 18, 2021 re: Courtroom sketch artists Document filed by USA. (Attachments: # 1 Text of Proposed Order Proposed Order)(Rohrbach, Andrew) (Entered: 11/18/2021)
11/18/2021	471	ORDER as to Ghislaine Maxwell: IT HEREBY IS ORDERED: 1. That courtroom sketch artists whether in the courtroom or overflow rooms may not draw exact likenesses of the Protected Witnesses; and 2. For avoidance of doubt, courtroom sketch artists may confer with the Court or counsel for either party to determine whether a witness is a Protected Witness. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/18/2021) (lnl) (Entered: 11/18/2021)
11/18/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: (Jury Selection) Jury Trial as to Ghislaine Maxwell held on 11/18/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell, Laura Menninger and Renato Stabile. AUSA Lara Pomerantz, Maurene Comey and Alison Moe for the government. Court Reporters Eve Giniger and Khris Sellin. Jury selection held. Jury selection adjourned until Monday, November 29, 2021 at 9:00 AM. See transcript. (jbo) (Entered: 11/19/2021)
11/19/2021	472	ENDORSED LETTER as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Patrick J. Smith dated 11/18/21 re: We respectfully request that the Court approve Jordana H. Feldman being added to the ECF docket in this case as a movant....ENDORSEMENT: The Clerk of Court is respectfully directed to add Jordana H. Feldman to the ECF docket in this case as a "movant". SO ORDERED. (Signed by Judge Alison J. Nathan on 11/19/21)(jw) (Entered: 11/19/2021)
11/19/2021	473	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's letter motion to quash the Defendants Rule 17(c)(3) subpoena. That motion has been filed temporarily under seal to allow the parties the opportunity to propose limited redactions. The parties are hereby ORDERED to file any proposed redactions on the public docket on or before November 22, 2021, and to justify any requested redactions by reference to the three-part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006) (Signed by Judge Alison J. Nathan on 11/19/21) (jw) (Entered: 11/19/2021)
11/19/2021	474	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's letter motion dated November 18, 2021. That motion has been filed temporarily under seal to allow the parties the opportunity to propose limited redactions. Defendant is hereby ORDERED to file a response on or before November 20, 2021. The parties are FURTHER ORDERED to file any proposed redactions to the motion papers on the public docket on or before November 22, 2021, justifying any requested redactions by reference to the three-part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006) (Defendant Responses due by 11/20/2021) (Signed by Judge Alison J. Nathan on 11/19/21)(jw) (Entered: 11/19/2021)
11/19/2021	475	JOINT LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 11/19/21 re: Video Monitor (Everdell, Christian) (Entered: 11/19/2021)
11/19/2021	476	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's supplemental letter regarding Government Exhibit 52, Dkt. No. 457, and the Defendants response, which has been temporarily filed under seal to allow the parties the opportunity to request limited redactions. The Government is hereby ORDERED to file a reply to Defendants response on or before 12:00 p.m. on November 21, 2021. The letter reply should address the Defendants argument that Employee-1 cannot authenticate

		Government Exhibit 52 because Mr. Rodriguez, a former employee, purportedly removed the document from the property before Employee-1 began working for Mr. Epstein. The parties are FURTHER ORDERED to file any proposed redactions to the motion papers on the public docket on or before November 22, 2021, justifying any requested redactions by reference to the three-part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006) (Government Replies due by 11/21/2021.). (Signed by Judge Alison J. Nathan on 11/19/21)(jw) (Entered: 11/19/2021)
11/19/2021	477	ORDER as to Ghislaine Maxwell. On October 29, 2021, Defendant filed a motion in limine to exclude evidence related to Accuser-3. Dkt. Nos. 387, 444. The Court twice heard argument related to this motion, including extensive argument at the November 10, 2021 in camera hearing that was sealed pursuant to Federal Rule of Evidence 412. See generally Nov. 1, 2021 Transcript; Nov. 10, 2021 Transcript. The Court has also considered supplemental briefing from the parties. That briefing has been filed temporarily under seal to permit the parties the opportunity to propose redactions in accordance with Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). In a Memorandum Opinion & Order filed under temporary seal, the Court GRANTS in part and DENIES in part the Defendant's motion. The Memorandum Opinion & Order lays out the permissible and impermissible testimony that may be offered by this witness based on Rules 412, 404, 401, and 403. The Court will send the temporarily sealed Memorandum Opinion & Order to the parties. By November 21, 2021, the parties are ORDERED to inform the Court whether either seeks sealing or limited redactions of the Courts Memorandum Opinion & Order and of the supplemental briefing, justifying any such request by reference to Federal Rule of Evidence 412(c)(2) and/or the three-part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). (Signed by Judge Alison J. Nathan on 11/19/2021)(jw) (Entered: 11/19/2021)
11/19/2021	478	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 19, 2021 re: Courtroom Connect Document filed by USA. (Comey, Maurene) (Entered: 11/19/2021)
11/19/2021	690	MEMORANDUM OPINION & ORDER as to Ghislaine Maxwell. Before the Court is the Defendant's fourth motion in limine to "exclude evidence related to Accuser-3," to whom the Court refers as Witness-3, on the grounds that the testimony is not direct evidence of the charged conspiracies and is inadmissible under Federal Rules of Evidence 404(b) and 403. Dkt. Nos. 387, 444. The Court has twice heard argument related to this motion, including argument at the November 10, 2021 in camera hearing that was sealed pursuant to Federal Rule of Evidence 412. See generally Nov. 1, 2021 Transcript; Nov. 10, 2021 Transcript. At the November 1, 2021 hearing, the Court provided a brief explanation of its current position based on the information then before it, but the Court ultimately reserved ruling pending additional briefing. The Court is now in receipt of the parties' additional briefing and accordingly is prepared to resolve the motion.(See Footnote 1 on this Memorandum Opinion & Order). The Government now proffers that the anticipated testimony of Witness-3 will describe how she met the Defendant and her relationship with the Defendant and Mr. Epstein. In particular, Witness-3 is anticipated to testify how Defendant introduced her to Mr. Epstein, how massages progressed to involve sexual activity, and Ms. Maxwell's role in facilitating those massages. Based on all of the information now before the Court, including a substantially more detailed proffer by the Government as to the anticipated testimony, see Gov. Supp. Ltr. at 2-3 (Nov. 5, 2021); see also Dkt. No. 452 at 42-43, the Court concludes that some of the anticipated testimony may serve as direct evidence of the Mann Act counts....[*** See this Memorandum Opinion & Order ***]... The parties may submit any requested edits to the proposed limiting instructions that are consistent with the Court's ruling or indicate that they have

		none on or before November 21, 2021. This resolves Dkt. Nos. 387, 444. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/19/2021)(bw) (Entered: 06/29/2022)
11/21/2021	479	LETTER by Jordana H. Feldman as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Patrick J. Smith dated 11/15/2021 re: Rule 17(c) Subpoena to Jordana H. Feldman Document filed by Jordana H. Feldman. (Smith, Patrick) (Entered: 11/21/2021)
11/21/2021	480	MOTION Authorizing a Subpoena Pursuant to Fed. R. Crim. P 17(c)(3) . Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1)(Pagliuca, Jeffrey) (Entered: 11/21/2021)
11/21/2021	481	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 21, 2021 re: Redactions related to Witness-3 . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/21/2021)
11/21/2021	482	ORDER as to Ghislaine Maxwell. On November 1, 2021, the Defense noticed eight expert witnesses. Def. Br., Ex. 1 ("Notice"). On November 8, 2021, the Government filed a motion to partially preclude the testimony of two of those experts, Dr. Dietz and Dr. Loftus. Gov't Br., Dkt. No. 424. The Defense filed a response via email on November 12, 2021, to permit the Government the opportunity to propose redactions. In an Opinion and Order temporarily filed under seal, the Court DENIES in part and GRANTS in part the Governments motion to preclude Dr. Dietz's testimony and DENIES in part and GRANTS in part the Governments motion to preclude Dr. Loftus's testimony. It doesso after considering the admissibility of the anticipated testimony under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993). The Court will send the temporarily sealed Opinion & Order to the parties. By November 23, 2021, the parties are ORDERED to inform the Court whether either seeks sealing or limited redactions of the Court's Opinion & Order, justifying any such request by reference to the three-part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). In addition, by that date, the parties are FURTHER ORDERED to file any proposed redactions to the Defenses response brief and/or supporting exhibits on the public docket, again justifying any such request by reference to the Lugosch test (Signed by Judge Alison J. Nathan on 11/21/21)(jw) (Entered: 11/22/2021)
11/21/2021	516	OPINION & ORDER as to Ghislaine Maxwell. The Court therefore denies in part and grants in part the Government's motion to preclude Dr. Dietz's testimony and denies in part and grants in part the Government's motion to preclude Dr. Loftus's testimony. This resolves docket number 424. (Signed by Judge Alison J. Nathan on 11/21/2021) (See ORDER set forth) (ap) (Entered: 11/29/2021)
11/22/2021	483	ORDER as to Ghislaine Maxwell. The Court will hold final pretrial conference on November 23, 2021 at 9:30 a.m. The proceeding will take place in Courtroom 318 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. In accordance with its prior Order, the Court will ensure access for alleged victims and any members of the Defendants family. Dkt. No. 344. The public will be able to access the proceeding in overflow Courtrooms 110, 506, 905, and 906 of the Thurgood Marshall U.S. Courthouse. These overflow rooms will have live video and audio feeds of the proceeding. (Pretrial Conference set for 11/23/2021 at 09:30 AM in Courtroom 318, 40 Centre Street, New York, NY 10007 before Judge Alison J. Nathan.). (Signed by Judge Alison J. Nathan on 11/22/21)(jw) (Entered: 11/22/2021)
11/22/2021	484	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 475 Pursuant to the Court's email of November 15, 2021, the parties respectfully submit this joint letter to request video monitors with a live feed to the trial proceedings in each of the parties' counsel

		rooms...ENDORSEMENT...To the extent that the Government is requesting that a video monitor be provided in a counsel room at 40 Foley Square, the request is granted to the extent the District Executive can accommodate the request. If the Government is requesting a video monitor in its own offices, the request is denied.The request is granted as to defense counsel's room. SO ORDERED (Signed by Judge Alison J. Nathan on 11/22/21)(jw) (Entered: 11/22/2021)
11/22/2021	485	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's proposed redactions to the parties supplemental briefing and the Court's Memorandum Opinion & Order regarding the admissibility of the anticipated testimony of Witness-3. Dkt. No. 481; see also Dkt. No. 477. Accordingly, the parties are ORDERED to file the redacted papers on the public docket by November 22, 2021, including the Government's supplemental letter regarding Witness-3 dated November 7, 2021 in response to Dkt. No. 417. The Court will file the redacted Memorandum Opinion & Order (Signed by Judge Alison J. Nathan on 11/22/21)(jw) (Entered: 11/22/2021)
11/22/2021	486	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 22, 2021 re: Proposed Redactions . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/22/2021)
11/22/2021	487	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 18, 2021 re: Motion to quash Rule 17(c) subpoena . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/22/2021)
11/22/2021	488	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 18, 2021 re: Authenticate birth certificates . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/22/2021)
11/22/2021	489	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 11/20/21 re: Birth Certificates (Everdell, Christian) (Entered: 11/22/2021)
11/22/2021	490	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated November 15, 2021 re: Government Exhibit 52 (Pagliuca, Jeffrey) (Entered: 11/22/2021)
11/22/2021	491	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 21, 2021 re: Reply re GX-52 Document filed by USA. (Rohrbach, Andrew) (Entered: 11/22/2021)
11/22/2021	492	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 5, 2021 re: Supplemental letter re Witness-3 Document filed by USA. (Rohrbach, Andrew) (Entered: 11/22/2021)
11/22/2021	493	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 7, 2021 re: Witness-3 and Definitions of "Victim" Document filed by USA. (Rohrbach, Andrew) (Entered: 11/22/2021)
11/22/2021	494	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 11/11/21 re: Accuser-3 Evidence (Everdell, Christian) (Entered: 11/22/2021)

11/22/2021	495	ORDER as to Ghislaine Maxwell. The Court will send the temporarily sealed Memorandum Opinions and Orders to the parties. By November 24, 2021, the parties are ORDERED to inform the Court whether either seeks sealing or limited redactions of the Memorandum Opinions and Orders, justifying any such request by reference to the three-part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). In addition, by that date, the parties are FURTHER ORDERED to file any proposed redactions to the moving papers and/or supporting exhibits on the public docket, again justifying any such request by reference to the Lugosch test. (Signed by Judge Alison J. Nathan on 11/22/21)(jw) (Entered: 11/23/2021)
11/22/2021	496	ORDER 486 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 22, 2021 re: Proposed Redactions. The Court is in receipt of the Government's, Administrator Feldman's, and two anticipated witnesses' motions to quash the Defendant's Rule 17(c)(3) subpoena. Dkt. No. 486. The motions to quash are DENIED. The Court hereby ORDERS the Administrator of the Epstein Victims' Compensation Program to produce to the Court via electronic thumb drive any materials responsive to the subpoena as soon as possible, but no later than 12:00 p.m. on November 24, 2021. Accordingly, the parties shall negotiate a protective order and submit the proposal for approval by the Court no later than 12:00 p.m. on November 24, 2021 (Signed by Judge Alison J. Nathan on 11/22/21) (jw) (Entered: 11/23/2021)
11/22/2021	691	MEMORANDUM OPINION & ORDER as to Ghislaine Maxwell. The Defense on November 1, 2021, noticed eight expert witnesses. Def. Br., Ex. 1 ("Notice"). Two of those experts, Dr. Park Dietz and Dr. Elizabeth Loftus, are expected to offer opinions that rebut opinions of the Government's expert witness, Dr. Lisa Rocchio. The Government on November 8, 2021, filed a motion to partially preclude the testimony of Dr. Dietz and Dr. Loftus. Dkt. No. 424. The Court has already addressed that motion. On November 15, 2021, the Government moved to fully or partially preclude the testimony of the remaining six experts. The Defense filed a response on November 19, 2021. The Court addressed the admissibility of Dr. Ryan Hall in a separate written opinion. In this opinion, the Court addresses the preliminary admissibility of Bennett Gershman based on the parties' current proffers....[*** See this Memorandum Opinion & Order ***]... III. Conclusion. The Court therefore grants the Government's motion to preclude Gershman's expert testimony. Because this is a preliminary pre-trial ruling, it is possible that facts and circumstances at trial would alter the Court's analysis. In that event, the Defense must re-raise its request to admit Gershman as an expert witness. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/22/2021)(bw) (Entered: 06/29/2022)
11/22/2021	692	MEMORANDUM OPINION & ORDER as to Ghislaine Maxwell. The Defense on November 1, 2021, noticed eight expert witnesses. Def. Br., Ex. 1 ("Notice"). Two of those experts, Dr. Park Dietz and Dr. Elizabeth Loftus, are expected to offer opinions that rebut opinions of the Government's expert witness, Dr. Lisa Rocchio. The Government on November 8, 2021, filed a motion to partially preclude the testimony of Dr. Dietz and Dr. Loftus. Dkt. No. 424. The Court has already addressed that motion. On November 15, 2021, the Government moved to fully or partially preclude the testimony of the remaining six experts. The Defense filed a response on November 19, 2021. The Court addresses the motion to preclude Dr. Hall in this separate opinion. It will address the other five experts in public rulings....[*** See this Memorandum Opinion & Order ***]... III. Conclusion. The Court therefore grants the Government's motion to preclude Dr. Hall's expert testimony. Because this is a preliminary pre-trial ruling, it is possible that facts and circumstances at trial would alter the Court's analysis. In that event, the Defense must re-raise its request to admit Dr. Hall as an expert witness. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/22/2021)(bw) (Entered: 06/29/2022)

11/23/2021	497	ORDER as to Ghislaine Maxwell. As discussed at today's conference, attached is the Courts draft preliminary instructions for the sworn jury. The Court has considered both parties proposed instructions as to the Courts order that certain witnesses be permitted to testify or be referred to by first name only or pseudonym. Dkt. No. 432. The draft preliminary instructions include a limiting instruction regarding this process. The parties may suggest any proposed edits to the preliminary instructions by letter on or before November 27, 2021, or they shall indicate by that date that they have no objections or suggestions. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/23/21)(jw) (Entered: 11/23/2021)
11/23/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: (Final) Pretrial Conference as to Ghislaine Maxwell held on 11/23/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter Paula Speers. Final Pretrial Conference held. See Transcript. (jbo) (Entered: 11/23/2021)
11/23/2021	498	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 23, 2021 re: Proposed redactions to Dietz/Loftus materials . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/23/2021)
11/23/2021	499	RESPONSE to Motion by Ghislaine Maxwell re: 424 MOTION to Preclude *Expert Testimony of Dr. Dietz and Dr. Loftus*.. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2) (Pagliuca, Jeffrey) (Entered: 11/23/2021)
11/24/2021	500	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 24, 2021 re: Proposed protective order Document filed by USA. (Attachments: # 1 Text of Proposed Order Proposed Protective Order)(Rohrbach, Andrew) (Entered: 11/24/2021)
11/24/2021	501	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 24, 2021 re: Corrected proposed protective order Document filed by USA. (Attachments: # 1 Text of Proposed Order Corrected Proposed Protective Order) (Rohrbach, Andrew) (Entered: 11/24/2021)
11/24/2021	502	ORDER as to Ghislaine Maxwell. As noted in this Court's prior order, trial in this case will commence on November 29, 2021. Dkt. No. 330. The trial will take place in Courtroom 318 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York. In accordance with its prior Order, the Court will ensure access for alleged victims and members of the Defendants family. Dkt. No. 344. Per the S.D.N.Y. Response to COVID-19, anyone who appears at any S.D.N.Y. courthouse must complete a questionnaire on the date of the proceeding prior to entering the courthouse. All visitors must also have their temperature taken when they arrive at the courthouse. 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. All visitors must wear a mask that covers the persons nose and mouth. Bandannas, gaiters, and masks with valves are not permitted. If a person does not have an approved mask, a screener will provide one. 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. For more information, please see https://www.nysd.uscourts.gov /covid-19-coronavirus (Signed by Judge Alison J. Nathan on 11/24/21)(jw) (Entered: 11/24/2021)

11/24/2021	503	ORDER as to Ghislaine Maxwell re: 501 The Court is in receipt of the initial production of the Epstein Victims' Compensation Program pursuant to the Rule 17(c) subpoena. See Dkt. No. 496. The Court is also in receipt of the parties' proposed protective order. Dkt. No. 501. The Court will enter the proposed protective order. Consistent with its prior Order, Dkt. No. 496, the Court determines that the parties may review the materials under the provisions of the protective order. Dkt. No. 501. In doing so, the Court has made no determination as to the admissibility of any of the material. Accordingly, the Administrator of the Epstein Victims Compensation Program is ORDERED to produce the materials contained in the initial production to the parties as soon as possible, but no later than 7:00 p.m. on November 24, 2021. (Signed by Judge Alison J. Nathan on 11/24/21)(jw) (Entered: 11/24/2021)
11/24/2021	504	LETTER by Jordana H. Feldman as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Patrick J. Smith dated 11/23/2021 re: Document Production from Jordana H. Feldman (with proposed redactions) Document filed by Jordana H. Feldman. (Smith, Patrick) (Entered: 11/24/2021)
11/24/2021	505	PROTECTIVE ORDER as to Ghislaine Maxwell...regarding procedures to be followed that shall govern the handling of confidential material.... (Signed by Judge Alison J. Nathan on 11/24/21)(jw) (Entered: 11/24/2021)
11/24/2021	506	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 24, 2021 re: Proposed redactions to Hall et al. materials . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 11/24/2021)
11/24/2021	507	MOTION to Preclude *Expert Testimony of Dr. Ryan Hall et al.*. Document filed by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B) (Rohrbach, Andrew) (Entered: 11/24/2021)
11/24/2021	508	RESPONSE to Motion by Ghislaine Maxwell re: 507 MOTION to Preclude *Expert Testimony of Dr. Ryan Hall et al...* (Pagliuca, Jeffrey) (Entered: 11/24/2021)
11/24/2021	509	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 22, 2021 re: 507 MOTION to Preclude *Expert Testimony of Dr. Ryan Hall et al.*. re: File reply brief . Document filed by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit Proposed reply brief, # 2 Exhibit Proposed Exhibit C)(Rohrbach, Andrew) (Entered: 11/24/2021)
11/27/2021	510	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 27, 2021 re: Preliminary instructions Document filed by USA. (Rohrbach, Andrew) (Entered: 11/27/2021)
11/27/2021	511	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 11/27/2021 re: Trial document procedure (Sternheim, Bobbi) (Entered: 11/27/2021)
11/27/2021	512	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated November 27, 2021 re: Court's Proposed Preliminary Instructions to the Jury (Pagliuca, Jeffrey) (Entered: 11/27/2021)
11/28/2021	515	ORDER as to Ghislaine Maxwell: The Court is in receipt of the third production of the Epstein Victims Compensation Program pursuant to the Rule 17(c) subpoena. See Dkt. Nos. 496, 503. Consistent with its prior orders, Dkt. Nos. 496, 503, the Court determines that the parties may review the materials under the provisions of the protective order. Dkt. No. 505. In doing so, the Court has made no determination as to the admissibility of any of the material. Accordingly, the Administrator of the Epstein Victims' Compensation

		Program is ORDERED to produce the materials contained in the third production to the parties as soon as possible, but no later than 8:30 p.m. on November 28, 2021. (Signed by Judge Alison J. Nathan on 11/28/2021) (ap) (Entered: 11/29/2021)
11/29/2021	513	ORDER as to Ghislaine Maxwell: The Court is in receipt of the second production of the Epstein Victims Compensation Program pursuant to the Rule 17(c) subpoena. See Dkt. Nos. 496, 503. The Administrator provided the materials via a secure FTP site, which the Court concludes is sufficient. Consistent with its prior orders, Dkt. Nos. 496, 503, the Court determines that the parties may review the materials under the provisions of the protective order. Dkt. No. 505. In doing so, the Court has made no determination as to the admissibility of any of the material. Accordingly, the Administrator of the Epstein Victims Compensation Program is ORDERED to produce the materials contained in the second production to the parties as soon as possible, but no later than 5:00 p.m. on November 27, 2021. (Signed by Judge Alison J. Nathan on 11/27/2021) (ap) (Entered: 11/29/2021)
11/29/2021	514	ORDER as to Ghislaine Maxwell: The Court is in receipt of the Government's letter motion to preclude certain lines of cross-examination of Government witnesses. The Court hereby GRANTS the Government's request to file the letter motion under seal in order to protect the privacy interests of anticipated witnesses, including those who are subject to the Court's pseudonym order. See Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110, 120 (2d Cir. 2006). The Defendant is hereby ORDERED to respond by today, November 28, 2021, at 2:00 p.m. (Responses due by 11/28/2021) (Signed by Judge Alison J. Nathan on 11/28/2021) (ap) (Entered: 11/29/2021)
11/29/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Selection / Jury Trial as to Ghislaine Maxwell held on 11/29/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski Jury selection held. Jury trial begins. See Transcript. (jbo) (Entered: 12/02/2021)
11/30/2021	517	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 30, 2021 re: Defense exhibits Document filed by USA. (Rohrbach, Andrew) (Entered: 11/30/2021)
11/30/2021	518	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated November 30, 2021 re: Fed. R. Crim. P. 16(b)(1)(A) (Pagliuca, Jeffrey) (Entered: 11/30/2021)
11/30/2021	519	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated November 30, 2021 re: Pseudonyms (Pagliuca, Jeffrey) (Entered: 11/30/2021)
11/30/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 11/30/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski. Jury trial held. See Transcript. (jbo) (Entered: 12/02/2021)
11/30/2021	693	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' letters regarding the issue of potential cross-examination that might elicit identifying information in violation of this Court's order. See Dkt. No. 519. The Government is hereby ORDERED to provide to the Defense the information it believes falls within the categories of specifically identifying information for the current testifying witness no later than 7:00

		a.m. tomorrow morning, December 1, 2021. The Defense is ORDERED to alert the Government of any issues concerning the current testifying witness by the same time7:00 a.m. tomorrow morning, December 1, 2021. The Defense shall remain cognizant not only of its duty to avoid revealing the names of witnesses testifying under pseudonyms, but also any specifically identifying information of the protected witnesses. See Transcript, at 10-11 (Nov. 1, 2021). The parties shall then meet and confer on any disagreements. If the parties cannot reach a resolution, they may raise any issues with the Court when the parties are scheduled to appear at 8:45 a.m. SO ORDERED. (Signed by Judge Alison J. Nathan on 11/30/2021)(bw) (Entered: 06/29/2022)
12/02/2021	520	ORDER as to Ghislaine Maxwell: The Clerk of Court is respectfully directed to pay the invoices received in connection with the transportation of jurors in this matter. (Signed by Judge Alison J. Nathan on 12/2/2021) (ap) (Entered: 12/03/2021)
12/02/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/2/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and Alena Lynch. Jury trial held. See Transcript. (jbo) (Entered: 12/07/2021)
12/03/2021	521	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 3, 2021 re: Witness Jane's Testimony (Attachments: # 1 Exhibit 1 (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 12/03/2021)
12/03/2021	522	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 3, 2021 re: Witness Dawson Document filed by USA. (Rohrbach, Andrew) (Entered: 12/03/2021)
12/03/2021	526	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 522 Accordingly, the parties jointly and respectfully request that the Court release Michael Dawson from his obligation to return to Court on Monday...ENDORSEMENT...SO ORDERED (Signed by Judge Alison J. Nathan on 12/3/21)(jw) (Entered: 12/06/2021)
12/03/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/3/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters George Malinowski and Andrew Walker. Jury trial held. See Transcript. (jbo) (Entered: 12/07/2021)
12/04/2021	523	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 4, 2021 re: 900 Series of Exhibits Document filed by USA. (Rohrbach, Andrew) (Entered: 12/04/2021)
12/05/2021	524	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 5, 2021 re: Edit to Witness-3 instruction . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 12/05/2021)
12/05/2021	525	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 5, 2021 re: Response to the Government's Letter Regarding 900 Series of Exhibits (Pagliuca, Jeffrey) (Entered: 12/05/2021)
12/05/2021	527	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's letter motion regarding the limiting instruction for Witness-3's anticipated testimony. The

		Government is hereby ORDERED to file an additional letter explaining what details regarding the alleged sexual activity the Government would seek to elicit absent instruction from the Court and in light of the Defenses opening. The Government's letter must be submitted no later than today, December 5, 2021, at 4:00 p.m. With that information, the Defense can respond to and the Court can analyze the Government's requested addition in the limiting instruction. Accordingly, the Defense is ORDERED to respond to the Government's letter motion and further response letter no later than today, December 5, 2021, at 7:00 p.m. In their letter responses the parties shall be mindful of Rule 412s requirement regarding sealing (Signed by Judge Alison J. Nathan on 12/5/21) (jw) (Entered: 12/06/2021)
12/06/2021	528	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 6, 2021 re: Attorney-Client Privilege Document filed by USA. (Rohrbach, Andrew) (Entered: 12/06/2021)
12/06/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/6/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski. Jury trial held. See Transcript. (jbo) (Entered: 12/07/2021)
12/07/2021		Minute Entry for proceedings held before Judge Alison J. Nathan:Jury Trial as to Ghislaine Maxwell held on 12/7/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski. See Transcript. (jw) (Entered: 12/13/2021)
12/08/2021	529	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 11/15/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Rebecca Forman, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/29/2021. Redacted Transcript Deadline set for 1/10/2022. Release of Transcript Restriction set for 3/8/2022. (Moya, Goretti) (Entered: 12/08/2021)
12/08/2021	530	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 11/15/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 12/08/2021)
12/08/2021	531	ORDER as to Ghislaine Maxwell. Juror Number 70 is directed to submit the receipts associated with the transportation cost incurred on Wednesday 8, 2021, to the Jury Administrator. Upon receipt, the Clerk of Court is directed to reimburse Juror Number 70 for said cost. SO ORDERED (Signed by Judge Alison J. Nathan on 12/8/21)(jw) (Entered: 12/08/2021)
12/08/2021		Minute Entry for proceedings held before Judge Alison J. Nathan:Jury Trial as to Ghislaine Maxwell held on 12/8/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the

		government. Court Reporters Martha Martin and George Malinowski. See Transcript (jw) (Entered: 12/13/2021)
12/09/2021	532	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 8, 2021 re: Exhibit 52 (Pagliuca, Jeffrey) (Entered: 12/09/2021)
12/09/2021	533	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 8, 2021 re: Admission of GX 52 . Document filed by USA as to Ghislaine Maxwell. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Rohrbach, Andrew) (Entered: 12/09/2021)
12/09/2021	534	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 9, 2021 re: Proposed redactions to Dkt. No. 533 . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 12/09/2021)
12/09/2021	535	MEMORANDUM OPINION & ORDER as to Ghislaine Maxwell. The Government seeks to admit what has been identified as Government Exhibit 52 ("GX 52"), and submit to the jury a redacted version of GX 52. The Defense objects to the admission of GX 52 on authentication and hearsay grounds. The admissibility of the exhibit has been the subject of pretrial motion in limine briefing and extensive supplemental briefing. See Dkt. Nos. 390, 397, 398, 457, 476, 490. This includes supplemental briefing received on December 8, 2021, after the authenticating witness, Mr. Juan Alessi, underwent direct examination by the Government and voir dire by the Defense. The Court reserved ruling on the exhibit, pending what was anticipated to be additional testimony. Trial Tr. at 876. The Court now overrules the Defenses objections. The parties are ORDERED to confer and propose a limiting instruction consistent with this ruling on or before today, December 9, 2021, at 7:00 p.m. The parties are FURTHER ORDERED to confer and prepare a stipulation that Government Exhibits 52A, 52D, 52E, 52F, 52G, and 52H are true and correct photocopies of five pages from GX 52. See Trial Tr. at 858. (Signed by Judge Alison J. Nathan on 12/9/21)(jw) (Entered: 12/10/2021)
12/09/2021		Minute Entry for proceedings held before Judge Alison J. Nathan:Jury Trial as to Ghislaine Maxwell held on 12/9/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski. See transcript. (jw) (Entered: 12/13/2021)
12/10/2021	536	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 11/23/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Paula Speer, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/3/2022. Redacted Transcript Deadline set for 1/10/2022. Release of Transcript Restriction set for 3/10/2022. (Moya, Goretti) (Entered: 12/10/2021)
12/10/2021	537	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 11/23/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 12/10/2021)
12/10/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/10/2021. Defendant Ghislaine Maxwell present with

		attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski Jury trial held. See Transcript. (jbo) (Entered: 12/20/2021)
12/11/2021	538	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 9, 2021 re: Limiting instruction for GX 52 Document filed by USA. (Rohrbach, Andrew) (Entered: 12/11/2021)
12/12/2021	539	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 12, 2021 re: Defense witness order . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 12/12/2021)
12/12/2021	540	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 12/12/2021 re: Order of Defense Witnesses (Sternheim, Bobbi) (Entered: 12/12/2021)
12/13/2021	541	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 13, 2021 re: Privilege stipulation Document filed by USA. (Rohrbach, Andrew) (Entered: 12/13/2021)
12/14/2021	542	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Defense's letter dated December 13, 2021, regarding anticipated witnesses. The Government is ORDERED to submit a response no later than today, December 14, 2021, at 10:00 p.m. The Defense is FURTHER ORDERED to provide a copy of its anticipated witness order to the Court no later than today, December 14, 2021, at 12:00 p.m. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/14/2021)(bw) (Entered: 12/14/2021)
12/14/2021	543	SEALED DOCUMENT placed in vault. (jus) (Entered: 12/14/2021)
12/14/2021	544	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 13, 2021 re: Jack Scarola, Brad Edwards and Robert Glassman (Attachments: # 1 Exhibit 1 (Filed Under Seal))(Pagliuca, Jeffrey) (Entered: 12/15/2021)
12/15/2021	545	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 14, 2021 re: Testimony from Victim Counsel Document filed by USA. (Rohrbach, Andrew) (Entered: 12/15/2021)
12/15/2021	546	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 15, 2021 re: Proposed redactions *to Privilege Letters*. Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 12/15/2021)
12/15/2021	547	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 12/15/2021 re: Opposition to restriction on expert testimony (Sternheim, Bobbi) (Entered: 12/15/2021)
12/15/2021	548	MEMORANDUM OPINION & ORDER as to Ghislaine Maxwell. The Defense on December 12, 2021, moved to permit three anticipated witnesses to testify under a pseudonym or their first names only. The Government filed a letter opposing this request on December 14, 2021. The Defense's primary contention is that some form of anonymity for its witnesses is justified by the same reasons that the Court permitted three alleged victims and two related government witnesses to testify under pseudonyms. The Court disagrees with this basic premise and denies the Defense's motion....[*** See this

		Memorandum Opinion & Order ***]... Last, the Court emphasizes that while it currently denies the Defense's motion, the Defense may of course raise, and the Court will consider, objections that particular lines of questioning into witnesses' backgrounds or lives are irrelevant, cumulative, intended to harass, or otherwise inappropriate. See, e.g., Smith v. Illinois, 390 U.S. 129, 133 (1968) (emphasizing that even when anonymity is not warranted, the court has a duty to protect a witness "from questions which go beyond the bounds of proper cross-examination merely to harass, annoy or humiliate him"). SO ORDERED. (Signed by Judge Alison J. Nathan on 12/15/2021)(bw) (Entered: 12/16/2021)
12/15/2021	694	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's motion to preclude certain testimony of defense witnesses, dated December 15, 2021. The Defense is ORDERED to submit a response as follows: - A response to the motion with respect to Dr. Loftus by today, December 15, 2021, at 7:45 p.m. - A response to the motion with respect to Alexander Hamilton by tomorrow, December 16, 2021, at 7:00 a.m. - A response to the motion with respect to the other anticipated witnesses by tomorrow, December 16, 2021, at 5:00 p.m. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/15/2021)(bw) (Entered: 06/29/2022)
12/16/2021	551	ORDER as to Ghislaine Maxwell: The Court is in receipt of the parties' joint letter regarding the admission of prior inconsistent statements. The parties' letter notes "that many of these statements raise one of two questions: (1) must counsel show the witness the prior inconsistent statement under Rule 613(b), and (2) is a statement admissible when the witness affirms that the 3500 material contains the inconsistent statement and also expresses disagreement with the substance." The parties are hereby ORDERED to submit a letter citing authority (beyond the rule itself) for their respective positions. The parties are FURTHER ORDERED to indicate each disputed prior inconsistent statement that was read into the record. Letters must be submitted as soon as possible but no later than today, December 16, 2021, at 10:15 p.m. The parties are FURTHER ORDERED to docket their respective letters by tomorrow, December 17, 2021, at 8:00 a.m. (Signed by Judge Alison J. Nathan on 12/16/2021) (ap) Modified on 12/17/2021 (ap). (Entered: 12/17/2021)
12/16/2021	552	ORDER as to Ghislaine Maxwell: The Court denies the motion for the remaining witnesses the Government seeks to preclude. (Signed by Judge Alison J. Nathan on 12/16/2021) (ap) (Entered: 12/17/2021)
12/16/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/16/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski Jury trial held. See Transcript. (jbo) (Entered: 12/20/2021)
12/17/2021	549	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 17, 2021 re: Law enforcement witness testimony Document filed by USA. (Attachments: # 1 Exhibit A)(Rohrbach, Andrew) (Entered: 12/17/2021)
12/17/2021	550	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 16, 2021 re: Prior inconsistent statements Document filed by USA. (Rohrbach, Andrew) (Entered: 12/17/2021)
12/17/2021	553	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 16, 2021 re: Prior Inconsistent Statements (Pagliuca, Jeffrey)

		(Entered: 12/17/2021)
12/17/2021	562	ORDER as to Ghislaine Maxwell. Attached is the draft jury charge and draft verdict sheet. Counsel shall be prepared to provide at the charging conference tomorrow, December 18, 2021, specific suggestions (with supporting authority if available) for any requested changes (Signed by Judge Alison J. Nathan on 12/17/21)(jw) (Entered: 12/20/2021)
12/17/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/17/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski Jury trial held. See Transcript. (jbo) (Entered: 12/20/2021)
12/18/2021	554	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 18, 2021 re: Jury instructions Document filed by USA. (Rohrbach, Andrew) (Entered: 12/18/2021)
12/18/2021	555	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 15, 2021 re: Ms. Maxwell's Response to Government's Motion to Preclude Certain Testimony by Alexander Hamilton (Pagliuca, Jeffrey) (Entered: 12/18/2021)
12/18/2021	563	ORDER as to Ghislaine Maxwell. The charging conference for this matter was held today, December 18, 2021. Attached to this Order are redline and clean copies of the draft jury charge and draft verdict form that incorporate all changes discussed at the conference, or by the Government's subsequent letter, Dkt. No. 554, and adopted by the Court. The Court also edited "a minor" to be "an individual under the age of 18" on page 38, line 19, and deleted "or foreign" on page 28, line 5, as consistent with the agreed upon edits at conference. No later than tomorrow, December 19, 2021, at 12:00 p.m., the parties may inform the Court in writing of any errors that were the result of the Court's inputting the changes from todays charging conference. (Signed by Judge Alison J. Nathan on 12/18/21)(jw) (Entered: 12/20/2021)
12/18/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/18/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Khris Sellin and Paula Speers. Jury trial held. See Transcript. (jbo) (Entered: 12/22/2021)
12/19/2021	556	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 19, 2021 re: Jury charge Document filed by USA. (Rohrbach, Andrew) (Entered: 12/19/2021)
12/19/2021	557	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 12/19/2021 re: Letter re: Jury Charge (Sternheim, Bobbi) (Entered: 12/19/2021)
12/19/2021	558	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 19, 2021 re: Closing logistics Document filed by USA. (Rohrbach, Andrew) (Entered: 12/19/2021)

12/19/2021	559	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 19, 2021 re: Redacted exhibits . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 12/19/2021)
12/19/2021	560	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 558 The parties respectfully submit this letter regarding the logistics for public access for closing arguments. The parties propose that they will release a public version of their slides (to the extent they do not contain sealed materials) following the conclusion of the trial day on the same basis that they have been releasing public exhibits during trial....ENDORSEMENT...The parties previously indicated to the Court that they did not intend to make the visuals of the closing argument presentations public. The Court accordingly ordered the parties to confer on a proposal so as to ensure public access. For the reasons provided by the parties, the Court adopts the parties' proposal. Versions of the closing argument visual presentations with narrowly tailored redactions (e.g., redactions to protect the anonymity of witnesses the Court has permitted to testify under pseudonyms) shall be made available to the public within two hours of the completion of closing arguments. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/19/2021)(jw) (Entered: 12/20/2021)
12/19/2021	561	MEMO ENDORSEMENT 559 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 19, 2021 re: Redacted exhibits...ENDORSEMENT...SO ORDERED (Signed by Judge Alison J. Nathan on 12/19/21) (jw) (Entered: 12/20/2021)
12/19/2021	564	ORDER as to Ghislaine Maxwell. The parties are hereby ORDERED by 9:00 a.m. tomorrow, December 20, 2021, to docket or otherwise make publicly available all admitted exhibits. The parties shall confer on and propose narrowly tailored redactions for any exhibits admitted temporarily under seal. SO ORDERED. (Signed by Judge Alison J. Nathan on 12/19/21)(jw) (Entered: 12/20/2021)
12/19/2021	565	ORDER as to Ghislaine Maxwell. Attached to this Order are the final versions of the jury charge and verdict form. Per the parties' letters, the Court adopted the Government's proposed edit to Instruction No. 19. See Dkt. Nos. 556, 557. (Signed by Judge Alison J. Nathan on 12/19/21)(jw) (Entered: 12/20/2021)
12/20/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/20/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Martha Martin and George Malinowski. Jury trial held. See Transcript. (jbo) (Entered: 12/22/2021)
12/21/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/21/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter Martha Martin. Jury trial held. See Transcript. (jbo) (Entered: 12/22/2021)
12/22/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/22/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter George Malinowski. Jury trial held. See Transcript. (jbo) (Entered: 01/10/2022)

12/27/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/27/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter Martha Martin. Jury trial held. See Transcript. (jbo) (Entered: 01/10/2022)
12/28/2021	566	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated December 27, 2021 re: Supplemental Instruction (Everdell, Christian) (Entered: 12/28/2021)
12/28/2021		Minute Entry for proceedings held before Judge Alison J. Nathan: Jury Trial as to Ghislaine Maxwell held on 12/28/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter George Malinowski. Jury trial held. See Transcript. (jbo) (Entered: 01/10/2022)
12/29/2021		Minute Entry for proceedings held before Judge Alison J. Nathan:Jury Trial as to Ghislaine Maxwell held on 12/29/2021. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim, Jeff Pagliuca, Christian Everdell and Laura Menninger. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporter Khris Sellin. Defendant found GUILTY on Counts 1, 3, 4, 5, 6. Defendant found NOT GUILTY on Count 2. Jury trial concluded. (jw) (Entered: 01/11/2022)
12/29/2021		JURY VERDICT as to Ghislaine Maxwell (1) Guilty on Count 1ss,3ss,4ss,5ss,6ss; Not Guilty on Count 2ss. (jw) (Entered: 06/29/2022)
01/03/2022	567	ORDER as to Ghislaine Maxwell. The parties are ORDERED to submit a joint letter by January 10, 2022, proposing a briefing schedule for the Defendant's Rule 29 motion and proposing a schedule for sentencing. The joint letter should also propose a schedule for the severed perjury counts. The Defense also inquired about a booster shot for the Defendant. The Court has been advised that MDC is making booster shots available within a week of receiving a request from an inmate. Defense counsel is accordingly advised to follow the MDC's instructions for requesting a booster. If a request is made and a booster not provided, Defense counsel may make a further application to the Court. SO ORDERED. (Signed by Judge Alison J. Nathan on 1/3/2022)(bw) (Entered: 01/03/2022)
01/05/2022	568	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated January 5, 2022 re: Inquiry . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 01/05/2022)
01/05/2022	569	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 1/5/22 re: Juror Issue (Redacted) (Everdell, Christian) (Entered: 01/05/2022)
01/05/2022	570	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated January 5, 2022 re: Ms. Maxwell's Response to Government's Letter re. Juror's Statements (Dkt. 568) (Pagliuca, Jeffrey) (Entered: 01/05/2022)
01/05/2022	571	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' letters. Dkt. Nos. 568, 569, 570. The Court hereby sets the following briefing schedule for the Defense to move for a new trial in light of the issues raised in the parties' letters: Defense motion: January 19, 2022; Government response: February 2, 2022; Defense reply: February 9,

		2022. The parties' briefing should address whether an inquiry of some kind is permitted and/or required, and, if so, the nature of such an inquiry. Although the Court reserves decision on whether an inquiry of any kind is warranted, the Court grants the Government's request, Dkt. No. 568, to offer court-appointed counsel to the juror in issue. Subject to the juror's right to decline court-appointed counsel, the Court will appoint the on-duty CJA counsel to represent the juror. If counsel for the juror wishes to be heard on the issue of the appropriateness of an inquiry, briefing by the juror's counsel may be filed by January 26, 2022. The Court will not adjourn post-trial briefing on other issues as requested by the Defense, Dkt. No. 569, but sets the following schedule for any other post-verdict motion by the Defense: Defense motion: February 4, 2022; Government opposition: February 18, 2022; Defense reply: March 4, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 1/5/2022) (bw) (Entered: 01/05/2022)
01/05/2022	572	NOTICE of Notice of Appearance for Jury Number 50 as to Ghislaine Maxwell (Spodek, Todd) (Entered: 01/05/2022)
01/05/2022	573	ORDER as to Ghislaine Maxwell. A notice of appearance has been filed by retained counsel on behalf of Juror Number 50. See Dkt. No. 572. Retained counsel has communicated to the Court that the juror does not wish to have counsel appointed. Accordingly, the Court will not appoint CJA counsel as indicated in its prior order. See Dkt. No. 571. Counsel for Juror Number 50 is directed to review Dkt. No. 571. SO ORDERED. (Signed by Judge Alison J. Nathan on 1/5/2022)(bw) (Entered: 01/06/2022)
01/10/2022	574	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated January 10, 2022 re: Scheduling Document filed by USA. (Rohrbach, Andrew) (Entered: 01/10/2022)
01/12/2022	575	ORDER as to Ghislaine Maxwell. The parties are ORDERED to submit via email any proposed redactions on or before January 13, 2022, justifying any such request by reference to the three-part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). If any redactions are proposed, the Court will determine whether any are appropriate and then docket the motion. The parties shall respond to Juror 50s motion on or before January 20, 2022. Upon further reflection, unless and until Juror No. 50 is permitted to intervene, he may have no standing to be heard on the question of whether an inquiry should be conducted. Accordingly, the Court withdraws the aspect of its prior order setting January 26, 2022, as the date by which counsel for Juror 50 should file a submission on the issue of the appropriateness of an inquiry. Dkt. No. 571. The Court will hear from the parties first regarding Juror 50's pending motion. Depending on the resolution of that motion, the Court will provide further guidance to counsel for Juror 50 regarding any permitted submission. If a further submission is permitted, the Court will provide ECF docketing access to counsel for Juror 50 at that time (Signed by Judge Alison J. Nathan on 1/12/22)(jw) (Entered: 01/12/2022)
01/14/2022	576	ORDER as to Ghislaine Maxwell. The Court required the parties to indicate whether Juror 50's motion to intervene and to be provided a copy of the jurors completed questionnaire and voir dire should be redacted. Dkt. No. 575. In response, the parties have submitted letters to the Court indicating their differing views on whether Juror 50s motion should be docketed at all. Upon further reflection, the Courtconcludes that it must first address the threshold question of whether an inquiry is permittedand/or required before considering Juror 50s requests. Accordingly, the Court will not consider or act on Juror 50's request to intervene and to be provided a copy of the jurors completed questionnaire and voir dire until the Court receives the parties briefing on the appropriateness of an inquiry and the nature of any such inquiry. The Court will maintain Juror 50's motion temporarily under seal until the Court considers the parties arguments

		and determines the appropriate next steps. Consistent with this and to (Signed by Judge Alison J. Nathan on 1/14/22)(jw) (Entered: 01/14/2022)
01/14/2022	577	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' joint letter regarding a schedule for sentencing and resolution of the severed perjury counts. Dkt. No. 574. The Court hereby schedules the sentencing in this matter for June 28, 2022, at 11:00 a.m. The Court will delay ordering the preparation of a presentence investigation report until April 2022. The Court previously set the schedule for briefing on the new trial motion as well as all other post-verdict motions. Dkt. No. 571. That schedule remains in place. The Court adopts the parties proposal that the scheduling of any proceedings related to the severed perjury counts be deferred until the post-verdict motions are resolved. By January 18, 2022, the Government shall indicate in a joint letter whether it is seeking an exclusion of time under the Speedy Trial Act for the perjury counts and the basis for any requested exclusion. In the joint letter, the defense shall indicate whether it consents to the proposed exclusion of time (Sentencing set for 6/28/2022 at 11:00 AM before Judge Alison J. Nathan.) (Signed by Judge Alison J. Nathan on 1/14/22)(jw) (Entered: 01/14/2022)
01/18/2022	578	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated January 18, 2022 re: Speedy Trial Act Document filed by USA. (Moe, Alison) (Entered: 01/18/2022)
01/19/2022	579	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 578 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated January 18, 2022 re: Speedy Trial Act. ENDORSEMENT: With respect to Counts 7 and 8, the Court hereby excludes time under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), from todays date through April 1, 2022. The Court finds that the ends of justice served by granting this exclusion from speedy trial computations outweigh the interests of the public and the defendant in a speedy trial on these counts because the time is necessary for the parties to research and brief post-trial motions. (Signed by Judge Alison J. Nathan on 1/19/2022) (ap) (Entered: 01/19/2022)
01/19/2022	580	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 01/19/2022 re: Letter to Court re: Motion for New Trial (Sternheim, Bobbi) (Entered: 01/19/2022)
01/24/2022	581	LETTER addressed to Judge Alison J. Nathan from Christine N. Walz, Sanford L. Bohrer and Cynthia A. Gierhart dated 1/21/22 re: Miami Herald letter regarding the Filing of Ms. Maxwell's Motion for a New Trial Under Seal (Dkt. 580) (jw) (Entered: 01/24/2022)
01/25/2022	582	**FILING ERROR - DEFICIENT DOCKET ENTRY - WRONG FILER -** LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Nathan Siegel dated 1/25/2022 re: Letter from Nathan Siegel on behalf of American Broadcasting Companies, Inc., and NBCUniversal News Group to Hon. Alison J. Nathan Joining the Requests of The Miami Herald (Dkt. No. 581) and the New York Times to Oppose Sealing, and Requesting Additional Unsealing Document filed by USA. (Siegel, Nathan) Modified on 1/26/2022 (lb). (Entered: 01/25/2022)
01/25/2022	583	LETTER addressed to Judge Alison J. Nathan from David E. McCraw dated 1/24/2022 re: Letter by the NY Times Company.(jw) Modified on 1/25/2022 (jw). (Entered: 01/25/2022)
01/26/2022	584	ORDER as to Ghislaine Maxwell. As a post-trial housekeeping matter, Court staff directed the parties via email to complete the process of providing copies of Court Exhibits with narrowly tailored redactions (e.g., redactions to protect the anonymity of jurors and of witnesses the Court permitted to testify under pseudonyms) for the Court to

		docket. The Government subsequently submitted one court exhibit with the name unredacted of a witness subject to the Court's anonymity order. Subsequently the Defense indicated in a temporarily sealed letter why the name was unredacted. The Government is accordingly ORDERED to docket a letter on ECF on or before January 28, 2022, indicating why a redaction is no longer being sought for the name of this witness. Once the Government confirms in that letter that it no longer seeks redaction of the name, then the Defense may file the temporarily sealed letter on the docket without redaction of the name. The Court will then docket all Court Exhibits. (Signed by Judge Alison J. Nathan on 1/26/22)(jw) (Entered: 01/26/2022)
01/26/2022	585	ORDER as to Ghislaine Maxwell. The Court is in receipt of Defendant's motion for a new trial and accompanying exhibits, which she requests to file under seal. See Dkt. No. 580. The Court has also received requests from media organizations to unseal the motion. The Court is aware there is substantial public interest in this matter and will ensure that the First Amendment right to public access is fully safeguarded. At the same time, the Court must act deliberately and hear from the parties in considering these sealing issues in order to ensure the integrity of any potential inquiry process going forward, should one be ordered. That too is in the public, as well as the Defendant's and the Government's, interest. Accordingly, to the extent the Defense requests that arguments in favor of sealing should themselves be sealed, that request is DENIED. Arguments in favor of sealing can be made in such a way so as not to undermine the grounds for seeking sealing or redaction in the first instance. The Defense is therefore ORDERED to file a letter on the public docket on or before February 1, 2022, that justifies the proposed sealing by reference to the three-part test in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). The Government may file on ECF a response to the Defenses justification letter on or before February 4, 2022. The Government's opposition to the Defenses new trial motion is due February 2, 2022. Dkt. No. 571. Per the established practice in this case, the Government must provide a copy via email to the Defense to allow the Defense the opportunity to propose narrowly tailored redactions and/or sealing. If either party proposes redactions to or sealing of the Government's anticipated opposition, a letter justifying such redactions or sealing must be filed on the public docket. The Defense letter must be filed on or before February 8, 2022, and the Government letter must be filed by February 11, 2022. The same process will apply for any Defense reply in support, which is due February 9, 2022. Dkt. No. 571. If redactions or sealing are proposed, the Defense letter justifying such requests would be due February 15, 2022, and the Government letter would be due February 18, 2022. The parties are FURTHER ORDERED to address the New York Times Company's motion to unseal the filled-out questionnaires for the twelve seated jurors. See Dkt. No. 583. Letters by both parties must be submitted via ECF on or before February 11, 2022. SO ORDERED (Signed by Judge Alison J. Nathan on 1/26/2022)(jw) (Entered: 01/26/2022)
01/26/2022	586	LETTER addressed to Judge Alison J. Nathan from Matthew A. Leish dated 1/26/2022 re: I write on behalf of Daily News, L.P. (jw) (Entered: 01/26/2022)
01/27/2022	587	LETTER addressed to Judge Alison J. Nathan from Nathan Siegel dated 1/26/2022 re: Letter addressed to Judge Alison J. Nathan on behalf of American Broadcasting Companies, Inc and NBC Universal News Group (jw) (Entered: 01/27/2022)
01/28/2022	588	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated January 28, 2022 re: Redaction of Witness Name Document filed by USA. (Pomerantz, Lara) (Entered: 01/28/2022)
01/28/2022	589	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 1/28/22 re: Redaction (Everdell, Christian) (Entered: 01/28/2022)

02/01/2022	590	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 2/1/22 re: Sealing Motion for New Trial (Everdell, Christian) (Entered: 02/01/2022)
02/01/2022	591	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 2/1/22 re: Extension of Time (Everdell, Christian) (Entered: 02/01/2022)
02/02/2022	592	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 591 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 2/1/22 re: Extension of Time. ENDORSEMENT: The extension request is hereby GRANTED. The briefing schedule for other post-verdict motions is revised as follows: - Defense submission: February 11, 2022. Government response: February 25, 2022. Defense reply: March 11, 2022. (Motions due by 2/11/2022. Responses due by 2/25/2022. Replies due by 3/11/2022) (Signed by Judge Alison J. Nathan on 2/2/2022) (ap) (Entered: 02/02/2022)
02/04/2022	593	ORDER as to Ghislaine Maxwell: As a post-trial house-keeping matter, attached to this Order are the Court Exhibits. The parties have proposed redactions to several exhibits and the sealing of Court Exhibit 4. The Court concludes that the proposed redactions are consistent with the three-part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006), and narrowly tailored. The redactions serve the purpose of protecting the anonymity of jurors and of victim-witnesses subject to the Court's anonymity order. With respect to Court Exhibit 4, rather than seal the entire document, the Court has redacted the information that would potentially identify the victim-witness who testified pursuant to the Court's anonymity order. Unredacted copies of the Court Exhibits will be filed under seal. (Signed by Judge Alison J. Nathan on 2/4/2022)(ap) (Entered: 02/04/2022)
02/04/2022	594	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated February 4, 2022 re: Opposition to Defendant's Sealing Request Document filed by USA. (Pomerantz, Lara) (Entered: 02/04/2022)
02/08/2022	595	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 2/8/2022 re: Request for Sealing (Sternheim, Bobbi) (Entered: 02/08/2022)
02/11/2022	596	ORDER as to Ghislaine Maxwell. The Court is in receipt of the parties' letters addressing the Defendant's request to temporarily seal her motion for a new trial and accompanying exhibits, and the Governments response in opposition and accompanying exhibits. See Dkt. Nos. 590, 594, 595. Several media organizations have also filed letters seeking unsealing. The Court is also in receipt of Juror 50's motion to intervene. Both the Government and the Defendant oppose intervention. The Defendant seeks to strike or, in the alternative, seal Juror 50's motion. For the reasons outlined more fully below, the Court rules as follows. First, the Defendant's motion to temporarily seal in their entirety all documents related to the motion for a new trial is DENIED. Any sealing of judicial documents must be narrowly tailored to serve competing interests. (Signed by Judge Alison J. Nathan on 2/11/22)(jw) (Entered: 02/11/2022)
02/11/2022	597	ORDER as to Ghislaine Maxwell. The Court's chambers received the attached letter via email from counsel for the National Association of Criminal Defense Lawyers (NACDL) seeking leave to file an amicus brief regarding the Defendant's motion for a new trial. The Court issues this Order in response. If any party wishes to file an amicus brief concerning the Defendant's motion for a new trial, it may submit to the Court via email a motion for leave to do so on or before February 18, 2022. The Court will only consider such a

		motion if: It is timely submitted by February 18, 2022; (Amicus Brief due by 2/18/2022) (Signed by Judge Alison J. Nathan on 2/11/22)(jw) (Entered: 02/11/2022)
02/11/2022	598	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated February 11, 2022 re: motion by the New York Times Company. Document filed by USA. (Moe, Alison) (Entered: 02/11/2022)
02/11/2022	599	MOTION for New Trial *to Obtain Relief Requested in Memorandum in Support of Post-Trial Motions*. Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 02/11/2022)
02/11/2022	600	MEMORANDUM in Support by Ghislaine Maxwell re 599 MOTION for New Trial *to Obtain Relief Requested in Memorandum in Support of Post-Trial Motions.. OMNIBUS MEMORANDUM in Support by Ghislaine Maxwell re Post-Trial Motions* (Everdell, Christian) (Entered: 02/12/2022)
02/15/2022	601	SEALED DOCUMENT placed in vault. (jus) (Entered: 02/15/2022)
02/16/2022	602	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C. Sternheim dated 02/16/2022 re: Letter in Response to Dkt. 596 (Sternheim, Bobbi) (Entered: 02/16/2022)
02/16/2022	603	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated February 16, 2022 re: Letter regarding proposed redactions. Document filed by USA. (Moe, Alison) (Entered: 02/16/2022)
02/17/2022	604	MEMO ENDORSEMENT as to Ghislaine Maxwell on MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF. ENDORSEMENT: The request for leave to file an amicus brief in accordance with this Court's February 11, 2022 order is GRANTED. SO ORDERED. (Signed by Judge Alison J. Nathan on 2/17/2022) (lnl) (Entered: 02/17/2022)
02/18/2022	605	ORDER as to Ghislaine Maxwell: The parties are hereby ORDERED to re-submit via email revised redactions to the parties' briefing on the Defendant's motion for a new trial by February 22, 2022. The revised proposed redactions shall be consistent with this Order. SO ORDERED. (Signed by Judge Alison J. Nathan on 2/18/2022) (lnl) (Entered: 02/18/2022)
02/21/2022	606	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 02/21/2022 re: Letter in Response to Dkt. 605 (Sternheim, Bobbi) (Entered: 02/21/2022)
02/24/2022	607	ORDER as to Ghislaine Maxwell: The Court is in receipt of the Defendant's proposed redactions revised in response to this Court's order. See Dkt. Nos. 605, 606. The Court has reviewed the proposed redactions and concludes that they are in accordance with its prior orders. See Dkt. Nos. 596, 605. The narrowly tailored redactions further the important interests of helping ensure the integrity of any inquiry and maintaining juror anonymity and privacy. As the Court explained in its February 11 Order, these interests justify redaction of the questions the parties propose be asked at any hearing and specific factual information developed by the parties that has not been publicly reported in the press and that the parties propose be inquired about at any forthcoming hearing. Dkt. No. 596 at 4 (citing United States v. McCoy et al., No. 14 Cr. 6181 (EAW), Dkt. No. 312 (text order) (W.D.N.Y. May 26, 2017); id. Dkt. No. 329 at 38-39; Press-Enter. Co. v. Superior Ct. of Cal., Riverside Cnty., 464 U.S. 501, 511-12 (1984)). Accordingly, the parties are ORDERED to docket the redacted briefs, accompanying exhibits, and their January 13 letters, by February 25, 2022. The Court will docket Juror 50's motion. As noted in its prior Order, following the Court's resolution of the Defendant's motion or a hearing, all

		redactions will be promptly unsealed except those necessary to protect any continuing interest in juror anonymity and privacy. See United States v. Amodeo, 44 F.3d 141, 146-47 (2d Cir. 1995); see also Press-Enter. Co., 478 U.S. at 14. (Signed by Judge Alison J. Nathan on 2/24/2022) (ap) (Entered: 02/24/2022)
02/24/2022	608	NOTICE OF MOTIONTO INTERVENE AND FOR THE RELEASE OF DOCUMENTS UNDER SEAL. Document filed as to Ghislaine Maxwell. (ap) (Entered: 02/24/2022)
02/24/2022	609	MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE AND FOR RELEASE OF SEALED JURY QUESTIONNAIRE AND TRANSCRIPT, ON BEHALF OF PROPOSED INTERVENOR, JUROR 50 as to Ghislaine Maxwell re: 608 MOTION. (ap) (Entered: 02/24/2022)
02/24/2022	610	ORDER as to Ghislaine Maxwell: for the reasons fully explained in the Opinion & Order, a hearing is necessary to resolve the Defendant's motion. Because of the important interest in the finality of judgments, the standard for obtaining a post-verdict hearing is high. The Court concludes, and the Government concedes, that the demanding standard for holding a post-verdict evidentiary hearing is met as to whether Juror 50 failed to respond truthfully during the jury selection process to whether he was a victim of sexual abuse. Following trial, Juror 50 made several direct, unambiguous statements to multiple media outlets about his own experience that do not pertain to jury deliberations and that cast doubt on the accuracy of his responses during jury selection. Juror 50's post-trial statements are "clear, strong, substantial and incontrovertible evidence that a specific, non-speculative impropriety"namely, a false statement during jury selection has occurred. United States v. Baker, 899 F.3d 123, 130 (2d Cir. 2018). To be clear, the potential impropriety is not that someone with a history of sexual abuse may have served on the jury. Rather, it is the potential failure to respond truthfully to questions during the jury selection process that asked for that material information so that any potential bias could be explored. In contrast, the demanding standard for ordering an evidentiary hearing is not met as to the conduct of any other juror. The Court DENIES the request to conduct a hearing with respect to the other jurors. The Court also DENIES the Defendant's request for a broader hearing and pre-hearing discovery. The Court therefore ORDERS that a hearing take place at which the Court will question Juror 50 under oath. The Court further ORDERS that Juror 50's questionnaire be unsealed, for the reasons explained in the Opinion & Order. The Court will email counsel for Juror 50 a copy of his questionnaire and a copy of this Order. As also explained in the Opinion & Order, the Court will conduct the questioning at the public hearing with input from counsel for the Defendant and the Government. The parties may submit by email proposed questions in accordance with the Opinion & Order on or before March 1, 2022. The hearing will take place on March 8, 2022, at 10:00 a.m. The Court ORDERS Juror 50 to appear in Courtroom 906 of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York at that date and time to give testimony under oath in response to the Court's questions. The Court will ensure public access and will provide information on public access as soon as it is available. The Court will send the temporarily sealed Opinion & Order to the parties. By noon on February 25, 2022, the parties are ORDERED to inform the Court whether either seeks limited redactions to the Opinion & Order, conforming any requests to this Court's prior order, Dkt. No. 596, and justifying any such request by reference to the three-part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). (Status Conference set for 3/8/2022 at 10:00 AM in Courtroom 906, 40 Centre Street, New York, NY 10007 before Judge Alison J. Nathan) (Signed by Judge Alison J. Nathan on 2/24/2022) (ap) Modified on 2/25/2022 (ap). (Entered: 02/24/2022)
02/24/2022	611	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated

		February 24, 2022 re: Court's February 24, 2022 Order (Dkt. No. 610) Document filed by USA. (Pomerantz, Lara) (Entered: 02/24/2022)
02/24/2022	612	LETTER MOTION addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated January 13, 2022 re: Ms. Maxwell's Request for Juror 50's Memorandum of Law in Support of Motion to Intervene, Jury Questionnaire and Transcript Remain Under Seal Upon Resolution of Her Motion for a New Trial . Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 02/24/2022)
02/24/2022	613	MOTION for New Trial . Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Pagliuca, Jeffrey) (Entered: 02/24/2022)
02/24/2022	614	AMICUS CURIAE BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS. The Court should not allow any juror to thwart its screening process by giving inaccurate answers and thereby create such a grave potential, realized in this case, for depriving the defendant of her right to a fair trial. A new trial is required. Document filed as to Ghislaine Maxwell. (See BRIEF set forth) (ap) (Entered: 02/24/2022)
02/24/2022	615	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 613 MOTION for New Trial .. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Pomerantz, Lara) (Entered: 02/24/2022)
02/24/2022	616	REPLY TO RESPONSE to Motion by Ghislaine Maxwell re 613 MOTION for New Trial .. (Attachments: # 1 Exhibit 3 (1 of 3), # 2 Exhibit 3 (2 of 3), # 3 Exhibit 3 (3of 3)) (Pagliuca, Jeffrey) (Entered: 02/24/2022)
02/24/2022	617	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated January 13, 2022 re: Juror 50's Motion to Intervene Document filed by USA. (Pomerantz, Lara) (Entered: 02/24/2022)
02/24/2022	618	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 02/24/2022 re: Letter in Response to Dkt 610 (Sternheim, Bobbi) (Entered: 02/24/2022)
02/25/2022	619	MEMO ENDORSEMENT as to Ghislaine Maxwell on 618 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 02/24/2022 re: Letter in Response to Dkt 610. ENDORSEMENT: The Court approves the Defense's proposed redactions, which are narrowly tailored to redact specific categories of questions the Court may ask at the forthcoming hearing. Consistent with this Court's prior order, such redactions help ensure the integrity of the forthcoming hearing. See Dkt. No. 596. The Court will docket the redacted Opinion & Order. As noted in the prior order, the redactions will be promptly unsealed following the hearing. SO ORDERED. (Signed by Judge Alison J. Nathan on 2/25/2022)(lnl) (Entered: 02/25/2022)
02/25/2022	620	OPINION & ORDER as to Ghislaine Maxwell: For the reasons stated above, the Court will hold a hearing regarding Juror 50's answers to Questions 25 and 48 of the questionnaire. The public proceeding will take place on March 8, 2022, at 10:00 a.m. Juror 50 is hereby ORDERED to appear in Courtroom 906 of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York at that date and time to give testimony under oath in response to the Court's questions. Counsel for the Defendant and the Government are ORDERED to submit via email proposed questions in accordance with this Opinion & Order on or before March 1, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 2/24/2022) (lnl) (Main Document 620 replaced on 3/9/2022) (jw). (Entered: 02/25/2022)

02/25/2022	621	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 599 MOTION for New Trial *to Obtain Relief Requested in Memorandum in Support of Post-Trial Motions*.. (Rohrbach, Andrew) (Entered: 02/25/2022)
02/28/2022	622	SEALED DOCUMENT placed in vault. (nmo) (Entered: 02/28/2022)
02/28/2022	623	SEALED DOCUMENT placed in vault. (nmo) (Entered: 02/28/2022)
03/01/2022	635	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSA Maurene Comey/Alison Moe/Lara Pomerantz/Andrew Rohrbach dated 3/1/22 re: Dear Judge Nathan: In accordance with the Courts February 24, 2022 Opinion and Order (Dkt. No. 620), the Government respectfully submits this letter to propose questions for the public hearing at which the Court will question Juror 50 under oath..... Document filed by USA. (jbo) (Entered: 03/09/2022)
03/01/2022	636	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from defense counsel Christian R. Everdell dated 3/1/22 re: Dear Judge Nathan: We write in response to the Courts order, dated February 24, 2022, permitting the parties to submit proposed questions to the Court for the hearing related to Ms. Maxwells Motion for a New Trial. Dkt. 610..... (jbo) (Entered: 03/09/2022)
03/02/2022	624	LETTER as to USA v. Ghislaine Maxwell addressed to Judge Alison J. Nathan from Attorney Todd A. Spodek dated March 1, 2022 re: Please be advised that I represent Juror 50. I am writing in response to Your Honor's February 24, 2022 Order (ECF No.: 610) directing Juror 50 to appear for a hearing on March 8, 2022. I write to inform the Court that Juror 50 will invoke his Fifth Amendment privilege against self-incrimination at the hearing. (bw) (Entered: 03/02/2022)
03/02/2022	625	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, Andrew Rohrbach, dated March 1, 2022 re: By letter dated March 1, 2022, counsel for Juror 50 informed the Court that Juror 50 will invoke his Fifth Amendment privilege against self-incrimination at the hearing scheduled for March 8, 2022. The Government writes to notify the Court that it is in the process of seeking internal approval to seek an order, pursuant to 18 U.S.C. §§ 6002 and 6003, compelling Juror 50's testimony at the hearing. The Government will, subject to internal approval, submit a proposed order to the Court in advance of the hearing.(bw) (Entered: 03/02/2022)
03/02/2022		*****DELETED DOCUMENT. Deleted document number 626 SEALED DOCUMENT placed in vault, as to Ghislaine Maxwell. The document was incorrectly filed in this case. (nmo)** (Entered: 03/02/2022)
03/02/2022	626	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 03/02/2022 re: Juror 50's intent to assert 5th Amendment and potential immunity (Sternheim, Bobbi) (Entered: 03/02/2022)
03/02/2022	627	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated March 2, 2022 re: Ms. Maxwells Request for adjournment of hearing on Motion for New Trial (Pagliuca, Jeffrey) (Entered: 03/02/2022)
03/02/2022	628	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated March 2, 2022 re: Opposition to Defendant's Adjournment Request Document filed by USA. (Pomerantz, Lara) (Entered: 03/02/2022)
03/03/2022	629	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 626 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Attorney Bobbi C Sternheim dated 03/02/2022 re: Juror 50's intent to assert 5th Amendment and potential immunity.

		ENDORSEMENT: No grounds are offered for entitlement to the requested proffer, and the Court is not aware of any basis for granting the request. DENIED. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/3/2022)(bw) (Entered: 03/03/2022)
03/03/2022	630	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 627 LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Attorney Jeffrey S. Pagliuca dated March 2, 2022 re: Ms. Maxwells Request for adjournment of hearing on Motion for New Trial. ENDORSEMENT: The requested two-month adjournment to May is not justified and is therefore DENIED. Two of the Defendant's four attorneys are able to be present and represent the Defendant at the March 8 hearing. The Court will conduct the questioning at the hearing, and the parties have already submitted briefing and proposed questions. The public interest in a reasonably prompt hearing outweighs the Defendant's preference for an adjournment. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/3/2022)(bw) (Entered: 03/03/2022)
03/03/2022	631	ORDER as to Ghislaine Maxwell. As noted in this Court's prior order, a hearing on the Defendant's motion for a new trial is scheduled for March 8, 2022, at 10:00 a.m. Dkt. No. 610. The hearing location is hereby changed to Courtroom 110 of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York....[*** See this Order ***]... Per the S.D.N.Y. Response to COVID-19, anyone who appears at any S.D.N.Y. courthouse must complete a questionnaire on the date of the proceeding prior to entering the courthouse. Only persons who meet the entry requirements established by the questionnaire will be allowed to enter the courthouse. All visitors must wear an N95, KN95, or KF94 mask at all times. Surgical masks, cloth masks, bandannas, gaiters, and masks with valves are not permitted. If a person does not have an approved mask, a screener will provide one. 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. For more information, please see https://www.nysd.uscourts.gov/covid-19-coronavirus. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/3/2022)(bw) (Entered: 03/03/2022)
03/07/2022	632	MOTION Application under 18 U.S.C. §§ 6002 and 6003 . Document filed by USA as to Ghislaine Maxwell. (Pomerantz, Lara) (Entered: 03/07/2022)
03/08/2022		Minute Entry for proceedings held before Judge Alison J. Nathan:Motion Hearing as to Ghislaine Maxwell held on 3/8/2022. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim and Christian Everdell, AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Juror 50 present with retained counsel Todd Spodek. Court Reporters Mike McDaniel and Kelly Surina. See transcript. Defendant remains remanded. (jw) (Entered: 03/09/2022)
03/09/2022	633	SEALED DOCUMENT placed in vault. (nmo) (Entered: 03/09/2022)
03/09/2022	634	SEALED DOCUMENT placed in vault. (nmo) (Entered: 03/09/2022)
03/09/2022	637	ORDER as to Ghislaine Maxwell... ORDERED that, pursuant to Title 18, United States Code, Sections 6002 and 6003, ----- give testimony at said hearing; and IT IS FURTHER ORDERED that, pursuant to Title 18, United States Code, Sections 6002 and 6003, no testimony or other information compelled under this Order, or any information directly or indirectly derived from such testimony or other information, may be used against ----- in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this Order. This Order shall become effective only if after the date of this Order ----- ----- refuses to testify on the basis of his privilege against self-incrimination. (Signed by Judge Alison J. Nathan on 3/8/22)(jbo) (Entered: 03/09/2022)
03/09/2022	638	HEARING EXHIBIT 1 as to Ghislaine Maxwell. (jbo) (Entered: 03/09/2022)

03/09/2022	639	ORDER as to Ghislaine Maxwell. As indicated at yesterday's hearing, the Court has docketed the unredacted copy of the Court's February 24, 2022, Opinion & Order, the Government's proposed questions, the Defendant's proposed questions with limited redactions, the signed immunity order with limited redactions, and Hearing Exhibit 1. The limited redactions to the signed immunity order and the Defendants proposed questions are narrowly tailored to further the interest of protecting juror anonymity. The Court will file the unredacted documents under seal. SO ORDERED. (Signed by Judge Alison J. Nathan on 3/9/22)(jbo) (Entered: 03/09/2022)
03/10/2022	640	ORDER as to Ghislaine Maxwell. Per the Court's instruction at the March 8 hearing, the parties submitted revised redactions to their briefing on the Defendants motion for a new trial. The Court rejects the Defendant's proposed redaction to page 8, lines 6-7 of her reply because it is not necessary to protect any continuing interest in juror anonymity and privacy. See Dkt. No. 607. The Court concludes that the remaining proposed redactions are narrowly tailored to further the important interest of protecting juror anonymity and privacy. Press-Enter. Co. v. Superior Ct. of Cal., Riverside Cnty., 464 U.S. 501, 511-12 (1984). The parties are ORDERED to file the redacted briefs (with the above noted line unredacted) on the docket on or before March 11, 2022. The Court will file the unredacted briefs under seal. (Signed by Judge Alison J. Nathan on 3/10/2022)(jw) (Entered: 03/10/2022)
03/10/2022	641	SEALED DOCUMENT placed in vault. (nmo) (Entered: 03/10/2022)
03/11/2022	642	MOTION for New Trial . Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, Exhibit 3)(Pagliuca, Jeffrey); Modified on 6/29/2022 (bw). (Entered: 03/11/2022)
03/11/2022	643	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 642 MOTION for New Trial .. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Pomerantz, Lara) (Entered: 03/11/2022)
03/11/2022	644	REPLY TO RESPONSE to Motion by Ghislaine Maxwell re 642 MOTION for New Trial .. (Attachments: # 1 Exhibit 3 (1 of 3), # 2 Exhibit 3 (2 of 3), # 3 Exhibit 3 (3of 3)) (Pagliuca, Jeffrey) (Entered: 03/11/2022)
03/11/2022	645	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Conference held on 3/8/22 before Judge Alison J. Nathan. Court Reporter/Transcriber: Michael McDaniel, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/1/2022. Redacted Transcript Deadline set for 4/11/2022. Release of Transcript Restriction set for 6/9/2022. (Moya, Goretti) (Entered: 03/11/2022)
03/11/2022	646	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Conference proceeding held on 3/8/22 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 03/11/2022)
03/11/2022	647	REPLY MEMORANDUM OF LAW in Support as to Ghislaine Maxwell re: 599 MOTION for New Trial *to Obtain Relief Requested in Memorandum in Support of Post-Trial Motions*. . (Everdell, Christian) (Entered: 03/11/2022)
03/15/2022	648	MEMORANDUM in Opposition by USA as to Ghislaine Maxwell re 642 MOTION for New Trial .. (Pomerantz, Lara) (Entered: 03/15/2022)

03/15/2022	649	MEMORANDUM in Support by Ghislaine Maxwell re 642 MOTION for New Trial .. (Sternheim, Bobbi) (Entered: 03/15/2022)
04/01/2022	650	LETTER MOTION addressed to Judge Alison J. Nathan from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated April 1, 2022 re: Speedy Trial Act . Document filed by USA as to Ghislaine Maxwell. (Moe, Alison) (Entered: 04/01/2022)
04/01/2022	651	MOTION to Stay re: 649 Memorandum in Support of Motion, 642 MOTION for New Trial ., 644 Reply to Response to Motion . Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 04/01/2022)
04/01/2022	652	LETTER by USA as to Ghislaine Maxwell addressed to Judge Vernon S. Broderick from Alison Moe, Maurene Comey, Lara Pomerantz, and Andrew Rohrbach dated April 1, 2022 re: opposition to defendant's April 1, 2022 letter. Document filed by USA. (Moe, Alison) (Entered: 04/01/2022)
04/01/2022		*****DELETED DOCUMENT. Deleted docket entry, no document number. NOTICE OF CASE REASSIGNMENT, as to Ghislaine Maxwell. The document was incorrectly filed in this case. (bw)** (Entered: 04/01/2022)
04/01/2022		REMARK as to USA v. Ghislaine Maxwell. Case reassigned to Judge Broderick due to an administrative error. Case returned to Judge Nathan. (bw) (Entered: 04/01/2022)
04/01/2022	653	OPINION & ORDER as to Ghislaine Maxwell. The Court concludes that Juror 50 testified credibly and truthfully at the post-trial hearing. His failure to disclose his prior sexual abuse during the jury selection process was highly unfortunate, but not deliberate. The Court further concludes that Juror 50 harbored no bias toward the Defendant and could serve as a fair and impartial juror. The requirements for a new trial under McDonough are not satisfied. The Defendant's motion for a new trial pursuant to Rule 33 is therefore DENIED. The Court orders the preparation of the presentence investigation report. With respect to Counts 7 and 8, the Court hereby excludes time under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), from today's date through April 22, 2022. The Court finds that the ends of justice served by granting this exclusion from speedy trial computations outweigh the interests of the public and the Defendant in a speedy trial on these counts because the pending post-trial motions affect the scheduling considerations set forth in the Government's January 10, 2022 letter. See Dkt. No. 574. The Defendant consents to this exclusion. Dkt. No. 650. The Court will rule on the Defendant's remaining post-verdict motions in due course. Sentencing remains scheduled for June 28, 2022. This resolves docket numbers 613, 614, 642, 650, and 651. (Signed by Judge Alison J. Nathan on 4/1/2022) (See ORDER set forth) (ap) (Entered: 04/01/2022)
04/04/2022	654	SEALED DOCUMENT placed in vault. (nmo) (Entered: 04/04/2022)
04/25/2022	655	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated April 25, 2022 re: Advance PSR Deadline . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 04/25/2022)
04/26/2022	656	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's letter regarding the deadline for the disclosure of the Presentence Investigation Report. Dkt. No. 655. After conferring with the Probation Office, the Court determines that advancing the PSR disclosure schedule will aid the parties in preparing their sentencing submissions. Further the Court hereby adjusts its standard sentencing submission schedule to ensure sufficient time to prepare for sentencing. Accordingly, the Court ORDERS the following schedule for sentencing: May 24, 2022 - First PSR disclosure; May 31, 2022 - Defendant objections due; June 6, 2022 - Government response due; June 9, 2022 - Second PSR disclosure; June 15, 2022 - Defendant sentencing submission due;

		June 22, 2022 - Government sentencing submission due; June 28, 2022 - Sentencing. This resolves Dkt. No. 655. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/26/2022) (bw) (Entered: 04/26/2022)
04/29/2022	657	OPINION & ORDER as to Ghislaine Maxwell....[*** See this Opinion & Order ***]... V. Conclusion. For the foregoing reasons, the Court denies the Defendant's Rule 29 motion because the jury's guilty verdicts were supported by the witness testimony and documentary evidence presented at trial. The Court denies the Defendant's motion based on constructive amendment or variance because the jury instructions, the Government's evidence at trial, and summation all captured the core of criminality charged in the Indictment, and the Defendant was not prejudiced by any alleged variance. Further, because the Government neither intentionally delayed its prosecution nor was the Defendant prejudiced by any delay, the Court also denies the Defendant's motion based on pre-indictment delay. Finally, the Court grants the Defendant's motion as to multiplicity. The Government concedes that Count One is multiplicitous with Count Three, and the Court further concludes that Count Five is multiplicitous with Count Three. Count Five, like Counts One and Three, charged the Defendant's participation in the same decade-long unlawful agreement with the Defendant's continuous coconspirator, Jeffrey Epstein, to groom and sexually abuse underage girls. Accordingly, the Court will enter judgment of conviction on Counts Three, Four, and Six. The Defendant's sentencing date remains scheduled for June 28, 2022. The Court previously set a schedule for sentencing submissions that remains in effect. Dkt. No. 656. This resolves Dkt. No. 599. SO ORDERED. (Signed by Judge Alison J. Nathan on 4/29/2022)(bw) (Entered: 04/29/2022)
05/10/2022	658	LETTER MOTION addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 05/10/2022 re: 2-day extension to file sentencing submission . Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 05/10/2022)
05/11/2022	659	MEMO ENDORSEMENT 658 LETTER MOTION addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 05/10/2022 re: 2-day extension to file sentencing submission...ENDORSEMENT..The request is DENIED. SO ORDERED (Signed by Judge Alison J. Nathan on 5/11/22) (jw) (Entered: 05/11/2022)
05/11/2022	660	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 11, 2022 re: Speedy Trial Exclusion . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 05/11/2022)
05/11/2022	661	MEMO ENDORSEMENT as to Ghislaine Maxwell (1) on 660 LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated May 11, 2022 re: Speedy Trial Exclusion. ENDORSEMENT: SO ORDERED. (Signed by Alison J. Nathan, U.S. Circuit Judge Sitting by designation on 5/11/2022) (ap) (Entered: 05/11/2022)
06/15/2022	662	MEMORANDUM OF LAW in Support by Ghislaine Maxwell *Memorandum of Ghislaine Maxwell in Support of Her Objections to the Presentence Investigation Report*. (Everdell, Christian) (Entered: 06/15/2022)
06/15/2022	663	SENTENCING SUBMISSION by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 06/15/2022)
06/17/2022	664	ORDER as to Ghislaine Maxwell: As noted in this Court's prior order, sentencing in this matter is scheduled for June 28, 2022, at 11:00 a.m. Dkt. No. 577. The sentencing proceeding will take place in Courtroom 318 of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York. Substantial seating for members of the press and public will be available in Courtroom 318. Overflow courtrooms will be

		available if needed. The overflow rooms will have live video and audio feeds of the proceeding. The use of any electronic devices in Courtroom 318 or the overflow courtrooms is prohibited. The District Executive's Office will coordinate seating in Courtroom 318 and the overflow courtrooms. The Court will ensure access for any victims. Victim access will be coordinated between the Victim Witness Unit and the District Executives Office. Defense counsel may coordinate access for members of the Defendant's family with the District Executive's Office. Wendy Olson, Coordinator, Victim Witness Unit, United States Attorney's Office, (212) 637-1028, Wendy.Olson@usdoj.gov; Joseph Pecorino, District Executive's Office, United States District Court, Southern District of New York, (212) 805-0513, Joseph_Pecorino@nysd.uscourts.gov. For information on Courthouse entry protocols, please see https://www.nysd.uscourts.gov/covid-19-coronavirus. (Signed by Judge Alison J. Nathan on 6/17/2022) (ap) (Entered: 06/17/2022)
06/21/2022	665	ORDER as to Ghislaine Maxwell: The Court is in receipt of a letter submitted by an attorney for two individuals seeking to speak as victims at sentencing. The Defendant submitted a letter in response. No party requested redactions or sealing of the letters. The Court will docket the letters. Any victim seeking to make a statement at sentencing shall contact the Victim Witness Unit of the United States Attorneys Office: Wendy Olson, Coordinator Victim Witness Unit United States Attorneys Office, (212) 637-1028, Wendy.Olson@usdoj.gov. A victim seeking to make a statement must submit a written statement by email to the Victim Witness Unit by noon on Thursday, June 23, 2022. In addition to submitting the written statement, the submission must note whether the victim seeks to make an oral statement at sentencing and provide a basis for entitlement to make a statement under the Crime Victims Rights Act, 18 U.S.C. § 3771. Statements that do not conform to this process will not be permitted. The Government is ORDERED to inform the Defendant of any anticipated victim impact statements by 2:00 p.m. on Thursday, June 23, 2022. If either party objects to any statement, the objection and statement being objected to must be filed with the Court by 2:00 p.m. on Friday, June 24, 2022. Any statements to which the parties do not object must be submitted to the Court by 5:00 p.m. on that same date. The Government is FURTHER ORDERED to confirm with the Court by noon tomorrow, June 22, 2022, that victims have been notified of the rights described in the CVRA, consistent with 18 U.S.C. § 3771(c)(1). (Signed by Judge Alison J. Nathan on 6/21/2022) (ap) (Entered: 06/21/2022)
06/21/2022	666	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan, from Robert Y. Lewis dated 6/14/2022 re: Victims' counsel writes a letter regarding sentencing. (ap) (Entered: 06/21/2022)
06/21/2022	667	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan, from Bobbi C. Sternheim dated 6/17/2022 re: Defense counsel writes regarding sealing of certain documents. (ap) (Entered: 06/21/2022)
06/21/2022	668	ORDER as to Ghislaine Maxwell: This order corrects the contact information for Wendy Olsen contained in the Court's original order, Dkt. No. 665. The Court is in receipt of a letter submitted by an attorney for two individuals seeking to speak as victims at sentencing. The Defendant submitted a letter in response. No party requested redactions or sealing of the letters. The Court will docket the letters. Any victim seeking to make a statement at sentencing shall contact the Victim Witness Unit of the United States Attorney's Office: Wendy Olsen, Coordinator Victim Witness Unit United States Attorney's Office, (212) 637-1028, Wendy.Olsen@usdoj.gov. A victim seeking to make a statement must submit a written statement by email to the Victim Witness Unit by noon on Thursday, June 23, 2022. In addition to submitting the written statement, the submission must note whether the victim seeks to make an oral statement at sentencing and provide a basis for entitlement to make a statement under the Crime Victims' Rights Act, 18 U.S.C. § 3771. Statements that do not conform to this process will not be

		permitted. The Government is ORDERED to inform the Defendant of any anticipated victim impact statements by 2:00 p.m. on Thursday, June 23, 2022. If either party objects to any statement, the objection and statement being objected to must be filed with the Court by 2:00 p.m. on Friday, June 24, 2022. Any statements to which the parties do not object must be submitted to the Court by 5:00 p.m. on that same date. The Government is FURTHER ORDERED to confirm with the Court by noon tomorrow, June 22, 2022, that victims have been notified of the rights described in the CVRA, consistent with 18 U.S.C. § 3771(c)(1). (Signed by Judge Alison J. Nathan on 6/21/20221) (ap) (Entered: 06/21/2022)
06/22/2022	669	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated June 22, 2022 re: CVRA Notice Document filed by USA. (Comey, Maurene) (Entered: 06/22/2022)
06/22/2022	670	SENTENCING SUBMISSION by USA as to Ghislaine Maxwell. (Moe, Alison) (Entered: 06/22/2022)
06/24/2022	671	ORDER as to Ghislaine Maxwell: The Government is ORDERED to provide its position on the proposed victim impact statements and the Defendant's objections and redaction requests by 5:00 p.m. today, June 24, 2022. The Government's letter should be docketed with any proposed redactions. Defense counsel is ORDERED to docket its letter regarding proposed victim impact statements and accompanying exhibits with any proposed redactions by 5:00 p.m. today, June 24, 2022. (Signed by Judge Alison J. Nathan on 6/24/2022) (ap) (Entered: 06/24/2022)
06/24/2022	672	LETTER MOTION addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 06/24/2022 re: 668 Order,,,,,,, 671 Order,, 665 Order,,,,,, re: Challenge to standing under CVRA . Document filed by Ghislaine Maxwell. (Sternheim, Bobbi) (Entered: 06/24/2022)
06/24/2022	673	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated June 24, 2022 re: CVRA submissions Document filed by USA. (Rohrbach, Andrew) (Entered: 06/24/2022)
06/24/2022	674	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Lara Pomerantz, Alison Moe, and Andrew Rohrbach dated June 24, 2022 re: Victim Impact Statements Document filed by USA. (Comey, Maurene) (Entered: 06/24/2022)
06/24/2022	682	ORDER as to Ghislaine Maxwell. The Crime Victims' Rights Act (CVRA) "guarantees to the victims of federal crimes an array of substantive and participatory rights, including the rights to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding, to confer with the attorney for the Government in the case, and to receive full and timely restitution as provided in law." United States v. Murillo-Bejerano (In re Rendon Galvis), 564 F.3d 170, 174 (2d Cir. 2009) (per curiam) (cleaned up). "In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded th[ose] rights." 18 U.S.C. § 3771(b)(1). In accordance with the procedure required by this Court's prior order, Dkt. No. 671, the Government has provided statements from seven individuals asserting they are crime victims under the CVRA. As explained below, the Court will permit all seven individuals to provide statements and the Defendant's request for redactions is denied....[*** See this Order ***]... In sum, all seven written statements received by the Court are deemed part of the record. The Court will consider them only for what they permissibly may be considered. The Government shall promptly docket the written statements without redactions. Annie Farmer, Kate, and Virginia Giuffre may

		present an in-person statement at sentencing if they wish to do so. The Government shall provide copies of this Order to counsel for the seven individuals who submitted statements by no later than today, June 24, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/24/22, United States Circuit Judge, Sitting by Designation)(bw) (Entered: 06/27/2022)
06/25/2022	675	NOTICE of Motion to be Heard at Sentencing as to Ghislaine Maxwell re: 668 Order,,,,,,,. (Attachments: # 1 Affidavit Declaration of RYL ISO Motion, # 2 Exhibit Victim Impact Statement of Sarah Ransome, # 3 Exhibit Victim Impact Statement of Elizabeth Stein)(Marsh, James) (Entered: 06/25/2022)
06/25/2022	676	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 06/25/2022 re: Opposition to Dkt 675 (Sternheim, Bobbi) (Entered: 06/25/2022)
06/25/2022	677	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Bobbi C Sternheim dated 06/25/2022 re: Notice of Possible Request for Adjournment of Sentencing (Sternheim, Bobbi) (Entered: 06/25/2022)
06/25/2022	683	ORDER as to Ghislaine Maxwell. The parties are ORDERED to submit their positions on Ms. Ransome and Ms. Stein's motion, Dkt. No. 675, which the Court received for the first time today, by 10:00 a.m. tomorrow, June 26, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/25/2022, United States Circuit Judge, Sitting by Designation)(bw) (Entered: 06/27/2022)
06/25/2022	685	ORDER as to Ghislaine Maxwell. Immediately upon receipt of the Defendant's letter, Dkt. No. 677, the Court directly contacted the Warden for MDC. He informed the Court that after meeting with defense counsel today, the Defendant was permitted to retain legal documents and a writing implement, to which she has had continuous access. Further, the Warden represented to the Court that first thing tomorrow morning (Sunday, June 26) he will confirm that the Defendant has access to requested legal materials to prepare for sentencing. The Government is ORDERED to confer with the Warden for MDC or MDC Legal Counsel as follow-up to the Court's conversation and to provide an update to the Court by 2:00 p.m. tomorrow, June 26, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/25/2022, United States Circuit Judge, Sitting by Designation)(bw) (Entered: 06/27/2022)
06/26/2022	678	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan re: CVRA. Document filed by USA. (Moe, Alison) (Entered: 06/26/2022)
06/26/2022	679	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Lara Pomerantz, Alison Moe, and Andrew Rohrbach dated June 26, 2022 re: Update from MDC Document filed by USA. (Comey, Maurene) (Entered: 06/26/2022)
06/26/2022	680	Sentencing Letter by Ghislaine Maxwell addressed to Honorable Alison J. Nathan from Bobbi C Sternheim dated 06/26/2022 re: Supplemental Exhibit to Dkt. 663. (Sternheim, Bobbi) (Entered: 06/26/2022)
06/26/2022	681	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated June 26, 2022 re: Kate Motion Document filed by USA. (Attachments: # 1 Exhibit Kate Motion)(Pomerantz, Lara) (Entered: 06/26/2022)
06/26/2022	684	ORDER as to Ghislaine Maxwell. The Defendant's letter in response to the Court's order regarding the CVRA references a motion by Kate's attorney that accompanied her impact statement. Dkt. No. 672 at 2 n.1. The Court is not in receipt of this motion. The Government is ORDERED to docket the motion referenced by the Defendant as soon as

		possible but no later than midnight tonight, June 26, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/26/2022, United States Circuit Judge, Sitting by Designation)(bw) (Entered: 06/27/2022)
06/27/2022	686	ORDER as to Ghislaine Maxwell. The Court has now received and docketed the full set of submissions related to victim impact statements that were filed in accordance with this Court's prior order. Dkt. No. 668. The Court received statements from Annie Farmer, Kate, Virginia Giuffre, Maria Farmer, Sarah Ransome, Teresa Helm, Juliette Bryant, and Elizabeth Stein. As indicated in its prior order, the Court will exercise its discretion to permit all of these individuals to be heard in writing. Dkt. No. 682. The Court also denied the Defendants redaction requests. Id. All unredacted statements are now part of the record. Dkt. Nos. 674, 675-1. Also as previously indicated in its order, the Court will permit Annie Farmer, Kate, and Virginia Giuffre to make an oral statement at sentencing if they wish to do so. Dkt. No. 682. Further, having now reviewed the full set of requests, and having heard from the Government that it does not object, Dkt. No. 678, the Court deems it feasible to exercise its discretion to permit the remaining individuals who seek to themselves make an oral statement at sentencing to do so. They are: Teresa Helm, Sarah Ransome, and Elizabeth Stein. In order to feasibly accomplish this in light of the anticipated length of the sentencing proceeding, while ensuring fairness and avoiding delay of sentencing, each individual speaking orally may read a shortened version of their previously submitted written statement. The Court deems counsel for the individuals to be responsible for ensuring that anticipated statements conform to this requirement. The Government shall promptly provide copies of this order to counsel for the eight individuals who submitted statements. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/27/2022, United States Circuit Judge, sitting by designation)(bw) (Entered: 06/27/2022)
06/27/2022	687	ENDORSED LETTER as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Sigrid S. McCawley dated June 27, 2022 re: I am in receipt of the Court's Order, Dkt. No. 686. As explained in our submission, due to a medical issue, Ms. Giuffre is not able to be present physically in the courtroom, but has asked that I be able to read her statement at the hearing. I seek clarification of Your Honor's Order that I will be allowed to read a portion of Ms. Guiffre's statement at the hearing. ENDORSEMENT: The Court anticipates permitting counsel for CVRA victim Virginia Giuffre to read a shortened version of Ms. Giuffre's previously submitted written statement. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/27/2022, U.S. Circuit Judge, Sitting by designation)(bw) (Entered: 06/28/2022)
06/28/2022		Minute Entry for proceedings held before Judge Alison J. Nathan: Sentencing held on 6/28/2022 for Ghislaine Maxwell (1) Count 1ss,3ss,4ss,5ss,6ss. Defendant Ghislaine Maxwell present with attorney Bobbi Sternheim and Christian Everdell. AUSA Lara Pomerantz, Maurene Comey, Alison Moe and Andrew Rohrbach for the government. Court Reporters Alena Lynch and Kristen Carannante. See transcript. (jw) Modified on 6/29/2022 (jw). (Entered: 06/29/2022)
06/29/2022	688	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 583 LETTER filed by Ghislaine Maxwell addressed to Judge Alison J. Nathan from David E. McCraw dated 1/24/2022 re: Letter by the NY Times Company. ENDORSEMENT: The motion to unseal the questionnaires of the twelve seated jurors is GRANTED. The motion to unseal the Defendant's motion for a new trial is moot as the Defendant's motion for a new trial is docketed at Dkt. No. 613. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/29/2022)(bw) (Entered: 06/29/2022)
06/29/2022	689	ORDER as to Ghislaine Maxwell. As a post-trial house-keeping matter, the Court has determined that a few miscellaneous court orders failed to be docketed during trial: - November 19, 2021 Memorandum Opinion & Order re Witness-3 (Kate); - November 22,

		2021 Memorandum Opinion & Order re Expert Witness Gershman; - November 22, 2021 Memorandum Opinion & Order re Expert Witness Hall; - November 30, 2021 Scheduling Order re Pseudonym Conferral; - December 15, 2021 Order re Response Schedule. The Court is now docketing those items. In order to ensure a complete docket, the parties are ORDERED to confer and determine whether any letters or briefing submitted to the Court without a redaction or sealing request remain to be docketed. The Court has determined, for example, that the parties failed to file on the docket their December 15 letter briefing and December 16 joint letter regarding witness prior inconsistent statements. Any outstanding items, including any proposed redactions, must be filed on ECF by July 12, 2022. SO ORDERED. (Signed by Judge Alison J. Nathan on 6/29/2022, United States Circuit Judge, Sitting by Designation)(bw) (Entered: 06/29/2022)
06/29/2022	695	SEALED DOCUMENT placed in vault. (jus) (Entered: 06/29/2022)
06/29/2022	696	JUDGMENT In A Criminal Case (S2 20-Cr-330). Date of Imposition of Judgment: 6/29/2022. Defendant Ghislaine Maxwell (1) was found guilty on Count(s) 1ss, 3ss, 4ss, 5ss, 6ss (judgment not entered on 1 & 5 as multiplicitous, Dkt. No. 657), after a plea of not guilty. The defendant has been found not guilty on Count(s) 2ss. Count(s) 7ss-8ss, and underlying indictments are dismissed on the motion of the United States. IMPRISONMENT: The Defendant is sentenced to a term of 240 Months. Count 3 a sentence of 60 Months. Count 4 a sentence of 120 Months. Count 6 a sentence of 240 Months. All Counts to run concurrently. - Defendant was notified of her right to Appeal. - The court makes the following recommendations to the Bureau of Prisons: Defendant to be considered for designation to FCI Danbury. Defendant to be considered for enrollment in FIT program. SUPERVISED RELEASE: 3 Years on Counts 3 and 4. 5 Years on Count 6 to run concurrently. Standard Conditions of Supervision (See page 5 of Judgment). Special Conditions of Supervision (See page 6 of Judgment). ASSESSMENT: $300.00, due immediately. FINE: $750,000.00. Schedule of Payments (See page 8 of Judgment). (Signed by Judge Alison J. Nathan on 6/29/2022)(bw) (Entered: 06/29/2022)
06/29/2022		DISMISSAL OF COUNTS on Government Motion as to Ghislaine Maxwell (1) Count 1s,1,2s,2,3s,3,4s,4,5s-6s,5-6,7ss-8ss. (bw) (Entered: 06/29/2022)
07/07/2022	697	NOTICE OF APPEAL by Ghislaine Maxwell from 696 Judgment. Filing fee $ 505.00, receipt number 2280. (nd) (Entered: 07/07/2022)
07/07/2022		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Ghislaine Maxwell to US Court of Appeals re: 697 Notice of Appeal - Final Judgment. (nd) (Entered: 07/07/2022)
07/07/2022		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to Ghislaine Maxwell re: 697 Notice of Appeal were transmitted to the U.S. Court of Appeals. (nd) (Entered: 07/07/2022)
07/08/2022		USCA Case Number 22-1426 from the U.S. Court of Appeals, 2nd Circ. as to Ghislaine Maxwell, assigned to 697 Notice of Appeal filed by Ghislaine Maxwell. (nd) (Entered: 07/08/2022)
07/12/2022	698	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated July 12, 2022 re: Redact filings . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 07/12/2022)
07/12/2022	699	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Laura A. Menninger dated March 9, 2021 re: Redactions in Government Response (Menninger, Laura) (Entered: 07/12/2022)

07/12/2022	700	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 1, 2021 re: GX 52 and GX 606 Document filed by USA. (Rohrbach, Andrew) (Entered: 07/12/2022)
07/12/2022	701	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 7, 2021 re: Testimony of Stephen Flatley Document filed by USA. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B)(Rohrbach, Andrew) (Entered: 07/12/2022)
07/12/2022	702	LETTER MOTION addressed to Judge Alison J. Nathan from Laura A. Menninger dated December 17, 2021 re: arrest warrant for Kelly Bovino . Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1-Subpoena, # 2 Exhibit 2-Return of Service, # 3 Exhibit 3-Menninger Affidavit, # 4 Text of Proposed Order Proposed Order)(Menninger, Laura) (Entered: 07/12/2022)
07/12/2022	703	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 12, 2021 re: Defense Rule 16 Document filed by USA. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B)(Rohrbach, Andrew) (Entered: 07/12/2022)
07/12/2022	704	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 14, 2021 re: Defense pseudonym motion Document filed by USA. (Rohrbach, Andrew) (Entered: 07/12/2022)
07/12/2022	705	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated May 12, 2021 re: Response to subpoena (Pagliuca, Jeffrey) (Entered: 07/12/2022)
07/12/2022	706	LETTER MOTION addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 15, 2021 re: Preclude defense witnesses . Document filed by USA as to Ghislaine Maxwell. (Rohrbach, Andrew) (Entered: 07/12/2022)
07/12/2022	707	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated October 14, 2021 re: Deadline for Filing Motion under FRE 412 (Pagliuca, Jeffrey) (Entered: 07/12/2022)
07/12/2022	708	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 15, 2021 re: Prior Inconsistent Statements Document filed by USA. (Rohrbach, Andrew) (Entered: 07/12/2022)
07/12/2022	709	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated November 15, 2021 re: Response to Government's Letter of November 12, 2021 (Pagliuca, Jeffrey) (Entered: 07/12/2022)
07/12/2022	710	JOINT LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated November 19, 2021 re: Video Monitors (Everdell, Christian) (Entered: 07/12/2022)
07/12/2022	711	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 16, 2021 re: Prior inconsistent statements Document filed by USA. (Rohrbach, Andrew) (Entered: 07/12/2022)

07/12/2022	713	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated December 17, 2021 re: Opposition to motion to compel Document filed by USA. (Rohrbach, Andrew) (Entered: 07/12/2022)
07/12/2022	714	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 21, 2021 re: Proposed limiting instruction Document filed by USA. (Rohrbach, Andrew) (Entered: 07/12/2022)
07/12/2022	715	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 6, 2021 re: Response to Government's Expert Disclosure of Stephen Flatley (Pagliuca, Jeffrey) (Entered: 07/12/2022)
07/12/2022	716	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated November 22, 2021 re: Proposed Limiting Instructions (Everdell, Christian) (Entered: 07/12/2022)
07/12/2022	717	LETTER MOTION addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 12, 2021 re: Defense Witness Anonymity . Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 07/12/2022)
07/12/2022	718	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated December 5, 2021 re: Witness-3 Limiting Instruction (Everdell, Christian) (Entered: 07/12/2022)
07/12/2022	719	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 13, 2021 re: Response to Motion to Preclude R16 Exhibit (Attachments: # 1 Exhibit 1-Under Seal)(Pagliuca, Jeffrey) (Entered: 07/12/2022)
07/12/2022	720	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated December 14, 2021 re: Proposed Witness Order (Everdell, Christian) (Entered: 07/12/2022)
07/12/2022	721	LETTER MOTION addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 14, 2021 re: Request re FRE 608 and 403 . Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit 1-Under Seal, # 2 Exhibit 2-Under Seal)(Pagliuca, Jeffrey) (Entered: 07/12/2022)
07/12/2022	722	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 15, 2021 re: Inconsistent Statements (Pagliuca, Jeffrey) (Entered: 07/12/2022)
07/12/2022	723	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 16, 2021 re: Response to Motion to Preclude Testimony (Pagliuca, Jeffrey) (Entered: 07/12/2022)
07/12/2022	724	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated December 16, 2021 re: Reply re Inconsistent Statements (Pagliuca, Jeffrey) (Entered: 07/12/2022)
07/12/2022	725	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated November 28, 2021 re: Under Seal (Pagliuca, Jeffrey) (Entered: 07/12/2022)
07/12/2022		*****DELETED DOCUMENT. Deleted document number 712 SEALED DOCUMENT, as to Ghislaine Maxwell. The document was incorrectly filed in this case. (ap)** (Entered: 07/13/2022)

07/13/2022	726	ORDER as to Ghislaine Maxwell: The Court is in receipt of the parties' proposed redactions to motions that were not previously docketed. See Dkt. No. 698. With one exception, the Court concludes that the proposed redactions are narrowly tailored to protect information subject to Fed. R. Evid. 412 and the privacy interests of witnesses, including individuals subject to the Court's pseudonym order, and individuals who were anticipated to be called as witnesses at trial, but were not ultimately called. See Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). The Court will file unredacted copies of all items under seal. The Court concludes, however, that the proposed redactions to Dkt. No. 725 are not narrowly tailored. The private information of victim-witnesses who are discussed in the letter may be protected by narrow redactions. However, there is no basis to redact the letter's general request to identify the proper scope of cross-examination. Accordingly, the Defendant is ORDERED to confer with the Government and docket proposed revised redactions on or before 12:00 p.m. on Friday, July 15, 2022. The letter at Dkt. No. 725 was filed under temporary seal at Dkt. No. 712. Because the Court concludes that sealing in not justified, the Clerk of Court is respectfully directed to strike the entry at Dkt. No. 712 from the docket. The Court's Chambers also received an email from Defense counsel inquiring whether to docket three joint letters regarding jury strikes that were previously filed with the Court, but not docketed. Because docketing the letters would not undermine the important interest of protecting juror anonymity and privacy, the parties are ORDERED to docket the three letters on or before 12:00 p.m. on Friday, July 15, 2022. Finally, to ensure a complete record, the Court has identified four additional documents that have not previously been docketed nor subject of a sealing request: November 19, 2021 Administrator Feldman's Motion to Quash Defendant's Rule 17(c)(3) subpoena, with exhibits November 22, 2021 Defendant's Response to Motions to Quash Defendant's Rule 17(c)(3) subpoena December 6, 2021 Jane's Opposition to Defendant's Motion to Call Counsel to Testify December 15, 2021 Jane's Opposition to Defendant's December 13, 2021 Motion to Call Counsel to Testify The parties are ORDERED to confer with each other and counsel for the relevant movants and indicate on or before 12:00 p.m. on Friday, July 15, 2022, whether there are any requests to seal or redact the outstanding documents. Any documents not subject to a sealing request must be docketed on ECF by that same date. Any proposed redactions must be justified by reference to the three-part test articulated by the Second Circuit in Lugosch v. Pyramid Co. of Onondaga. This resolves Dkt. No. 698. (Signed by Judge Alison J. Nathan on 7/13/2022) (ap) Modified on 7/14/2022 (ap). (Entered: 07/13/2022)
07/14/2022	727	JOINT LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated 11/14/21 re: Proposed Juror Strikes (Everdell, Christian) (Entered: 07/14/2022)
07/14/2022	728	SEALED DOCUMENT placed in vault. (jus) (Entered: 07/14/2022)
07/14/2022	729	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 7, 2021 re: Jury questionnaires Document filed by USA. (Rohrbach, Andrew) (Entered: 07/14/2022)
07/14/2022	730	JOINT LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated November 13, 2021 re: Juror questionnaires Document filed by USA. (Rohrbach, Andrew) (Entered: 07/14/2022)
07/14/2022	731	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, Lara Pomerantz, and Andrew Rohrbach dated July 14, 2022 re: Filings from Jane Document filed by USA. (Attachments: # 1 Exhibit

		December 6, 2021 letter, # 2 Exhibit December 15, 2021 letter)(Rohrbach, Andrew) (Entered: 07/14/2022)
07/14/2022	732	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated November 22, 2021 re: Response to Motions to Quash (Pagliuca, Jeffrey) (Entered: 07/14/2022)
07/14/2022	733	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated November 28, 2021 re: Response to Government's Letter of November 27, 2021 (Pagliuca, Jeffrey) (Entered: 07/14/2022)
07/15/2022	734	LETTER by Jordana H. Feldman as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Patrick J. Smith dated 11/19/2021 re: Motion to Quash Defendants Rule 17(c)(3) Subpoena Document filed by Jordana H. Feldman. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H)(Smith, Patrick) (Entered: 07/15/2022)
07/15/2022	735	ORDER as to Ghislaine Maxwell. The Court is in receipt of the Government's revised proposed redactions to Dkt. No. 725 and proposed redactions to Defendant's November 22, 2021 Response to Motions to Quash. See Dkt. Nos. 732, 733. The Court concludes that the proposed redactions are narrowly tailored to protect the identities and privacy interests of victim-witnesses who were subject to the Courts anonymity order. See Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). The Court will file unredacted copies under seal (Signed by Judge Alison J. Nathan on 7/15/2022)(jw) (Entered: 07/15/2022)
07/15/2022	736	SEALED DOCUMENT placed in vault. (nmo) (Entered: 07/15/2022)
07/22/2022	737	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Sentence held on 6/28/2022 before Judge Alison J. Nathan. Court Reporter/Transcriber: Alena Lynch, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/12/2022. Redacted Transcript Deadline set for 8/22/2022. Release of Transcript Restriction set for 10/20/2022. (McGuirk, Kelly) (Entered: 07/22/2022)
07/22/2022	738	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Sentence proceeding held on 6/28/2022 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 07/22/2022)
08/10/2022	739	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Hearing held on 11/23/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Paula Speer, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/31/2022. Redacted Transcript Deadline set for 9/12/2022. Release of Transcript Restriction set for 11/9/2022. (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	740	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Hearing proceeding held on 11/29/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely

		electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	741	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Trial held on 11/29/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Paula Speer, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/31/2022. Redacted Transcript Deadline set for 9/12/2022. Release of Transcript Restriction set for 11/9/2022. (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	742	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Trial proceeding held on 11/29/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	743	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Trial held on 11/30/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Paula Speer, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/31/2022. Redacted Transcript Deadline set for 9/12/2022. Release of Transcript Restriction set for 11/9/2022. (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	744	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Trial proceeding held on 11/30/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	745	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Trial held on 12/1/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Paula Speer, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/31/2022. Redacted Transcript Deadline set for 9/12/2022. Release of Transcript Restriction set for 11/9/2022. (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	746	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Trial proceeding held on 12/1/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	747	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Trial held on 12/2/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Paula Speer, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/31/2022. Redacted

		Transcript Deadline set for 9/12/2022. Release of Transcript Restriction set for 11/9/2022. (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	748	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Trial proceeding held on 12/2/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	749	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Trial held on 12/3/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Paula Speer, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/31/2022. Redacted Transcript Deadline set for 9/12/2022. Release of Transcript Restriction set for 11/9/2022. (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	750	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Trial proceeding held on 12/3/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	751	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Trial held on 12/6/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Paula Speer, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/31/2022. Redacted Transcript Deadline set for 9/12/2022. Release of Transcript Restriction set for 11/9/2022. (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	752	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Trial proceeding held on 12/6/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	753	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Trial held on 12/7/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Paula Speer, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/31/2022. Redacted Transcript Deadline set for 9/12/2022. Release of Transcript Restriction set for 11/9/2022. (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	754	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Trial proceeding held on 12/7/22 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely

		electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	755	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Trial held on 12/8/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Paula Speer, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/31/2022. Redacted Transcript Deadline set for 9/12/2022. Release of Transcript Restriction set for 11/9/2022. (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	756	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Trial proceeding held on 12/8/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	757	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Trial held on 12/9/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Paula Speer, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/31/2022. Redacted Transcript Deadline set for 9/12/2022. Release of Transcript Restriction set for 11/9/2022. (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	758	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Trial proceeding held on 12/9/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	759	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Trial held on 12/10/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Paula Speer, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/31/2022. Redacted Transcript Deadline set for 9/12/2022. Release of Transcript Restriction set for 11/9/2022. (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	760	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Trial proceeding held on 12/10/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	761	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Trial held on 12/16/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Paula Speer, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/31/2022. Redacted

		Transcript Deadline set for 9/12/2022. Release of Transcript Restriction set for 11/9/2022. (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	762	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Trial proceeding held on 12/16/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	763	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Trial held on 12/17/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Paula Speer, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/31/2022. Redacted Transcript Deadline set for 9/12/2022. Release of Transcript Restriction set for 11/9/2022. (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	764	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ghislaine Maxwell. Notice is hereby given that an official transcript of a Trial proceeding held on 12/17/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 08/10/2022)
08/10/2022	765	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Trial held on 12/18/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Paula Speer, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/31/2022. Redacted Transcript Deadline set for 9/12/2022. Release of Transcript Restriction set for 11/9/2022. (Moya, Goretti) (Entered: 08/10/2022)
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08/10/2022	773	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Trial held on 12/27/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Paula Speer, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/31/2022. Redacted Transcript Deadline set for 9/12/2022. Release of Transcript Restriction set for 11/9/2022. (Moya, Goretti) (Entered: 08/10/2022)
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08/10/2022	775	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Trial held on 12/28/21 before Judge Alison J. Nathan. Court Reporter/Transcriber: Paula Speer, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/31/2022. Redacted

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08/22/2022	779	TRANSCRIPT of Proceedings as to Ghislaine Maxwell re: Sentence held on 6/28/2022 before Judge Alison J. Nathan. Court Reporter/Transcriber: Alena Lynch, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 9/12/2022. Redacted Transcript Deadline set for 9/22/2022. Release of Transcript Restriction set for 11/21/2022. (McGuirk, Kelly) (Entered: 08/22/2022)
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ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	SUPERSEDING INDICTMENT
- v. -	:	S2 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 2004, 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. Additionally, between in or about 1994 and in or about 2004, MAXWELL was paid by Epstein to manage his various properties.

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. Between approximately in or about 1994 and in or about 2004, 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 multi-story private residence on the Upper East Side of Manhattan, New York owned by Epstein (the "New York Residence").

b. An estate in Palm Beach, Florida owned by Epstein (the "Palm Beach Residence").

c. A ranch in Santa Fe, New Mexico owned by Epstein (the "New Mexico Residence").

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

6. Additionally, beginning at least in or about 2001, GHISLAINE MAXWELL, the defendant, and Jeffrey Epstein enticed and recruited, and caused to be enticed and recruited, minor girls to visit Epstein's Palm Beach Residence to engage in sex acts with Epstein, after which Epstein, MAXWELL, or another employee of Epstein's would give the victims hundreds of dollars in cash. Epstein and MAXWELL encouraged one or more of those victims to travel with Epstein with the intention that the victim engage in sex acts with Epstein. Moreover, and in order to maintain and increase his supply of victims, Epstein, MAXWELL, and other Epstein employees also paid certain victims to recruit additional girls to be similarly abused by Epstein. In this way, Epstein and MAXWELL created a network of underage victims for him to sexually exploit.

7. Between at least in or about 2001 and in or about 2004, GHISLAINE MAXWELL, the defendant, and Epstein encouraged and enticed one or more minor victims to engage in paid sex acts with Epstein through a variety of means and methods, including but not limited to the following:

a. Epstein's employees, including, at times, MAXWELL, would call a victim to schedule an appointment for the victim to massage Epstein at his Palm Beach Residence. MAXWELL placed at least some of those calls while with Epstein in

Manhattan, New York. Epstein would often travel from New York to Florida, where he would then have the scheduled appointments.

b. When a victim initially arrived at the Palm Beach Residence, she would be greeted by an employee of Epstein's, including, at times, MAXWELL. The victim would then be escorted to a room with a massage table. Once inside, the victim would provide a nude or semi-nude massage for EPSTEIN, who would himself typically be naked. During these encounters, EPSTEIN would escalate the nature and scope of the physical contact to include sex acts such as groping and direct and indirect contact with the victim's genitals. EPSTEIN would also typically masturbate during these encounters, ask the victim to touch him while he masturbated, and touch the victim's genitals with his hands or with sex toys.

c. In connection with each sexual encounter, Epstein or one of his employees or associates, including, at times, MAXWELL, paid the victim in cash. Each victim was typically paid hundreds of dollars for each encounter.

8. 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

9. Among the victims induced or enticed by GHISLAINE MAXWELL, the defendant, were minor victims identified herein as Minor Victim-1, Minor Victim-2, Minor Victim-3, and Minor Victim-4. 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.

d. Minor Victim-4 was recruited to provide Epstein with sexualized massages for which Minor Victim-4 was paid by Epstein and/or one of his associates, including, at

times, MAXWELL, at the Palm Beach Residence beginning in or around 2001. MAXWELL met Minor Victim-4 at Epstein's Palm Beach Residence when Minor Victim-4 was approximately 14 years old. MAXWELL subsequently interacted with Minor Victim-4 on multiple occasions at Epstein's Palm Beach Residence, knowing that Minor Victim-4 was under the age of 18 at the time. During these interactions, which took place between approximately 2001 and 2004, MAXWELL groomed Minor Victim-4 to engage in sexual acts with Epstein through multiple means. For example, MAXWELL asked Minor Victim-4 about her family and other aspects of her life. MAXWELL also sought to normalize inappropriate and abusive conduct by, among other things, discussing sexual topics in front of Minor Victim-4 and being present when Minor Victim-4 was nude in the massage room of the Palm Beach Residence. On multiple occasions between approximately 2001 and 2004, Minor Victim-4 provided nude massages to Epstein at the Palm Beach Residence, during which Epstein engaged in multiple sex acts with Minor Victim-4. Epstein's employees, including at times MAXWELL, called Minor Victim-4, including from New York, to schedule appointments for Minor Victim-4 to massage Epstein. After each massage, Epstein or one of his employees, including at times MAXWELL, paid Minor Victim-4 hundreds of dollars in cash. At some point during this period, both Epstein and MAXWELL invited Minor Victim-4 to travel with Epstein and

offered to assist Minor Victim-4 with obtaining a passport for purposes of such travel, but Minor Victim-4 declined the invitation. On multiple occasions between approximately 2001 and 2004, Epstein's employees, including at times MAXWELL, sent Minor Victim-4 gifts, including lingerie, from an address in Manhattan, New York to Minor Victim-4's residence in Florida. Epstein and MAXWELL each also encouraged Minor Victim-4 to recruit other young females to provide sexualized massages to Epstein. In response, Minor Victim-4 brought multiple females, including girls under the age of 18, to provide sexualized massages for Epstein at the Palm Beach Residence. On such occasions, both Minor Victim-4 and the girl she brought were paid hundreds of dollars in cash.

MAXWELL'S EFFORTS TO CONCEAL HER CONDUCT

10. 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

11. From at least in or about 1994, up to and including in or about 2004, 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.

12. 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

13. 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.

e. Between in or about 2001 and in or about 2002, when Minor Victim-4 was under the age of 18, MAXWELL and Epstein invited Minor Victim-4 to travel from Florida to a place outside of Florida with Epstein.

(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:

14. The allegations contained in paragraphs 1 through 9 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, 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:

16. The allegations contained in paragraphs 1 through 9 of this Indictment are repeated and realleged as if fully set forth within.

17. From at least in or about 1994, up to and including in or about 2004, 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).

18. 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 years 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

19. 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.

e. Between in or about 2001 and in or about 2002, when Minor Victim-4 was under the age of 18, MAXWELL and Epstein invited Minor Victim-4 to travel from Florida to a place outside of Florida with Epstein.

(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:

20. The allegations contained in paragraphs 1 through 9 of this Indictment are repeated and realleged as if fully set forth within.

21. 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 years 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
(Sex Trafficking Conspiracy)

The Grand Jury further charges:

22. The allegations contained in paragraphs 1 through 9 of this Indictment are repeated and realleged as if fully set forth within.

23. From at least in or about 2001, up to and including in or about 2004, 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, sex trafficking of minors, in violation of Title 18, United States Code, Section 1591(a) and (b).

24. It was a part and object of the conspiracy that GHISLAINE MAXWELL, the defendant, Jeffrey Epstein, and others known and unknown, would and did, in and affecting interstate and foreign commerce, recruit, entice, harbor, transport, provide, and obtain, by any means a person, and to benefit,

financially and by receiving anything of value, from participation in a venture which has engaged in any such act, knowing that the person had not attained the age of 18 years and would be caused to engage in a commercial sex act, in violation of Title 18, United States Code, Sections 1591(a) and (b)(2).

Overt Acts

25. 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 2001 and in or about 2004, Epstein and MAXWELL recruited Minor Victim-4 to engage in sex acts with EPSTEIN at the Palm Beach Residence, after which Epstein and, at times, MAXWELL provided Minor Victim-4 with hundreds of dollars in cash for each encounter. Minor Victim-4 truthfully told both Epstein and MAXWELL her age.

b. Between in or about 2001 and in or about 2004, Epstein and MAXWELL both encouraged and enticed Minor Victim-4 to recruit other girls to engage in paid sex acts with Epstein, which she did.

c. Between in or about 2001 and in or about 2004, Epstein's employees, including at times MAXWELL, sent Minor Victim-4 gifts, including lingerie, from an address in the Southern District of New York to Minor Victim-4's residence in

Florida. For example, on one occasion in or about October of 2002, Epstein caused a package to be sent by Federal Express from an address in Manhattan to Minor Victim-4 in Florida.

d. On multiple occasions between in or about 2001 and in or about 2004, Epstein, MAXWELL, or one of Epstein's other employees called Minor Victim-4 to schedule an appointment for Minor Victim-4 to massage Epstein. For example, in or about April of 2004 and May of 2004 another employee of Epstein's called Minor Victim-4 to schedule such appointments.

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

COUNT SIX
(Sex Trafficking of a Minor)

The Grand Jury further charges:

26. The allegations contained in paragraphs 1 through 9 of this Indictment are repeated and realleged as if fully set forth within.

27. From at least in or about 2001, up to and including in or about 2004, in the Southern District of New York and elsewhere, GHISLAINE MAXWELL, the defendant, willfully and knowingly, in and affecting interstate and foreign commerce, did recruit, entice, harbor, transport, provide, and obtain by any means a person, knowing that the person had not attained the age of 18 years and would be caused to engage in a commercial sex act, and did aid and abet the same, to wit, MAXWELL recruited, enticed, harbored, transported, provided, and obtained

individuals who were less than 18 years old, including but not limited to Minor Victim-4, as described above, and who were then caused to engage in at least one commercial sex act with Jeffrey Epstein, and aided and abetted the same.

(Title 18, United States Code, Section 1591(a), (b)(2), and 2.)

COUNT SEVEN
(Perjury)

The Grand Jury further charges:

28. The allegations contained in paragraphs 1 through 9 of this Indictment are repeated and realleged as if fully set forth within.

29. 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 EIGHT
(Perjury)

The Grand Jury further charges:

30. The allegations contained in paragraphs 1 through 9 of this Indictment are repeated and realleged as if fully set forth within.

31. 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.)

FORFEITURE ALLEGATIONS

32. As a result of committing the offense alleged in Count Six of this Indictment, GHISLAINE MAXWELL, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 1594(c)(1), any property, real and personal, that was used or intended to be used to commit or to

facilitate the commission of the offense alleged in Count Six, and any property, real or personal, constituting or derived from any proceeds obtained, directly or indirectly, as a result of the offense alleged in Count Six, or any property traceable to such property.

Substitute Asset Provision

33. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third person;

(c) has been placed beyond the jurisdiction of the Court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) and 28 U.S.C. § 2461(c), to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property.

(Title 18, United States Code, Section 1594; Title 21, United States Code, Section 853; and Title 28, United States Code, Section 2461.)

FOREPERSON

AUDREY STRAUSS
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

S2 20 Cr. 330 (AJN)

(18 U.S.C. §§ 371, 1591, 1623, 2422, 2423(a), and 2)

AUDREY STRAUSS
United States Attorney

Foreperson

A-138

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/16/21

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America,

–v–

Ghislaine Maxwell,

Defendant.

20-cr-330 (AJN)

OPINION & ORDER

ALISON J. NATHAN, District Judge:

In June 2020, a grand jury returned a six-count indictment charging Ghislaine Maxwell with facilitating the late financier Jeffrey Epstein's sexual abuse of minor victims from around 1994 to 1997. The Government filed a first (S1) superseding indictment shortly thereafter, which contained only small, ministerial corrections. The S1 superseding indictment included two counts of enticement or transportation of minors to engage in illegal sex acts in violation of the Mann Act and two counts of conspiracy to commit those offenses. It also included two counts of perjury in connection with Maxwell's testimony in a civil deposition. Trial is set to begin on July 12, 2021.

Maxwell filed twelve pretrial motions seeking to dismiss portions of the S1 superseding indictment, suppress evidence, and compel discovery. After the parties fully briefed those motions, a grand jury returned a second (S2) superseding indictment adding a sex trafficking count and another related conspiracy count.

This Opinion resolves all of Maxwell's currently pending pretrial motions other than those seeking to suppress evidence, which the Court will resolve in due course. The motions, and this Opinion, deal exclusively with the S1 superseding indictment and do not resolve any issues

related to the newly added sex trafficking charges. For the reasons that follow, the Court denies Maxwell's motions to dismiss the S1 superseding indictment in whole or in part. It grants her motion to sever the perjury charges for a separate trial. It denies her motion to further expedite discovery.

The Court provides a brief summary of its conclusions here and its reasoning on the pages that follow:

- Maxwell moves to dismiss all counts based on a non-prosecution agreement between Jeffrey Epstein and the U.S. Attorney for the Southern District of Florida. The Court concludes that the agreement does not apply in this District or to the charged offenses.
- Maxwell moves to dismiss all counts as untimely. The Court concludes that the Government brought the charges within the statute of limitations and did not unfairly delay in bringing them.
- Maxwell moves to dismiss the Mann Act counts because they are too vague, or in the alternative to require the Government to describe the charges in greater detail. The Court concludes that the charges are specific enough.
- Maxwell moves to dismiss the perjury counts because, in her view, her testimony responded to ambiguous questioning and was not material. The Court concludes that these issues are best left for the jury.
- Maxwell moves to sever the perjury counts from the Mann Act counts so that they can proceed in a separate trial. The Court concludes that severance is appropriate and will try the perjury counts separately.
- Maxwell moves to strike language from the indictment that she believes is superfluous and to dismiss conspiracy counts she believes are redundant. The Court concludes that these motions are premature before trial.
- Maxwell moves to compel the Government to immediately disclose certain categories of evidence. The Court concludes that she is not entitled to do so, but the Court will order Maxwell and the Government to confer on a discovery schedule.
- Maxwell moves to dismiss all counts because a grand jury in White Plains, rather than Manhattan, returned the S1 superseding indictment. Because a jury in Manhattan returned the S2 superseding indictment, the motion appears moot.

I. Jeffrey Epstein's non-prosecution agreement does not bar this prosecution

In September 2007, under investigation by both federal and state authorities, Jeffrey Epstein entered into a non-prosecution agreement ("NPA") with the Office of the United States Attorney for the Southern District of Florida. Dkt. No. 142 at 1-2. Epstein agreed in the NPA to plead guilty in Florida state court to soliciting minors for prostitution and to serve eighteen months in a county jail. *Id.* In exchange, the U.S. Attorney's Office agreed not to charge him with federal crimes in the Southern District of Florida stemming from its investigation of his conduct between 2001 and 2007. *Id.* It also agreed not to bring criminal charges against any of his "potential co-conspirators." *Id.*

As a recent report from the Department of Justice's Office of Professional Responsibility observed, the NPA was unusual in many respects, including its breadth, leniency, and secrecy. OPR Report, Gov. Ex. 3, Dkt. No. 204-3, at x, 80, 175, 179, 260–61. The U.S. Attorney's promise not to prosecute unidentified co-conspirators marks a stark departure from normal practice for federal plea agreements. This provision appears to have been added "with little discussion or consideration by the prosecutors." *Id.* at 169, 185. The report concluded that the U.S. Attorney's negotiation and approval of the NPA did not amount to professional misconduct, but nonetheless reflected "poor judgment." *Id.* at 169.

Only the NPA's effect, and not its wisdom, is presently before the Court. Maxwell contends that the NPA bars this prosecution, because she is charged as a co-conspirator of Jeffrey Epstein and the NPA's co-conspirator provision lacks any geographical or temporal limitations. The Court disagrees for two independent reasons. First, under controlling Second Circuit precedent, the NPA does not bind the U.S. Attorney for the Southern District of New York. Second, it does not cover the offenses charged in the S1 superseding indictment.

A. The non-prosecution agreement does not bind the U.S. Attorney for the Southern District of New York

United States Attorneys speak for the United States. When a U.S. Attorney makes a promise as part of a plea bargain, both contract principles and due process require the federal government to fulfill it. *See Santobello v. New York*, 404 U.S. 257, 262 (1971); *United States v. Ready*, 82 F.3d 551, 558 (2d Cir. 1996). The question here is not whether the U.S. Attorney for the Southern District of Florida had the power to bind the U.S. Attorney for the Southern District of New York. The question is whether the terms of the NPA did so. Applying Second Circuit precedent and principles of contract interpretation, the Court concludes that they did not.

In *United States v. Annabi*, the Second Circuit held: "A plea agreement binds only the office of the United States Attorney for the district in which the plea is entered unless it affirmatively appears that the agreement contemplates a broader restriction." 771 F.2d 670, 672 (2d Cir. 1985) (per curiam). This is something akin to a clear statement rule. Single-district plea agreements are the norm. Nationwide, unlimited agreements are the rare exception. Applying *Annabi*, panels of the Second Circuit have stated that courts cannot infer intent to depart from this ordinary practice from an agreement's use of phrases like "the government" or "the United States." *United States v. Salameh*, 152 F.3d 88, 120 (2d Cir. 1998) (per curiam); *United States v. Gonzalez*, 93 F. App'x 268, 270 (2d Cir. 2004). Those are common shorthand. A plea agreement need not painstakingly spell out "the Office of the United States Attorney for Such-and-Such District" in every instance to make clear that it applies only in the district where signed.

Maxwell asks this Court to draw the opposite conclusion. The provision of the NPA dealing with co-conspirators does not expressly state that it binds U.S. Attorneys in other districts. It does not expressly state that it applies in other districts. The relevant language, in

its entirety, reads as follows: "the United States also agrees that it will not institute any criminal charges against any potential co-conspirators of Epstein." Dkt. No. 142-1 at 5. Under *Annabi, Salameh, and Gonzalez*, a statement that "the United States" agrees not to prosecute implies no restriction on prosecutions in other districts.

Two provisions of the NPA refer specifically to prosecution in the Southern District of Florida. The first states that the U.S. Attorney for the Southern District of Florida will defer "prosecution in this District" if Epstein complies with the agreement. Dkt. No. 142-1 at 2. The second states that no prosecution "will be instituted in this District, and the charges against Epstein if any, will be dismissed" after he fulfills the agreement's conditions. Maxwell contends that the lack of similar language in the co-conspirator provision must mean that it lacks any geographical limitation. If anything, that language reflects that the NPA's scope was expressly limited to the Southern District of Florida. It is not plausible—let alone "affirmatively apparent", *Annabi*, 771 F.2d at 672,—that the parties intended to drastically expand the agreement's geographic scope in the single sentence on the prosecution of co-conspirators without clearly so saying.

Without an affirmative statement in the NPA's text, Maxwell turns to its negotiation history. Under Second Circuit precedent she may offer evidence that negotiations of the NPA between the defendant and the prosecutors included a promise to bind other districts. *See United States v. Russo*, 801 F.2d 624, 626 (2d Cir. 1986). She alleges that officials in the U.S. Attorney's Office for the Southern District of Florida sought and obtained approval for the NPA from the Office of the Deputy Attorney General and communicated with attorneys in other districts. Any involvement of attorneys outside the Southern District of Florida appears to have been minimal. Maxwell has already received access to an unusually large amount of information

about the NPA's negotiation history in the form of the OPR report and yet identifies no evidence that the Department of Justice made any promises not contained in the NPA. The OPR report reflects that the Office of the Deputy Attorney General reviewed the NPA, but only after it was signed when Epstein tried to get out of it. OPR Report at 103. Other documents show that attorneys in the Southern District of Florida reached out to other districts for investigatory assistance but not for help negotiating the NPA. Dkt. No. 204-2. Nor would direct approval of the NPA by the Office of the Deputy Attorney General change the meaning of its terms. No evidence suggests anyone promised Epstein that the NPA would bar the prosecution of his co-conspirators in other districts. Absent such a promise, it does not matter who did or did not approve it.

Second Circuit precedent creates a strong presumption that a plea agreement binds only the U.S. Attorney's office for the district where it was signed. Maxwell identifies nothing in the NPA's text or negotiation history to disturb this presumption. The Court thus concludes that the NPA does not bind the U.S. Attorney for the Southern District of New York.

B. The non-prosecution agreement does not cover the charged offenses

The NPA would provide Maxwell no defense to the charges in the S1 superseding indictment even against an office bound to follow it. The NPA bars prosecution, following Epstein's fulfillment of its conditions, only for three specific categories of offenses:

(1) "the offenses set out on pages 1 and 2" of the NPA; namely, "any offenses that may have been committed by Epstein against the United States from in or around 2001 through in or around September 2007" including five enumerated offenses;

(2) "any other offenses that have been the subject of the joint investigation by the Federal Bureau of Investigation and the United States Attorney's Office"; and

(3) "any offenses that arose from the Federal Grand Jury investigation."

Dkt. No. 142-1 at 2. The NPA makes clear that the covered charges are those relating to and deriving from a specific investigation of conduct that occurred between 2001 and 2007.

Maxwell contends that the NPA's co-conspirator provision lacks any limitation on the offenses covered. The Court disagrees with this improbable interpretation. The phrase "potential co-conspirator" means nothing without answering the question "co-conspirator in what?" The most natural reading of the co-conspirator provision is that it covers those who conspired with Epstein in the offenses covered by the NPA for their involvement in those offenses. Thus, it would cover any involvement of Maxwell in offenses committed by Epstein from 2001 to 2007, other offenses that were the subject of the FBI and U.S. Attorney's Office investigation, and any offenses that arose from the related grand jury investigation.

The Court has no trouble concluding that the perjury counts are not covered by the NPA. Those charges do not relate to conduct in which Maxwell conspired with Epstein and stem from depositions in 2016, more than eight years after Epstein signed the NPA. Maxwell now concedes as much, though her motion sought to dismiss the S1 superseding indictment in its entirety, perjury counts and all.

The Mann Act counts, too, fall comfortably outside the NPA's scope. The S1 superseding indictment charges conduct occurring exclusively between 1994 and 1997, some four years before the period covered by the Southern District of Florida investigation and the NPA. The NPA does not purport to immunize Epstein from liability for crimes committed before the period that was the subject of the FBI and U.S. Attorney's Office investigation. Maxwell's protection is no broader. The Court thus concludes that the NPA does not cover the offenses charged in the S1 superseding indictment.

C. Maxwell is not entitled to an evidentiary hearing

In the alternative to dismissing the indictment, Maxwell requests that the Court conduct an evidentiary hearing as to the parties' intent in the NPA. The Court finds no basis to do so.

The cases Maxwell cites where courts held hearings on the scope of a plea agreement mostly involved oral agreements where there was no written record of the full set of terms reached by the parties. All of them involved defendants with first-hand knowledge of negotiations who claimed prosecutors breached an oral promise. "An oral agreement greatly increases the potential for disputes such as . . . a failure to agree on the existence, let alone the terms, of the deal." *United States v. Aleman*, 286 F.3d 86, 90 (2d Cir. 2002). Thus, an evidentiary hearing may be necessary to determine the terms of an agreement never committed to writing. This is no such case. The NPA's terms are clear. Beyond the NPA itself, an extensive OPR report details its negotiation history. No record evidence suggests that prosecutors promised Epstein anything beyond what was spelled out in writing. The Court agrees with the Government that Maxwell's request for a hearing rests on mere conjecture.

For the same reason, the Court will not order the discovery on the NPA. In any case, it appears that the Government has already produced two of the documents Maxwell seeks in her motion—the OPR report and notes mentioned in a privilege log. Of course, the Government's disclosure obligations would require it to disclose to Maxwell any exculpatory evidence or evidence material to preparing the defense, including any evidence supporting a defense under the NPA. The Government shall confirm in writing within one week whether it views any evidence supporting Maxwell's interpretation of the NPA as material it is required to disclose, and, if so, whether it has disclosed any and all such evidence in its possession.

II. The indictment is timely

A. The indictment complies with the statute of limitations

Federal law imposes a five-year limitations period for most non-capital offenses. 18 U.S.C. § 3282(a). Recognizing the difficulty of promptly prosecuting crimes against children, Congress has provided a longer limitations period for "offense[s] involving the sexual or physical abuse, or kidnaping" of a minor. 18 U.S.C. § 3283. Until 2003, the operative version of § 3283 allowed prosecution of these offenses until the victim reached the age of twenty-five. Congress further extended the limitations period in the PROTECT Act of 2003, Pub. L. No. 108-21, 117 Stat. 650, to allow prosecution any time during the life of the victim.

The parties agree that the Mann Act charges are timely if subject to the PROTECT Act, but untimely under the general statute of limitations for non-capital offenses or the pre-2003 version of § 3283. Maxwell contends that the charged offenses do not qualify as offenses involving the sexual or physical abuse or kidnapping of a minor and are thus governed by the general statute of limitations. Alternatively, she contends that the pre-2003 version of § 3283 applies because the charged conduct occurred prior to 2003. The Court concludes that statute of limitations in the PROTECT Act applies and that the charges are timely.

1. The Mann Act charges are offenses involving the sexual abuse of minors

Maxwell does not dispute that the facts alleged in the S1 superseding indictment involve the sexual abuse of minors. The indictment charges that Epstein sexually abused each of the alleged minor victims and that Maxwell allegedly enticed them to travel or transported them for that purpose. Instead, Maxwell contends that charged offenses do not qualify as offenses involving the sexual abuse of minors because sexual abuse is not an essential ingredient of each statutory offense. *See Bridges v. United States*, 346 U.S. 209, 221 (1953). In Maxwell's view,

for example, it is possible to transport a minor with intent to engage in criminal sexual activity and not follow through with the planned sexual abuse, and so sexual abuse is not an essential ingredient of the offense. Maxwell makes the same argument for the enticement and related conspiracy charges.

This approach is analogous to the "categorical approach" employed by courts to evaluate prior convictions for immigration and sentencing purposes. *See Taylor v. United States*, 495 U.S. 575, 602 (1990). Generally speaking, the "categorical approach" requires that courts "look only to the statutory definitions—i.e., the elements" of the relevant offense to determine if the provision applies "and not to the particular facts underlying those convictions." *Descamps v. United States*, 570 U.S. 254, 261 (2013) (internal quotation marks omitted). Whether a statute requires a categorical or case-specific approach is a question of statutory interpretation. To determine whether Congress used the word "offense" in a statute to refer to an offense in the abstract or to the facts of each individual case, the Court must examine the statute's "text, context, and history." *United States v. Davis*, 139 S. Ct. 2319, 2327 (2019).

Though it has not authoritatively settled the question, the Second Circuit has strongly suggested that Maxwell's approach is the wrong one. In *Weingarten v. United States*, 865 F.3d 48, 58–60 (2d Cir. 2017), the Second Circuit discussed at length how the text, context, and history of § 3283 show that Congress intended courts to apply the statute using a case-specific approach. The Third Circuit reached the same conclusion in *United States v. Schneider*, 801 F.3d 186, 196 (3d Cir. 2015).

The Court sees no reason to depart from the reasoning in *Weingarten*. First, "[t]he Supreme Court's modern categorical approach jurisprudence is confined to the post-conviction contexts of criminal sentencing and immigration deportation cases." *Weingarten*, 865 F.3d at 58.

To the extent that the categorical approach is ever appropriate in other contexts, it is inappropriate here.

The Court begins with the statute's text. Statutes that call for application of the categorical approach typically deal with the elements of an offense in a prior criminal conviction. *Id.* at 59. "The language of § 3283, by contrast, reaches beyond the offense and its legal elements to the conduct 'involv[ed]' in the offense. That linguistic expansion indicates Congress intended courts to look beyond the bare legal charges in deciding whether § 3283 applied." *Id.* at 59–60 (alteration in original) (quoting § 3283). Maxwell cites one case holding otherwise, but that case involved a venue statute presenting significantly different concerns. *See United States v. Morgan*, 393 F.3d 192, 200 (D.C. Cir. 2004). The Supreme Court has likewise held that a statute which uses the language "an *offense that . . . involves* fraud or deceit in which the loss to the victim or victims exceeds $10,000" is "consistent with a circumstance-specific approach." *Nijhawan v. Holder*, 557 U.S. 29, 32, 38 (2009) (emphasis added). Thus, the word "involves" generally means that courts should look to the circumstances of an offense as committed in each case. This reading accords with a robust legislative history indicating that Congress intended to apply § 3283 to a wide range of crimes against children. *See Weingarten*, 865 F.3d at 60; *Schneider*, 801 F.3d at 196.

The purposes underlying the categorical approach do not apply here either. For statutes dealing with prior convictions, "[t]he categorical approach serves 'practical' purposes: It promotes judicial and administrative efficiency by precluding the relitigation of past convictions in minitrials conducted long after the fact." *Moncrieffe v. Holder*, 569 U.S. 184, 200–01 (2013). In the context of § 3283, there is no prior conviction to assess, and the jury will determine in the first instance whether "the defendant engaged in the applicable abusive conduct." *Weingarten*,

865 F.3d at 60. Maxwell nonetheless contends that using a case-specific approach for § 3283 would be impractical because the Government would need to prove conduct beyond the elements of the offense. It may be true that this approach requires the Government to prove some additional facts, but any statute-of-limitations defense presents factual issues (including, at least, when the alleged conduct took place). This is not a serious practical problem and does not justify setting aside the statute's language and apparent purpose.

Maxwell relies primarily on *Bridges v. United States*, 346 U.S. 209 (1953), to urge this Court to cast *Weingarten* aside. The Supreme Court in *Bridges* addressed a statute that extended the limitations period for defrauding the United States during the Second World War. In that case, the Supreme Court first concluded that making false statements at an immigration hearing was not subject to the extended limitations period because it lacked any pecuniary element as required by the statute. *Id.* at 221. Then, as an alternative basis for its holding, it explained that the offense did not require fraud as an "essential ingredient." *Id.* at 222. It reached that conclusion in large part because the statute's legislative history made clear that Congress intended it to apply only to a narrow class of war frauds causing pecuniary loss. *Id.* at 216.

As the Second Circuit explained in *Weingarten*, Congress had the opposite intent in the enacting in the PROTECT Act. *Weingarten*, 865 F.3d at 59 & n. 10. "In passing recent statutes related to child sex abuse, including extensions of the § 3283 limitations period, Congress 'evinced a general intention to "'cast a wide net to ensnare as many offenses against children as possible."'" *Id.* at 60 (quoting *Schneider*, 801 F.3d at 196 (quoting *United States v. Dodge*, 597 F.3d 1347, 1355 (11th Cir. 2010) (en banc))). The primary basis for *Bridges*' holding—legislative history supporting a narrow interpretation—does not exist here. Instead, both the statute's plan meaning and its legislative history suggest it should apply more broadly.

Based on the statute's text, context, and history, the Court follows *Weingarten* and concludes that the appropriate inquiry is whether the charged offenses involved the sexual abuse of a minor on the facts alleged in this case. There is no question that they did. The Court thus concludes that § 3283 governs the limitations period for the charges here.

2. The 2003 amendment to the statute of limitations applies to these offenses

Maxwell next contends that because the charged conduct took place before the PROTECT Act's enactment, that statute did not lengthen the statute of limitations applicable to her alleged offenses. Here too, the Second Circuit has provided guidance in its decision in *Weingarten*. Although the court did not provide a definitive answer there, it explained that the view Maxwell now takes conflicts with established principles of retroactivity and the decisions of at least two other circuit courts. *Weingarten*, 865 F.3d at 58 & n.8; *see Cruz v. Maypa*, 773 F.3d 138, 145 (4th Cir. 2014); *United States v. Leo Sure Chief*, 438 F.3d 920, 924 (9th Cir. 2006).

The Supreme Court has set out a two-step framework to determine whether a federal statute applies to past conduct. *See Landgraf v. USI Film Products*, 511 U.S. 244, 280 (1994). Courts look first to the language of the statute. If the statute states that it applies to past conduct, courts must so apply it. *Weingarten*, 865 F.3d at 54. Otherwise, the statute applies to past conduct unless doing so would create impermissible retroactive effects. *Id.*

The Court begins with *Landgraf*'s first step. To assess a statute's meaning here, courts must consider the text of the statute along with other indicia of congressional intent, including the statute's history and structure. *See Enter. Mortg. Acceptance Co., LLC, Sec. Litig. v. Enter. Mortg. Acceptance Co.*, 391 F.3d 401, 406 (2d Cir. 2004).

Section 3283, as amended by the PROTECT Act, broadly states that "[n]o statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnaping, of a child under the age of 18 years shall preclude such prosecution during the life of the child." The statute lacks an express retroactivity clause, but courts have held that no such clause is necessary, including for this particular statute. *See Leo Sure Chief*, 438 F.3d at 923. The statute's plain language unambiguously requires that it apply to prosecutions for offenses committed before the date of enactment. Instead of simply providing a new limitations period for future conduct, Congress stated that *no* statute of limitations that *would otherwise preclude* prosecution of these offenses will apply. That is, it prevents the application of any statute of limitations that would otherwise apply to past conduct.

Courts have reached the same conclusion for other statutes employing similar language. The Eighth Circuit has held that the 1994 amendments to § 3283, which allowed prosecution of sex crimes against children until the victim reached age twenty-five, applied to past conduct. *See United States v. Jeffries*, 405 F.3d 682, 684–85 (8th Cir. 2005). The Second Circuit has observed that the Higher Education Technical Amendments of 1991, Pub. L. No. 102-26, 105 Stat. 123, illustrates language that requires a statute's application to past conduct. *See Enter. Mortg. Acceptance Co., LLC, Sec. Litig.*, 391 F.3d at 407. That statute eliminated the statute of limitations for claims on defaulted student loans by stating that "no limitation shall terminate the period within which suit may be filed." *Id.* The PROTECT Act's language is quite similar.

The history of § 3283 confirms Congress's intent to apply the extended limitations period as broadly as the Constitution allows. With each successive amendment to the statute, Congress further extended the limitations period, recognizing that sex crimes against children "may be difficult to detect quickly" because children often delay or decline to report sexual abuse.

Weingarten, 865 F.3d at 54. Congress enacted the limitations provision of the PROTECT Act because it found the prior statute of limitations was "inadequate in many cases." H.R. Conf. Rep. No. 108-63, at 54 (2003). For example, a person who abducted and raped a child could not be prosecuted beyond this extended limit—even if DNA matching conclusively identified him as the perpetrator one day after the victim turned 25." *Id.*

Maxwell makes no argument based on the statute's text. Instead, she contends that because the House version of the bill included an express retroactivity provision absent from its final form, the Court should infer that Congress did not intend the statute to apply to past conduct. However, the legislative history makes clear that Congress abandoned the retroactivity provision in the House bill only because it would have produced unconstitutional results. The Supreme Court has explained that a law that revives a time-barred prosecution violates the Ex Post Facto Clause of the Constitution, but a law that extends an un-expired statute of limitations does not. *Stogner v. California*, 539 U.S. 607, 632–33 (2003). Senator Leahy, who co-sponsored the PROTECT Act, expressed concerns in a committee report that the proposed retroactivity provision was "of doubtful constitutionality" because it "would have revived the government's authority to prosecute crimes that were previously time-barred." 149 Cong. Rec. S5137, S5147 (Apr. 10, 2003) (statement of Sen. Leahy). Congress removed the provision shortly thereafter for this reason. The removal of the express retroactivity provision shows only that Congress intended to limit the PROTECT Act to its constitutional applications, including past conduct—like Maxwell's—on which the statute of limitations had not yet expired.

Both the text and history of the PROTECT Act's amendment to § 3283 reflect that it applies Maxwell's conduct charged in the S1 superseding indictment. The Court could stop here.

However, it also concludes that even if the statute were ambiguous, it would properly apply to these charges.

At *Lanfgraf*'s second step, the Court asks whether application of the statute to past conduct would have impermissible retroactive effects. "[A] statute has presumptively impermissible retroactive effects when it 'takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.'" *Weingarten*, 865 F.3d at 56 (quoting *Landgraf*, 511 U.S. at 290). Thus, applying a new statute of limitations to previously time-barred claims has an impermissible retroactive effect. *Enter. Mortg. Acceptance Co., LLC, Sec. Litig.*, 391 F.3d at 407. Applying it to conduct for which the statute of limitations has not yet expired does not. *Vernon v. Cassadaga Valley Cent. Sch. Dist.*, 49 F.3d 886, 890 (2d Cir. 1995).

Maxwell concedes that these offenses were within the statute of limitations when Congress enacted the PROTECT Act. Thus, the Act did not deprive her of any vested rights. Maxwell contends that it is unfair to allow the Government to prosecute her now for conduct that occurred more than twenty years ago, but there is no dispute that Congress has the power to set a lengthy limitations period or no limitations period at all. It has done so here, judging that the difficulty of prosecuting these offenses and the harm they work on children outweighs a defendant's interest in repose. Maxwell's fairness argument is a gripe with Congress's policy judgment, not an impermissibly retroactive application of the statute. The Court concludes that § 3283 allows her prosecution now.

B. The Government's delay in bringing charges did not violate due process

"As the Supreme Court stated in *United States v. Marion*, the statute of limitations is 'the primary guarantee against bringing overly stale criminal charges.'" *United States v. Cornielle*,

171 F.3d 748, 751 (2d Cir. 1999) (cleaned up) (quoting *United States v. Marion*, 404 U.S. 307, 322 (1971)). There is a strong presumption that an indictment filed within the statute of limitations is valid. To prevail on a claim that pre-indictment delay violates due process, a defendant must show both that the Government intentionally delayed bringing charges for an improper purpose and that the delay seriously damaged the defendant's ability defend against the charges. *See id.* This is a stringent standard. "Thus, while the [Supreme] Court may not have shut the door firmly on a contention that at some point the Due Process Clause forecloses prosecution of a claim because it is too old, at most the door is barely ajar." *DeMichele v. Greenburgh Cent. Sch. Dist. No. 7*, 167 F.3d 784, 790–91 (2d Cir. 1999).

The Court sees no evidence that the Government's delay in bringing these charges was designed to thwart Maxwell's ability to prepare a defense. However, it is enough to say that Maxwell does not make the strong showing of prejudice required to support this sort of claim. Maxwell contends that the Government's delay in bringing charges has prejudiced her interests because potential witnesses have died, others have forgotten, and records have been lost or destroyed. It is highly speculative that any of these factors would make a substantial difference in her case.

Maxwell first points to several potential witnesses who have passed away. These include Jeffrey Epstein and his mother, one individual Maxwell believes worked with one of the alleged victims in this case, and a police detective who investigated Epstein in Florida. She contends they all would have provided exculpatory testimony were they alive today. Courts have generally found that vague assertions that a deceased witness might have provided favorable testimony do not justify dismissing an indictment for delay. *See, e.g.*, *United States v. Scala*, 388 F. Supp. 2d 396, 399–400 (S.D.N.Y. 2005). The Court agrees with this approach. Maxwell

provides no indication of what many of these potential witnesses might have testified to. The testimony she suggests the detective might have offered—that witnesses in the Palm Beach investigation did not identify Maxwell by name—is propensity evidence that does nothing to establish her innocence of the charged offenses. There are also serious doubts under all of the relevant circumstances that a jury would have found testimony from Epstein credible even if he had waived his right against self-incrimination and testified on her behalf. *See United States v. Spears*, 159 F.3d 1081, 1085 (7th Cir. 1999).

Maxwell's arguments that the indictment should be dismissed because of the possibility of missing witnesses, failing memories, or lost records fail for similar reasons. These are difficulties that arise in any case where there is extended delay in bringing a prosecution, and they do not justify dismissing an indictment. *United States v. Marion*, 404 U.S. 307, 325–26 (1971); *see United States v. Elsbery*, 602 F.2d 1054, 1059 (2d Cir. 1979).

Finally, the Court finds no substantial prejudice from the pretrial publicity this case has garnered. Maxwell contends that lengthy public interest in this case has transformed her reputation from that of Epstein's friend to a co-conspirator. And she also alleges—without evidence—that her accusers fabricated their stories based on media allegations. The Court will not dismiss the indictment on Maxwell's bare assertion that numerous witnesses are engaged in a perjurious conspiracy against her. And the Court will take all appropriate steps to ensure that the pretrial publicity in this case does not compromise Maxwell's right to a fair and impartial jury.

The Court thus concludes that Maxwell has failed to establish actual prejudice from the Government's delay in bringing charges. She may renew her motion if the factual record at trial shows otherwise. On the present record, neither the applicable statute of limitations nor due process bars the charges here.

III. The indictment describes the charged offenses with specificity

Maxwell seeks to dismiss the Mann Act counts for lack of specificity or in the alternative to compel the Government to submit a bill of particulars providing greater detail of the charges. The Court concludes that the charges in the S1 superseding indictment are clear enough.

Under Federal Rule of Criminal Procedure 7, an indictment must contain "a plain, concise, and definite written statement of the essential facts constituting the offense charged." The indictment must be specific enough to inform the defendant of the charges and allow the defendant to plead double jeopardy in a later prosecution based on the same events. *United States v. Stavroulakis*, 952 F.2d 686, 693 (2d Cir. 1992). "Under this test, an indictment need do little more than to track the language of the statute charged and state the time and place (in approximate terms) of the alleged crime." *United States. v. Tramunti*, 513 F.2d 1087, 1113 (2d Cir. 1975). In addition to dismissal, "Rule 7(f) of the Federal Rules of Criminal Procedure permits a defendant to seek a bill of particulars in order to identify with sufficient particularity the nature of the charge pending against him, thereby enabling defendant to prepare for trial, to prevent surprise, and to interpose a plea of double jeopardy should he be prosecuted a second time for the same offense." *United States v. Bortnovsky*, 820 F.2d 572, 574 (2d Cir. 1987).

The S1 superseding indictment sets out the elements of each charged crime and the facts supporting each element. Nonetheless, Maxwell contends that the indictment is too vague because it refers to open-ended time periods, describes conduct like "grooming" and "befriending" that is not inherently criminal, and does not identify the alleged victims by name.

Maxwell's first argument fails because the Government need only describe the time and place of charged conduct "in approximate terms." *Tramunti*, 513 F.2d at 1113. The details are subject to proof at trial. "[T]he Second Circuit routinely upholds the 'on or about' language used

to describe the window of when a violation occurred." *United States v. Kidd*, 386 F. Supp. 3d 364, 369 (S.D.N.Y. 2019) (quoting *United States v. Nersesian*, 824 F.2d 1294, 1323 (2d Cir. 1987)). "This is especially true in cases of sexual abuse of children: allegations of sexual abuse of underage victims often proceed without specific dates of the offenses." *United States v. Young*, No. 08-cr-285 (KMK), 2008 WL 4178190, at *2 (S.D.N.Y. Sept. 4, 2008) (collecting cases). As here, these cases frequently involve alleged abuse spanning a lengthy period of time, and witnesses who were victimized as children may struggle to recall the precise dates when abuse occurred. The indictment adequately describes the time and place of the charged conduct.

Maxwell next contends that allegations of noncriminal conduct render the charges impermissibly vague. The Court disagrees. Rule 7 requires only that the language of the indictment track the language of the statute and provide a rough account of the time and place of the crime. *Tramunti*, 513 F.2d at 1113. The language of the S1 superseding indictment does so. The Government's decision to provide more details than those strictly required does not hamper Maxwell's ability to prepare a defense. Maxwell's argument that some of the conduct alleged is not inherently criminal goes to the merits of the Government's case, not the specificity of the charges.

Finally, Maxwell argues that the indictment is vague because the government does not provide the names of the alleged victims. The Court sees no basis to require that the alleged victims' names be included the indictment. The names of victims, even if important, generally need not appear there unless their omission would seriously prejudice the defendant. *See United States v. Stringer*, 730 F.3d 120, 127 (2d Cir. 2013); *United States v. Kidd*, 386 F. Supp. 3d 364, 369 (S.D.N.Y. 2019). Maxwell likely knows the identity of the alleged victims described in the indictment at this point because the Government has provided extensive discovery on them.

Moreover, the Government has agreed to disclose their names in advance of trial. There is thus no unfairness here. *See Stringer*, 730 F.3d at 126. As discussed below, the Court will require the parties to negotiate and propose a full schedule for all remaining pretrial disclosures.

IV. The perjury charges are legally tenable

The Court turns next to Maxwell's motion to dismiss the perjury counts stemming from her answers to questions in a deposition in a civil case. She contends that these charges are legally deficient because the questions posed were fundamentally ambiguous and the questions were not material to the subject of the deposition. The Court concludes that the charges are legally tenable and Maxwell's defenses are appropriately left to the jury.

The applicable perjury statute imposes criminal penalties on anyone who "in any proceeding before or ancillary to any court . . . knowingly makes any false material declaration." 18 U.S.C. § 1623(a). Testimony is perjurious only if it is knowingly false and is material to the proceeding in which the defendant offered it.

A. The questions posed were not too ambiguous to support a perjury charge

The requirement of knowing falsity requires that a witness believe that their testimony is false. *United States v. Lighte*, 782 F.2d 367, 372 (2d Cir. 1986). As a general matter, "[a] jury is best equipped to determine the meaning that a defendant assigns to a specific question." *Id.* Courts have acknowledged a narrow exception for questions that are so fundamentally ambiguous or imprecise that the answer to them cannot legally be false. *Id.* at 372, 375; *see also United States v. Wolfson*, 437 F.2d 862, 878 (2d Cir. 1970). A question is fundamentally ambiguous only if reasonable people could not agree on its meaning in context. *Lighte*, 782 F.2d at 375. The existence of some arguable ambiguity does not foreclose a perjury charge against a witness who understood the question.

At a minimum, Maxwell's motion is premature. Courts typically evaluate whether a question was fundamentally ambiguous only after the development of a full factual record at trial. *See, e.g.*, *United States v. Markiewicz*, 978 F.2d 786, 808 (2d Cir. 1992). The evidence at trial may shed further light on whether the questions posed were objectively ambiguous in context or whether Maxwell subjectively understood them. In any event, the Court has closely considered each of the categories of questions that Maxwell argues are ambiguous. None of the alleged ambiguities Maxwell identifies rise to the level supporting dismissal of the charges. The context of the questions and answers, in conjunction with the Government's evidence, could lead a reasonable juror to conclude that the statements were perjurious. Truth and falsity are questions for the jury in all but the most extreme cases. The Court declines to usurp the jury's role on the limited pretrial record.

B. A reasonable juror could conclude that Maxwell's statements were material

Maxwell also argues that the perjury counts should be dismissed because none of the allegedly false statements were material to the defamation action. In a civil deposition, a statement is material if it has a natural tendency to influence the court or if a truthful answer might reasonably lead to the discovery of admissible evidence. *United States v. Gaudin*, 515 U.S. 506, 509 (1995); *United States v. Kross*, 14 F.3d 751, 753–54 (2d Cir. 1994). Like knowing falsity, materiality is an element of the offense and thus ordinarily must be "decided by the jury, not the court." *Johnson v. United States*, 520 U.S. 461, 465 (1997). Only the most extraordinary circumstances justify departure from this general rule. *United States v. Forde*, 740 F. Supp. 2d 406, 412 (S.D.N.Y. 2010) (citing *Gaudin*, 515 U.S. at 522–23).

The charged statements do not fall within this narrow exception. Maxwell contends that the questions did not relate to the sex trafficking and sexual abuse allegations at the center of the

civil case, but that is not the legal standard. The Government may prevail if it proves that Maxwell's answers could have led to the discovery of other evidence or could influence the factfinder in the civil case. *See Gaudin*, 515 U.S. at 509; *Kross*, 14 F.3d at 753–54. At trial, a reasonable juror could conclude that truthful answers to the questions may have permitted the plaintiff to locate other victims or witnesses who could have corroborated the plaintiff's testimony. The factual disputes relating to materiality are at least enough to preclude pretrial resolution. In criminal cases, courts must guard against "invading the 'inviolable function of the jury' in our criminal justice system," and if the "defense raises a factual dispute that is inextricably intertwined with a defendant's potential culpability, a judge cannot resolve that dispute on a Rule 12(b) motion." *United States v. Sampson*, 898 F.3d 270, 281 (2d Cir. 2018).

The Court concludes that the perjury charges are legally tenable and appropriately presented to the jury.

V. The perjury charges must be severed and tried separately

Although the perjury charges are legally tenable, the Court concludes that the interests of justice require severing those counts and trying them separately. Trying the perjury counts together with the Mann Act counts would require admitting evidence of other acts likely to be unduly prejudicial. It would also risk disqualifying Maxwell's chosen counsel based on their involvement in the earlier civil case.

Rule 14(a) of the Federal Rules of Criminal Procedure allows a court to order separate trials if joining all offenses in a single trial would prejudice the defendant. A defendant seeking severance must show significant unfairness to outweigh the burden on the court of conducting multiple trials. *United States v. Walker*, 142 F.3d 103, 110 (2d Cir. 1998). The harm to the defendant must be more than "solely the adverse effect of being tried for two crimes rather than

one." *United States v. Werner*, 620 F.2d 922, 929 (2d Cir. 1980). Though this standard is demanding, the Court concludes that, due to unique features of the perjury counts, Maxwell meets it here. Trying all counts together would compromise Maxwell's right to the counsel of her choice and risk an unfair trial.

Trying the perjury counts together with the Mann Act counts would risk an unfair trial on each set of counts. First, it would introduce unrelated allegations of sexual abuse, which would potentially expose the jury to evidence that might otherwise not be admissible. In particular, a joint trial would potentially expose the jury to a wider swath of information regarding civil litigation against Epstein that is remote from Maxwell's charged conduct. This presents a significant risk that the jury will cumulate the evidence of the various crimes charged and find guilt when, if considered separately, it would not do so. *See United States v. Halper*, 590 F.2d 422, 430 (2d Cir. 1978). Second, the evidence presented on the Mann Act counts may prejudice the jury's ability to fairly evaluate Maxwell's truthfulness in her deposition, a critical element of the perjury counts. The Court has concerns that a limiting instruction may be inadequate to mitigate these risks given the nature of the allegations involved.

Importantly, a joint trial is also likely to require disqualification of at least one of Maxwell's attorneys from participating as an advocate on her behalf. The perjury counts likely implicate the performance and credibility of her lawyers in the civil action—two of whom represent her in this case. The New York Rules of Professional Conduct generally forbid a lawyer from representing a client in a proceeding in which the lawyer is likely also to be a witness. N.Y. R. Prof'l Conduct § 3.7(a). Maxwell's counsel in the civil action and the deposition may be important fact witnesses on the perjury counts. Even if counsel were not required to testify, trying all counts together could force Maxwell to choose between having her

counsel testify on her behalf on the perjury charges and having them assist her in defending the Mann Act charges.

The Second Circuit has recognized that witness testimony offered by a party's attorney presents serious risks to the fairness of a trial. *See Murray v. Metro. Life Ins. Co.*, 583 F.3d 173, 178 (2d Cir. 2009). The lawyer might appear to vouch for their own credibility, jurors might perceive the lawyer as distorting the truth to benefit their client, and blurred lines between argument and evidence might confuse the jury. *Id.* Disqualification of counsel also implicates Maxwell's Sixth Amendment right to be represented by the counsel of her choice. *See, e.g.*, *United States v. Kincade*, No. 15-cr-00071 (JAD) (GWF), 2016 WL 6154901, at *6 (D. Nev. Oct. 21, 2016). The prejudice to Maxwell is especially pronounced because the attorneys who represented her in the civil case have worked with her for years and are particularly familiar with the facts surrounding the criminal prosecution. *See United States v. Cunningham*, 672 F.2d 1064, 1070–71 (2d Cir. 1982).

The Court is of course cognizant of the burden separate trials may impose on all trial participants. But much of the proof relevant to the perjury counts and the Mann Act counts does not overlap. In particular, materiality for statements made in a civil deposition is broad, and evidence on that question is unlikely to bear on the other charges here. *See Kross*, 14 F.3d at 753–54; *Gaudin*, 515 U.S. at 509. Although some allegations of sexual abuse are relevant to both sets of charges, many are not. At a minimum, this will expand the scope of the trial far beyond the narrower issues presented. And while the Court agrees with the Government that at least some of Maxwell's concerns are overstated, there is little question that the jury's consideration of the nature of the defamation action will require a significant investment of time and resources to provide the requisite context.

The balance of these considerations favors severance. "Motions to sever are committed to the sound discretion of the trial judge." *United States v. Casamento*, 887 F.2d 1141, 1149 (2d Cir. 1989). In its discretion, the Court concludes that trying the perjury counts separately will best ensure a fair and expeditious resolution of all charges in this case.

VI. Maxwell's motion to strike surplusage is premature

Maxwell moves to strike allegations related to one of the alleged victims from the S1 superseding indictment as surplusage. The Court declines to do so at this juncture.

Federal Rule of Criminal Procedure 7(d) allows a court to strike surplusage from an indictment on a defendant's motion. "Motions to strike surplusage from an indictment will be granted only where the challenged allegations are not relevant to the crime charged and are inflammatory and prejudicial." *United States v. Hernandez*, 85 F.3d 1023, 1030 (2d Cir. 1996) (cleaned up). Courts in this District generally delay ruling on any motion to strike until after the presentation of the Government's evidence at trial, because that evidence may affect how specific allegations relate to the overall charges. *See, e.g.*, *United States v. Nejad*, No. 18-cr-224 (AJN), 2019 WL 6702361, at *18 (S.D.N.Y. Dec. 6, 2019); *United States v. Mostafa*, 965 F. Supp. 2d 451, 467 (S.D.N.Y. 2013).

Maxwell contends that the allegations related to "Minor Victim-3" are surplusage because the indictment does not charge that Minor Victim-3 traveled in interstate commerce or was below the age of consent in England where the alleged activities took place. Thus, she argues, these allegations do not relate to the charged conspiracy and instead reflect an attempt to introduce Minor Victim-3's testimony for impermissible purposes.

The Court will not strike any language from the S1 superseding indictment at this juncture. The standard under Rule 7(d) is "exacting" and requires the defendant to demonstrate

clearly that the allegations are irrelevant to the crimes charged. *United States v. Napolitano*, 552 F. Supp. 465, 480 (S.D.N.Y. 1982). The indictment does not allege that the alleged victim traveled in interstate commerce or was underage during sexual encounters with Epstein. But the Court cannot rule out that the allegations may reflect conduct undertaken in furtherance of the charged conspiracy or be relevant to prove facts such as Maxwell's state of mind. *See United States v. Concepcion*, 983 F.2d 369, 392 (2d Cir. 1992). The Court will follow the well-worn path of others in this District and reserve the issue for trial. Maxwell may renew her motion then.

VII. Maxwell's motion to dismiss multiplicitous charges is premature

Maxwell's motion to dismiss either the first or third count of the S1 superseding indictment as multiplicitous is also premature. Maxwell contends that the Government has alleged the same conspiracy twice in the indictment. "An indictment is multiplicitous when it charges a single offense as an offense multiple times, in separate counts, when, in law and fact, only one crime has been committed." *United States v. Chacko*, 169 F.3d 140, 145 (2d Cir. 1999). "The multiplicity doctrine is based upon the double jeopardy clause of the Fifth Amendment, which assures that the court does not exceed its legislative authorization by imposing multiple punishments for the same offense." *United States v. Nakashian*, 820 F.2d 549, 552 (2d Cir. 1987) (cleaned up).

"Where there has been no prior conviction or acquittal, the Double Jeopardy Clause does not protect against simultaneous prosecutions for the same offense, so long as no more than one punishment is eventually imposed." *United States v. Josephberg*, 459 F.3d 350, 355 (2d Cir. 2006). "Since *Josephberg*, courts in this Circuit have routinely denied pre-trial motions to dismiss potentially multiplicitous counts as premature." *United States v. Medina*, No. 13-cr-272

(PGG), 2014 WL 3057917, at *3 (S.D.N.Y. July 7, 2014) (collecting cases). The Court therefore denies Maxwell's motion to dismiss multiplicitous counts without prejudice.

VIII. The parties shall negotiate all remaining disclosures

Maxwell moves to compel the Government to produce certain documents she believes it has in its possession and has failed to produce. She also seeks accelerated disclosure of the Government's witness list, Jencks Act material, *Brady* and *Giglio* material, co-conspirator statements, and Rule 404(b) material. Based on the Government's response in briefing and letters the parties have since submitted to the Court, it appears that most of these requests have been overtaken by events. Accordingly, although the Court concludes that Maxwell is not entitled to expedite this discovery based on the arguments in her motion papers, the Court will require the parties to confer on an overall schedule for all remaining pretrial disclosures.

A. The Court accepts the Government's representations that it has disclosed all *Brady* and *Giglio* Material

The Supreme Court's decisions in *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972) require the Government to disclose to defendants certain evidence that will aid their defense. *Brady* requires disclosure of exculpatory evidence. Under *Giglio*, the Government has a duty to produce "not only exculpatory material, but also information that could be used to impeach a key government witness." *United States v. Coppa*, 267 F.3d 132, 135 (2d Cir. 2001) (citing *Giglio*, 405 U.S. at 154). As a general rule, "*Brady* and its progeny do not require immediate disclosure of all exculpatory and impeachment material upon request by a defendant." *Id.* at 146. "[A]s long as a defendant possesses *Brady* evidence in time for its effective use, the government has not deprived the defendant of due process of law simply because it did not produce the evidence sooner." *Id.* at 144.

Maxwell requests an order directing immediate disclosure of all *Brady* and *Giglio* material and also requests a few specific documents she contends the Government has failed to disclose. The Court begins with the specific requests. The requested materials include (1) records of witness interviews in connection with an ex parte declaration in support of a response to a motion to quash subpoenas; (2) an unredacted copy of two FBI reports; (3) pages from a personal diary that is in the custody of a civilian third party; and (4) copies of all subpoenas the Government has issued for Maxwell's records as part of its investigation in this case.

The Government represents that it is cognizant of its *Brady* obligations, that is has reviewed the witness interviews and one of the FBI reports, and that neither set of documents includes exculpatory information not previously disclosed. The Court has no reason to doubt the Government's representation in this case that it is aware of its Brady obligations and that it has complied and will continue to comply with them. And because the witness statements are covered by the Jencks Act, the Court cannot compel production of such statements under the terms of the statute. *See* 18 U.S.C. § 3500; *Coppa*, 267 F.3d at 145. Next, the Government represents that it has already produced an unredacted copy of the other requested FBI report, and so that request is moot. The diary pages she requests are within the control of a civilian third party, not the Government, and so the Government need not (and perhaps cannot) produce them. *See United States v. Collins*, 409 F. Supp. 3d 228, 239 (S.D.N.Y. 2019). Finally, Maxwell's request for copies of all subpoenas the Government has issued is overly broad and lacks a legal basis. Maxwell is not entitled to compel production of these documents.

The Court also will not issue an order requiring the immediate disclosure of *Brady* and *Giglio* material. The Government has represented that it recognizes its obligations under Brady and that it has complied, and will continue to comply, with such obligations. The Court has no

reason to doubt these representations given its expansive approach to document production thus far in this case. The Government has agreed in its recent letter to produce *Giglio* material six weeks in advance of trial. The parties shall negotiate the specific timing, but assuming a schedule along those lines is met, the Court concludes that Maxwell will be able to effectively prepare for trial. *See Coppa*, 267 F.3d at 144.

B. Jencks Act material and co-conspirator statements

Maxwell also seeks to expedite discovery of Jencks Act material and non-exculpatory statements of co-conspirators that the government may offer at trial. The Jencks Act, 18 U.S.C. § 3500, "provides that no prior statement made by a government witness shall be the subject of discovery until that witness has testified on direct examination." *Coppa*, 267 F.3d at 145. The statute therefore prohibits a district court in most cases from ordering the pretrial disclosure of witness statements unless those statements are exculpatory. "A coconspirator who testifies on behalf of the government is a witness under the Act." *In re United States*, 834 F.2d 283, 286 (2d Cir. 1987). The Court therefore lacks the inherent power to expedite these disclosures. In any case, the Government has agreed to produce all Jencks Act material at least six weeks in advance of trial.

The Court also rejects Maxwell's alternative request for a hearing to determine the admissibility of co-conspirator declarations. Co-conspirator statements may often be admitted at trial on a conditional basis. If the Court determines that the Government has not met its burden to show that the conditionally admitted statements were made in furtherance of the charged conspiracy, the Court should provide a limiting instruction or, in extreme cases declare a mistrial. *United States v. Tracy*, 12 F.3d 1186, 1199 (2d Cir. 1993). Although conditional admissions can pose a problem, a pretrial hearing is unnecessary here because the Government

has committed to producing co-conspirator statements at least six weeks in advance of trial to allow Maxwell to raise any objections. Maxwell will have adequate time to object to any proffered co-conspirator testimony following the Government's Jencks Act disclosures.

C. Witness list

As a general matter, "district courts have authority to compel pretrial disclosure of the identity of government witnesses." *United States v. Cannone*, 528 F.2d 296, 300 (2d Cir. 1975). In deciding whether to order accelerated disclosure of a witness list, courts consider whether a defendant has made a specific showing that disclosure is "both material to the preparation of the defense and reasonable in light of the circumstances surrounding the case." *United States v. Bejasa*, 904 F.2d 137, 139–140 (2d Cir. 1990) (cleaned up).

Maxwell has made a particularized showing that the Government must produce a witness list reasonably in advance of trial. The nature of the allegations in this case—decades-old allegations spanning multiple locations—present considerable challenges for the preparation of the defense. However, the Government's proposed disclosure schedule—which will afford Maxwell at least six weeks to investigate testifying witness statements—allows Maxwell significantly more time to review disclosures than schedules adopted in most cases in this District. *See, e.g.*, *United States v. Rueb*, No. 00-CR-91 (RWS), 2001 WL 96177, at *9 (S.D.N.Y. Feb. 5, 2001) (thirty days before trial); *United States v. Nachamie*, 91 F. Supp. 2d 565, 580 (S.D.N.Y. 2000) (fourteen days before trial). In addition, on April 13, 2021, the Government produced over 20,000 pages of interview notes, reports and other materials related to non-testifying witnesses. After considering the circumstances, including the complexity of the issues in this case and what the defense has already received and likely learned in the course of discovery, the Court concludes that the Government's proposal is generally reasonable.

D. Rule 404(b) material

Maxwell's final discovery request is for early disclosure of evidence the Government seeks to offer under Federal Rule of Evidence 404(b). Under Rule 404(b), if the prosecutor in a criminal case intends to use "evidence of a crime, wrong, or other act" against a defendant, the prosecutor must "provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial" and must "do so in writing before trial—or in any form during trial if the court, for good cause, excuses lack of pretrial notice." The Government represents that it will notify the defense of its intent to use 404(b) evidence at least 45 days in advance of trial to allow Maxwell to file any motions in limine to be considered at the final pretrial conference. The Government's proposal will give Maxwell an opportunity to challenge admission of that evidence and to bring to the Court's attention any issues that require resolution before trial. "This is all that Rule 404(b) requires." *United States v. Thompson*, No. 13-cr-378 (AJN), 2013 WL 6246489, at *9 (S.D.N.Y. Dec. 3, 2013). The Court concludes this schedule is generally reasonable, although additional time to enable briefing and resolution in advance of trial is strongly encouraged.

The Court's denial of Maxwell's requests to compel pretrial disclosures does not preclude the parties from negotiating in good faith for an expedited discovery timeline that will account for Maxwell's specific concerns. "[I]n most criminal cases, pretrial disclosure will redound to the benefit of all parties, counsel, and the court." *United States v. Percevault*, 490 F.2d 126, 132 (2d Cir. 1974). In general, the Court will require the parties to negotiate a final, omnibus schedule to propose to the Court. The Court concludes that the disclosure of all of the above materials approximately six to eight weeks in advance of trial is appropriate and sufficient.

Given the complexities of the case and the addition of two counts via the S2 indictment, the Court encourages the parties to agree to approximately eight weeks.

IX. The S2 superseding indictment moots Maxwell's grand jury challenge

The Court has not received supplemental briefing on the motions in light of the return of the S2 superseding indictment and so does resolve any such issues here.[1] However, Maxwell's motion seeking to dismiss the S1 superseding indictment because it was returned by a grand jury sitting at the White Plains courthouse appears moot. Maxwell argued that the use of a grand jury drawn from the White Plains Division in this District did not represent a fair cross-section of the community, because her trial would proceed in the Manhattan Division. A grand jury sitting in Manhattan returned the S2 superseding indictment. By April 21, 2021, Maxwell shall show cause why her grand jury motion should not be dismissed on that basis.

Conclusion

The Court DENIES Maxwell's motions to dismiss the indictment as barred by Epstein's non-prosecution agreement (Dkt. No. 141), to dismiss the Mann Act counts as barred by the statute of limitations (Dkt. No. 143), to dismiss the indictment for pre-indictment delay (Dkt. No. 137), to dismiss the Mann Act counts for lack of specificity (Dkt. No. 123), to dismiss the perjury counts as legally untenable (Dkt. No. 135), to strike surplusage (Dkt. No. 145), to dismiss count one or count three as multiplicitous (Dkt. No. 121), and to expedite pretrial disclosures (Dkt. No. 147). The Court GRANTS Maxwell's motion to sever the perjury counts for a separate trial (Dkt. No. 119).

[1] The parties shall negotiate and propose a schedule for any available additional or supplement rulings in light of the filing of the S2 indictment.

The Court ORDERS the Government to confirm within one week whether it considers any evidence related to negotiation of the non-prosecution agreement to constitute *Brady* or Rule 16 material and, if so, to confirm that it has or will disclose such evidence.

The Court further ORDERS the parties to negotiate a final schedule for all pretrial disclosures that remain outstanding, including: *Brady*, *Giglio*, and Jenks Act materials, including co-conspirator statements; non-testifying witness statements; testifying witness statements; the identity of victims alleged in the indictment; 404(b) material; and the Government's witness list. The Court also requires the parties to negotiate a schedule for any additional or supplemental motions briefing in light of the S2 indictment. The Court ORDERS a joint proposal to be submitted by April 21, 2021. If agreement is not reached, the parties shall submit their respective proposals.

The Court further ORDERS Maxwell to show cause by April 21, 2021 why her motion to dismiss the S1 superseding indictment under the Sixth Amendment (Dkt. No. 125) should not be denied as moot.

SO ORDERED.

Dated: April 16, 2021
New York, New York

ALISON J. NATHAN
United States District Judge

Exhibit B

A-173

COMPOSITE EXHIBIT A

NON-PROSECUTION AGREEMENT AND ADDENDUM

IN RE:
INVESTIGATION OF
JEFFREY EPSTEIN
_____/

NON-PROSECUTION AGREEMENT

IT APPEARING that the City of Palm Beach Police Department and the State Attorney's Office for the 15th Judicial Circuit in and for Palm Beach County (hereinafter, the "State Attorney's Office") have conducted an investigation into the conduct of Jeffrey Epstein (hereinafter "Epstein");

IT APPEARING that the State Attorney's Office has charged Epstein by indictment with solicitation of prostitution, in violation of Florida Statutes Section 796.07;

IT APPEARING that the United States Attorney's Office and the Federal Bureau of Investigation have conducted their own investigation into Epstein's background and any offenses that may have been committed by Epstein against the United States from in or around 2001 through in or around September 2007, including:

(1) knowingly and willfully conspiring with others known and unknown to commit an offense against the United States, that is, to use a facility or means of interstate or foreign commerce to knowingly persuade, induce, or entice minor females to engage in prostitution, in violation of Title 18, United States Code, Section 2422(b); all in violation of Title 18, United States Code, Section 371;

(2) knowingly and willfully conspiring with others known and unknown to travel in interstate commerce for the purpose of engaging in illicit sexual conduct, as defined in 18 U.S.C. § 2423(f), with minor females, in violation of Title 18, United States Code, Section 2423(b); all in violation of Title 18, United States Code, Section 2423(e);

(3) using a facility or means of interstate or foreign commerce to knowingly persuade, induce, or entice minor females to engage in prostitution; in violation of Title 18, United States Code, Sections 2422(b) and 2;

(4) traveling in interstate commerce for the purpose of engaging in illicit sexual conduct, as defined in 18 U.S.C. § 2423(f), with minor females; in violation

of Title 18, United States Code, Section 2423(b); and

(5) knowingly, in and affecting interstate and foreign commerce, recruiting, enticing, and obtaining by any means a person, knowing that the person had not attained the age of 18 years and would be caused to engage in a commercial sex act as defined in 18 U.S.C. § 1591(c)(1); in violation of Title 18, United States Code, Sections 1591(a)(1) and 2; and

IT APPEARING that Epstein seeks to resolve globally his state and federal criminal liability and Epstein understands and acknowledges that, in exchange for the benefits provided by this agreement, he agrees to comply with its terms, including undertaking certain actions with the State Attorney's Office;

IT APPEARING, after an investigation of the offenses and Epstein's background by both State and Federal law enforcement agencies, and after due consultation with the State Attorney's Office, that the interests of the United States, the State of Florida, and the Defendant will be served by the following procedure;

THEREFORE, on the authority of R. Alexander Acosta, United States Attorney for the Southern District of Florida, prosecution in this District for these offenses shall be deferred in favor of prosecution by the State of Florida, provided that Epstein abides by the following conditions and the requirements of this Agreement set forth below.

If the United States Attorney should determine, based on reliable evidence, that, during the period of the Agreement, Epstein willfully violated any of the conditions of this Agreement, then the United States Attorney may, within ninety (90) days following the expiration of the term of home confinement discussed below, provide Epstein with timely notice specifying the condition(s) of the Agreement that he has violated, and shall initiate its prosecution on any offense within sixty (60) days' of giving notice of the violation. Any notice provided to Epstein pursuant to this paragraph shall be provided within 60 days of the United States learning of facts which may provide a basis for a determination of a breach of the Agreement.

After timely fulfilling all the terms and conditions of the Agreement, no prosecution for the offenses set out on pages 1 and 2 of this Agreement, nor any other offenses that have been the subject of the joint investigation by the Federal Bureau of Investigation and the United States Attorney's Office, nor any offenses that arose from the Federal Grand Jury investigation will be instituted in this District, and the charges against Epstein if any, will be dismissed.

Terms of the Agreement:

1. Epstein shall plead guilty (not nolo contendere) to the Indictment as currently pending against him in the 15th Judicial Circuit in and for Palm Beach County (Case No. 2006-cf-009495AXXXMB) charging one (1) count of solicitation of prostitution, in violation of Fl. Stat. § 796.07. In addition, Epstein shall plead guilty to an Information filed by the State Attorney's Office charging Epstein with an offense that requires him to register as a sex offender, that is, the solicitation of minors to engage in prostitution, in violation of Florida Statutes Section 796.03;

2. Epstein shall make a binding recommendation that the Court impose a thirty (30) month sentence to be divided as follows:

   (a) Epstein shall be sentenced to consecutive terms of twelve (12) months and six (6) months in county jail for all charges, without any opportunity for withholding adjudication or sentencing, and without probation or community control in lieu of imprisonment; and

   (b) Epstein shall be sentenced to a term of twelve (12) months of community control consecutive to his two terms in county jail as described in Term 2(a), *supra*.

3. This agreement is contingent upon a Judge of the 15th Judicial Circuit accepting and executing the sentence agreed upon between the State Attorney's Office and Epstein, the details of which are set forth in this agreement.

4. The terms contained in paragraphs 1 and 2, *supra*, do not foreclose Epstein and the State Attorney's Office from agreeing to recommend any additional charge(s) or any additional term(s) of probation and/or incarceration.

5. Epstein shall waive all challenges to the Information filed by the State Attorney's Office and shall waive the right to appeal his conviction and sentence, except a sentence that exceeds what is set forth in paragraph (2), *supra*.

6. Epstein shall provide to the U.S. Attorney's Office copies of all

proposed agreements with the State Attorney's Office prior to entering into those agreements.

7. The United States shall provide Epstein's attorneys with a list of individuals whom it has identified as victims, as defined in 18 U.S.C. § 2255, after Epstein has signed this agreement and been sentenced. Upon the execution of this agreement, the United States, in consultation with and subject to the good faith approval of Epstein's counsel, shall select an attorney representative for these persons, who shall be paid for by Epstein. Epstein's counsel may contact the identified individuals through that representative.

8. If any of the individuals referred to in paragraph (7), *supra*, elects to file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the United States District Court for the Southern District of Florida over his person and/or the subject matter, and Epstein waives his right to contest liability and also waives his right to contest damages up to an amount as agreed to between the identified individual and Epstein, so long as the identified individual elects to proceed exclusively under 18 U.S.C. § 2255, and agrees to waive any other claim for damages, whether pursuant to state, federal, or common law. Notwithstanding this waiver, as to those individuals whose names appear on the list provided by the United States, Epstein's signature on this agreement, his waivers and failures to contest liability and such damages in any suit are not to be construed as an admission of any criminal or civil liability.

9. Epstein's signature on this agreement also is not to be construed as an admission of civil or criminal liability or a waiver of any jurisdictional or other defense as to any person whose name does not appear on the list provided by the United States.

10. Except as to those individuals who elect to proceed exclusively under 18 U.S.C. § 2255, as set forth in paragraph (8), *supra*, neither Epstein's signature on this agreement, nor its terms, nor any resulting waivers or settlements by Epstein are to be construed as admissions or evidence of civil or criminal liability or a waiver of any jurisdictional or other defense as to any person, whether or not her name appears on the list provided by the United States.

11. Epstein shall use his best efforts to enter his guilty plea and be

sentenced not later than October 26, 2007. The United States has no objection to Epstein self-reporting to begin serving his sentence not later than January 4, 2008.

12. Epstein agrees that he will not be afforded any benefits with respect to gain time, other than the rights, opportunities, and benefits as any other inmate, including but not limited to, eligibility for gain time credit based on standard rules and regulations that apply in the State of Florida. At the United States' request, Epstein agrees to provide an accounting of the gain time he earned during his period of incarceration.

13. The parties anticipate that this agreement will not be made part of any public record. If the United States receives a Freedom of Information Act request or any compulsory process commanding the disclosure of the agreement, it will provide notice to Epstein before making that disclosure.

Epstein understands that the United States Attorney has no authority to require the State Attorney's Office to abide by any terms of this agreement. Epstein understands that it is his obligation to undertake discussions with the State Attorney's Office and to use his best efforts to ensure compliance with these procedures, which compliance will be necessary to satisfy the United States' interest. Epstein also understands that it is his obligation to use his best efforts to convince the Judge of the 15th Judicial Circuit to accept Epstein's binding recommendation regarding the sentence to be imposed, and understands that the failure to do so will be a breach of the agreement.

In consideration of Epstein's agreement to plead guilty and to provide compensation in the manner described above, if Epstein successfully fulfills all of the terms and conditions of this agreement, the United States also agrees that it will not institute any criminal charges against any potential co-conspirators of Epstein, including but not limited to Sarah Kellen, Adriana Ross, Lesley Groff, or Nadia Marcinkova. Further, upon execution of this agreement and a plea agreement with the State Attorney's Office, the federal Grand Jury investigation will be suspended, and all pending federal Grand Jury subpoenas will be held in abeyance unless and until the defendant violates any term of this agreement. The defendant likewise agrees to withdraw his pending motion to intervene and to quash certain grand jury subpoenas. Both parties agree to maintain their evidence, specifically evidence requested by or directly related to the grand jury subpoenas that have been issued, and including certain computer equipment, inviolate until all of the terms of this agreement have been satisfied. Upon the successful completion of the terms of this agreement, all outstanding grand jury subpoenas shall be deemed withdrawn.

By signing this agreement, Epstein asserts and certifies that each of these terms is material to this agreement and is supported by independent consideration and that a breach of any one of these conditions allows the United States to elect to terminate the agreement and to investigate and prosecute Epstein and any other individual or entity for any and all federal offenses.

By signing this agreement, Epstein asserts and certifies that he is aware of the fact that the Sixth Amendment to the Constitution of the United States provides that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. Epstein further is aware that Rule 48(b) of the Federal Rules of Criminal Procedure provides that the Court may dismiss an indictment, information, or complaint for unnecessary delay in presenting a charge to the Grand Jury, filing an information, or in bringing a defendant to trial. Epstein hereby requests that the United States Attorney for the Southern District of Florida defer such prosecution. Epstein agrees and consents that any delay from the date of this Agreement to the date of initiation of prosecution, as provided for in the terms expressed herein, shall be deemed to be a necessary delay at his own request, and he hereby waives any defense to such prosecution on the ground that such delay operated to deny him rights under Rule 48(b) of the Federal Rules of Criminal Procedure and the Sixth Amendment to the Constitution of the United States to a speedy trial or to bar the prosecution by reason of the running of the statute of limitations for a period of months equal to the period between the signing of this agreement and the breach of this agreement as to those offenses that were the subject of the grand jury's investigation. Epstein further asserts and certifies that he understands that the Fifth Amendment and Rule 7(a) of the Federal Rules of Criminal Procedure provide that all felonies must be charged in an indictment presented to a grand jury. Epstein hereby agrees and consents that, if a prosecution against him is instituted for any offense that was the subject of the grand jury's investigation, it may be by way of an Information signed and filed by the United States Attorney, and hereby waives his right to be indicted by a grand jury as to any such offense.

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By signing this agreement, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the conditions of this Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: _____ By: _____
A. MARIE VILLAFAÑA
ASSISTANT U.S. ATTORNEY

Dated: 9/24/07
JEFFREY EPSTEIN

Dated: _____
GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: _____
LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

By signing this agreement, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the conditions of this Non-Prosecution Agreement and agrees to comply with them.

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JEFFREY EPSTEIN

Dated: 9/24/07
GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: _____
LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

By signing this agreement, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the conditions of this Non-Prosecution Agreement and agrees to comply with them.

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ASSISTANT U.S. ATTORNEY

Dated: _____
JEFFREY EPSTEIN

Dated: _____
GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: 9-24-07
LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

IN RE:

INVESTIGATION OF

JEFFREY EPSTEIN

_____/

ADDENDUM TO THE NON-PROSECUTION AGREEMENT

IT APPEARING that the parties seek to clarify certain provisions of page 4, paragraph 7 of the Non-Prosecution Agreement (hereinafter "paragraph 7"), that agreement is modified as follows:

7A. The United States has the right to assign to an independent third-party the responsibility for consulting with and, subject to the good faith approval of Epstein's counsel, selecting the attorney representative for the individuals identified under the Agreement. If the United States elects to assign this responsibility to an independent third-party, both the United States and Epstein retain the right to make good faith objections to the attorney representative suggested by the independent third-party prior to the final designation of the attorney representative.

7B. The parties will jointly prepare a short written submission to the independent third-party regarding the role of the attorney representative and regarding Epstein's Agreement to pay such attorney representative his or her regular customary hourly rate for representing such victims subject to the provisions of paragraph C, infra.

7C. Pursuant to additional paragraph 7A, Epstein has agreed to pay the fees of the attorney representative selected by the independent third party. This provision, however, shall not obligate Epstein to pay the fees and costs of contested litigation filed against him. Thus, if after consideration of potential settlements, an attorney representative elects to file a contested lawsuit pursuant to 18 U.S.C. s 2255 or elects to pursue any other contested remedy, the paragraph 7 obligation of the Agreement to pay the costs of the attorney representative, as opposed to any statutory or other obligations to pay reasonable attorneys fees and costs such as those contained in s 2255 to bear the costs of the attorney representative, shall cease.

By signing this Addendum, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the clarifications to the Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: 10/30/07

By: Jeffrey H. Sloman FAUSA
for A. MARIE VILLAFAÑA
ASSISTANT U.S. ATTORNEY

Dated: 10/29/07

JEFFREY EPSTEIN

Dated: _____

GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: _____

LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

By signing this Addendum, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the clarifications to the Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: 10/30/07

By: Jeffrey H. Sloman FAUSA
A. MARIE VILLAFAÑA
ASSISTANT U.S. ATTORNEY

Dated: _____

JEFFREY EPSTEIN

Dated: 10/29/07

GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: _____

LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

By signing this Addendum, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the clarifications to the Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: 10/30/07

By: [signature] FAUSA
A. MARIE VILLAFAÑA
ASSISTANT U.S. ATTORNEY

Dated: _____

JEFFREY EPSTEIN

Dated: _____

GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: 10-29-07

LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

Affirmation

I, Jeffrey E. Epstein do hereby re-affirm the Non-Prosecution Agreement and Addendum to same dated October 30, 2007.

Jeffrey E. Epstein

12/7/07
Date

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8/13/21

United States of America,

–v–

Ghislaine Maxwell,

Defendant.

20-cr-330 (AJN)

OPINION & ORDER

ALISON J. NATHAN, District Judge:

On April 16, 2021, the Court issued an Opinion & Order granting in part and denying in part Ghislaine Maxwell's various pretrial motions seeking to dismiss portions of the Government's (S1) superseding indictment and compel discovery. Prior to the issuance of that Opinion & Order but after the motions were fully briefed, a grand jury returned a second (S2) superseding indictment adding a sex trafficking count and sex trafficking conspiracy count. The Court did not address the new charges in the April 16, 2021 Opinion & Order. On May 25, 2021, Maxwell filed another round of pretrial motions seeking to dismiss the S2 indictment in whole or in part and to compel discovery. Dkt. No. 292, 293. For appeal preservation purposes or otherwise, the arguments largely, though not entirely, rehash the positions rejected by the Court in its April 16, 2021 Opinion & Order. To the extent new arguments are made, they are addressed below. All pending motions are DENIED. The Court provides a brief summary of its conclusions here and its reasoning on the pages that follow:

- Maxwell moves to dismiss counts one, three, five, and six as barred by Jeffrey Epstein's non-prosecution agreement. The Court again concludes, as it did in its April 16, 2021 Opinion & Order, that the agreement does not bind the United States Attorney for the Southern District of New York.

- Maxwell moves to dismiss counts five and six on the grounds that prosecuting her on those counts would violate her rights under the Double Jeopardy Clause. The Court concludes that Maxwell has not previously been put in jeopardy for these offenses and therefore her prosecution on these counts does not violate the Double Jeopardy Clause.
- Maxwell moves to dismiss counts five and six as untimely. The Court again concludes, as it did in its April 16, 2021 Opinion & Order, that the Government brought the charges within the applicable statute of limitations.
- Maxwell moves to dismiss count five and either count one or count three as multiplicitous. The Court again determines, as it did in its April 16, 2021 Opinion & Order, that this motion is premature and denies it without prejudice for renewal at trial.
- Maxwell moves to dismiss the S2 indictment for pre-indictment delay. The Court again concludes, as it did in its April 16, 2021 Opinion & Order, that Maxwell has not established that she suffered prejudice and therefore any delay has not violated her rights to due process.
- Maxwell moves for a bill of particulars related to counts five and six because they are too vague, and in particular do not provide specific dates. The Court again concludes, as it did in its April 16, 2021 Opinion & Order, that the charges are sufficiently specific.
- Maxwell moves to compel the Government to produce the statements of "Minor-Victim 4" in the S2 indictment as *Brady* material. The Court concludes that the current disclosure schedule gives Maxwell sufficient time to make effective use of any such statements and therefore immediate disclosure is not warranted.

I. Jeffrey Epstein's non-prosecution agreement does not bar the charges in the S2 indictment

In its April 16, 2021 Opinion & Order on Maxwell's first set of pretrial motions, the Court held that the non-prosecution agreement ("NPA") between Jeffrey Epstein and the U.S. Attorney's Office for the Southern District of Florida did not bar the charges against Maxwell in the S1 superseding indictment. *See United States v. Maxwell*, No. 20-cr-330 (AJN), 2021 WL 1518675, at *2 (S.D.N.Y. Apr. 16, 2021). Maxwell now renews those arguments for the charges in the S2 superseding indictment. The Court understands the primary purpose of Maxwell's renewed motion to be to preserve these arguments for appellate review, and the Court denies the

renewed motion for substantially the same reasons set forth in its April 16 opinion. The Court will proceed to briefly explain why neither the new charges in the S2 superseding indictment nor the supplemental authority Maxwell cites change the Court's conclusion that the NPA does not bar the charges against her.

As the Court explained in its April 16, 2021 Opinion & Order, the Second Circuit held in *United States v. Annabi* that "[a] plea agreement binds only the office of the United States Attorney for the district in which the plea is entered unless it affirmatively appears that the agreement contemplates a broader restriction." 771 F.2d 670, 672 (2d Cir. 1985) (per curiam). The Second Circuit's opinion in *Annabi* is clear, and that court has followed it steadfastly since. *See, e.g.*, *United States v. Gonzalez*, 93 F. App'x 268, 270 (2d Cir. 2004); *United States v. Brown*, No. 99-1230(L), 2002 WL 34244994, at *2 (2d Cir. Apr. 26, 2002); *United States v. Salameh*, 152 F.3d 88, 120 (2d Cir. 1998) (per curiam); *United States v. Rivera*, 844 F.2d 916, 923 (2d Cir. 1988). The Second Circuit has held that language nearly identical to that in Epstein's NPA is not enough to overcome the presumption in favor of single-district plea agreements. *See Salameh*, 152 F.3d at 120. Adhering to this binding authority, this Court thus concluded (and continues to conclude) that the NPA does not bind the U.S. Attorney's Office for the Southern District of New York. It thus provides Maxwell no defense in this case even if it would otherwise cover the conduct charged in the new counts in the S2 superseding indictment.

Maxwell advances two new arguments for why the Court should depart from this reasoning—the first in her renewed motion and the second in a letter of supplemental authority. *See* Dkt. Nos. 293, 310. In her renewed motion, she contends that *Annabi* contains an exception for out-of-district prosecutions for charges that are "identical to the dismissed charges." And in the letter of supplemental authority, she contends that the opinion of the Pennsylvania Supreme

Court in *Commonwealth v. Cosby*, No. 39 MAP 2020, 2021 WL 2674380 (Pa. June 30, 2021), requires dismissal. Neither argument is persuasive.

Annabi contains no exception for out-of-district prosecutions for charges that are "identical to the dismissed charges." In the language Maxwell cites from *Annabi*, the Second Circuit discussed (and rejected) a claim based on the Double Jeopardy Clause, not a claim based on the plea agreement in that case. *See Annabi*, 771 F.2d at 672. In that section of the opinion, the Second Circuit held that even if the charges had been identical to the dismissed charges, the defendants' double jeopardy claims would fail because they were never in jeopardy on the charges that were dismissed under the plea agreement. Nothing in *Annabi* suggests that the presumption in favor of single-district plea agreements does not apply if later charges in another district are sufficiently "identical" to the dismissed ones, and no subsequent Second Circuit case applying *Annabi* has so held. *Annabi* applies squarely to the facts of this case and binds this Court.

The Court also disagrees that *Cosby* mandates a different result. To begin with, this Court must follow the precedential opinions of the Second Circuit on questions of federal law, not those of a state court. Thus, nothing in *Cosby* could change this Court's view that Second Circuit precedent in *Annabi* forecloses Maxwell's arguments related to the NPA. In any event, the state court in *Cosby* did not purport to decide the same federal question at issue here. In *Cosby*, the court held that it was unfair for a district attorney to proceed with charges against Bill Cosby after the district attorney's office had, in that court's view of the facts, unequivocally promised that it would not charge him. *Cosby*, 2021 WL 2674380, at *34. That case did not involve a question of whether one office's promise bound another, much less whether a plea agreement in one federal district should be construed to apply in another district. Instead, the

case focused on whether prosecutors were required to honor a promise that the court found to be clear in the absence of a formal plea agreement. Even if this Court agreed with the analysis in *Cosby*, that opinion sheds no light on the proper interpretation of the NPA in this case.

After considering the arguments in Maxwell's renewed motion and letter of supplemental authority, the Court's view remains unchanged from its April 16, 2021 Opinion & Order. Under Second Circuit precedent, the NPA does not bind the U.S. Attorney for the Southern District of New York. It thus does not bar the charges in the S2 superseding indictment.

II. This prosecution does not violate the prohibition against double jeopardy

The Double Jeopardy Clause provides that "[n]o person shall be . . . subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V. "This protection applies both to successive punishments and to successive prosecutions for the same criminal offense." *United States v. Dixon*, 509 U.S. 688, 696 (1993). "A defendant may only raise a Double Jeopardy claim if he has been put in jeopardy (*i.e.* jeopardy has 'attached') sometime before the alleged 'second' prosecution." *United States v. Podde*, 105 F.3d 813, 816 (2d Cir. 1997). A defendant is put in jeopardy when the jury in their case is empaneled or upon the defendant's entry of a guilty plea. *Crist v. Bretz*, 437 U.S. 28, 35 (1978); *Morris v. Reynolds*, 264 F.3d 38, 49 (2d Cir. 2001). Until then, a defendant has not been put in jeopardy and the Government is free to commence a prosecution.

Maxwell has not previously been put in jeopardy for the offenses charged in this case. She concededly has not been punished or prosecuted for any prior offense. She was never charged in the Southern District of Florida in connection with the Epstein investigation. She agreed to nothing in Epstein's NPA, because she was not a party to it. She suffered no criminal consequences as a result of Epstein's guilty plea in Florida state court. To the contrary, there is

no indication that Maxwell was even a subject of the Florida investigation. The Double Jeopardy Clause bars only successive prosecution or punishment for the same offense, and Maxwell has endured neither. Thus, the Double Jeopardy Clause does not bar the charges against her.

Despite facing no prior prosecution or punishment herself, Maxwell contends that she is immune from prosecution because Epstein was already punished for the same conspiracy. The cases she cites, however, deal with successive prosecutions of a particular defendant for the same conspiracy, not separate prosecutions of individual co-conspirators. *See, e.g.*, *United States v. Lopez*, 356 F.3d 463, 469 (2d Cir. 2004). The Double Jeopardy Clause does not require all co-conspirators be tried together for related offenses. *See Zafiro v. United States*, 506 U.S. 534, 539 (1993); *United States v. Hinton*, 543 F.2d 1002, 1014 (2d Cir. 1976). Whether the Government could have charged Epstein again in this case has nothing to do with Maxwell's rights under the Double Jeopardy Clause.

Maxwell finally points to one case in which the Second Circuit held that a subsequent prosecution might not be permissible against a defendant whose charges were dismissed after her husband pleaded guilty. Dkt. No. 293 at 19 (citing *United States v. Cambindo Valencia*, 609 F.2d 603 (2d Cir. 1979)). However, the Court agrees with the Government that the result in *Cambindo Valencia* rested on the terms of the husband's plea agreement, not the Double Jeopardy Clause. *See Cambindo Valencia*, 609 F.2d at 638. No precedent stands for the proposition that an uncharged co-conspirator is put in jeopardy when another co-conspirator accepts a non-prosecution agreement. This is the first case in which Maxwell will be put in jeopardy for these offenses, and so this prosecution does not put her in jeopardy a second time.

III. Counts five and six are not time-barred

For most non-capital offenses, the statute of limitations under federal law is five years. 18 U.S.C. § 3282(a). Congress has enacted longer limitations periods for certain crimes, in particular for "offense[s] involving the sexual or physical abuse, or kidnapping" of a minor in 18 U.S.C. § 3283. Prior to 2003, the limitations period in § 3283 lasted until the victim reached the age of 25, and then Congress extended the limitations period to the life of the victim with the PROTECT Act of 2003, Pub. L. No. 108-21, 117 Stat 60. In 2006, Congress enacted 18 U.S.C. § 3299, which eliminated the statute of limitations for the sex trafficking of minors in violation of 18 U.S.C. § 1591 and for some other sex crimes. *See* 18 U.S.C. § 3299 ("Notwithstanding any other law, an indictment may be found or an information instituted at any time without limitation for any offense under . . . section 1591.").

In her previous motion, Maxwell argued that the Mann Act charges against her in the indictment were time-barred on the grounds that the extended limitations period § 3283 was not applicable. The Court denied that motion in its April 16, 2021 Opinion & Order. *Maxwell*, 2021 WL 1518675, at *5. Maxwell now argues that the new charges the Government has brought against her in the S2 indictment, Sex Trafficking Conspiracy (18 U.S.C. § 371) and Sex Trafficking (18 U.S.C. § 1591), are time-barred as well because § 3283 does not apply to those offenses either. She renews her contention from her previous motion that the limitations period in § 3283 only applies to offenses which "necessarily entail" the sexual abuse of a minor and argues that a violation of 18 U.S.C. § 1591 does not. Thus, according to Maxwell's reasoning, the general five-year statute of limitations period in 18 U.S.C. § 3282(a) applies to the sex trafficking counts and, because the alleged conduct occurred from 2001 to 2004, the Government is now time-barred for prosecuting her for these offenses.

The Court denies this motion for substantially similar reasons as those discussed in its April 16, 2021 Opinion & Order. As an initial matter, the Court reiterates that Maxwell's analysis of § 3283 is incorrect. As the Court explained, § 3283 does not call for a "categorical approach" nor an "essential ingredient" test, but instead requires that the defendant's conduct in that particular case involved the sexual abuse of a minor. *Maxwell*, 2021 WL 1518675 at *5-7. Here, there is no question that Maxwell is alleged to have engaged in activity that constitutes the sexual abuse of a minor with respect to the sex trafficking counts.

But in any event, as the Government pointed out in its brief – and as Maxwell did not contest in her reply – § 3283 is not the only statute of limitations that applies to the sex trafficking counts. As discussed above, in 2006, Congress enacted § 3299 to eliminate altogether the limitations period for the offense of sex trafficking children in violation of § 1591. *See* 18 U.S.C. § 3299.

Moreover, while the alleged sex trafficking in the S2 indictment is alleged to have occurred prior to the enactment of § 3299 in 2006, the Court holds that the provision nonetheless applies retroactively to cover that conduct. In its April 16, 2021 Opinion & Order, the Court analyzed § 3283 under the *Landgraf v. USA Film Products*, 511 U.S. 244, 280 (1994) framework and concluded that the limitations period applied retroactively so long as the previous limitations period had not yet expired. *Maxwell*, 2021 WL 1518675, at *7-8. Similar to § 3283, which states that "[n]o statute of limitations that would otherwise preclude prosecution" shall apply, the language of § 3299 provides that an indictment may be instituted at any time for certain offenses "[n]otwithstanding any other law." As discussed in the Court's previous opinion with respect to § 3283, this kind of language unambiguously requires that the limitations period apply retroactively to prosecutions for offenses committed before the date of enactment so long as the

applicable limitations period has not yet run – offenses that *by definition* are those for which "other law[s]" of limitation would otherwise bar prosecution. *See* 18 U.S.C. § 3299. Moreover, as the Court also explained, not only does this kind of language unambiguously require retroactivity, it also does not result in any impermissible retroactive effects so long as it does not revive time-barred claims. *Maxwell*, 2021 WL 1518675, at *7-8. The Court therefore joins multiple other district courts in concluding that, like § 3283, § 3299 applies retroactively to offenses for which the previous limitations period has not yet run. *See United States v. Nader,* 425 F. Supp. 3d 619, 629 (E.D. Va. 2019); *United States v. Pierre-Louis*, No. 16 CR 541 (CM), 2018 WL 4043140, at *6 (S.D.N.Y. Aug. 9, 2018); *United States v. Vickers*, No. 13-CR-128-A, 2014 WL 1838255, at *8 (W.D.N.Y. May 8, 2014); *United States v. Sensi*, No. 3:08-CR-253 (WWE), 2010 WL 2351484, at *3 (D. Conn. June 7, 2010).

The sex trafficking charges are therefore not time-barred. Regardless of whether it was the general five-year limitations period in § 3282(a) or the extended limitations period for sexual abuse of minors in § 3283 that was applicable to Maxwell's alleged conduct *prior* to the enactment of § 3299 in 2006, neither had expired by that date. Thus, as Maxwell does not contest, § 3299 applies retroactively to the sex trafficking offenses in the indictment and the Government is permitted to bring those charges without time limitation.

IV. Maxwell's motion to dismiss count five and either count one or count three as multiplicitous is premature

In her previous motions, Maxwell argued that either count one or count three of the S1 indictment, the Mann Act conspiracy charges, must be dismissed because the counts are multiplicitous. In the Court's April 16, 2021 Opinion & Order, the Court joined many other courts in this Circuit holding that pretrial motions of this sort are premature in light of *United States v. Josephberg*, 459 F.3d 350, 355 (2d Cir. 2006), and the Court dismissed without

prejudice. *Maxwell*, 2021 WL 1518675, at *14. In the instant motion, Maxwell similarly argues that count five of the S2 indictment, the sex trafficking conspiracy charge, is duplicative of either counts one or three. Maxwell's motion is denied without prejudice for the reasons stated in the Court's April 16, 2021 Opinion & Order.

V. The Government's delay in bringing the charges did not violate due process

Maxwell also renews her motion to dismiss the S2 indictment based on alleged improper pretrial delay. In its April 16, 2021 Opinion & Order, the Court denied Maxwell's motion, concluding that her efforts to show actual and substantial prejudice fell far short of the "stringent standard" necessary to prevail on such a claim. *Maxwell*, 2021 WL 1518675, at *9. Maxwell's motion to dismiss the S2 on these grounds fails for the same reasons. As before, nothing in the record indicates that the Government's delay in bringing these charges was designed to thwart Maxwell's ability to prepare a defense. However, it is sufficient to conclude that Maxwell does not make the strong showing of prejudice required to support this sort of claim. Maxwell contends that the Government's delay in bringing charges has prejudiced her interests because potential witnesses have died, others have forgotten, and records have been lost or destroyed. It is highly speculative that any of these factors would make a substantial difference in her case.

The Court thus again concludes for the reasons stated in the April 16, 2021 Opinion & Order, that Maxwell has failed to establish actual prejudice from the Government's delay in bringing charges. She may renew her motion if the factual record at trial shows otherwise. On the present record, neither the applicable statute of limitations nor due process bars the charges here.

VI. No bill of particulars is warranted

Maxwell moves for a bill of particulars as to counts five and six. Federal Rule of Criminal Procedure 7 requires that an indictment contain "a plain, concise, and definite written statement of the essential facts constituting the offense charged[.]" The indictment must be specific enough to inform the defendant of the charges and allow the defendant to plead double jeopardy in a later prosecution based on the same events. *See United States v. Stavroulakis*, 952 F.2d 686, 693 (2d Cir. 1992). "Under this test, an indictment need do little more than to track the language of the statute charged and state the time and place (in approximate terms) of the alleged crime." *United States. v. Tramunti*, 513 F.2d 1087, 1113 (2d Cir. 1975).

"Rule 7(f) of the Federal Rules of Criminal Procedure permits a defendant to seek a bill of particulars in order to identify with sufficient particularity the nature of the charge pending against him, thereby enabling defendant to prepare for trial, to prevent surprise, and to interpose a plea of double jeopardy should he be prosecuted a second time for the same offense." *United States v. Bortnovsky*, 820 F.2d 572, 574 (2d Cir. 1987). "The purpose of a bill of particulars is to supplement the allegations in the indictment when necessary to (1) enable the defendant to prepare his defense, (2) avoid unfair surprise to the defendant at trial, and (3) preclude a second prosecution of the same offense." *United States v. Mandell*, 710 F. Supp. 2d 368, 384 (S.D.N.Y. 2010)). On the other hand, the Court must balance these interests against the harm to the Government from restricting its proof at trial. *See United States v. Rajaratnam*, No. 09-cr-1184 (RJH), 2010 WL 2788168, at *1 (S.D.N.Y. Jul. 13, 2010).

In her previous motions, Maxwell argued that the Mann Act counts in the indictment should be dismissed for lack of specificity or that, in the alternative, the Court should compel the Government to submit a bill of particulars providing greater detail of the charges. Maxwell

contended specifically that the indictment is too vague because it refers to open-ended time periods for the Mann Act counts. The Court disagreed in light of Circuit precedent requiring only that an indictment describe the time and place of the charged conduct in "approximate terms" and permitting the use of "on or about" language to describe the window of when a violation occurred. *Maxwell*, 2021 WL 1518675, at *10 (citing *Tramunti*, 513 F.2d at 1113; *United States v. Nersesian*, 824 F.2d 1294, 1323 (2d Cir. 1987)). The Court explained that approximate time periods are particularly appropriate if the allegations involved ongoing conduct and especially if the indictment alleges sexual abuse against minor victims. *Id.* (citing *United States v. Young*, No. 08-cr-285 (KMK), 2008 WL 4178190, at *2 (S.D.N.Y. Sept. 4, 2008)).

Maxwell now again moves for a bill of particulars. Maxwell primarily argues that the S2 indictment does not provide specific dates for the conduct alleged with respect to the sex trafficking counts. Instead, the S2 indictment provides a four-year time period from 2001 to 2004 in which the alleged sex trafficking and sex trafficking conspiracy occurred. Maxwell's motion in this respect is denied for the same reasons stated in the Court's April 16, 2021 Opinion & Order. The indictment alleges ongoing conduct that involve the sexual abuse of minors with respect to counts five and six and therefore the approximate time period provided is sufficient. Accordingly, the motion for a bill of particulars is denied.[1]

VII. The current disclosure schedule for impeachment material is adequate

Finally, Maxwell moves to compel the immediate disclosure of any of Minor Victim's prior statements in which she did not mention Maxwell, including prior statements made to the

[1] Additionally, Maxwell includes in her motion for a bill of particulars a request to require the government to identify the unnamed co-conspirators who allegedly participated in the conspiracies charged in the S2 indictment. Maxwell also made this request in the parties' joint May 21, 2021 letter to the Court regarding the disclosure schedule. Dkt. No. 291. In both her motion and the May 21, 2021 letter, Maxwell requests that this information be disclosed to the defense at the same time that the Government discloses Jencks Act material. The Government has not opposed this request. In the absence

FBI. The Court has ordered the Government to disclose all Jencks Act and *Giglio* material by October 11, 2021. Dkt. No. 297 at 1. That date is seven weeks in advance of trial. The Court sees no reason to depart from the rule in this district that impeachment material of anticipated witnesses does not warrant an order compelling immediate disclosure. *See United States v. Campo Flores*, No. 15 Cr. 765 (PAC), 2016 WL 5946472, at *11 (S.D.N.Y. Oct. 12, 2016). Seven weeks in advance of trial is far more time than is standard in this district and no showing has been made that it will be insufficient for Maxwell to make effective use of the information in preparation of her defense.

To the extent Maxwell argues that the Government is in possession of prior statements that are exculpatory under *Brady* (for example, if a witness denied Maxwell's involvement), rather than useful only for standard impeachment purposes, it is of course the Government's obligation to "disclose such information to the defense promptly after its existence becomes known to the Government so that the defense may make effective use of the information in the preparation of its case." Dkt. 68 at 1. The context of questions and answers surely matters as to whether a statement (or omission) is exculpatory, impeaching, or neither. It is for the Government to make these assessments *ex ante* and fully meet its disclosure obligations so that the defense may make effective use of any such information in preparation for trial. *See United States v. Coppa*, 267 F.3d 132, 144-46 (2d Cir. 2001). The Government has repeatedly confirmed that it understands those obligations, and that it has met them and will continue to meet them. Accordingly, the motion to compel the immediate disclosure of any of Minor Victim-4's prior statements in which she did not mention Maxwell is denied.

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of objection, the Court presumes the Government intends to disclose this information to Maxwell at the same time that as it discloses Jencks Act material.

Conclusion

For the reasons above and in this Court's April 16, 2021 Opinion & Order, the Court DENIES Maxwell's motion to obtain relief specified in her supplemental pre-trial motions relating to the S2 indictment. This resolves Dkt. No. 292.

SO ORDERED.

Dated: August 13, 2021
New York, New York

ALISON J. NATHAN
United States District Judge

travel across state lines with the intent that she would engage in sexual activity for which a person could be charged with a crime under the penal law of New York State, namely, New York Penal Law Section 130.55. I instruct you as a matter of law that sexual abuse in the third degree -- the offense set forth in Count Two of the indictment -- was a violation of New York State Penal Law from in or about 1994, up to and including in or about 1997, at the time the acts are alleged to have been committed.

A person violates New York State Penal Law Section 130.55, sexual abuse in the third degree, when he or she subjects another person to sexual contact without the latter's consent. Under New York law, "sexual contact" means any touching of the sexual or other intimate parts of a person for the purpose of gratifying the sexual desire of either party. It includes the touching of the victim by the actor, whether directly or through clothing; as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.

Also under New York law, lack of consent can result from incapacity to consent. A person less than 17 years old is deemed incapable of consenting to sexual contact under New York law. Thus, the law deems sexual contact with a person less than 17 years old to be without that person's consent even if, in fact, that person did consent. However, in order to find

that the intended acts were nonconsensual solely because of the victim's age, you must find that Ms. Maxwell knew that Jane was less than 17 years old.

Instruction No. 18. Count Four. Transportation of an individual under the age of 17 to engage in illegal sexual activity. The statute.

The relevant statute for Count Four is Title 18, United States Code, Section 2423(a), which provides that a person who "knowingly transports any individual under the age of 17 years in interstate commerce, with the intent that such individual engage in any sexual activity for which any person can be charged with a criminal offense" is guilty of a federal crime.

Instruction No. 19. Count Four. Transportation of an individual under the age of 17 to engage in illegal sexual activity. The elements.

In order to prove the defendant guilty of Count Four, the government must establish each of the following three elements of the crime beyond a reasonable doubt:

First, that the defendant knowingly transported an individual in interstate commerce as alleged in the indictment.

Second, that the defendant transported the individual with the intent that the individual would engage in sexual activity for which any person can be charged with a criminal offense under New York law as alleged in the indictment.

And third, that the defendant knew that the individual was less than 17 years old at the time of the acts alleged in Count Four of the indictment. Count Four also relates solely to Jane during the time period 1994 to 1997.

Instruction No. 20. Count Four. Transportation of an individual under the age of 17 to engage in illegal sexual activity. First element.

The first element of Count Four which the government must prove beyond a reasonable doubt is that Ms. Maxwell knowingly transported Jane in interstate commerce as alleged in the indictment. The phrase "to transport an individual in interstate commerce" means to move or carry or cause someone to be moved or carried from one state to another.

The government does not have to prove that Ms. Maxwell personally transported Jane across a state line; it is sufficient to satisfy the element that Ms. Maxwell was actively engaged, either personally or through an agent, in the making of the travel arrangements such as by purchasing tickets necessary for Jane to travel as planned. Ms. Maxwell must have knowingly transported or caused the transportation of Jane in interstate commerce. That means that the government must prove that Ms. Maxwell knew both that she was causing Jane to be transported and that Jane was being transported in interstate commerce. As I've explained, an act is done knowingly when it's done voluntarily and intentionally and not because of

22-1426-cr

United States Court of Appeals

for the

Second Circuit

UNITED STATES OF AMERICA,

Appellee,

– v. –

GHISLAINE MAXWELL, AKA Sealed Defendant 1,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX
Volume 2 of 2 (Pages A-205 to A-421)

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accident, mistake, or some innocent reason.

It is the defendant's intent that matters here. If the government establishes each of the elements of the crime beyond a reasonable doubt, then the defendant is guilty of this charge whether or not the individual agreed or consented to cross state lines.

Instruction No. 21. Count Four. Transportation of an individual under the age of 17 to engage in illegal sexual activity. Second element.

The second element of Count Four which the government must prove beyond a reasonable doubt is that Ms. Maxwell knowingly transported Jane in interstate commerce with the intent that Jane engage in sexual activity for which any person can be charged with a criminal offense in violation of New York law.

Like Count Two, Count Four alleges sexual activity for which an individual could be charged with a violation of New York Penal Law, Section 130.55, sexual abuse in the third degree. I've already instructed you regarding that crime, and those instructions apply equally here.

In order to establish this element, it's not necessary for the government to prove that the illegal sexual activity was Ms. Maxwell's sole purpose for transporting Jane across state lines. A person may have several different purposes or motives for such conduct, and each may prompt in varying degree

the person's actions.

The government must prove beyond a reasonable doubt, however, that a significant or motivating purpose of Jane's travel across state lines was that she would engage in illegal sexual activity; in other words, the illegal sexual activity must not have been merely incidental to the trip.

Instruction No. 22. Count Four. Transportation of an individual under the age of 17 to engage in illegal sexual activity. Third element.

The third element of Count Four which the government must prove beyond a reasonable doubt is that Ms. Maxwell knew that Jane was less than 17 years old at the time of the acts alleged in Count Four of the indictment.

Instruction No. 23. Counts Two and Four. Failure to accomplish intended activity is immaterial.

Now, with respect to Counts Two and Four, it is not a defense that the sexual activity which may have been intended by the defendant was not accomplished. In other words, it's not necessary for the government to prove that anyone, in fact, engaged in any sexual activity for which any person can be charged with a criminal offense with the individual after she was enticed for Count Two or transported for Count Four across state lines. It is enough if the defendant has the requisite intent at the time of the enticement or transportation.

Instruction No. 24. Count Six. Sex trafficking of an

mind of their own. Because last week the Court invited them to sit the extra day and they declined that. So an inquiry may be appropriate, but I don't think telling them what they should do is necessarily the right thing to do.

THE COURT: Well, I have told them previously that they are here till at least 5. I think the question is whether, in light of the circumstances we find ourselves, we should encourage longer, if it's available to them. But you think about it. I'll hear from you. I'm not intending to do anything just yet. I presume we will hear from them as to this evening, but think about the indication of at least some extension of hours tomorrow if they have not completed the task.

All right? Thank you.

(Recess pending verdict)

THE COURT: I have a note.

Under Count Four, if the defendant aided in the transportation of Jane's return flight, but not the flight to New Mexico, where/if the intent was for Jane to engage in sexual activity, can she be found guilty under the second element?

I'm going to let you take a -- if you want to just take a look at the note. Counsel, you're welcome to take a photo of it, if that helps.

MS. STERNHEIM: Thank you.

THE COURT: Mark the note as Court Exhibit 14.

THE DEPUTY CLERK: 15.

THE COURT: 15.

Counsel, soon I'll look for your proposals.

Another note from the jury. This one says: We would like to end deliberations at 5 p.m. today.

So we'll take up extending deliberations after we resolve the response to this question.

(Counsel conferred)

THE COURT: All right. Let me get a proposal.

MR. EVERDELL: Happy to talk, your Honor.

THE COURT: Counsel, are you ready?

MS. MOE: I apologize, your Honor. Can we just have one more moment to confer with our supervisor?

THE COURT: Okay.

MS. MOE: Thank you.

(Counsel conferred)

MS. MOE: Thank you, your Honor.

Apologies for the delay.

THE COURT: Defense counsel, are you ready?

MS. STERNHEIM: Yes.

THE COURT: Okay. Go ahead, Ms. Moe.

MS. MOE: Your Honor, our proposal would be to refer the jurors to instruction number 21 on page 28 of the Court's instructions, which pertains to comprehensive instruction with

respect to the second element. Beyond that, we're not able to parse the question because we find it confusing; so we think the safest course is to refer the jurors to the comprehensive instruction with respect to the second element.

THE COURT: Mr. Everdell.

MR. EVERDELL: Your Honor, I think the answer to this question is no, and I'll tell you the rationale for this.

As to the jurors' note, they've clearly separated out in their minds the flight to New Mexico versus the flight back from New Mexico. And in their minds, there still is a question, it would seem, that the flight -- whatever the purpose of the flight to New Mexico was, whether it was for illicit sexual activity or not, that is different from the purpose of the flight back from New Mexico. And they are asking can she be found guilty solely on if there's some aiding and abetting, some helping of that flight from New Mexico, which presumably the flight home they're saying.

THE COURT: So the flight from New Mexico to where?

MR. EVERDELL: Well, there is no record of a flight from New Mexico. But what they are saying, I think, in this note is they are separating out in their minds the flight to New Mexico versus whatever flight she may have taken from New Mexico. And I would say based on the instructions in the Court's instructions which the government pointed to, there has to be -- the significant or motivating purpose of the travel

across state lines has to be that Jane engaged in illicit sexual activity. There is no significant or motivating purpose of a return trip where Mr. Epstein wasn't present; it's just a return trip from New Mexico. That would not be a significant or motivating purpose. She is just presumably going home, but is not for the purpose of engaging in illicit sexual activity.

The testimony, if we are to believe it, is that she went to New Mexico for some purpose to engage in sexual activity, that's if you believe Jane's testimony. But returning from there is not that purpose. Returning is returning, or it's going somewhere else; it's going somewhere away from where -- at least in the record, the evidence in the record, if there is any -- Epstein was presumably in New Mexico. This is her leaving New Mexico. So I don't think that qualifies as a significant or motivating purpose. That travel across state lines is for some other purpose.

MS. MOE: Your Honor, I don't believe this note is that clear about what flight we're talking about. The note begins by talking about an unspecified return flight, and then it turns to talking about a flight to New Mexico. Then there's a modifying clause about intent. It is unclear which of the two flights we are now modifying.

I think the safest course here is to refer the jury to the elements of the crime. I think guessing at what flight they may be talking about is sort of beyond the reach of this

question because they haven't identified a flight here.

MR. EVERDELL: Your Honor, I think they've been fairly clear. They say: If the defendant aided in the transportation of Jane's return flight, but not the flight to New Mexico. The only evidence we have of a flight to New Mexico with Jane is the one in the flight logs, and it is a flight to New Mexico. And so the return flight would be some other flight besides the flight to New Mexico.

She is also alleged that -- and to be honest, I think it was a little unclear what may have happened in New Mexico based on her testimony; but if there was any illegal sexual conduct, the flight to New Mexico, this is what they are debating, because they say, but not the flight to New Mexico, where/if the intent was for Jane to engage in sexual activity.

Okay. So it seems that the jury is deliberating or at least trying to decide whether the flight to New Mexico was for the purpose of engaging in illegal sexual activity. And they are confused that the return flight that happens after that, could that be the basis alone for a conviction on Count Four. Answer is no, because that return flight is not for the purpose of illegal sexual activity.

MS. MOE: Your Honor, at the very least, the answer to this can't be no, because a jury could infer intent to engage in sexual conduct and the return of a flight in aiding and abetting that.

We can't tell which flight we're talking about, which leg of a potentially multi-leg trip we're talking about. And so I think here, again, the Court gave a thorough instruction about this particular element. Because we can't tell which set of facts they are asking about, I think the proper course here is to refer the jury to the particulars with respect to this element.

THE COURT: It's difficult to know and to have in my head, based on the articulation of the question, as well as the testimony, exactly what they are referring to. I don't know.

So I am inclined to follow the government's suggestion here and to say, I can't provide an additional response to your question other than to consider carefully the instructions as to -- I mean, I could either point them to all of the count or specifically to the second element, since that's what they're asking about.

MR. EVERDELL: If we're going to just refer them to certain language, I think we refer them to the language in the last paragraph.

THE COURT: Page?

MR. EVERDELL: Page 28, instruction number 21, lines 14 through 17.

MS. MOE: Your Honor, those particular lines don't appear to be what the jury is asking about. I recognize that the note refers to Count Four and the second element, but the

entire note seems to be about transportation of some kind. And so we would propose just referring them to the instruction in its entirety.

MR. EVERDELL: Your Honor, I don't find this note confusing. And I think simply saying it's confusing --

THE COURT: Well, I find it confusing. For example, I don't know if this is a question about aiding and abetting. I don't know.

MR. EVERDELL: Your Honor, I think this is pretty -- I think this is a question about whether you can hold her accountable for a return flight, if you believe that she had something to do with arranging that return flight from New Mexico; whereas the first flight to New Mexico may have been -- at least there's some testimony to consider about whether that was for the purpose of illegal sexual activity. It was not true of the return flight, the flight back, wherever she was going, home, somewhere else, somewhere away from Mr. Epstein.

I think they are asking, Can we consider if Ms. Maxwell had anything to do with that flight, arranging of that flight, whether she can be convicted, because it's on the return trip from an area where Jane claims she was involved in sexual abuse.

THE COURT: But it says where/if the intent was to engage -- for Jane to engage in sexual activity.

MR. EVERDELL: Right. They are saying with a flight

to New Mexico, where/if there was an intent for Jane to engage in sexual activity. So there is still an open question in their minds about whether the flight to New Mexico, that travel, was for the purpose of engaging in illegal sexual activity.

But they are now considering whether the flight out of New Mexico, if Ms. Maxwell had any -- did anything to do with that flight, with arranging that flight, could we convict her on that count alone. Because there is no, I think, evidence that she arranged the flight going to New Mexico; instead, they are considering now whether there's any evidence that she may have arranged the flight out of New Mexico. And is that enough to provide a conviction on Count Two? And I think the answer to that is pretty clearly no -- I'm sorry, Count Four I should have said, not Count Two. Because there's no evidence of that.

And there is also -- there is no -- in the instructions themselves, that would not be a significant or motivating purpose for that travel across state lines. That would simply be for her to return home. That's not travel for the purpose of engaging in illegal sexual activity.

MS. MOE: Your Honor, I think this colloquy illustrates how confusing the note is. We are now guessing at what hypothetical facts the jury is talking about; and then guessing hypothetically what their legal question is on top of that. And I think we're compounding guesswork, what this

question is about. And so the question is about the element; the charge is about that particular element. I think more guesswork here makes this more confusing and not less confusing. I think, as the Court pointed out, some aspects of this note are about aiding and abetting. And so even referring the jury just to instruction number 21 leaves out that aspect of the jury's deliberations and their determination on this particular issue. And so we think the safest course is to provide the jury with applicable law in this area, and they can find the facts as they see fit and as they apply to these particular instructions.

MR. EVERDELL: Your Honor, I don't think this is a question about aid and abetting, broadly speaking. I think they are talking about the flights to and from New Mexico. I think that much is pretty clear from the note. And whether or not Ms. Maxwell had anything to do with arranging that travel --

THE COURT: But your legal contention is she can't be found guilty of this count unless the jury concludes that she aided in the transportation to New Mexico.

That's not legally accurate, is it?

MR. EVERDELL: Your Honor, the instruction itself says it has to be a significant or motivating purpose for the travel across state lines.

THE COURT: Right.

MR. EVERDELL: Right?

The travel back to a place where she is presumably not engaging in illicit sexual activity, that is not a significant or motivating purpose for that travel.

THE COURT: You didn't answer my question.

MR. EVERDELL: Maybe I'm confused by the question, your Honor.

THE COURT: To be found guilty on this count, must the jury conclude that she aided in the transportation of Jane's flight to New Mexico?

MS. MENNINGER: Your Honor, may I interject myself into this conversation?

THE COURT: If you answer the question, I would value it.

MS. MENNINGER: I will.

It has to be a place for which the travel was a significant or motivating purpose for illegal sexual activity.

In this hypothetical that they've given in this question, they have a comma in two places. The first place they have a comma is after the return flight, comma, but not the flight to New Mexico, where the intent was for Jane to engage in sexual activity, comma. So they have excluded out where they're hypothetically claiming that the flight to New Mexico was the place for which the intent was for Jane to engage in sexual activity.

THE COURT: Wow.

MS. MENNINGER: And they are asking, Can we find her responsible for the return flight, but not that flight to New Mexico, where the intent was to engage in sexual activity. That's why I think they have written it with the commas as they are.

THE COURT: Okay.

MS. MENNINGER: So they have to be directed --

THE COURT: Let me try again. Can I get a yes or a no to my question? Is it your legal position that the jury must conclude, in order to convict on this count, that the defendant had to aid in the transportation of the flight to New Mexico?

MS. MENNINGER: I don't believe that -- no, no, it is not my contention.

THE COURT: Thank you.

MS. MENNINGER: And the reason is the indictment does not specify New Mexico. It could be a flight to New York, for example. It could be a flight to New Mexico. It could be any place, the purpose for which was to engage in illegal sexual activity. So it doesn't have to be to New Mexico.

THE COURT: I agree with that.

This is why it's difficult to parse the question without assuming a variety of meanings, and I'm trying to track your comma argument.

MS. MENNINGER: Had they placed the comma after New

Mexico rather than the place where they did put the comma, then that would have told us, can't she be responsible for aiding in the transportation of the return flight, comma, but not the flight to New Mexico, comma. That would then put the where/if the intent was --

THE COURT: That would be an entirely different meaning to the question.

MS. MENNINGER: I think so.

THE COURT: No, I agree. What I don't know is I don't know what they meant and I don't know how much weight to put on that comma placement; because, as you've noted, that precise sentence without that comma has an entirely different meaning.

MS. MOE: Yes, your Honor.

And I think at the point at which we're parsing jury notes like statutes this finely, I think it illustrates the point that this note is confusing; that we're not sure what the jury is asking about either factually or legally.

The question is about the second element; and so we think the proper course is to refer the jury to those particular instructions. And the jury is free to send a clarifying note, if they wish to do so. But I think when we are parsing commas this finely in a note that is unclear, it's unclear which clauses are modifying which clauses, or which flights we're even talking about, I think it's far too confusing to give simple answers here.

THE COURT: I can't answer this ambiguous question no. I don't know that the answer is no, even with the ambiguity; because I don't know if what they have in mind is an aiding and abetting question, which we haven't discussed yet.

MS. MENNINGER: They never used the word "abet."

THE COURT: That's true. I won't assume that's the question for purposes of the answer, but I also don't assume the meaning that you've put on it for purposes of the answer. So the only solution here is to say, I direct you to consider the full instruction on Element 2 of Count Four on page 28.

MS. MENNINGER: Our request would be to emphasize the portion of that that talks about the purpose of the travel. Because they have highlighted the purpose of the travel in their question. And the way I read it is certainly that that's their question. If they don't have evidence that the intent on the return flight was for purposes of sexual activity, then I do think the answer, as Mr. Everdell said is, no, they can't convict.

MS. STERNHEIM: May I have a moment?

(Counsel conferred)

MR. EVERDELL: Your Honor, I'm sorry to raise another issue, but I think we have to, given the note itself.

One moment. Sorry. The photograph on the phone keeps disappearing.

We're talking about they are referring to Count Four,

which is the substantive transportation count, which, as we know, has to deal with the violation of New York law. And they are talking about flights to New Mexico; and can she be found guilty on the second element of Count Four regarding these flights to New Mexico.

So I think we may have to respond to the jury on that score as well, which is the fact that they have to be considering New York events for Count Four, rather than -- or violations of New York law, which wouldn't occur in New Mexico for there to be a conviction on Count Four.

MS. MOE: Your Honor, I think that's exactly why we proposed directing the jurors to the entirety of the instruction, which says just that. The second paragraph of that same instruction reminds the jury, as the instruction does throughout, that we're talking about New York Penal Law, Section 130.55. And so I think our proposal remains the same that they be referred to the entirety of the instruction, which includes that language, among other aspects of this particular element.

THE COURT: Yes.

MS. STERNHEIM: Judge, may I be heard for a moment?

THE COURT: Sure.

MS. STERNHEIM: I think the fact that the jury has mentioned New Mexico regarding a count that pertains to New York is not just cleared up by referring them to the

instruction. Clearly they are making an error concerning which state begins with "New." And I suggest that if the Court wishes to refer them to the charge, the Court also clears up the fact that Count Four requires a violation of New York law, not New Mexico law.

THE COURT: That's certainly why we should refer them to the whole charge. That's what lines 7 through 10 make clear.

MS. MOE: Yes, your Honor.

The only illegal sexual activity identified in the entirety of the jury charge is a statute in New York. There cannot be any risk of confusion on that score. This particular charge reminds the jury of that and includes that language as well. The jury has not been charged about any laws in New Mexico; so there can't be any risk of confusion for exactly that reason.

MR. EVERDELL: I just don't understand the confidence about how there can be no possible confusion --

THE COURT: This conversation is stopping.

My decision is to refer them back to this charge, because it is a proper instruction on the second element to Count Four. I do not know what this question means. It's too difficult to parse factually and legally what they're asking. So the only option in those circumstances is to direct them back to the count.

So I'll take any requests beyond simply saying, I received your note. I refer you to instruction number 21 on page 28. Please consider carefully the full instruction.

MS. MOE: Yes, your Honor.

THE COURT: Mr. Everdell?

MR. EVERDELL: That's fine, your Honor.

THE COURT: Okay. I'll do that. And then -- well, let me write it, and then we'll send it back, and then we'll discuss -- because we have to bring them in to dismiss them.

So I received your note. I refer you to instruction number 21 on page 28. Please consider the entirety of the instruction.

MS. MOE: Yes, your Honor. Thank you.

THE COURT: Okay.

MR. EVERDELL: Without waiving our prior objection.

THE COURT: Understood.

All right. While Ms. Williams is handing that to the CSO, for extending deliberation times going forward.

MS. MOE: Yes, your Honor.

We've considered the matter. And the government's view is that is within the Court's discretion certainly to set a schedule for jury deliberations. Given the circumstances, we agree that it's prudent to advise the jury that, barring any scheduling complications, they should expect an extended day tomorrow.

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December 27, 2021

BY ECF

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

Re: *United States v. Ghislaine Maxwell*, S2 20 Cr. 330 (AJN)

Dear Judge Nathan:

We respectfully submit this letter to request that the Court give the jury additional instructions to correct apparent errors in the jury's understanding of Counts Two and Four, and the law applicable to those counts, that were highlighted by the jury's note this afternoon (Court Exhibit #15).

Court Exhibit #15 reads, in relevant part, as follows:

> Under Count Four (4), [i]f the defendant aided in the transportation of Jane's return flight, but not the flight to New Mexico where/if the intent was for Jane to engage in sexual activity, can she be found guilty under the second element?

Count Four alleges that Ms. Maxwell "arranged for [Jane] to be transported *from Florida to New York, New York* on multiple occasions with the intention that [Jane] would engage in one or more sex acts with Jeffrey Epstein, *in violation of New York Penal Law, Section 130.55*." S2 Ind. ¶ 21 (emphasis added).

In response to the note, the Court referred the jury to Instruction No. 21 of the jury charge. The defense believes that the Court's response was erroneous for two reasons.

Constructive Amendment / Variance

First, without further instruction, the jury could convict Ms. Maxwell based on a constructive amendment and/or prejudicial variance from the S2 Indictment. The Court has recently explained the law on constructive amendment and variance. "To prevail on a constructive amendment claim, a defendant must demonstrate that the terms of [an] indictment are in effect altered by the presentation of evidence and jury instructions which so modify essential elements of the offense charged that there is a substantial likelihood that the defendant may have been convicted of an offense other than that charged in the indictment." *United States v. Gross*, No. 15-cr-769 (AJN), 2017 WL 4685111, at *20 (S.D.N.Y. Oct. 18, 2017) (cleaned up). "Because the doctrine of constructive amendment protects a defendant's Grand Jury Clause rights, a constructive amendment constitutes a 'per se violation' of the defendant's constitutional rights—*i.e.* there is no requirement that a defendant make a specific showing of prejudice." *Id.* (quoting *United States v. D'Amelio*, 683 F.3d 412, 417 (2d Cir. 2012).

Although the Second Circuit has "consistently permitted significant flexibility" in how the government proves the crime alleged, the defendant must be "given notice of the core of criminality to be proven at trial." *Id.* (cleaned up). "[A]lthough an indictment 'drawn in general terms' may articulate a broad core of criminality, an indictment that is drawn in specific terms may be read to specify a narrower set of facts—such that the proof of completely distinct facts at trial could lead to a constructive amendment." *Id.* (quoting *United States v. Wozniak*, 126 F.3d 105, 109-10 (2d Cir. 1997)).

In contrast to a constructive amendment, "[a] variance occurs when the charging terms of the indictment are left unaltered, but the evidence at trial proves facts materially different from those alleged in the indictment." *Id*. at 20 (cleaned up).

Court Exhibit #15 indicates that the jury is considering a conviction on the substantive transportation offense charged in Count Four based on Jane's alleged travel to and from New Mexico and sexual activity that purportedly took place while she was there. That is not what the indictment alleges. Count Four alleges that Ms. Maxwell "arranged for [Jane] to be transported *from Florida to New York, New York* on multiple occasions with the intention that [Jane] would engage in one or more sex acts with Jeffrey Epstein, *in violation of New York Penal Law, Section 130.55*." S2 Ind. ¶ 21 (emphasis added). As such, a conviction on Count Four must be based on evidence that Ms. Maxwell intended Jane to travel from Florida to New York, and while in New York, engage in one or more sex acts that violated Section 130.55 of the New York Penal Law. The government has represented to the Court on numerous occasions that Ms. Maxwell cannot be convicted on any of the four Mann Act counts, including Count Four, without proof of an intent to violate New York law. That excludes any conduct that may have occurred in New Mexico. Indeed, in the discussion about Court Exhibit #15, the government stressed this point:

> The only illegal sexual activity identified in the entirety of the jury charge *is a statute in New York*. There cannot be any risk of confusion on that score. This particular charge reminds the jury of that and includes that language as well. *The jury has not been charged about any laws in New Mexico; so there can't be any risk of confusion for exactly that reason*.

Tr. 3140:10-16 (emphasis added).

Despite the government's confidence, Court Exhibit #15 indicates that the jury is considering a conviction on Count Four based on Jane's travel to and from *New Mexico* and alleged sexual abuse that purportedly took place in *New Mexico*. Should the jury convict on this basis, it would be a constructive amendment and/or a variance from the express language of Count Four. Jane's alleged travel from Florida to New York and the sex acts that she purportedly engaged in there in violation of New York law are part of the "core of criminality" charged in Count Four. *See Wozniak*, 126 F.3d at 109-111 (finding constructive amendment where indictment charged a conspiracy to distribute cocaine and methamphetamine, but the evidence at trial focused on marijuana). A conviction based on Jane's travel to and from New Mexico and any sexual activity that allegedly occurred while she was there would be premised on facts elicited at trial that are "completely distinct" from the allegations in the indictment. *Gross*, 2017 WL 4685111, at *20. If the Court does not instruct the jury that they cannot convict Ms. Maxwell on Count Four based on the alleged events in New Mexico, it would permit the jury to convict Ms. Maxwell of an offense "other than that charged in the indictment" and constitute a constructive amendment. *Id*. A constructive amendment like this is *per se* reversible error without a showing of prejudice. *United States v. Frank*, 156 F.3d 332, 337 n.5 (2d Cir. 1998).

At the very least, if the jury convicts Ms. Maxwell on Count Four based on Jane's alleged sexual activity in New Mexico, it would be a substantial variance from the allegations in the S2 Indictment, which requires an intent that Jane travel to New York and violate New York law. The Court should instruct the jury as requested below to *prevent* such a variance from occurring. Ms. Maxwell has no burden to prove prejudice at this point since the variance can still be prevented by

a curative instruction. Moreover, because the same issues arise with respect to the substantive enticement offense charged in Count Two, the Court must give the same instruction as to Count Two as well.[1]

Supplemental Jury Instruction

Second, we believe that the Court's response to the jury note was substantively incorrect and prejudicial to Ms. Maxwell. "A jury's interruption of its deliberations 'to seek further explanation of the law' is a 'critical moment in a criminal trial'; and [the Second Circuit] therefore ascribe[s] 'crucial importance' to a 'completely accurate statement by the judge' at that moment." *United States v. Kopstein*, 759 F.3d 168, 172 (2d Cir. 2014) (quoting *United States v. Lefkowitz*, 284 F.2d 310, 314 (2d Cir. 1960)). "Instructions are erroneous if they mislead the jury as to the correct legal standard or do not adequately inform the jury of the law." *Hudson v. New York City*, 271 F.3d 62, 67 (2d Cir. 2001). Reversal is "required where, based on a review of the record as a whole, the error was prejudicial or the charge was highly confusing." *Kopstein*, 759 F.3d at 172; *see also id*. ("A charge that appears likely to have left the jury 'highly confused' may, on that ground alone, be reversed." (quoting *Nat'l R.R. Passenger Corp. v. One 25,900 Square Foot More or Less Parcel of Land*, 766 F.2d 685, 688 (2d Cir. 1985) ("A charge that appears likely to have left the jury 'highly confused' may, on that ground alone, be reversed."))). "Even if an initial

[1] The defense notes that the object of the conspiracies charged in Counts One and Three is a violation of the same New York statute. While we do not contest that alleged sexual activity that occurred in other states can be evidence of those conspiracies, the jury cannot convict Ms. Maxwell on those counts without finding that she acted with the intent that someone under the age of 17 would engage in sexual activity within the state of New York that violated New York law.

instruction is not itself erroneous or highly confusing, a supplemental instruction prompted by a jury question may be so muddled as to warrant vacatur." *Id*. at 172.

The jury note indicates that the jury is confused about the second element of Count Four, and by extension, the third element of Count Two. Both counts require an intent to violate New York law and cannot be based on any conduct that allegedly occurred in New Mexico (or any other state besides New York). The court's answer to the jury's question permits the jury to convict Ms. Maxwell on Count Four based on alleged conduct occurring in New Mexico—aiding in a return flight from New Mexico. Not only is that conduct not charged in the indictment (see discussion above), it also is not illegal under New York law. Under New York law, an intent to engage in sexual activity in any other state cannot form the basis for a violation of New York law, as charged in Counts Two and Four. *See People v. Carvajal*, 6 N.Y.3d 305, 312 (2005) ("CPL 20.20[] has codified the general principle that, for New York to exercise criminal jurisdiction, some alleged conduct or a consequence of that conduct must have occurred in the state."). If the defendant disputes the evidence of the State's prosecutorial authority at trial, "the trial court should charge the jury that jurisdiction must be proven beyond a reasonable doubt." *People v. McLaughlin*, 80 N.Y.2d 466, 472 (N.Y. 1992).

Proposed Jury Instruction

For the reasons set forth above, we request that the Court give the jury the following additional instruction tomorrow:

> As to the third element of Count Two, you must determine whether the Government has proven beyond a reasonable doubt that the Defendant acted with the intent that Jane would engage in sexual activity within the state of New York in violation of New York Penal Law 130.55.
>
> As to the second element of Count Four, you must determine whether the Government has proven beyond a reasonable doubt that the Defendant transported Jane with the intent that Jane would engage in sexual activity within the state of New York in violation of New York Penal Law 130.55.
>
> An intent that Jane engage in sexual activity in any state other than New York cannot form the basis of these two elements of Counts Two and Four.

Sincerely,

/s/ Christian Everdell

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cc: All Counsel of Record (By Email)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

v. 20 CR 330 (AJN)

GHISLAINE MAXWELL,

Defendant. Jury Trial

----------x

New York, N.Y.
December 28, 2021
9:49 a.m.

Before:

HON. ALISON J. NATHAN,

District Judge

APPEARANCES

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York
BY: MAURENE COMEY
ALISON MOE
LARA POMERANTZ
ANDREW ROHRBACH
Assistant United States Attorneys

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Attorneys for Defendant
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LAURA A. MENNINGER
-and-
BOBBI C. STERNHEIM
-and-
COHEN & GRESSER
BY: CHRISTIAN R. EVERDELL

Also Present: Amanda Young, FBI
Paul Byrne, NYPD
Sunny Drescher,
Paralegal, U.S. Attorney's Office
Ann Lundberg,
Paralegal, Haddon Morgan and Foreman

(Jury not present)

THE COURT: I received -- I think it was filed in the wee hours, I didn't receive it until this morning, the defense's followup letter taking a slightly different approach to the jury's last note than what was argued in court.

I haven't heard from the government.

MS. MOE: I just noticed that the door to the jury room is open.

THE COURT: Thank you. To be clear, the jury is not there.

MS. MOE: Yes, your Honor. I meant the door to the area that leads to the jury room. Just wanted to be cautious.

THE COURT: Thank you. Appreciate that.

MS. MOE: Thank you, your Honor. With respect to the defendant's letter, this is essentially the same argument that the defense advanced yesterday, which the Court carefully considered and rejected. Nothing has changed between then and now.

In particular, the defense's letter identifies no error in the instruction the Court referred the jury to nor could they. It was a correct legal instruction when the Court instructed the jury last week, it was a correct legal instruction when the Court referred the jury to it yesterday afternoon, and that it remains true. It was a thorough and carefully considered instruction on the legal elements and

there can be no error in referring the jury to a correct legal instruction. And so no relief is appropriate here.

At bottom, your Honor, the jury asked a question and nothing more. There is no reason to speculate about what the jury might be concluding. The jury has been accurately instructed on the law and that's all that's required here. Going beyond that to speculate about the jury's deliberations and compound speculation upon speculation to send back confusing legal instructions would compound the problem here. The simple course is exactly the course the Court took yesterday, which is to refer the jury to a thorough and complete and accurate legal instruction. There can't be any dispute that the instructions that the Court has given are accurate, and that's all that's required here.

THE COURT: I suppose an additional point, just looking at the -- I mean, the defense's new proposed instruction talks about Count Two, which wasn't asked about. Also, it has -- so it has three paragraphs. The first one is about Count Two, which wasn't asked about. There is a second paragraph. And then the third paragraph I think is just wrong, an intent that Jane engaged in sexual activity in any state other than New York cannot form the basis of these elements. That would suggest it may have no relevance. This is the same discussion we've had a couple of times, Mr. Everdell. Sexual activity with respect to Jane in New Mexico under the age of 17

can be relevant to an intent to transport to New York to engage in sexual activity under the age of 17, I think. I think this is the same basic discussion that we've had. So, in addition to my reasoning yesterday, I think the proposal made by the defense is wrong.

I continue to not know how to parse the jury's question exactly, other than to know that they are asking about Count Four, the defense's original suggestion to just point to the motivating factor I rejected language or to say no. To say no, I think, was the wrong course, because I don't understand the question well enough to be able to say no.

Pointing to just the motivating factor language I think was unhelpful because, really, the point is to remind them of the whole instruction, including that it's a violation of New York penal law that's charged and is the illegal sexual activity that they're considering.

So, for those reasons, I am in the same place.

I did want to make a little bit of an additional record regarding my extending the deliberations by an hour, the instructions that I gave yesterday regarding that slightly extended schedule.

I asked the jury to make themselves available to deliberate until at least 6:00 today, which is a one-hour extension of what's largely been our schedule. Although, it was until 6 o'clock, I think, on the first night of

deliberations.

I made clear that they can let me know through my deputy if this presents a hardship for anyone. No one has so indicated. I also made clear that they can take all the time they need.

I extended the deliberations by an hour each day because we are seeing an astronomical spike in the number COVID-positive cases in New York City over the last one to two weeks duce to the omicron variant. We are, very simply, at a different place regarding the pandemic than we were only one week ago, and we now face a high and escalating risk that jurors and/or trial participants may need to quarantine, thus disrupting trial and putting at risk our ability to complete this trial. Accordingly, extending deliberations by an hour gives the jury more time each day to continue to engage in its thoughtful deliberations.

We will take up later in the day how I will approach the remainder of the week and going forward. I think the same reasoning likely will lead me to talk to the jury at the end of the day about continuing deliberations until a verdict is reached.

I'll hear you on that now or later, as you like.

MR. EVERDELL: Your Honor, I don't need to be heard on that issue now.

If I could, I understand the Court has overruled the

request of the letter, but if I could make a brief record on that, it will not take very long.

THE COURT: Okay. And so there is the record that you made yesterday at the time the question came. There is the record that you put in the letter this morning that came in late -- early this morning that I reviewed this morning that we just discussed. So, to the extent you're seeking a third bite at the apple, go ahead.

MR. EVERDELL: I'm simply looking to fill out the record. I understand it's been rejected by the Court.

I think from the defense point of view, I think two things are very clear from this note. One is that the jury is considering whether or not they can convict Ms. Maxwell on the substantive offense in Count Four based solely on events that took place in New Mexico and traveled to and from New Mexico.

THE COURT: There are a number of assumptions in that that don't necessarily derive from the meaning of that letter, but I understand that is your position.

MR. EVERDELL: Understood, your Honor.

And I think the second point is that they are looking at the instructions that they have been given thus far because they reference the second element of Count Four. So they're looking at that instruction and they are unclear, they are confused by those instructions. They are not sure whether or not -- those instructions don't inform them that, in fact,

conduct that occurs solely in New Mexico, travels to and from New Mexico, solely in New Mexico cannot form the basis for a violation of New York law --

THE COURT: Again, using your language, cannot form a basis, would suggest it is irrelevant. I'll say that is wrong as a legal matter, number 1. Number 2, you didn't seek to exclude that testimony, nor did you seek a limiting instruction with respect to that testimony, and I think that was quite ripe for all of the reasons we've articulated.

MR. EVERDELL: Yes. Although, I would point out we did, in the charging conference, request the inclusion of travel from Florida to New York to make clear that that was the required facts to be proven for those counts.

In any event, I think this is a time that calls for a supplemental instruction. I understand the Court has rejected --

THE COURT: I'm not going to give them an incorrect supplemental instruction.

MR. EVERDELL: If the Court thinks the instruction that was proposed is incorrect, we can certainly work to draft a correct one. I think the jury is saying that they may convict Ms. Maxwell on Count Four based on conduct that solely relates to New Mexico. I am not saying it is irrelevant. What I am saying is if all they had — which is what I think the note is saying — is travel to and from New Mexico and alleged sexual

activity that occurred in New Mexico, that wouldn't be a sufficient basis to convict on Count Four or Count Two because it requires an intent to violate New York law, and you can't violate this section of New York law in New Mexico.

So if that's all they're considered on a basis to convict on Count Four and Count Two, then that would be insufficient and improper, and that's why I think a supplemental instruction that clarifies that point is warranted in this case, but I understand the Court has rejected that. And that's all.

THE COURT: I think the instruction is correct that I referred them to. The reading of the note that you've suggested, I have no idea if that's what the jury is asking or many other plausible readings, and what you've proposed, as you just indicated, would be incorrect. So, I think that's why precisely we sent them back to the charge.

Anything else?

MR. EVERDELL: No, your Honor.

THE COURT: As I said, we'll see where we are at the end of the day, but in light of the variant, my concern about interruption of trial, given the increasing daily risk of exposure to either a juror or trial participant requiring quarantine, it is time to think to have the jurors make plans to continue deliberating until a verdict is reached.

I will wait until we hear from the jury, otherwise

A-238

COURT EXHIBIT # 15

DATE: 12/27/2021
TIME:
CASE: US v. Maxwell
20 CR 330 (AJN)

Hello Judge Nathan,

Under Count Four (4), If the defendant aided in the transportation of Jane's return flight, but not the flight to New Mexico where/if the intent was for Jane to engage in sexual activity, can she be found guilty under the second element?

Thank [redacted]

#26

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 2/24/22

United States of America,

–v–

Ghislaine Maxwell,

Defendant.

20-CR-330 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

On January 19, 2022, the Defendant filed a motion for a new trial pursuant to Federal Rule of Criminal Procedure 33 on the basis that Juror 50 "falsely answered a material question during *voir dire* and . . . that, had he answered truthfully, he would have been subject to a challenge for cause." Maxwell Br., Jan. 19, 2022, at 48. The Defendant contends that the current paper record sufficiently supports her motion and should be granted without a hearing. In the alternative, she requests that a hearing be conducted. *Id.* She also argues that if a hearing is ordered, a broader hearing is required based on a news article that suggests a second juror was allegedly a victim of sexual abuse. *Id.* at 48–49.

In an Opinion & Order filed under temporary seal, the Court DENIES the Defendant's motion for a new trial on the current record. As explained in the temporarily sealed Opinion & Order, Defendant's motion on the current record relies extensively on statements made by Juror 50 regarding what occurred during jury deliberations that the Court is prohibited from considering under Federal Rule of Evidence 606. With regard to Juror 50's statements that do not pertain to jury deliberations, in order to resolve the motion on this record, the Court would have to accept unsworn statements made to media outlets as true and reach factual determinations that are not available on the current record.

Accordingly, for the reasons fully explained in the Opinion & Order, a hearing is necessary to resolve the Defendant's motion. Because of the important interest in the finality of judgments, the standard for obtaining a post-verdict hearing is high. The Court concludes, and the Government concedes, that the demanding standard for holding a post-verdict evidentiary hearing is met as to whether Juror 50 failed to respond truthfully during the jury selection process to whether he was a victim of sexual abuse. Following trial, Juror 50 made several direct, unambiguous statements to multiple media outlets about his own experience that do not pertain to jury deliberations and that cast doubt on the accuracy of his responses during jury selection. Juror 50's post-trial statements are "clear, strong, substantial and incontrovertible evidence that a specific, nonspeculative impropriety"—namely, a false statement during jury selection—has occurred. *United States v. Baker*, 899 F.3d 123, 130 (2d Cir. 2018). To be clear, the potential impropriety is not that someone with a history of sexual abuse may have served on the jury. Rather, it is the potential failure to respond truthfully to questions during the jury selection process that asked for that material information so that any potential bias could be explored.

In contrast, the demanding standard for ordering an evidentiary hearing is not met as to the conduct of any other juror. The Court DENIES the request to conduct a hearing with respect to the other jurors. The Court also DENIES the Defendant's request for a broader hearing and pre-hearing discovery.

The Court therefore ORDERS that a hearing take place at which the Court will question Juror 50 under oath. The Court further ORDERS that Juror 50's questionnaire be unsealed, for the reasons explained in the Opinion & Order. The Court will email counsel for Juror 50 a copy of his questionnaire and a copy of this Order. As also explained in the Opinion & Order, the

Court will conduct the questioning at the public hearing with input from counsel for the Defendant and the Government. The parties may submit by email proposed questions in accordance with the Opinion & Order on or before **March 1, 2022**.

The hearing will take place on **March 8, 2022, at 10:00 a.m.** The Court ORDERS Juror 50 to appear in Courtroom 906 of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York at that date and time to give testimony under oath in response to the Court's questions. The Court will ensure public access and will provide information on public access as soon as it is available.

The Court will send the temporarily sealed Opinion & Order to the parties. **By noon on February 25, 2022**, the parties are ORDERED to inform the Court whether either seeks limited redactions to the Opinion & Order, conforming any requests to this Court's prior order, Dkt. No. 596, and justifying any such request by reference to the three-part test articulated by the Second Circuit in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006).

SO ORDERED.

Dated: February 24, 2022
New York, New York

ALISON J. NATHAN
United States District Judge

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Ghislaine Maxwell juror breaks silence to The Independent: 'This verdict is for all the victims'

'For those who testified, for those who came forward and for those who haven't come forward. I'm glad that Maxwell has been held accountable,' a juror in Maxwell's sex-trafficking trial tells **Lucia Osborne-Crowley**

Wednesday 05 January 2022 10:13 • 40 Comments

(REUTERS)

A juror in the Ghislaine Maxwell sex-trafficking trial has told *The Independent* that he voted to find Maxwell guilty of the majority of the charges against her because he believed the stories told by the victims and because he believed the pattern of abuse they all described.

Scotty David, who wishes to be identified by his first and middle name, told *The Independent* in his first media interview that he believed all of the victims who testified against Ghislaine Maxwell in her sex-trafficking trial that took place in lower Manhattan over the past four weeks. All of the accusers corroborated each other and were backed up by other evidence, he said.

David said he is proud to be part of holding Maxwell accountable for her crimes.

"This verdict is for all the victims," David told *The Independent*. "For those who testified, for those who came forward and for those who haven't come forward. I'm glad that Maxwell has been held accountable.

"This verdict shows that you can be found guilty no matter your status."

David told *The Independent* that he found all of the accusers who testified to be believable and credible, despite the defence's many attacks on their credibility and their attempts to poke holes in their memory.

"They were all believable. Nothing they said felt to me like a lie," he said.

David knows that sometimes you can misremember small details of traumatic memories without ever doubting the core of the memory. He knows that because he is himself a survivor of sexual abuse.

"I know what happened when I was sexually abused. I remember the colour of the carpet, the walls. Some of it can be replayed like a video," he said. He explained this to the jury.

"But I can't remember all the details, there are some things that run together."

So he knew that some misremembered details doesn't mean the memory itself didn't happen.

There were also questions from the jury about why the girls didn't come forward earlier.

But David said he knows what that's like, too. "I didn't disclose my abuse until I was in high school," he said.

The jury room went dead silent when he shared his story, he told *The Independent*.

David believes this helped the jury understand that it's possible that these women were telling the truth.

You might forget some things, he said, but the core of a traumatic memory stays with you.

There were also questions about why the girls kept going back to Epstein and Maxwell, why they accepted their help.

"We are not here to judge these victims," David told *The Independent*. "We are here to judge whether we believe their stories, but we are not here to judge the decisions they made or didn't make.

"We cannot judge what they did or didn't do afterward," he said. "It doesn't change that it happened."

David felt that the defence were continually attacking the accusers on the stand, and he said these attempts did little to change his mind.

At one point, the accuser testifying under the name "Carolyn" threw her binder of evidence down beside her because she was so distressed by the questioning she was being subjected to.

"It just made me feel more compassion for her," David said.

The juror said that, ultimately, the jury found that all the victims were credible.

The defence team focused strongly on its memory expert, Professor Elizabeth Loftus. Loftus testified about experiments that had been conducted in which researchers had successfully implanted a false memory into the mind of research subjects.

In one study, the researchers were able to change a detail of a memory about witnessing a car accident. They were able to convince participants that the scene featured a stop sign rather than a yield sign.

But that didn't sway the jury either, David said.

"None of that relates to traumatic memory," he said. Loftus said herself that she had never conducted a study on whether these tactics would work with memories of sexual abuse, David recalled.

Since the trial, there has been speculation that the fact a juror had been a victim of sexual abuse could be used by Maxwell as grounds for appeal.

Speaking separately to MailOnline, David said he could not remember the details of the 50 question pre-trial questionnaire each potential juror was asked about whether they were a victim of sexual abuse or a relative or a friend of a victim, but felt he had answered all questions honestly.

David told The Independent that the accusers' testimony was corroborated by a significant amount of evidence.

He specifically mentioned Kate – an accuser who testified but was not allowed to be considered for the actual charges because she was over the age of consent in the UK when she was abused – and said her testimony powerfully corroborated the other accusers' stories.

"She was able to show us that this was a pattern," David said. "We knew we couldn't use her testimony to convict Maxwell, but she showed the pattern of how those girls were groomed.

"She showed us the pattern that happened to all of these girls.

"It was about confusing their boundaries," he said. "For Jane, it started with seeing Maxwell topless. For Annie Farmer, it started with Maxwell showing her how to give Epstein a foot massage.

"The pattern is that Ghislaine talks to you like she is also a teenager. Then it moves into massage. She tries to make you comfortable, to see what they can get away with.

"What she did was wrong."

Annie Farmer's story was backed up by her teenage diary, as well as her high school boyfriend. That was important to the jury, he said.

Carolyn's story was backed up by Shawn, her ex-boyfriend who testified that he used to drive her to Epstein's Palm Beach mansion.

Jane's story was backed up by her high school boyfriend, who remembered being told about Epstein when they were younger.

The accuser's stories were backed up by flight logs which placed Jane on at least one flight with Maxwell, David said.

Their stories were backed up by Maxwell's "little black book" – an address book found in Epstein's home that listed the names of "masseuses" including Jane and Carolyn.

David said the little black book also gave the jurors clues about how Maxwell and Epstein had evaded accountability in the past. There were names of several Palm Beach police officers listed on a first-name basis in that book, David said.

"Those girls' names and phone numbers were listed next to the words 'mom' and 'dad'," he said. "Professional masseuses do not need their parents with them."

Many speculated that the jury chose to acquit Maxwell on count two because that count related solely to Jane, and that Jane was less credible than other victims.

But David told *The Independent* that wasn't the case.

"We simply didn't see enough direct evidence to convict on count two," he said. "It wasn't about not believing Jane."

Count two was a substantive charge that required proof that Maxwell "enticed" Jane to travel across state lines. David said there just wasn't any direct evidence for any specific trip that Maxwell took any action to entice Jane to get on those flights.

"I personally was willing to find her guilty on count two," he said. "But we all decided in the end that there wasn't enough evidence."

David also explained that he was convinced by the closeness of Maxwell and Epstein's relationship and the key role she played in his life.

"Of course she knew what was going on," he said.

The schedule for Maxwell's sentencing hearing has not yet been set.

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EXCLUSIVE: 'Ghislaine was a predator as guilty as Epstein': Maxwell juror describes moment he 'locked eyes' with sex trafficker and reveals his own abuse ordeal

- **Scotty David , a juror in the Ghislaine Maxwell trial, was one of the 12 men and women who convicted Maxwell on five of the six counts of sex-trafficking last week**
- **Scotty says he went into the trial firmly believing that Maxwell was 'innocent until proven guilty' but 'After all I've learned, she's just as guilty as Epstein. I don't want to call her a monster, but a predator is the right word**
- **During the trial Scotty, who works in finance, was seated in the third row of the jury box, in the back corner. From his vantage point, he said, he had a vista of the entire court and the 'perfect view' of Maxwell herself**
- **Scotty said that Maxwell's manner in court was discussed during deliberations. He said, 'We did discuss that we thought she was a little standoffish and not necessarily cold, more like she was paying attention'**
- **Scotty revealed that he was not the only juror to share a story of sexual abuse and that it did not affect his ability to view Maxwell as innocent until proven guilty**
- **Scotty is completely satisfied that they reached the right verdict and that, with Maxwell's conviction, justice has been done. He says that he believes she will spend the rest of her life in prison unless a deal is done**
- **He said, 'It satisfies me to know that we did our due diligence and that we brought justice for these victims, for these girls who are now women'**

By LAURA COLLINS CHIEF INVESTIGATIVE REPORTER FOR DAILYMAIL.COM and DANIEL BATES FOR DAILYMAIL.COM
PUBLISHED: 00:26 EST, 5 January 2022 | **UPDATED:** 09:04 EST, 5 January 2022

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A juror in the Ghislaine Maxwell trial has revealed how he viewed her as a 'predator', describing the moment he 'locked eyes' with Jeffrey Epstein's accomplice - and revealed his own child sex abuse ordeal to the jury.

Scotty David said he had helped the other members of the jury understand things from a victim's point of view and explained how 'you can't remember all the details' of traumatic memories - this was a crucial line of attack by Maxwell's lawyers who called a 'false memory' expert witness.

David also claimed that the five guilty verdicts returned in New York last week, possibly condemning Maxwell to spend the rest of life behind bars, were for 'all the victims'.

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Legal experts said that if David failed to disclose his past experiences before the jury deliberations, Maxwell could have grounds to claim a mistrial and have her convictions quashed.

However, the question of whether a potential juror was a victim of sexual abuse or a relative or friend of a victim was asked in the 50-question survey completed by each juror ahead of selection.

David said he went into the trial firmly believing that Maxwell was 'innocent until proven guilty' and viewing the victims with a skeptical eye.

But, he said, 'After all I've learned, she's just as guilty as Epstein. I don't want to call her a monster, but a predator is the right word.

'She knew what was happening. She knew what Epstein was doing and she allowed it to happen. She participated in getting these girls comfortable so that he could have his way with them.

'And, to me, them returning repeatedly for the money has nothing to do with anything because these girls were minors, and it doesn't matter what incentivized them. It matters what happened to them.'

Ghislaine Maxwell juror speaks out after guilty verdict

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Scotty, who spoke on condition that only his first and middle names are used, said he went into the trial firmly believing that Maxwell was 'innocent until proven guilty' and viewing the victims with a skeptical eye

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During the trial Scotty, who works in finance, was seated in the third row of the jury box, in the back corner. From his vantage point, he said, he had a vista of the entire court and the 'perfect view' of Maxwell herself

During the trial Scotty, who works in finance, was seated in the third row of the jury box, in the back corner. From his vantage point, he said, he had a vista of the entire court and the 'perfect view' of Maxwell herself.

He recalled, 'I could literally see her [all the time]. There were times when it felt like she was staring right at me and we would lock eyes...it didn't feel real.'

'She was constantly taking notes, and constantly passing post-it notes over to her attorneys especially when they were on cross examination.'

At times, he said, 'I felt like she was watching what we were doing because there were times when some jurors, not during when the victims presented their testimony, but when certain other people presented on things that maybe they didn't feel mattered...some people would nod off.'

Scotty said that Maxwell's manner in court was discussed during deliberations. He said, 'We did discuss that we thought she was a little standoffish and not necessarily cold, more like she was paying attention.'

In an insight that will surely come as a gut blow to Maxwell herself, who reportedly wanted to testify but was advised against it, Scotty revealed that if she had taken the stand, 'It would have shown maybe that she was a little more human.

'Maybe if she gave her version of the story, who knows, maybe if she gave us a story of how she was manipulated...I don't know. But then that would have been an admission I feel like of guilt.'

Jurors were instructed not to draw any inference of guilt or otherwise from Maxwell's decision not to testify and, Scotty said, it was simply set to one side and not discussed during deliberations.

Asked if, at any stage, he had experienced any sympathy for Maxwell he said, 'Absolutely. Because this is the rest of her life, right? We were deciding what happens based off the evidence provided.

'We took that very seriously because we took at as, this could be our sister, our sister could be on trial here. We have to really comb through the evidence and make sure we have enough proof to say that she's either guilty or not.'

David told The Independent he found all the accusers to be credible, despite the defence's attacks on their stories and memories.

How Maxwell could claim a mistrial after juror reveals he was victim of child sex abuse and shared his experience with the jury

Ghislaine Maxwell could lodge a claim of mistrial after it emerged one of the jurors who convicted her was a victim of child sex abuse.

Scotty David said he had helped the other members of the jury understand things from a victim's point of view.

He also claimed the five guilty verdicts returned last week, possibly condemning Maxwell to spend the rest of her life behind bars, were for 'all the victims'.

David said that after he revealed his ordeal, another juror came forward with to share that they too had been sexually abused.

Legal experts said that if David failed to disclose his past experiences before the jury deliberations, Maxwell could have grounds to claim a mistrial and have her convictions quashed.

Moira Penza, a former federal prosecutor in New York, said: 'I certainly hope the juror disclosed this fully on his questionnaire.

'A little strange the defence didn't strike him. It could definitely be an issue.

'In the first instance it would likely form the basis for a motion to Judge [Alison] Nathan for a new trial.'

However, the question of whether a potential juror was a victim of sexual abuse or a relative or friend of a victim was asked in the 50-question questionnaire completed by each juror ahead of selection.

Scotty could not remember that question when asked by DailyMail.com but was certain that he had answered all questions honestly.

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'They were all believable. Nothing they said felt to me like a lie,' he said.

'I know what happened when I was sexually abused. I remember the color of the carpet, the walls. Some of it can be replayed like a video,' he said, and he explained this to fellow jurors.

'But I can't remember all the details, there are some things that run together.'

Scotty said when he chose to share his own experience of sexual abuse the room 'went silent'.

It has since been speculated that the fact that a juror was a victim of sexual abuse could be used by Maxwell as grounds of appeal.

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Scotty recalled looking directly at Maxwell, 'I could literally see her [all the time]. There were times when it felt like she was staring right at me and we would lock eyes...it didn't feel real'

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Scotty could not remember that question when asked by DailyMail.com but was certain that he had answered all questions honestly.

He also revealed that he was not the only juror to share a story of sexual abuse and that it did not affect his ability to view Maxwell as innocent until proven guilty.

It did, however, he believes give him access to a better understanding of the testimony of victims.

To that end, he said, the defense's tactic of 'going hard' on the victims did not play well with him or other jurors.

Scotty pointed to defense attorney Laura Menninger's use of air-quotes when questioning Jane about her story of 'escaping' Epstein at one point.

He said, 'Everything, her tone, using air-quotes with escape ... I think she was acting in order to convince us that this girl's lying and lying for money.'

Instead, he said, all it did was convince jurors that the defense team were showing a complete lack of respect for the victims.

He said, 'I just felt terrible I'm like, 'I can't believe you're treating this woman like this.' Like even if she's lying there's better ways to go about it...I don't feel attacking them that way or degrading her based on what she said was the way to go.'

The jury was sent out with a daunting 80 pages of instructions after a trial that was often dizzying in detail with lengthy testimony from the victims alone, and six counts to consider.

At first, Scotty admitted, jurors struggled to know where to start or how to make any progress at all.

He said that they did not take an initial vote of opinions but instead, on the first day they were sent out simply chose a foreperson and began by reading the instructions page by page.

He said, 'It was overwhelming. I mean 80 pages of how you interpret the law on each count, and it flips back and forth between different pages, and you have to flip 20 pages in order to get a definition of something else that can apply to one specific count.'

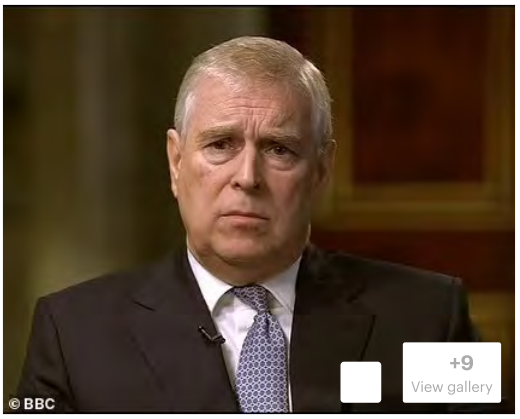
'Brutal' Prince Andrew court hearing 'couldn't have gone worse' for him: Duke's hopes of having case thrown out hang by a thread after judge 'made it very clear he did not accept' royal lawyers' arguments, experts say

Prince Andrew's hopes of getting the case by his US sex accuser thrown out of court were hanging by a thread last night following a 'brutal' hearing in New York.

A judge told the royal he would find out 'pretty soon' – most likely within days – if his bid to have the lawsuit dismissed would be successful.

But the early signs were not good for the Queen's son after Judge Lewis Kaplan put his legal team through a bruising encounter during a make-or-break hearing in New York yesterday.

One legal expert said that the hearing 'could not have gone worse' and pointed out that the fact that his lawyers were reduced to saying they 'respectfully disagree' with the judge did not bode well- adding 'respectfully disagreeing with the judge means you are about to lose.'



Prince Andrew is interviewed for the BBC's Newsnight in November 2019. In the interview, Andrew denied Ms Giuffre's claim that they had shared a sweaty dance at a London nightclub, saying that at the time he could not sweat due to a condition

Andrew's lawyer was seeking to persuade the court that his accuser, Virginia Roberts, now known as Virginia Giuffre, had waived her right to sue him when she

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Maxwell faced six counts relating to sex trafficking which centered on the stories of four victims.

A fifth victim, Kate, was called only to show a pattern of grooming behavior and was not directly implicated in any of the counts.

At first jurors struggled to agree, Scotty said, over the legal definitions of terms such as 'enticing.'

He said, 'It was super confusing. It didn't get heated. It was just confusing, and when people are confused, tones can get raised. Nobody ever yelled at other people. People would just speak, sounding frustrated.

'So, we [realized] we had to come up with a new game plan and that game plan was, we're going to talk to each other with compassion.'

According to Scotty once the jurors had found a way to 'understand' each other they worked methodically through each count starting with count 2.

This was the only charge on which they did not convict Maxwell and related to the charge of 'enticing' Jane to travel for sexual exploitation.

An initial vote saw 7 jurors vote guilty and 5 not guilty. Those 'not guilty' votes turned to 'not sure' on further discussion. Ultimately, he said, it was not a question of Jane's credibility but rather the fact that they simply did not feel the evidence was there to meet the necessary bar of beyond reasonable doubt.

Working through each charge jurors wrote out lists of evidence on a white board and attached post-it notes as they built the case for each as they saw it and deliberated towards consensus.

On counts two and four – both relating to Jane – there was a 7/5 split of guilty/not sure. On counts one, three and five – all conspiracy charges – there was a 10/2 guilty/not sure split and on count six, the sex trafficking charge relating to Carolyn, all voted guilty from the start.

Scotty said he never felt pressure from either the judge or the rest of the jurors to reach a verdict. In fact, he said, when the judge sent a note on Wednesday 29 December informing them that if they had not reached a verdict she would recall them the following day, they were about to send her a note saying they had reached consensus on all counts.

signed an earlier £370,000 ($500,000) legal settlement with pedophile Jeffrey Epstein, the duke's friend.

Miss Roberts, 38, one of the billionaire sex offender's most high-profile victims, claims she was trafficked by him and girlfriend Ghislaine Maxwell to have sex with Andrew on three occasions when she was 17.

The 61-year-old prince vehemently denies the claims and says he has no recollection of even meeting her.

Judge Kaplan appeared mostly dismissive of the arguments by the duke's lawyer, Andrew Brettler.

He said that part of the 2009 settlement protecting 'other potential defendants' that Andrew's lawyers had appeared to be leaning on was 'unclear' and pointed to two sentences in the text that seemed to suggest it could not be used by Andrew.

Judge Kaplan also pointed to language in the agreement stating it is 'not intended to be used by any other person' to protect themselves from lawsuits without the agreement of Miss Roberts and Epstein - again suggesting Andrew could not rely on it.

While he did not immediately rule at the end of the hearing, he made clear that he was not leaning Andrew's way as he rejected much of the reasoning offered by Mr Brettler, who said the case 'should absolutely be dismissed'.

Judge Kaplan told the two sides: 'I appreciate the arguments and the passion. You'll have the decision pretty soon.' But he directed that the exchange of potential evidence in the case was to proceed as scheduled – which was seen as an indication he would likely rule against Andrew's motion.

Sources close to the proceedings yesterday described them as 'brutal' for Andrew. During the hour-long hearing, held via video conference due to Covid, Judge Kaplan interjected several times in Mr Brettler's arguments.

He told him once: 'With all due respect, Mr Brettler, that's not a dog that's going to hunt here' and another time asked the lawyer outright: 'So what?'

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Maxwell (pictured with Epstein) faced six counts relating to sex trafficking which centered on the stories of four victims

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Scotty revealed that he was not the only juror to share a story of sexual abuse and that it did not affect his ability to view Maxwell as innocent until proven guilty

Today Scotty is completely satisfied that they reached the right verdict and that, with Maxwell's conviction, justice has been done.

He says that he believes she will spend the rest of her life in prison unless a deal is done to reduce her sentence. But said that he had no idea of the severity of the potential sentence until after the verdict was reached and that it would not have influenced anything if he had.

He said, 'It satisfies me to know that we did our due diligence and that we brought justice for these victims, for these girls who are now women.'

He said that, ultimately, he and the rest of the jurors were convinced that Epstein and Maxwell's lives were so 'intertwined' that it was inconceivable that she was not fully aware of his crimes.

She aided and abetted, he said. And with her conviction she wasn't paying or being held accountable for Epstein's crimes as her attorneys have argued, Scotty said, instead she was answering to her own guilt because she was 'every bit as culpable' as he.

According to Scotty, 'The prosecution proved their case beyond reasonable doubt.'

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It is detrimental and wrong in multiple ways for a...
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United States

Some Ghislaine Maxwell jurors initially doubted accusers, juror says

By Luc Cohen

4 minute read

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Jeffrey Epstein associate Ghislaine Maxwell sits as the guilty verdict in her sex abuse trial is read in a courtroom sketch in New York City, U.S., December 29, 2021. REUTERS/Jane Rosenberg

NEW YORK, Jan 5 (Reuters) - During jury deliberations after the trial of British socialite Ghislaine Maxwell, some jurors initially doubted the accounts of two of her accusers, one member of the jury said on Tuesday night.

This juror, who asked to be identified only by his first and middle names, said some of the jurors had issues with the credibility of witnesses known as Jane and Carolyn, two of the four women who testified that Maxwell set them up with the late financier Jeffrey Epstein as teenagers.

He said that after some of the jurors questioned the accuracy of the two women's memories, he decided to share his own experience of being sexually abused as a child. He said that he remembered most important elements of what happened to him, but not every single detail. That swayed some jurors, he said.

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"When I shared that, they were able to sort of come around on, they were able to come around on the memory aspect of the sexual abuse," Scotty David, a 35-year-old Manhattan resident, told Reuters in a phone interview. He gave an earlier interview to The Independent.

He added that coming to a unanimous verdict "wasn't easy, to be honest."

"There's a room of 12 people and we all have to be on the same page and we all have to understand what's going on," he said. "And then we have to agree. So that's partly why it took so long."

Maxwell, 60, was convicted on Dec. 29 of recruiting and grooming teenage girls for sexual encounters with Epstein. The conviction followed five full days of deliberations.

During jury selection, hundreds of prospective jurors were given questionnaires asking, among other things, if they or anyone in their families had experienced sexual abuse, court records show.

For those who answered yes, the judge in the case asked during follow-up questioning if it would affect their ability to serve as a fair or impartial juror, the records show.

Scotty David said he did not recall being asked about his experience during follow-up questioning, known as voir dire. He said he "flew through" the initial questionnaire and also did not recall being asked on the form about personal experiences with sexual abuse, but that he would have answered honestly.

The U.S. Attorney's office in Manhattan wrote a letter to U.S. District Judge Alison Nathan on Wednesday asking her to conduct an inquiry into the juror's description of being a victim of sexual abuse and his responses to the questionnaire, in light of the juror's statements to outlets including Reuters.

"While the court instructed jurors that they were free to discuss their jury service with anyone of their choosing, some of the statements, as related in the media, merit attention by the court," the letter read.

Maxwell's defense attorneys did not respond to requests for comment about Scotty David's account of the jury deliberations or his responses to questions during jury selection.

Jurors were not identified by name during the trial. Scotty David shared with Reuters a photograph of an instruction sheet from the court telling him to return on Nov. 29 for the final day of jury selection. His juror number, which is listed on the sheet, was among the 18 chosen as jurors or alternates.

Maxwell's defense lawyers argued that the women's memories had been corrupted over the years and that they were motivated by money to implicate Maxwell.

Scotty David said several jurors initially were not sure whether to convict Maxwell on the sex trafficking count, which is backed up by the testimony of a woman named Carolyn who said she was 14 when Epstein began abusing her in 2002.

But he said some jurors changed their minds after hearing the personal story of one juror who said she grew up poor. Carolyn said she dropped out of school in seventh grade and was paid $300 - sometimes by Maxwell - each time she gave Epstein an erotic massage. Carolyn said she used the cash to buy drugs.

"For Carolyn, it took one of the jurors sharing their story of growing up in the same socioeconomic background," he said. "She grew up poor, and said had there been an Epstein or Ghislaine in her neighborhood, some of the girls would have fallen prey to them as well."

Scotty David said he was skeptical of the defense's argument that Maxwell was being treated as a scapegoat for Epstein, who died by suicide at age 66 in a Manhattan jail cell while awaiting trial on sex abuse charges.

"She participated, she was complicit, she did nothing to stop it," he said.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

v. 20 CR 330 (AJN)

GHISLAINE MAXWELL,

Defendant.

----------x

New York, N.Y.
March 8, 2022
10:15 a.m.

Before:

HON. ALISON J. NATHAN,

District Judge

APPEARANCES

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York
ALISON MOE
MAURENE COMEY
ANDREW ROHRBACH
LARA POMERANTZ
Assistant United States Attorneys

COHEN & GRESSER
Attorneys for Defendant
CHRISTIAN EVERDELL

BOBBI C. STERNHEIM
Attorney for Defendant

SPODEK LAW GROUP
Attorneys for Juror 50
TODD A. SPODEK

(Case called)

DEPUTY CLERK: Counsel, please state your name for the record, starting with the government.

MS. MOE: Good morning, your Honor, Alison Moe, Lara Pomerantz, Andrew Rohrbach and Maurene Comey for the government.

THE COURT: Good morning, counsel.

MS. STERNHEIM: Bobbi C. Sternheim and Christian Everdell for Ghislaine Maxwell, who is present at defense table.

THE COURT: Good morning.

And Mr. Spodek on behalf of Juror 50, please state your appearance.

MR. SPODEK: Good morning, your Honor, Todd Spodek on behalf of Juror 50, who is present.

THE COURT: Thank you. We're here today for a hearing on the defendant's motion for a new trial. The government has consented and to indeed requested this hearing as to Juror 50.

My opinion and order dated February 24, 2022 ordered this hearing into Juror 50's responses to questions on the jury selection questionnaire. That opinion lays out the scope and nature of today's hearing.

In addition to the motion for new trial briefing that I received from of the parties, I also received proposed questions from both sides which I have carefully considered in

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preparing for today's hearing. In the submitted questions, the defense renewed the request that counsel be permitted to conduct the questioning. I am denying that renewed request. I will conduct this proceeding in accord with my February 24 opinion.

Following my questioning, I will hear from counsel for the parties at sidebar as to any proposed follow-up questions that they wish be asked and I will consider those requests.

In a moment, I will address counsel for Juror 50.

Let me ask counsel for the parties if there are any preliminary matters.

MS. MOE: Not from the government, your Honor, thank you.

MS. STERNHEIM: No, thank you.

THE COURT: All right. Juror 50 is present and represented by retained counsel, Mr. Spodek.

Mr. Spodek, just as a preliminary matter, does your client wish that he be referred to here as Juror 50 rather than using his full name?

MR. SPODEK: Yes, your Honor.

THE COURT: And I understand, but again confirm for me that in post-verdict press interviews he did not reveal his last name, is that correct?

MR. SPODEK: That's correct.

THE COURT: I do intend to continue to refer to him as

Juror 50. In post-verdict press interviews he did not reveal his last name. Consistent with that and my juror anonymity order during trial, I will permit that to continue.

I received a letter dated March 1st, 2022 from Mr. Spodek. In that letter, Mr. Spodek, you informed me that Juror 50 would invoke his Fifth Amendment privilege against self-incrimination at this hearing. As you see from my February 24 opinion, Mr. Spodek, I am going to ask Juror 50 questions today about responses that he gave during the jury selection process in the case of *United States v. Maxwell*.

Does it remain your client's intention to assert his Fifth Amendment privilege in response to those questions?

MR. SPODEK: Yes, your Honor.

THE COURT: I'm going to confirm on the record with your client, Mr. Spodek:

Juror 50, is it your intention to assert your Fifth Amendment privilege in response to the questions I'm going to ask you today?

JUROR 50: Yes, your Honor.

THE COURT: All right. I received a written application from the government last night.

Ms. Moe, could you confirm that the government is making the application?

MS. MOE: Yes, your Honor.

THE COURT: In accord with the application, I have

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signed the proposed immunity order which will be docketed with Juror 50's name redacted.

Juror 50, in view of your assertion of the Fifth Amendment privilege, I have signed an order granting you immunity. It is use immunity with respect to your testimony in this proceeding. That means that no testimony given by you or any information, directly or indirectly, derived from your testimony may be used against you in a federal criminal case, except if you testify falsely today you could be prosecuted for perjury. In light of this immunity, you will be required to answer questions today.

So in other words, you need to answer my questions today. You need to answer truthfully. If you don't answer truthfully, you could be prosecuted for perjury. But you will not be prosecuted in federal court based on any truthful testimony that you give here today, even if that testimony indicated that you committed a crime.

Juror 50, do you understand that?

JUROR 50: Yes, your Honor.

THE COURT: All right. I am going to have Juror 50 come forward to the witness stand, please.

(Continued on next page)

[redacted],

having been duly sworn, testified as follows:

EXAMINATION

BY THE COURT:

THE COURT: I'm going to approach with the court reporter and ask Juror 50 at the sidebar to state and spell his name for the record. His name will be redacted from the public transcript.

(At sidebar)

THE COURT: Please state your name for the record.

THE WITNESS: [redacted].

(In open court)

BY THE COURT:

Q. With that, Juror 50, you are under oath.

I will begin with some general instructions to you. If at any point you don't understand something that I'm asking, please ask for clarification. Don't speculate as to the meaning of my question, ask for clarification.

In responding to questions, I do instruct you not to tell me about the jury deliberations or your thought process during deliberations. I'm not asking questions about those and you should not provide that information in response to my questions. So listen to my specific questions, let me know if there's something you don't understand, do not respond with information about the jury's deliberations, and tell the truth.

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If there is a response that is too difficult or embarrassing for you to share in open court, you may request to speak at sidebar with me and counsel. However, if you have already shared the information publicly, including in media interviews, then I will not allow the sidebar.

There's a binder in front of you. I have marked the document in there as Court Exhibit 1, so it's Court Exhibit 1 to the record for this hearing proceeding and you may open that.

That is a copy of the questionnaire that you filled out on November 4, 2021. Please take a moment and look through it so that you're familiar with it and can identify it.

A. Yes.

Q. Do you recognize that as the questionnaire that you filled out on November 4, 2021, as part of the jury selection process in this case?

A. Yes, your Honor.

Q. I will ask you to turn to page 24 and look at question 48.

That question reads: Have you or a friend or family member ever been the victim of sexual harassment, sexual abuse or sexual assault, and then in parenthesis, this includes actual or attempted assault or other unwanted sexual advance, including by a stranger, acquaintance, supervisor, teacher or family member. Do you see that question 48?

A. Yes, your Honor.

Q. On your questionnaire you indicated no as your answer. You checked the box for no. Is no an accurate answer to that question?

A. No, it is not.

Q. What is an accurate answer to that question?

A. Yes for self.

Q. Okay. If you look at question 48A, that question says: If yes, without listing names, please explain.

And when you filled out the questionnaire on November 4, 2021, you left that blank. What is an accurate answer to question 48A?

A. I would have put I was abused as a child.

Q. Without listing names, what happened?

A. It was a family member, who is no longer a part of the family, and one of their friends when I was nine and ten years old.

Q. Did this happen on one occasion or multiple occasions?

A. Multiple occasions.

Q. And did you tell anyone?

A. I did not for several years until I was in high school.

Q. And when you told someone in high school, did you tell authorities or adults or friends?

Who did you tell?

A. I told my mom and she called the police station and gave a report of the account and but never received any paperwork. So

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I don't know if anything was actually filed or anything done. There were no charges brought.

Q. You said a family member, no longer a family member. Again, without listing names, what was the nature of the familial relationship?

A. A stepbrother.

Q. You said stepbrother?

A. Yes.

Q. I'm going to ask you to look at question 48B. Question 48B reads: If your answer to 48 was yes, do you believe this would affect your ability to serve fairly and impartially as a juror in this case?

When you filled this out on November 4, you left that blank. What is an accurate answer to 48B?

A. It would have been no, because it did not affect my ability to be fair and impartial at all.

Q. I'm going to ask you to turn to page 13 of the questionnaire. Question 25 reads: Have you or any of your relatives or close friends ever been a victim of a crime?

And you checked no when you filled this out on November 4. Is no an accurate answer?

A. Looking back at it now, no, it's an incorrect answer.

Q. Who would have an accurate answer have been?

A. It would have been yes.

Q. Yes self, yes friend or family?

A. Yes self.

Q. And when you say "yes self," what are you referring to?

A. I'm referring to the sexual abuse.

What I was thinking when I was completing that questionnaire was like if I was robbed or mugged or some sort of crime like that. I wasn't thinking of my sexual abuse as being a victim of a crime because I no longer associate being a victim. It's part of my healing process and it's how I dealt with the abuse.

Q. Have you ever been robbed?

A. Never.

Q. Ever been mugged?

A. Never.

Q. Family or friends ever been robbed?

A. No.

Q. Or mugged?

A. I don't know anybody that has ever been robbed or mugged.

Q. Question 25A, asked: If yes, is there anything about the experience that would prevent you from acting as a fair and impartial juror in this case?

You left that blank when you filled it out on November 4. What is an accurate answer to 25A?

A. It would have been no. I was definitely able to set aside everything and be fair and impartial.

Q. Okay. In light of the answer that you gave to 48A, I am

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going to ask you to turn to question 49. It's on page 25.

Question 49 reads: Have you or a friend or family member ever been accused of sexual harassment, sexual abuse or sexual assault, and then in parenthesis: This includes both formal accusations in a court or law or informal accusations in a social or work setting of actual or attempted sexual assault or other unwanted sexual advance, including by a stranger, acquaintance, supervisor, teacher or family member.

When you filled this out on November 4, you checked no. Is that an accurate answer?

A. Yes, your Honor.

Q. So the incident that you described in response to 48 in which, as I understand it, you informed your mother when you were in high school that when you were nine or ten a family member had engaged in sexual abuse with you, is that correct?

A. Yes.

Q. So why is that not responsive to question 49?

A. Because I don't consider them part of my family. I never considered them part of my family even when they lived with us for a few years.

Q. And when you filled out the questionnaire, when you got to this question were you thinking about what happened to you but you didn't respond yes because you didn't consider them a family member, or you didn't consider it?

A. I didn't even consider it at all.

Q. Why is that?

A. I flew through this questionnaire. I never thought that I -- I honestly never thought I would be chosen to sit on this jury. We had to be at the courthouse super early, and I got here early and it took 45 minutes just to get through the security line. And we get ushered into a room --

Q. I will come back and ask you some questions about the process for filling it out.

A. Got it.

Q. Just for the moment, just with respect to this question, tell me your thought process.

A. At this point I was super distracted because I was sat right in front of the table, literally within four feet of that table where everybody was dropping off their questionnaires. People were asking questions, there was papers being ripped off the questionnaire packets, and there's a lot of talking going on, and it's super distracting. I'm like: I want to finish. So I just start going through and marking the questions as I'm like: Okay, okay. I didn't spend a whole lot of time thinking about it.

Q. As you sit here now, what's the answer to question 49?

A. It would have been -- it would have been yes, that a stepbrother was accused -- a stepbrother and his friend was accused of sexual abuse.

Q. Okay. So a moment ago you said the answer would have been

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no because you didn't consider them family.
A. Family, yeah.
Q. But now you say yes because it would have been a stepbrother. Explain.
A. Because by law, by marriage, that person was my stepbrother. So when you read the question that way and it says has a friend or family member ever been accused, then the correct answer would have been yes, a friend or family member.
Q. Okay. And so the same response then for 48A is what you would have given for 49B?
A. Yes, your Honor.
Q. And 49B, if your answer to 49 was yes, do you believe this would affect your ability to serve fairly and impartially as a juror in this case?
A. In no case. It would not affect me.
Q. In responding a moment ago you said you never thought you would be chosen as a juror in this case. Why is that?
A. Only because the sheer volume of people that were there. It was insane, the amount of people. So I just never thought -- number one, I didn't know what it was when I went into it, and then when they played the video of you, I just thought that the likelihood of being chosen, surely they will be interviewing thousands of people. And they ultimately choose twelve people to sit on a jury, and I never thought I would be one of those twelve.

Q. Did you hope that you would be?
A. I did not hope to be on this jury. But again, like if you're going to serve jury duty, it might as well as be something that's interesting, but I did not set out in order to get on this jury.
Q. Let me ask you to return to question 48A, page 24. You spoke to this a little bit but I want to make sure I understand the answer. You indicated that when you checked no, that was an inaccurate answer. Why did you check no?
A. I didn't see the part where it says self, I just -- I completely skimmed way too fast. I was distracted by all the noise going on around me. And again, like I said, I just wanted to get done with this. It had been a long process, I had been sitting for hours, there were audiovisual problems getting your video to play, so we literally sat there for three hours. I didn't have a phone, I didn't have a book, I was sitting there twiddling my thumbs thinking about the break up that just happened a few weeks prior and sitting in my feelings and not very focused.
Q. So tell me what you understood the question to be asking.
A. I thought it was asking about family or a friend.
Q. And the box that says yes for self?
A. Right, I just missed it. Inadvertent mistake. This was one of the biggest mistakes I have ever made in my life, and if I could go back and change everything and have slowed down and

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actually taken the time to read this appropriately, I would in a heartbeat.

Q. There are other questions on the questionnaire that are structured with similar yes self, yes friend or family, or no. Do you recall seeing those questions?

A. Only after I have reread this do I recall that.

Q. So on none of the questions that included yes, parenthesis self, yes friend or family member, or no --

A. I did not pick up on that when I was filling this out.

Q. Okay. When did you first learn that an answer to the questionnaire was inaccurate?

A. When an article had come out about the article that I had given to Lucia through The Independent.

Q. So you learned of an inaccurate answer in an article about an interview?

A. Yes.

Q. And what about during the interview?

A. During the interview, no.

Q. When did you first learn that the questionnaire may contain a question that asked about sexual abuse history?

A. That was during my Daily Mail interview with the reporter Laura Collins.

Q. So we're talking about your response to 48 which you have indicated was inaccurate. Did you in any way intentionally provide an inaccurate answer to this question?

A. Absolutely not.

Q. In responding to this question, did you answer no so as to make it more likely that you would be selected for the jury?

A. Absolutely not, your Honor.

Q. Did your history of sexual abuse motivate you in any way to try to tailor your answers to make it more likely that you would be selected for this jury?

A. Not at all, your Honor.

Q. At the time you filled out the questionnaire on November 4, did it occur to you that you might personally benefit in any way from being on the jury in this case?

A. Not at all, your Honor.

Q. I'm going to return to question 25 again, which you have indicated was inaccurately responded to, and again you've discussed this, but I want to just hear directly in response to this question, why did you check no?

A. Well, again, I wasn't thinking about abuse. I don't really think about my abuse really much anymore because it doesn't define me, it doesn't make me who I am today. It's something that happened, it's an experience that I lived through, and I have become the person I am today because of my goals and ambitions. And I do not feel that I am a victim of a crime, even though looking back on this abuse, that does make me a victim of a crime, which is why I should have marked yes for self.

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Q. In any way did you intentionally provide an inaccurate answer to this question?
A. Absolutely not, your Honor.
Q. In responding to the question, did you answer no so as to make it more likely that you would be selected for the jury?
A. No, your Honor.
Q. Did your history of sexual abuse motivate you, again, to try to tailor this answer to make it more likely that you would be selected for the jury?
A. No, your Honor, I wasn't even thinking about that.
Q. I am going to return to the topic of the process for filling out the questionnaire, and you have spoken to that some and I will give you as much space as you want to respond. Just by background, you were summoned to appear for jury duty on the morning of November 4, is that correct?
A. Yes, your Honor.
Q. And when did you learn you would be filling out a questionnaire?
A. When we got to the courtroom.
Q. When did you learn the case for which you were being considered as a juror?
A. Three hours after sitting in that chair.
Q. And how long did it take you to fill out the questionnaire?
A. It's a great question. I don't recall how long it took, but I want to say we were done by around noon or a little after

noon.
Q. Were you rushed in any way?
A. I felt rushed only because of all the commotion going on in front of me and everybody else just going by on both sides.
Q. And how did that make you feel rushed?
A. It made me -- growing up in school I never wanted to be the last one finished. You want to finish your test and go hang out with your friends. So it's kinds of that same policy, I just wanted -- everyone else is finishing and I'm like: Why am I still reading this? I'm like: I'm never going to get chosen, let's get this done with.
Q. Would you say you approached the filling out of the questionnaire with diligence?
A. Looking back on it now, no, your Honor.
Q. Were you concerned with following my instructions?
A. Absolutely not.
Q. You were not concerned with following my instructions?
A. No, I really -- this is a terrible excuse, but I didn't really think I would be chosen.
Q. Some of the questions required follow up depending on whether a yes or no answer was provided. Do you recall that?
A. Yes, your Honor.
Q. And we'll take a quick look at two examples, question 9 on page 8, question 9 and 9A and question 10 and 10A.
Question 9 asked whether your beliefs would make you

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unable to render a verdict. You checked no. 9A said: If yes, please explain. You left that blank. So that question, if a yes response called for explanation, you didn't provide an explanation because you checked no.

The next question 10 asked about principles of law and whether you would accept them if selected to serve on the jury, and you said yes. 10A said: If no, please explain. And you followed that instruction and didn't provide an explanation because you had said yes.

You recall there were a number of questions that sometimes called for explanation and sometimes didn't?

A. Yes, your Honor.

Q. So how did you know whether to include follow-up answers?

A. So these questions are in the beginning where I had more focus than I did at the end and less distractions, so it was easier to follow along, like these are the first few questions. It is a pretty thick packet, there's a binder of questions, so at this point I was still, I guess, in focus and in the zone and knew how to respond to these questions I guess accurately at this part.

Q. Actually throughout the questionnaire you appeared to have followed the instructions with respect to follow-up questions.

A. Right.

Q. I reviewed a lot of questionnaires. Some people would provide follow-up when it wasn't called for or not provide

follow-up when it was called for. Your questionnaire seems to follow the instructions throughout. It appears generally that you read and followed the instructions within each question. So how do you reconcile that with what you just testified to that you were distracted, raced through?

A. Pretty simply, because you see your answer, you mark a no, then the next question says "if yes." Well, I marked no, so skip, go to the next question. So that's what I'm talking about when I flew through, I skimmed, I didn't read everything. So if I had just marked no and it says "if yes," immediately move on.

Q. Just to return to 48 now, sorry to go back, first you told me it was a good question, how long it took you to fill it out, and then you said you couldn't remember. I want to go back. I think you said you were finished by noon. Do you remember what time you started the questionnaire?

A. It had to be around 11-something. Again, I don't know, I --

Q. I'm not sure that clock works.

A. Yeah, I don't remember seeing -- obviously that clock is in the back and I was facing the front of the courtroom that we were in, so I wouldn't have even seen that clock. But I feel like the room we were in was much larger than this one, and I don't know what time I started. It definitely felt like we were there for hours before even seeing your video and then

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given the questionnaire.
Q. You say, if you had to estimate, an hour to fill out the questionnaire?
A. Maybe. I think that would be accurate.
Q. And to return to 48, so you just said it was pretty easy to, if yes, explain, if no, explain, so you skimmed through that. Looking again at 48, which has sort of a lot of white space for the answer there, do you see that?
A. Yes, your Honor.
Q. And again, this is how many of the questions were structured: Check box yes self, yes friend or family, or no.

Tell me again your thought process and how you understood the yes self, and yes friend or family.
A. I just read the friend or family, again, like distracted, so I missed that "have you," and then "yes self" while reading this question.
Q. At the time you were filling this out, were you surprised the questionnaire asked about friend and family but not about you?
A. I didn't honestly think about it.
Q. At the time you filled out the questionnaire, did you think that your history of sexual abuse would be something that the parties and I would want to know in order to determine if you could be fair and impartial?
A. Looking back thinking now, yes, that's a question that

would have been asked, but I honestly didn't think about it. I really don't think about my sexual abuse, period. I don't tell very many people.
Q. After the trial you gave interviews in which you did tell people about your history of sexual abuse.
A. Yes.
Q. How do you reconcile what you just said with that?
A. So I didn't -- this is going back to a deliberation thing, so I have to think about how to say this.
Q. Well, I don't want you to talk about deliberations.
A. Right.
Q. If you can, you just said you don't talk about it, but --
A. I didn't talk about my abuse, I only said that -- I only used it in order to talk to a reporter about jury deliberations, I didn't use it in order to insert anything. I just gave that as to why I believe a certain way based on all the evidence that was provided during the trial.
Q. I suppose that the question is: You were prepared for the public and you knew the public paid a lot of attention to this case, you were giving national and international media interviews, you were prepared for your history of sexual abuse to be widely known.
A. Right, but not something -- I didn't think this would happen, like I didn't lie in order to get on this jury and then go to the press and tell them about my abuse. It just -- it's

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a little illogical thinking about it, like if I lied deliberately I wouldn't have told a soul. I certainly wouldn't have put myself in a position to where I could -- this position that I'm in now, potentially any sort of criminal charges, I just wouldn't have done it. It was an honest mistake and one of the biggest mistakes, and again, I apologize for wasting a lot of people's time and money, and this is never anything that I intended or did on purpose.

Q. I understand your point, I still want to just make sure I understand as someone who is filling out the questionnaire and sort of walking through life and doesn't think about the history of sexual abuse and talk about it, at the same time you were prepared for the world to know about it. Tell me how to make sense of that.

A. It was only how I view things and how I can recall memories, that's it. I didn't talk about my abuse, I just said I can remember things and recall things, like the color of the wall or --

Q. Did you think about the fact that many people would learn from your interview that you had this history of sexual abuse?

A. No, I did not.

Q. You didn't think about that?

A. No, I did not think that anybody -- certainly my family or friends would find this out.

Q. Friends weren't following the news of the case after you

indicated you had been a juror on it?

A. I don't know if they were following the news of the case, but I have had some conversations about it with my friends afterward, but most people don't even know. It's not like -- I didn't know much about it either. Sexual abuse isn't a topic that I really want to research or learn about or watch about frequently.

Q. You did understand from your interviews that the fact that you were abused would be a known fact in the world.

A. Yes, your Honor.

Q. And did you make a conscious decision that you were okay with that?

A. Yes, your Honor. After sitting on this trial for several weeks and seeing the victims be brave enough to give their story, I felt like if they can do it, then so can I. I didn't have to divulge any of the details that happened to me, I focused on the memory aspect.

Q. Okay. What I'm going to do now is I'm going to take us back in time to not November 4 but November 16, 2021. That's when I questioned you individually in that process that I suspect now you know is called voir dire. You recall that process?

A. Yes, your Honor.

Q. At that time I asked you some follow-up questions based on your responses to the questionnaire and some additional

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questions. Do you recall that?
A. Yes, your Honor.
Q. So if you had filled out your questionnaire accurately as to 48 and 25 and 49, I would have asked additional questions that day. So what I'm going to do is ask you those questions now.
A. Okay.
Q. And I need you to answer honestly as to how you would have answered on November 16 if you had answered the questions 25, 48 and 49 accurately. Do you understand that?
A. Yes, your Honor.
Q. And again, I'm not asking for your thought process during deliberations or anything about jury deliberations, I'm asking you to go back to that time and if you had answered these questions accurately, how would you have responded to my follow ups. Okay?

So at the time I asked you questions on November 16, and if you had answered the questions accurately, did you believe there was anything about your prior experience with sexual abuse that would affect your ability to be a fair and impartial juror?
A. No, it would not affect me in any way.
Q. At the time I asked you the questions, if you had answered the questions accurately, did you believe there was anything about your experience with sexual abuse that would have

affected your ability to render a verdict based solely on the evidence presented at trial and my instructions as to the law?
A. Yeah. No, your Honor, I would be able to review the evidence based solely on the evidence.
Q. Okay. At the time I asked you questions, and if you answered accurately, did you believe there's anything about your experience with prior sexual abuse that would interfere with your ability to assess the credibility of witnesses alleging sexual abuse?
A. Absolutely in no way.
Q. So at the time did you believe that you would be able to conclude that a witness alleging sexual abuse was not testifying truthfully if that was what the evidence suggested?
A. Correct, your Honor, yes, I did.
Q. At the time I asked you questions on November 16, did you harbor any bias against Ms. Maxwell?
A. Not at all.
Q. At the time I asked you questions on November 16, were with you biased in favor of the government or the prosecution?
A. Not at all, your Honor.
Q. Did you want to put your thumb on the scale in any direction?
A. No.
Q. At the time I asked you questions, and in light of your experience with sexual abuse, did you believe that the subject

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matter of the case would upset you in such a way that would distract you from your duty as a juror?
A. No, your Honor.
Q. Would you be thinking about your own experience in a way that would prevent you from being fair or impartial?
A. No, your Honor.
Q. At the time I asked you questions on November 16, and in light of your experience with sexual abuse, did you believe that issues of reporting or not reporting sexual abuse that might be discussed at trial would interfere with your ability to be fair or impartial as a juror in the case?
A. No, your Honor.
Q. At the time I asked you questions on November 16, and if you had answered accurately and based on your experience with sexual abuse, did you have any doubt as to your ability to be fair to both sides?
A. No, your Honor, no doubt.
THE COURT: All right. I will meet with counsel at sidebar.
(At sidebar)
THE COURT: I will give you an opportunity to propose follow-up questions in light of his responses to questions of counsel.
MS. MOE: Yes, your Honor, just one proposal. I believe the Court asked Juror 50 about the way in which he

approached the questionnaire process, whether he took the Court's instructions seriously. We would just propose asking parallel questions about the questions he was asked in person, in particular because the juror was asked during voir dire similar questions about questions of bias for or against the government, impartiality. And so to clarify the record, whether he took answering those questions in person seriously and answered truthfully.
MS. STERNHEIM: Could we have a moment?
THE COURT: You may.
(Pause)
MR. EVERDELL: Your Honor, I think there was several areas of follow-up here that are warranted.
First, the juror made some reference to his healing process. I couldn't quite understand what he said at the time, something about how he views himself as a victim or not as a victim of a crime. I think we need to understand his healing process and what he has gone through, because that affects his ability to be an impartial juror in a case involving sexual abuse. Is this something that he still is seeking treatment for? Is this something he is still thinking? How he deals with the healing process and how he thinks about himself as a victim affects how he views the victim witnesses in this case, and I think there ought to be more questions about that.
THE COURT: What's the proposed question?

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MR. EVERDELL: What was -- we gave a number of those in our submissions, but: You talked publicly about the fact that you were in therapy, what was the nature of the therapy? Does it deal with your experiences as victim of sexual abuse? What was the healing process that you talked about? Describe this healing process for me. Does it involve addressing this issue of prior child sexual abuse? Were you in therapy during the trial? Is this an issue that you are still dealing with?

THE COURT: I did review those questions proposed and I considered them. The defense did not propose any comparable questions for jurors during the voir dire process who indicated yes to this question and indicated a history of sexual abuse, so those requests are denied.

Any other follow-up requests?

MR. EVERDELL: Your Honor, I think we need to talk further about the nature of abuse. We talked about the fact this was repeated, happened multiple times. This happened with more than one person, a stepbrother and a friend. I think we need to understand because -- I'm not trying to pry, your Honor, I'm not trying to get into these gory details, but it is relevant, the extent of the similarities of this juror's abuse and whether that lines up with the testimony we heard from the victims is relevant in an inquiry to bias.

And I think we need to understand a little more about similar questions that we asked -- we proposed to the Court in

our follow up: How long did this go on? When did it stop? Were you home when this happened? What was the interaction between you and the abusers and family members? These are all things that go to the similarity.

THE COURT: I have the same response. I considered those questions. We had, I think it was Juror 21 who had talked about familial abuse. The defense didn't propose any comparable follow-up questions. The questions went to the core questions of impartiality and fairness. The defense didn't request those questions and they didn't move to strike for cause. Here, there's dissimilarity of age; for example, younger than some of the proposed jurors, some of the inquired-into jurors who indicated yes, the defense didn't request follow up as to the specific similarities and the like, and I don't think I would have asked them because the bottom line questions are what is in issue. So that request is denied.

Any other proposed follow up?

MR. EVERDELL: Yes, I have a few more.

MS. STERNHEIM: Judge, you have asked certain things about the questionnaire, but I do not believe that you asked about the summary of the case which specifically says what this case is about, it is about sexual abuse of a minor, and did he just fly through that as well?

It is clear that this juror has supplemented --

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THE COURT: Make your arguments in briefing afterwards, if you're doing that. I want specific proposed questions in light of responses.

MS. STERNHEIM: I know your Honor did not want to get into what happened in the jury room, but a couple of --

THE COURT: I'm not permitted to get into that.

MS. STERNHEIM: You are permitted to discuss what he stated publicly, and publicly he said that he --

THE COURT: You misunderstand the law, or I do, but I have written an analysis of that issue in my opinion. That he revealed what happened in jury deliberations does not allow me to accept, as part of this hearing, evidence of what he said in jury deliberations. You may disagree with that legal analysis. I have written extensively about it in my February 24 opinion. I won't relitigate that now.

MS. STERNHEIM: He did not tell very many people about it, then he told the world.

THE COURT: Right. I pressed repeatedly on that issue. If you have a specific follow up that you would like me to ask --

MR. EVERDELL: I do have some follow up. He said he didn't tell many people, but he also said he didn't think people would learn about his history of sexual abuse, despite the fact that he was telling reporters about that. We need to ask him, I think, about his post to Annie Farmer where he says:

Thanks for telling my story. So if he says: I didn't expect the world to hear about my sexual abuse, yet at the same time he's telling Annie Farmer, one of the victims in this case, post-trial, "Thanks for telling my story," that suggests to me that he wanted to be known as the victim of sexual abuse, he wanted to be seen as a champion of sexual abuse, and that this explanation that he is giving is simply false.

There's also the Facebook post that he made after the fact --

THE COURT: Just a moment. I will ask him to explain, to reconcile that if he can, that he said he didn't think people would know about it with the fact that he went on social media and thanked one of the witnesses in the case. I will ask about that.

MR. EVERDELL: Your Honor, he said this is a verdict for all of the victims, which I think includes himself. How does he reconcile that comment with the fact that he didn't want to share with the world that he himself was a victim of sexual abuse, meaning: I'm doing this for the victims of sexual abuse. That's clear import of that comment. I think that's a conflict.

There's also his Facebook posts after the fact where he says: I can now tell everybody that I was a juror on the Ghislaine Maxwell trial. What an incredible, surreal experience. Again, telling the world that I'm out here.

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THE COURT: I will ask the question how does he reconcile the statement that he didn't think anyone would know with the fact that he was posting on social media.

MR. EVERDELL: I think we also need some follow-up questions that we proposed in our letter about his belief about victim memory, because I think that goes to his ability to evaluate the evidence fairly and impartially.

THE COURT: I will deny that.

MR. EVERDELL: I believe also he said in his answers that he didn't hope to be on the jury but if he is going to be on a jury, it might as well be something interesting. I'm paraphrasing, but that's the import of his comment. I think we need some follow up about what he meant by that comment. Why was it that he found this interesting? Was it some reflection of the fact that it involved victims of sexual abuse, and because he was the victim of sexual abuse himself that made it interesting for him?

THE COURT: I will ask him what he meant.

MS. STERNHEIM: Judge, I may have an issue. I thought the last question about following your instructions, I think he said no. And insofar as saying no, how did he not follow your instructions after he filled out the questionnaire?

THE COURT: Okay. I will ask that question and then I will ask the government's question about whether he followed my instructions during voir dire.

MS. MOE: Thank you, your Honor.

THE COURT: And then I will --

MR. EVERDELL: Your Honor, I believe he mentioned something about his interview with the journalist Lucia, first name Lucia, and I was trying to follow his response, but he said something about: I didn't understand that this was an issue in the questionnaire. But I believe the reporting is that they discussed this at length, the consequences of him going public and the consequences of the fact that there was a jury questionnaire at issue here and there were answers to those questions that he would be talking about. I can't remember exactly what it is, but there was some discussion about the consequences of him going forward. And I believe what he said was: I didn't have any discussions or any lengthy discussions with the journalists about me coming forward and just answered their questions. But I believe there was a discussion with Lucia about the consequences, about whether he wants to do this, about -- I don't remember now --

THE COURT: I don't understand what you're referring to.

MR. EVERDELL: I think the issue is he was saying how he didn't expect to be public, he didn't expect to be known worldwide as a victim of sexual abuse, he didn't expect this come out, even though he's talking to journalists. My understanding is he had a discussion with Lucia, the journalist

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from The Independent, about the consequences of him coming forward, which is: This is a momentous decision you're making.

So I don't see how he squares his comments about I never thought by talking to the press that I would come forward and be known this way, when in fact I think there was a lengthy discussion he had with a journalist about this very fact.

THE COURT: He said that he recognized by talking to the press about it that it would be known publicly.

MR. EVERDELL: I think he may have said that, but I think at the same time he's saying I didn't think this would be known by my parents and my friends. I don't know how you square those responses. To me -- and I know this was the subject of argument that you don't want to hear at this point, but his responses are simply not credible on this point because he's talking out of both sides of his mouth: I didn't think I would be known, but yet I did know I would be known. It makes no sense to me. I'm curious to hear more about what I perceive as blatant conflict in answers about a discussion with a journalist about the consequences of going forward.

THE COURT: You want me to ask about what he discussed with which journalist?

MR. EVERDELL: Lucia, who I believe is The Independent journalist. So I would -- I'm sorry it's not coming out very focused, I apologize, but: You had discussed before in responses to my questions about the fact that you didn't think

that talking to a reporter would necessarily make you known to the world about -- your sexual abuse known to the world. If that wasn't something that truly entered your head, isn't it a fact that you spoke to Lucia, the reporter from The Independent that you spoke to, about the consequences that you might face in revealing all this stuff -- we won't get into jury deliberations -- about what you said to her about your sexual abuse and other things, there would be well-known consequences to what you were doing. How do you square those two thoughts in your head, which you didn't think it would be public, didn't think you would be known for this, and the journalist is telling you that very fact?

MS. MOE: Your Honor, the government has no objection to limited follow-up questions about his understanding about whether it would become public. I do have concerns about the proposed question because it's confusing and a little cryptic. I don't know what the word "consequences" might mean in response to the question or what that's in particular driving at. I think, as the Court noted, he has already sort of explained his understanding about speaking publicly to a reporter and whether it would be publicly known that he was the victim of sexual abuse.

There's also, I think, some tension between the Court's focused question about whether he understood it would become public that he was the victim of sexual abuse and

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further questions about his understanding about sort of the magnitude of press coverage arising from the issue that gives rise to this hearing, which I believe he touched on as well.

THE COURT: I think what I will do is go back and ask: Did you understand at the time you talked to the press in the way that you did, did you understand that it would be publicly known that you were a victim of sexual abuse? We'll see what he says.

Did you think about the consequences of talking to the press about that? Did you talk to the press, the press reporter about the consequences?

It's difficult for me to see what it's going at, but I will seek clarification on his answers, as I did multiple times, on the reconciling and understanding his thinking about coming out publicly as a victim of sexual abuse. He has explained some of the transformation process and the like. You can make your arguments about credibility. But I will go back and see if there's something to ask regarding talking to the reporter about the consequences. Which also there's a temporal issue here, he didn't think about it until he talked to the press, and in the course of that the press talked to him about the consequences and that changed his understanding potentially.

MS. MOE: Yes, your Honor. And I think yet a third point, talking about consequences today, I think Juror 50

rightly understands that question to be referring to whether he would understand he would be sitting in a courtroom like this.

THE COURT: I will go back and try to get an understanding of what he thought would happen when talking to the press regarding his own sexual history regarding it being publicly known that he was someone who suffered from sexual abuse.

MS. STERNHEIM: During the interview he mentioned question 48, and he said: I recall being asking about friend and family, and she said "it also asked about you," he turned beet red, and she said: You're turning beet red. He said: The blood is rushing to my head.

THE COURT: She actually said: You're not on the stand. You misquoted it in the papers.

MR. EVERDELL: Not in the sun.

THE COURT: You're not in the sun, she said, you're not on the stand, don't worry, but yes.

MS. STERNHEIM: What was going through his mind when she mentioned that the question included you?

THE COURT: I will ask that. He talked about the first time he learned that the questionnaire had the question.

MS. STERNHEIM: And last thing is: What was his motivation in speaking to the press and being interviewed?

THE COURT: Those questions, what motivated him after trial, is not relevant to what was going on during the filling

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out of the questionnaire and responding to the voir dire. I would ask questions about that, and I have, but what motivated him to talk to the press is not relevant to the inquiry.

All right. Anything else?

MS. MOE: Not from the government, your Honor, thank you.

(Continued on next page)

(In open court)

THE COURT: All right. I do have some additional questions, Juror 50.

BY THE COURT:

Q. I asked you whether you approached filling out the questionnaire with diligence.

Can you recall that?

A. Yes, your Honor.

Q. And you indicated no and you wish you had and that sort of thing. And I asked you whether you took my instructions carefully in the questionnaire.

Do you remember that?

A. Yes, your Honor.

Q. And your answer is no? Is that accurate?

A. Yes, your Honor.

Q. And to make sure I understand, why is that? Why didn't you take my instructions carefully?

A. It was definitely inadvertent. Again, like I said, I began to float, fly through it, in order to get done. I was super distracted, and it just -- I don't know what happened. I just wanted to get done with it.

Q. When you came back on November 16 for the follow-up questions, there was another instruction video.

Do you recall that?

A. Yes, your Honor.

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Q. And when I asked you questions, those one-on-one questions, did you pay attention to the instructions at that time?
A. Yes, your Honor.
Q. Did you listen carefully to my questions?
A. Yes, your Honor.
Q. Do you have any doubt that you answered those questions accurately?
A. I answered every single one of those questions accurately.
Q. Might you have failed to pay attention to the specifics of the questions in any way?
A. Not at all, your Honor.
Q. And how do you know that, given how you approached the questionnaire?
A. Because it was a different situation. I wasn't distracted. There weren't things going on. I wasn't sitting there for hours. It was multiple weeks later. So, again, I wasn't -- at that point, I wasn't thinking about my ex.
Q. Would you say that you're distracted easily?
A. I think I can become distracted, but it had no effect me serving in the jury, on the jury, and listening to all the evidence given during the trial.
Q. And what was your approach to my instructions at various points?
A. It was to follow them.
Q. When you were testifying earlier -- and I asked you some

questions about this -- you said that you didn't think that your family or friends would learn that you were a victim of sexual abuse, despite the press interviews.

Do I have that right?

A. Yes, your Honor.
Q. And why didn't you think that?
A. Well, I wasn't using my full name. I'm also not ashamed about it. It's something that happened, and it's something that is relatively common that happened to multiple people throughout the world.
Q. And we talked about this, but you understood that there was a high level of press and public attention to the case. Correct?
A. Yes, your Honor.
Q. Help me reconcile that you didn't think friends and family would learn about your sexual abuse with the fact that you were speaking publicly about it.
A. The one thing that I can point to is that when my friends commented, texted me -- commented on my post, texted me about it, they didn't even know that this trial was even happening. So I figured a little article about a juror giving their experience wouldn't be record-breaking or really in the news at all.
Q. So you couldn't see how they would find out about it?
A. Yes, your Honor. That wasn't something that I was

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intentionally planning to hide; right? So if somebody were to ask me if I was abused, I would say yes.

Q. And otherwise -- well, let me ask you: You were posting on social media about your role as a juror.

A. After the trial, yes.

Q. So wouldn't your friends and family find out in that regard?

A. It just -- I just said that I had served on the jury. I didn't say anything about it in it.

Q. There was a communication with one of the witnesses in the case, Annie Farmer, on social media?

A. That's right.

Q. And you thanked her for sharing your story.

A. Yes.

Q. What did you mean by that?

A. She just shared the article, and then I commented on it; that thank you for sharing my story because she said that I was brave enough to come forward, and so I thanked her for sharing hers as well.

Q. So your friends who followed you there would see that.

A. I don't have any followers. I think I had like two followers, and they were random things. Twitter is not something I normally use. So I had just randomly seen that she'd shared that. So I felt like I wanted to comment.

Q. You testified, when I asked whether you hoped you'd be on

the jury, and you had said that you didn't think you would. And I asked you why, and I asked you if you hoped you would.

And you said, well, I thought it would be interesting. If you were going to serve jury duty, this would be --

What did you mean you thought it would be interesting?

A. So not everybody gets called for jury duty. Some people never get called in their entire lifetime. I figured if -- what I mean by that is this is something interesting. It's not like -- I don't know. Maybe a fraud case might be boring. I don't know. I just felt like this might be something interesting that keeps my attention.

Q. I asked you when you first learned that the questionnaire included a history-of-sexual-abuse question.

Do you remember that?

A. Yes, your Honor.

Q. And you told me during a videoed interview.

A. Yes, your Honor.

Q. Correct.

What was your reaction when you learned that the questionnaire contained that question?

A. Well, she asked me. And I was, like, they don't ask about your own personal abuse because it's what I believed. It's what I thought. It's what I read. I didn't know I had made a huge mistake like that, and that's why I responded that way.

Q. And how did you feel?

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A. Well, number one, I was, like, did I just mess something up entirely? And I was embarrassed and sort of like shocked and didn't know that that was the full question.

Q. I think at one point you said that you sort of didn't realize the extent to which your interviewing would kind of reverberate. I don't mean this process.

But in terms of the public knowing that you had a history of sexual abuse, with any of the reporters you spoke to, did you talk through the consequences?

A. No, your Honor.

Q. And, again, I don't mean about this kind of process. But I just mean to speak about your history of sexual abuse.

A. Correct. No, your Honor.

THE COURT: I'll briefly meet with counsel.

(At the sidebar)

THE COURT: I want to make sure that I've accurately captured the follow-up questions that were requested and give you a final opportunity if you have any additional questions for followup.

MS. POMERANTZ: Nothing further, your Honor. Thank you.

MS. STERNHEIM: Judge, I had asked before if the Court could inquire about the summary of the case. He said he paid attention early on. He specifically said that the case was about sexual abuse.

THE COURT: I don't understand what the question is.

MS. STERNHEIM: Well, you had read that. So you knew what this case about, and that was in your mind when you were answering the questionnaire. For him to say that --

THE COURT: I don't want argument.

What question do you want me to ask?

MS. STERNHEIM: Did you read the summary of the case and understand that the subject matter of this case --

THE COURT: Well, I won't summarize it. I'll read the whole thing and ask: "Did you understand that that was the subject matter of the case?"

MS. STERNHEIM: Yes.

MS. POMERANTZ: No objection, your Honor. Thank you.

(In open court)

BY THE COURT:

Q. Returning to the questionnaire, it says, page 4. It's actually the second page of the questionnaire. There were documents that you took off when you filled it out.

I provided a summary of the case.

Do you recall that?

A. Yes, your Honor.

Q. The third paragraph down in that summary reads: "The charges of the indictment stem from allegations that from at least 1994 through 2004, the defendant conspired with and aided and abetted Jeffrey Epstein to entice minors to travel to

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engage in criminal sexual activity, to transport minors to engage in criminal sexual activity, and to engage in sex trafficking of a minor."

And then the next paragraph lays out of the specific counts.

Do you recall if you read that summary of the case?

A. Yes, your Honor. I did.

Q. So what did you understand the case to be about?

A. Just that, just what was written there.

Q. And in reading that, did that cause you to think about your history of sexual abuse?

A. It did not. Again, it's something that I don't think about. It happened so long ago. Again, it's not part of who I am.

THE COURT: All right. You may step down.

(Witness excused)

THE COURT: Counsel, let me ask your proposals as to some briefing, if necessary, post-trial briefing.

Government?

MS. MOE: Your Honor, the government would respectfully propose that the parties submit letter briefing promptly following the hearing within the next few days.

If I could just have a moment to confer with my colleagues about a specific date. Our general proposal would be to have a short and tight briefing schedule to resolve the

issues from the hearing, but if I could just have one moment about a specific date.

THE COURT: Okay.

(Government counsel confer off the record)

MS. MOE: Your Honor, the government would propose that we submit our letter briefing by Friday.

MS. STERNHEIM: May I, Judge?

THE COURT: Yes. I think your response on the other briefing is due on Friday.

MS. STERNHEIM: And I am starting a trial, not that that is going to necessarily prolong our request. But I would ask for two weeks for us to submit our written submission.

MS. MOE: Your Honor, the government respectfully submits that this issue has been prolonged in litigation. It has been briefed exhaustively. The only remaining issues are about Juror 50's testimony today and the inferences to be drawn, which is a very narrow and confined issue which can be resolved quickly and briefed quickly.

MS. STERNHEIM: Your Honor, this is an incredibly important issue. We are not asking for --

THE COURT: I know it's incredibly important, Ms. Sternheim. That doesn't alter the fact of what there is to do. But let me look at the calendar.

What date does your trial start, Ms. Sternheim?

MS. STERNHEIM: The 16th.

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THE COURT: All right. I think simultaneous briefing is appropriate. For one, I have responsive briefing on the legal issues, and so really what we're talking about is argument following based on today's record.

One week from today, the 15th. Simultaneous briefing, I don't care if you call it letter briefing or otherwise. As you know, all I care is that it's double-spaced so I can read it on my iPad. Fifteen pages max per side.

Anything else from the government?

MS. POMERANTZ: No, your Honor. Thank you.

MS. STERNHEIM: Your Honor, I would just request that our submission of questions which was sent to chambers be made a part of this record.

THE COURT: Yes. As I've said, I will docket everything. There's identifying information of Juror 50 in your submitted questions. So that needs to be redacted.

But other than Juror 50 identifying information, the redactions for all materials, I believe, for all materials based on the post-trial briefing and the submitted questions can be publicly docketed.

Is that correct? As well as my opinion had two lines of redactions. So I'll docket my opinion without redactions. I'll ask the parties to -- actually, I think we can handle the submitted questions, the redactions for identifying information.

The parties' briefing, I'll ask you to submit the briefs with redactions only for protecting juror privacy and juror identity.

Any reason not to do that by tomorrow?

MS. MOE: Yes, your Honor.

THE COURT: By tomorrow?

MS. STERNHEIM: Yes.

THE COURT: Thank you.

So that will put everything on the record. As for today's hearing, the only thing that's redacted is Juror 50's name. And that's redacted on the immunity materials, as well as Mr. Spodek's letter just indicated "Juror 50."

Anything further, Ms. Sternheim?

MS. STERNHEIM: Not at this time.

THE COURT: Ms. Moe?

MS. MOE: No, your Honor. Thank you.

THE COURT: All right. We're adjourned.

(Adjourned)

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COURT EXHIBIT #

DATE: 3/8/22

TIME:

CASE: 20cr330, US v. Maxwell

Post-verdict hearing

Juror ID: 50

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3/9/22

PRELIMINARY INSTRUCTIONS

Please read the following instructions carefully before completing any portion of this questionnaire. Please print your juror number in the space provided at the top of **each** page. **Do not write your name on the questionnaire.** Please answer each and every question fully. Some questions have more than one part.

YOU ARE SWORN TO GIVE TRUE AND COMPLETE ANSWERS TO ALL QUESTIONS IN THIS QUESTIONNAIRE. This questionnaire is designed to help simplify and shorten the jury selection process. The purpose of the questionnaire is to determine whether prospective jurors can decide this case impartially based upon the evidence presented at trial and the legal instructions given by the presiding judge. The questions are not intended to inquire unnecessarily into personal matters. Although some of the questions may appear to be of a personal nature, please understand that the Court and the parties must learn enough information about each juror's background and experiences to select a fair and impartial jury.

Please answer all questions to the best of your ability. If you do not know the answer to a question then write, "I don't know." There are no "right" or "wrong" answers, only truthful answers. If you have strong feelings about this case in general, please do not hesitate to share them. Although you may be a perfectly good juror in another case, this may or may not be the right case for you to sit on as an impartial juror. Both parties have the right to get honest answers and to hear your true opinions. Do not discuss the case or your answers with anyone. It is important that the answers be yours alone. Remember, you are sworn to give true and complete answers to all questions.

If you need extra space to answer any question, please use the extra blank sheets of paper included at the end of the questionnaire. Be sure to indicate on the blank page the number of the question you are answering. Do not write anything on the back of any page.

DO NOT DISCUSS YOUR QUESTIONS AND ANSWERS OR THE CASE WITH ANYONE, NOW OR UNTIL FURTHER INSTRUCTED BY THE COURT. You should not discuss the questions or answers with fellow jurors. It is very important that your answers be your own individual answers. More broadly, do not discuss the case with anyone, including the lawyers (except in the presence of the Court), your fellow jurors, your family, your friends, or anyone else. Do not communicate about the case in any way, including telephone, e-mail, any social media app or website (such as Facebook), any communications app or website (such as Twitter). You must also avoid reading or hearing about the case (or anyone participating in the case) in newspapers, in magazines, on the radio or television, or on the Internet.

DO NOT DO YOUR OWN RESEARCH ON THE CASE. Do not conduct any research into the case (or anyone participating in the case) at any time before your entire jury service has been completed. That includes performing Internet searches, asking other people about the case, reading news stories, books, or reports about the case, or watching films or television programs that relate to the case. Do not read, watch, or listen to any information about this case.

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Your name will not be disclosed or connected to this questionnaire beyond the Judge and the parties in this case. However, if you believe that any of your answers contain private information that could embarrass you or otherwise seriously compromise your privacy and wish to request that the Court keep them confidential and not distribute them beyond the Judge and parties, please indicate the particular question number at the end of the questionnaire.

SUMMARY OF THE CASE

The Court is selecting a jury for a trial commencing on Monday, November 29, 2021. Although it is never possible to predict the length of a trial, currently this trial is expected to last approximately six weeks.

This is a criminal case. The Defendant, Ghislaine Maxwell, has been charged in an Indictment with various criminal offenses. The Indictment is not evidence. It simply contains the charges—referred to as "counts"—that the Government intends to prove to the jury at trial beyond a reasonable doubt.

The charges in the Indictment stem from allegations that from at least 1994 through 2004, the Defendant conspired with and aided and abetted Jeffrey Epstein to entice minors to travel to engage in criminal sexual activity, to transport minors to engage in criminal sexual activity, and to engage in sex trafficking of a minor.

The Indictment charges the Defendant in 6 counts: Count One of the Indictment charges the Defendant with conspiring with Jeffrey Epstein and others to entice minors to travel to engage in sexual activity for which a person can be charged with a criminal offense. Count Two charges the Defendant with enticing a minor to travel to engage in sexual activity for which a person can be charged with a criminal offense, and aiding and abetting the same. Count Three charges the Defendant with conspiring with Epstein and others to transport minors to engage in sexual activity for which a person can be charged with a criminal offense. Count Four charges the Defendant with transporting a minor to engage in sexual activity for which a person can be charged with a criminal offense, and aiding and abetting the same. Count Five charges the Defendant with participating in a sex trafficking conspiracy. Count Six charges the Defendant with sex trafficking of a minor, and aiding and abetting the same.

Ms. Maxwell has pled not guilty to all charges. Ms. Maxwell is presumed innocent, and before she can be found guilty on any charge, the jury must find that the Government has proven each element of that crime beyond a reasonable doubt.

Juror ID: 50

SCHEDULE

Potential jurors will be called back for further questioning and jury selection from Tuesday, November 16, 2021, through Friday, November 19, 2021. Your availability during that week will be required.

The trial will commence on Monday, November 29, 2021. The trial is expected to last about six weeks. Generally, trial will be held five days per week, Monday through Friday, from 9:30 a.m. until 5:00 p.m. Trial will not be held on Friday, December 24, 2021 (Christmas Eve Day) and Friday, December 31, 2021 (New Year's Eve).

If you are selected as a juror, you will be required to be present for the taking of testimony and evidence for as long as the trial lasts. There are no plans to sequester the jury, which means you will go home every day after court.

All jury service involves some degree of hardship. Our court and justice system depends on citizens doing their civic duty to serve as jurors, which involves temporarily putting aside their regular business for jury service. The Court views service on a jury to be one of the highest duties a citizen owes to the United States. Mere inconvenience or the usual financial hardship of jury service will not be sufficient to excuse a prospective juror. You must show extraordinary personal or financial hardship to be excused from service.

Juror ID: 50

PLEASE ANSWER THE FOLLOWING QUESTIONS:

	ABILITY TO SERVE
	Please note: In the event you are excused from service on this jury, you will likely not be excused from jury service in general. You will instead be required to report to the Court's Jury Clerk for placement on another panel for another case.
1.	Do you have any unmovable commitments between November 16, 2021, and November 19, 2021, which is when jury selection will take place? ☐ Yes ☒ No
1a.	If yes, please explain (without indicating the name of where you work or the names of any family members or friends, or other personal information that might identify who you are): _____ _____ _____ _____
2.	Do you have any unmovable commitments between November 29, 2021, and approximately January 15, 2022, which is the estimated length for trial? ☐ Yes ☒ No
2a.	If yes, please explain (without indicating the name of where you work or the names of any family members or friends, or other personal information that might identify who you are): _____ _____ _____ _____
3.	Do you have any international travel plans between now and November 29, 2021? ☐ Yes ☒ No
4.	Do any circumstances exist such that serving on the jury in this case would entail <u>serious</u> hardship or <u>extreme</u> inconvenience? ☐ Yes ☒ No
4a.	If yes, please briefly describe the serious hardship or extreme inconvenience: _____ _____ _____ _____

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5.	Do you have any personal commitments that would make it difficult for you to get to court by 9:30 a.m., every day of trial, or remain at the courthouse until 5:00 p.m.? (Please note, the Court will arrange and provide transportation to and from the Courthouse each day for selected jurors). ☐ Yes ☒ No
5a.	If yes, please explain why you would be unable to get to court by 9:30 a.m. or remain until 5:00 p.m.: _____
6.	Do you have any difficulty reading, speaking, or understanding English? ☐ Yes ☒ No
7.	Do you have any medical, physical, or mental condition or illness that makes you unable to serve on a jury, including difficulty hearing, seeing, reading, or concentrating? ☐ Yes ☒ No
7a.	If yes, please briefly describe the condition or illness. If you believe you could serve as a juror if such condition were accommodated in some way, please state the accommodation. _____
8.	Are you taking any medication which would prevent you from giving full attention to all the evidence at this trial? ☐ Yes ☒ No
8a.	If yes, please explain: _____

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9.	Do you have any religious, philosophical, or other beliefs that would make you unable to render a verdict in a criminal case? ☐ Yes ☒ No
9a.	If yes, please explain: _____ _____ _____ _____

	BASIC LEGAL PRINCIPLES AND MEDIA RESTRICTIONS
10.	Under the law, the facts are for the jury to determine and the law is for the Judge to determine. You are required to accept the law as the Judge explains it to you even if you do not like the law or disagree with it, and you must determine the facts according to those instructions. Do you accept this principle, and will you be able to follow the Judge's instructions if selected to serve on this jury? ☒ Yes ☐ No
10a.	If no, please explain: _____ _____ _____ _____
11.	The law provides that a defendant in a criminal case is presumed innocent at all stages of the trial and is not required to put on any defense at all. The Government is required to prove the defendant guilty beyond a reasonable doubt on each charge. Do you accept these principles, and will you be able to apply them if selected to serve on this jury? ☒ Yes ☐ No
11a.	If no, please explain: _____ _____ _____ _____

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12.	The law provides that a defendant in a criminal case has an absolute right not to testify, and that a juror cannot hold it against the defendant if she chooses not to testify. Do you accept this principle, and will you be able to apply it if selected to serve on this jury? ☒ Yes ☐ No
12a.	If no, please explain: _____
13.	A juror is required by law to make his or her decision based solely on the evidence or lack of evidence presented in Court, and not on the basis of conjecture, suspicion, bias, sympathy, or prejudice. Do you accept this principle, and will you be able to apply it if selected to serve on this jury? ☒ Yes ☐ No
13a.	If no, please explain: _____
14.	Under the law, the question of punishment is for the Court alone to decide, and thus the issue of punishment must not enter into your deliberations as to whether the defendant is guilty or not guilty as charged. Do you accept this principle, and will you be able to apply it if selected to serve on this jury? ☒ Yes ☐ No
14a.	If no, please explain: _____

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15.	You may hear testimony in this case that law enforcement officers recovered certain evidence from searches. The Court will instruct you that those searches were legal and that the evidence obtained from those searches is admissible in this case. Do you have any feelings or opinions about searches conducted by law enforcement officers, or the use of evidence obtained from searches, that would affect your ability to be fair and impartial in this case? ☐ Yes ☒ No
15a.	If yes, please explain: _____ _____ _____ _____
16.	You also may hear testimony in this case from expert witnesses. Have you had any experiences with experts, or do you have any general feelings about the use of experts, that would affect your ability to be fair and impartial in this case? ☐ Yes ☒ No
16a.	If yes, please explain: _____ _____ _____ _____
17.	As instructed above, **from now and until your jury service is complete**, you are instructed to avoid all media coverage and not to go on the Internet with regard to this case for any purpose. That is, you are forbidden from consuming any news media or social media, or any discussion of this case (or of anyone participating in the case) outside of the courtroom whatsoever. You also must not discuss this case with anyone. This includes your family, friends, spouse, domestic partner, colleagues, and co-workers. These instructions apply from now and until you are either dismissed from jury selection or chosen as a juror and the trial is complete. When we return for the next step in jury selection, the Judge will ask you if you have followed this instruction. Do you have any reservations or concerns about your ability or willingness to follow this instruction? ☐ Yes ☒ No

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17a.	If yes, please explain:

	PRIOR JURY SERVICE
18.	Have you ever served as a juror in a trial in any court? ☐ Yes ☒ No
19.	Have you ever at any time served as a member of a grand jury, whether in federal, state, county, or city court? ☐ Yes ☒ No

	EXPERIENCE AS A WITNESS, DEFENDANT, OR CRIME VICTIM
20.	Have you, or has any relative or close friend, ever participated in a state or federal court case, whether criminal or civil, as a witness, plaintiff, or defendant? ☐ Yes (self) ☐ Yes (friend or family member) ☒ No
20a.	If yes, is there anything about that experience that would prevent you from acting as a fair and impartial juror in this case? ☐ Yes ☐ No
20b.	If yes to 20a, please explain:
21.	Have you or any relative or close friend ever been involved or appeared as a witness in any investigation by a federal or state grand jury or by a congressional or state legislative committee, licensing authority, or governmental agency, or been questioned in any matter by any federal, state, or local law enforcement agency? ☐ Yes (self) ☐ Yes (friend or family member) ☒ No

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21a.	If yes, is there anything about that experience that would prevent you from acting as a fair and impartial juror in this case? ☐ Yes ☐ No
21b.	If yes to 21a, please explain: _____
22.	Have you, or has any relative or close friend, ever been subpoenaed for any inquiry or investigation? ☐ Yes (self) ☐ Yes (friend or family member) ☒ No
22a.	If yes, is there anything about that experience that would prevent you from acting as a fair and impartial juror in this case? ☐ Yes ☐ No
22b.	If yes to 22a, please explain: _____
23.	Have you, or has any relative or close friend, ever been arrested or charged with a crime? ☐ Yes (self) ☐ Yes (friend or family member) ☒ No
23a.	If yes, is there anything about that experience that would prevent you from acting as a fair and impartial juror in this case? ☐ Yes ☐ No
23b.	If yes to 23a, please explain: _____

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24.	Have you, or has any relative or close friend, ever been the subject of any investigation or accusation by any grand jury, state or federal, or any other investigation? ☐ Yes (self) ☐ Yes (friend or family member) ☒ No
24a.	If yes, is there anything about that experience that would prevent you from acting as a fair and impartial juror in this case? ☐ Yes ☐ No
24b.	If yes to 24a, please explain: _____ _____ _____ _____
25.	Have you, or any of your relatives or close friends, ever been a victim of a crime? ☐ Yes (self) ☐ Yes (friend or family member) ☒ No
25a.	If yes, is there anything about that experience that would prevent you from acting as a fair and impartial juror in this case? ☐ Yes ☐ No
25b.	If yes to 25a, please explain: _____ _____ _____ _____
26.	Have you, or has any member of your family or any of your close friends—either as individuals or in the course of their business affairs—ever been a party to a legal action or dispute with the United States, or with any of the officers, departments, agencies, or employees of the United States, including the United States Attorney's Office, the FBI, or the NYPD? ☐ Yes (self) ☐ Yes (friend or family member) ☒ No

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26a.	If yes, is there anything about that experience that would prevent you from acting as a fair and impartial juror in this case? ☐ Yes ☐ No
26b.	If yes to 26a, please explain: _____ _____ _____ _____
27.	Have you, or has any member of your family, ever had a dispute concerning money owed to you by the Government or owed by you to the Government? ☐ Yes (self) ☐ Yes (friend or family member) ☒ No
27a.	If yes, is there anything about that experience that would prevent you from acting as a fair and impartial juror in this case? ☐ Yes ☐ No
27b.	If yes to 27a, please explain: _____ _____ _____ _____

	RELATIONSHIP WITH, AND VIEW OF, GOVERNMENT, DEFENSE, AND OTHERS
28.	Do you or any member of your family or a close friend work in law, law enforcement, the justice system, or the courts? ☐ Yes ☒ No
28a.	If yes, please explain: _____ _____ _____ _____

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28b.	If yes to 28, would this affect your ability to serve as a fair and impartial juror in this case? ☐ Yes ☐ No
28c.	If yes to 28b, please explain: _____ _____ _____ _____
29.	Do you know or have any association—professional, business, or social, direct or indirect—with any member of the staff of the United States Attorney's Office for the Southern District of New York? ☐ Yes ☒ No
29a.	If yes, please explain: _____ _____ _____ _____
29b.	If yes to 29, would this affect your ability to serve as a fair and impartial juror in this case? ☐ Yes ☐ No
29c.	If yes to 29b, please explain: _____ _____ _____ _____
30.	Do you know or have any association—professional, business, or social, direct or indirect—with the Federal Bureau of Investigation, commonly known as the FBI? ☐ Yes ☒ No
30a.	If yes, please explain: _____ _____ _____ _____

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30b.	If yes to 30, would this affect your ability to serve as a fair and impartial juror in this case? ☐ Yes ☐ No
30c.	If yes to 30b, please explain: _____ _____ _____ _____
31.	Do you know or have any association—professional, business, or social, direct or indirect—with the New York City Police Department, commonly known as the NYPD? ☐ Yes ☒ No
31a.	If yes, please explain: _____ _____ _____ _____
31b.	If yes to 31, would this affect your ability to serve as a fair and impartial juror in this case? ☐ Yes ☐ No
31c.	If yes to 31b, please explain: _____ _____ _____ _____
32.	Do you have any opinion of the U.S. Attorney's Office for the Southern District of New York, the U.S. Attorney Damian Williams, or the former Acting U.S. Attorney Audrey Strauss that might make it difficult for you to be a fair and impartial juror in this case? ☐ Yes ☒ No

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32a.	If yes, please explain:

	PERSONAL RELATIONSHIP WITH CASE PARTICIPANTS
33.	The next subset of questions asks whether you or any member of your family or a close friend personally knows or has past or present dealings with individuals involved in this case. To "personally know" means to have some direct or personal knowledge or connection to the following individuals. If you have only heard the names through media or social media, for example, that is not personal knowledge.
33a.	Do you or does any member of your family or a close friend personally know or have past or present dealings with the Defendant in this case, Ghislaine Maxwell, or her family members? ☐ Yes ☒ No
33b.	Do you or does any member of your family or a close friend personally know or have past or present dealings with Jeffrey Epstein? ☐ Yes ☒ No
33c.	Do you or does any member of your family or a close friend personally know or have past or present dealings with the U.S. Attorney for the Southern District of New York, Damian Williams, the former Acting U.S. Attorney for the Southern District of New York, Audrey Strauss, or anyone else who works for or used to work for the U.S. Attorney's Office for the Southern District of New York? ☐ Yes ☒ No
33d.	Do you or does any member of your family or a close friend personally know or have past or present dealings with any of the Assistant United States Attorneys who are prosecuting this case: Maurene Comey ☐ Yes ☒ No Alison Moe ☐ Yes ☒ No Lara Pomerantz ☐ Yes ☒ No Andrew Rohrbach ☐ Yes ☒ No

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33e.	Do you or does any member of your family or a close friend personally know or have past or present dealings with any of the defense attorneys or law firms who are representing the Defendant: Christian Everdell of Cohen & Gresser LLP ☐ Yes ☒ No Jeffrey Pagliuca of Haddon, Morgan and Foreman, P.C. ☐ Yes ☒ No Laura Menninger of Haddon, Morgan and Foreman, P.C. ☐ Yes ☒ No Bobbi Sternheim of Law Offices of Bobbi C. Sternheim ☐ Yes ☒ No
33f.	Do you or does any member of your family or a close friend personally know or have past or present dealings with the United States District Court Judge who is presiding over this case, Alison J. Nathan, or anyone who works on her staff? ☐ Yes ☒ No
33g.	If you answered "yes" to any of the above sub-questions (33a, 33b, 33c, 33d, 33e, or 33f), please explain whom you know, how you know the individual(s), and whether your relationship with that person might make it difficult for you to be a fair and impartial juror in this case:

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	KNOWLEDGE OF CASE AND PEOPLE
	This case has been widely reported in the national and local media. There is nothing wrong with having heard something about this case. It is important to answer all of the following questions truthfully and fully.
34.	Before today, had you read, seen, or heard anything about Ms. Maxwell? ☒ Yes ☐ No ☐ Unsure
34a.	If yes or unsure, please state what you remember hearing, and how or from whom you may have heard (*e.g.*, a friend, the newspaper, a website, social media). If you heard about Ms. Maxwell from a media source, please identify the media source by name: I read on a website that she was Jeffrey Epstein's girlfriend - source was CNN.com
35.	Have you personally formed an opinion about Ms. Maxwell's guilt or innocence of the crimes charged as a result of anything you have heard, read or seen? ☐ Yes ☒ No ☐ Unsure ☐ Not applicable, I have not read/seen/heard about Ms. Maxwell
35a.	If yes or unsure, please summarize your opinion:

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36.	Based on anything that you have read, seen, or heard about Ms. Maxwell, including anything about criminal charges against Ms. Maxwell, have you formed any opinions about Ms. Maxwell that might make it difficult for you to be a fair and impartial juror in this case? ☐ Yes ☒ No ☐ Unsure ☐ Not applicable, I have not read/seen/heard about Ms. Maxwell
36a.	If yes or unsure, please explain why it might be difficult for you to be a fair and impartial juror in this case:
37.	Before today, had you read, seen, or heard anything about Jeffrey Epstein? ☒ Yes ☐ No ☐ Unsure
37a.	If yes or unsure, please state what you remember hearing, and how or from whom you may have heard (*e.g.*, a friend, the newspaper, a website, social media). If you heard about Mr. Epstein from a media source, please identify the media source by name: CNN is source. Heard about his death and that he was in jail awaiting trial.
38.	Have you verbally stated or posted your opinion on social media or online about Ms. Maxwell or Mr. Epstein? ☐ Yes ☒ No ☐ Not applicable, I have not read/seen/heard about Mr. Epstein/Ms. Maxwell
38a.	If yes, when and where did you state or post your opinion?

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39.	Based on anything that you have read, seen, or heard about Jeffrey Epstein, have you formed any opinions about Mr. Epstein that might make it difficult for you to be a fair and impartial juror in this case? ☐ Yes ☒ No ☐ Unsure ☐ Not applicable, I have not read/seen/heard about Mr. Epstein
39a.	If yes or unsure, please explain why it might be difficult for you to be a fair and impartial juror in this case: _____ _____ _____ _____
40.	If you have heard about Jeffrey Epstein, do you think Ms. Maxwell's alleged association with Jeffrey Epstein will make it difficult for you to fairly and impartially consider the evidence presented at trial and render a verdict based solely on the evidence? ☐ Yes ☒ No ☐ Unsure ☐ Not applicable, I have not read/seen/heard about Ms. Maxwell and/or Jeffrey Epstein
40a.	If yes or unsure, please explain: _____ _____ _____ _____
41.	Based on anything you have read, seen, or heard about Ms. Maxwell, including anything about criminal charges brought against Ms. Maxwell, would you be able to follow the Court's instruction to put that information out of your mind and decide this case based only on the evidence presented at trial? ☒ Yes ☐ No ☐ Unsure ☐ Not applicable, I have not read/seen/heard about Ms. Maxwell

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41a.	If no or unsure, please explain:

	NATURE OF CHARGES
42.	During the trial, you will hear evidence alleging sex crimes against underage girls. Some of the evidence in this case will involve sexually suggestive or sexually explicit conduct. Is there anything about the nature of this case and the accusations as summarized at the beginning of this questionnaire that might make it difficult for you to be a fair and impartial juror in this case? ☐ Yes ☒ No
42a.	If yes, please explain:
43.	Do you have any specific views or feelings concerning laws regarding the age at which individuals can or cannot consent to sexual activity with other individuals that would affect your ability to serve as a fair and impartial juror? ☐ Yes ☒ No
43a.	If yes, please explain:
44.	Do you have any opinion about the enforcement of the federal sex trafficking laws or the federal laws concerning sex crimes against minors that might prevent you from being fair and impartial in this case? ☐ Yes ☒ No

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44a.	If yes, please explain:
45.	Have you or a family member ever supported, lobbied, petitioned, protested, or worked in any other manner for or against any laws, regulations, or organizations relating to sex trafficking, sex crimes against minors, sex abuse, or sexual harassment? ☐ Yes ☒ No
45a.	If yes, please explain when and what you or your family member did:
45b.	If your answer to 45 was yes, do you believe that this would affect your ability to serve fairly and impartially as a juror in this case? ☐ Yes ☐ No
45c.	If yes to 45b, please explain:
46.	The witnesses in this case may include law enforcement witnesses. Would you have any difficulty assessing the credibility of a law enforcement officer just like you would any other witness? ☐ Yes ☒ No
46a.	If yes, please explain:

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47.	Witnesses in this case may testify claiming sexual abuse or sexual assault. Would you have any difficulty assessing the credibility of a witness claiming sexual assault or abuse just like you would any other witness? ☐ Yes ☒ No
47a.	If yes, please explain:
48.	Have you or a friend or family member ever been the victim of sexual harassment, sexual abuse, or sexual assault? (This includes actual or attempted sexual assault or other unwanted sexual advance, including by a stranger, acquaintance, supervisor, teacher, or family member.) ☐ Yes (self) ☐ Yes (friend or family member) ☒ No
48a.	If yes, without listing names, please explain:
48b.	If your answer to 48 was yes, do you believe that this would affect your ability to serve fairly and impartially as a juror in this case? ☐ Yes ☐ No
48c.	If yes to 48b, please explain:

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49.	Have you or a friend or family member ever been accused of sexual harassment, sexual abuse, or sexual assault? (This includes both formal accusations in a court of law or informal accusations in a social or work setting of actual or attempted sexual assault or other unwanted sexual advance, including by a stranger, acquaintance, supervisor, teacher, or family member.). ☐ Yes (self) ☐ Yes (friend or family member) ☒ No
49a.	If yes, without listing names, please explain:
49b.	If your answer to 49 was yes, do you believe that this would affect your ability to serve fairly and impartially as a juror in this case? ☐ Yes ☐ No
49c.	If yes to 49b, please explain:
50.	Is there any other experience that you or anyone close to you has had that may affect your ability to serve fairly and impartially as a juror in this case? ☐ Yes ☒ No
50a.	If yes, please explain:

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	CLOSING QUESTION
51.	Do you wish for any particular answers to remain confidential and to not go beyond the Judge, counsel, and the Defendant, because the answer would embarrass you or otherwise seriously compromise your privacy? ☐ Yes ☒ No If yes, please list which question number(s): _____ _____

Juror ID: 50

DECLARATION

I, Juror Number 50 declare under penalty of perjury that the foregoing answers set forth in this Jury Questionnaire are true and correct to the best of my knowledge and belief. I have not discussed my answers with others, or received assistance in completing the questionnaire.

Signed this 4th day of November, 2021

DO NOT WRITE YOUR NAME. PLEASE SIGN USING YOUR JUROR NUMBER.

Juror ID: 50

You may use these pages to finish any answers that you could not fit in the spaces provided above. If you write anything below, please indicate the number of the relevant question.

A-315

Juror ID: 50

A-316

Juror ID: 50

Juror ID: 50

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/1/22

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America,

–v–

Ghislaine Maxwell,

Defendant.

20-CR-330 (AJN)

OPINION & ORDER

ALISON J. NATHAN, Circuit Judge, sitting by designation:

Central to our system of justice is a defendant's right to have guilt adjudged by a lay jury of one's peers. Citizens give their time and attention to this critical role in the administration of justice, a role which is enshrined in our Constitution. Judicial officers are charged with the implementation of this constitutional right. In all cases, whether of high profile or low, trial courts must ensure that only jurors who can fairly and impartially assess the evidence are seated on the jury. And once seated, the jury must be permitted to deliberate fully and frankly in an effort to reach a unanimous verdict. Trials entail significant investments of public and private resources. *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 555 (1984). For all of these reasons, a verdict may be set aside only in the most extraordinary of circumstances.

Before the Court is the Defendant's motion for a new trial pursuant to Federal Rule of Criminal Procedure 33 on the basis that a juror provided inaccurate information during jury selection. Maxwell contends the juror's presence on the jury violated her Sixth Amendment right to an impartial jury. Bearing these principles in mind, the Court conducted an uncommon post-trial hearing. Although uncommon, the hearing was necessary because of incontrovertible evidence that Juror 50 failed to respond accurately during the jury selection process to a question on a written questionnaire about his history of sexual abuse. At the hearing, the Court

questioned the juror under oath and under the penalty of perjury. The Court inquired about whether his answers were false, his explanation for giving those answers, and how he would have responded to follow-up questions if accurate answers had been provided at the time of jury selection. This inquiry was limited by Federal Rule of Evidence 606, which prohibits a juror from testifying about the content of deliberations or his mental processes in evaluating the evidence at trial. The rule embodies long-accepted federal law and is an important safeguard of the integrity of the jury trial system. The hearing was further limited by Supreme Court and Second Circuit law that permits inquiry only if there is clear and incontrovertible evidence of potential misconduct by the juror.

Based on the hearing record, the questions before the Court are whether Juror 50 failed to answer honestly a material question during jury selection, and whether, if he had provided a correct response, the Court would have struck him "for cause" because he was biased. Controlling law is clear that the question is not whether the Defendant would have chosen to exercise one of her discretionary peremptory strikes against this juror had he accurately disclosed his prior sexual abuse. It is only whether the Court would have struck him for cause due to actual, implied, or inferred bias. *See McDonough Power Equip., Inc.*, 464 U.S. at 555–56. The limits on the nature of the post-trial inquiry serve the important interest in the finality of judgments.

The Court concludes that the Defendant has failed to satisfy the demanding requirements of the controlling Supreme Court decision, *McDonough v. Greenwood*. The Court finds Juror 50 testified credibly at the hearing. There are many reasons for that finding. He appeared to testify frankly and honestly, even when the answers he gave were the cause of personal embarrassment and regret. His incentive at the hearing was to testify truthfully or face criminal perjury charges.

His tone, demeanor, and responsiveness gave no indication of false testimony. The Court thus credits his testimony that he was distracted as he filled out the questionnaire and "skimmed way too fast," leading him to misunderstand some of the questions. Assuming mistakenly that he would not be one of the twelve jurors selected from the hundreds of prospective jurors who had been summoned, he rushed through the questionnaire. This led to inaccurate answers. Juror 50's lack of attention and care in responding accurately to every question on the questionnaire is regrettable, but the Court is confident that the failure to disclose was not deliberate.

The Court further finds that Juror 50 was not biased and would not have been stricken for cause even if he had answered each question on the questionnaire accurately. At the hearing, the Court asked Juror 50 the same set of questions that it asked of all prospective jurors who had indicated prior experience with sexual abuse on the questionnaire. These questions are typical of how trial court judges seek to assess potential bias and determine—based on the juror's responses—whether the juror should be struck for cause. This is so because the key question is not simply whether an individual has had experiences similar to the issues that will be explored at trial, but whether the individual can serve fairly and impartially.

This Court has presided over a murder trial in which a juror who had a family member murdered was not struck for cause. So too victims of fraud serve faithfully in fraud trials and individuals who have been discriminated against serve fairly in discrimination cases. And survivors of rape have and can serve impartially in trials charging the crime of rape. In this case, Juror 50's responses at the hearing to the questions regarding his ability to be a fair and impartial juror, even in light of his past experience of sexual abuse, established that he too could serve fairly and impartially. Thus, this Court would not have struck Juror 50 for cause if he had provided accurate responses to the questionnaire.

The Defendant's motion for a new trial pursuant to Rule 33 is therefore DENIED.

I. BACKGROUND

A. Jury Selection Process

The jury selection process in this case was designed to screen a sufficient number of prospective jurors for the high-profile trial while also complying with the Southern District of New York's COVID-19 protocols and protecting the health and safety of prospective jurors, court staff, and case participants during the unprecedented pandemic. Selection proceeded in three stages: a written pre-screen questionnaire, one-on-one oral *voir dire*, and, finally, the exercise of peremptory strikes. The Court developed the questionnaire and *voir dire* with input from the parties. *See* Dkt. No. 367; *see also* Oct. 21, 2021 Tr., Dkt. No. 459. The questionnaire was designed to pre-screen for "the major for-cause strike issues in the case"—that is, "the trial's length and schedule, a juror's personal knowledge of the parties, [the] extent of a juror's awareness of publicity about the case and the defendant, and any bias due to publicity or as a result of the nature of the charges." Oct. 21, 2021 Tr. at 5. In-person *voir dire* would then focus on appropriate follow-up questions based on questionnaire responses, additional questions more appropriately asked orally, and background information to aid the parties' exercise of informed peremptory challenges. *Id.* at 7.

When prospective jurors arrived to complete the questionnaire, and when they returned for *voir dire*, they watched videotaped instructions from this Court. The Court prepared those instructions with the parties' input. Dkt. Nos. 366, 404, 427. These instructions briefly explained the jury selection process, explained the nature of the charges (using the same language that the parties proposed for the jury questionnaire), and instructed jurors not to discuss the case or consume any media about the case.

The final questionnaire contained 51 questions, although multiple questions required follow-up responses for certain answers. Dkt. No. 462. Questions 25, 48, and 49 asked about a prospective juror's experience with crime and sexual abuse, harassment, and assault.

Question 25 asked: "Have you, or any of your relatives or close friends, ever been a victim of a crime?," and provided three answer options in the following order: "Yes (self)," "Yes (friend or family member)," and "No." *Id.* at 13. Question 25a then asked: "If yes, is there anything about that experience that would prevent you from acting as a fair and impartial juror in this case?," and provided two answer options: "Yes" and "No." Finally, Question 25b asked: "If yes to 25a, please explain." Several lines were then provided for the prospective juror to explain their answer. *Id.*

Question 48 asked:

> Have you or a friend or family member ever been the victim of sexual harassment, sexual abuse, or sexual assault? (This includes actual or attempted sexual assault or other unwanted sexual advance, including by a stranger, acquaintance, supervisor, teacher, or family member).

Id. at 24. Like Question 25, there were three answer options in the following order: "Yes (self)," "Yes (friend or family member)," and "No." Question 48a next asked: "If yes, without listing names, please explain." Space was provided to write an answer. Question 48b asked: "If your answer to 48 was yes, do you believe that this would affect your ability to serve fairly and impartially as a juror in this case?" There were two answer choices: "Yes" and "No." Finally, Question 48c asked: "If yes to 48b, please explain." Like Question 48a, several lines of space were provided to answer the question. *Id.*

Finally, Question 49 asked:

> Have you or a friend or family member ever been accused of sexual harassment, sexual abuse, or sexual assault? (This includes both formal accusations in a court of law or informal accusations in a social or work setting of actual or attempted sexual assault or

> other unwanted sexual advance, including by a stranger, acquaintance, supervisor, teacher, or family member.).

Id. at 25. Like Questions 25 and 48, there were three answer options in the following order: "Yes (self)," "Yes (friend or family member)," and "No." The follow-up questions to Question 49 followed the same structure as the follow-up questions to Question 48. Question 49a asked: "If yes, without listing names, please explain." Question 49b asked: "If your answer to 49 was yes, do you believe that this would affect your ability to serve fairly and impartially as a juror in this case?" and had checkboxes for "Yes" and "No." Finally, Question 49c asked: "If yes to 49b, please explain." *Id.* The Court developed Questions 48 and 49 in response to requests from both sides that the Court inquire into a prospective juror's experience with sexual abuse and assault. *See* Dkt. No. 367 at 21, 24. The Defendant also sought questions about experience with sexual harassment. *See id.* at 22. Rather than ask several separate questions, the Court adopted a compromise of two sufficiently broad questions so as not to unduly lengthen the questionnaire.

During five sessions held over three days on November 4, 5, and 12, 2021, 694 prospective jurors completed the questionnaire. *See* Nov. 15, 2021 Tr. at 2, Dkt. No. 529. Counsel reviewed the completed questionnaires and jointly submitted four lists to the Court: (1) prospective jurors that both sides agreed should proceed to *voir dire*; (2) prospective jurors that both sides agreed should be excused or struck for cause; (3) prospective jurors that the Defendant but not the Government believed should be excused; and (4) prospective jurors that the Government but not the Defendant believed should be excused. *Id*. at 2–3. Because the parties agreed on a sufficient number of prospective jurors to proceed to *voir dire*, the Court did not resolve any disputes from lists 3 and 4, and those prospective jurors were excused by consent. *Id*. at 2–5.

As a result of this process, 231 prospective jurors were selected to return for in-person questioning for *voir dire*. *Id*. at 4. At this second stage of selection, the Court questioned prospective jurors one-on-one due to "Covid-related space limitations, to streamline the process in light of a likelihood of a high number of sidebars which would otherwise be required, and to ensure that the comments of one juror [did] not infect the pool." *Id*. at 8. If a prospective juror was not struck for cause, the Court instructed the now-qualified juror to return on the morning of November 29, 2021, for the parties' exercise of peremptory strikes.

B. Juror 50's jury selection process

Juror 50 completed the questionnaire on the morning of November 4, 2021—the first questionnaire session. Mar. 8, 2022 Hearing Tr. at 7. In his questionnaire, Juror 50 checked "No" for Question 25. Hearing Exhibit 1 at 13, Dkt. No. 638 (hereinafter "Questionnaire"). He left Questions 25a and 25b blank. For Question 48, he checked the box "No." *Id*. at 24. He left Questions 48a, 48b, and 48c blank. Finally, Juror 50 checked "No" for Question 49. *Id*. at 25. He left Questions 49a, 49b, and 49c blank.

Juror 50 was among the prospective jurors the parties agreed should proceed to *voir dire*. He returned for in-person questioning on November 16, 2021. Consistent with other prospective jurors who had answered "No" to Questions 25, 48, and 49, the Court did not ask Juror 50 any follow-up questions on these issues. However, the Court did ask Juror 50 about his background, whether he would follow the Court's instructions, and his prior knowledge of the Defendant and Jeffrey Epstein, among other questions. Juror 50 explained that he had seen a news article on *CNN*, but he could "absolutely" decide the case "based on the facts and evidence, or lack of evidence, here presented in court." Nov. 16, 2021 Voir Dire Tr. at 130; *see also id.* at 131 (indicating that he had "no doubt" as to his ability to put his prior knowledge aside). In closing,

the Court asked if Juror 50 had any doubt about his ability to be fair to both sides. Juror 50 replied, "No" and affirmed that he did not have "any reason to think that [he] can't be fair and impartial here." *Id*. at 134.

On November 29, the parties exercised their peremptory strikes. The Defendant used all of her strikes. *See* Nov. 29, 2021 Trial Tr. at 731–32. Juror 50 was one of fifty-eight qualified prospective jurors, and he was ultimately one of the twelve deliberating jurors. *Id*. at 733.

C. Juror 50's post-verdict interviews and party response

Following the thirteen-day trial, the jury began deliberations on December 20, 2021. The jury returned a unanimous verdict on December 29, 2021, finding the Defendant guilty of five of the six counts. Dkt. No. 593 at 29–30.

A week after the jury announced its verdict, on January 5, 2022, the Government informed the Court that a juror had given at least three post-verdict interviews to press outlets about his jury service and requested a hearing be held on the matter. Dkt. No. 568. The letter noted that in the interviews, which were both in print and on video, the juror "described being a victim of sexual abuse" and asserted that he "flew through" the jury questionnaire and did not recall being asked whether he had been a victim of sexual abuse. *Id*. at 1. The Government indicated that it believed the juror to be Juror 50, and a review of his questionnaire showed that he had provided a negative response to a question that asked whether a prospective juror had been a victim of sexual abuse. *Id*. at 2 n.2; *see also* Feb. 25, 2022 Op. & Order, at 3 & n.1, Dkt. No. 620. A letter from the Defendant followed shortly thereafter also informing the Court about the juror's interviews. Dkt. No. 569. The Defendant filed a second letter that same day opposing the Government's request for a hearing "because based on undisputed, publicly

available information, the Court can and should order a new trial without any evidentiary hearing." Dkt. No. 570.[1]

On January 19, 2022, the Defendant filed a motion for a new trial pursuant to Federal Rule of Criminal Procedure 33, on the basis of Juror 50's statements. Dkt. Nos. 613, 642. In an Opinion & Order dated February 25, 2022, the Court denied the Defendant's motion for a new trial on the current record and determined that a hearing was necessary to resolve the motion. The Court ordered an evidentiary hearing limited to instances supported by clear, strong, and incontrovertible evidence that a specific, nonspeculative impropriety had occurred—namely, a false statement during jury selection. The hearing was also limited by Federal Rule of Evidence 606, which bars the Court from receiving evidence of a juror's statements regarding what occurred during jury deliberations. Fed. R. Evid. 606(b)(1). Accordingly, the evidentiary hearing was limited to "whether Juror 50 provided false answers on the questionnaire, the explanation for those answers, and how Juror 50 would have responded to follow-up questions if accurate answers had been provided" during the jury selection process. Feb. 25, 2022 Op. & Order, at 7.

D. Evidentiary Hearing

The hearing took place on March 8, 2022. Juror 50 appeared with retained counsel and testified pursuant to a grant of immunity. Hearing Tr. at 3–5. Juror 50 confirmed he understood that if he provided false answers he could be prosecuted for perjury. *Id.* at 5. The Court conducted the questioning with input from counsel; both parties submitted proposed questions in advance for the Court's consideration. Dkt. Nos. 635, 636. The Court's inquiry went beyond the

[1] As noted in the Court's prior Opinion, also on January 5, 2022, the Jury Department of the Southern District of New York received a call from Juror 50 asking for guidance because of statements he had given to certain media outlets that were being widely reported on in the press, inquiring whether he needed an attorney, and asking if he could receive a copy of his completed questionnaire. February 25, 2022 Op. & Order, at 3 n.2.

limited approach proposed by the Government. The Court also rejected many of the Defendant's proposed lines of questions. The parties were also permitted to propose follow-up questions at the hearing in light of the Court's questioning and Juror 50's responses. The Court accepted some of these proposals and rejected others.

Juror 50 testified that his answers to Questions 25, 48, and 49 were not accurate. He explained that when he was nine and ten years old, he was abused on multiple occasions by a stepbrother, who he no longer considered part of the family, and one of the stepbrother's friends. Hearing Tr. at 8. He disclosed the abuse to his mother when he was in high school. His mother called the police and gave a report, but no charges were brought. *Id*. at 8–9. Although he first testified that "no" was correct for Question 49 because he did not consider the stepbrother part of his family, upon further questioning from the Court, he acknowledged that the correct answer would have been "yes." *Id*. at 11–13. He similarly acknowledged that "yes (self)" would have been correct to Question 25; although at the time of the questionnaire, he understood the question to be asking about being "robbed or mugged or some sort of crime like that." *Id*. at 9–10.

Juror 50 testified that these incorrect answers were an inadvertent mistake and that he had not intentionally failed to disclose his personal history of sexual abuse. *Id*. at 14–16, 22–23. He explained that he was distracted as he filled out the questionnaire and "completely skimmed way too fast," leading him to misunderstand the questions. *Id*. at 14–15. It took several hours to start the questionnaire after a long security line and technical issues with the Court's instructional video. His mind was preoccupied with a recent romantic breakup and the commotion at the nearby check-out table. He saw other prospective jurors completing their questionnaires and rushed to finish. He explained that he was unconcerned with diligently completing the questionnaire; he assumed due to the sheer "volume" of prospective jurors being screened that it

was impossible he would be selected as a final juror. *Id*. at 11–13, 18. He testified that his personal history of sexual abuse was not something he typically thought about and that it had not crossed his mind as he filled out the questionnaire.

The Court asked follow-up questions consistent with those asked of prospective jurors during *voir dire* who responded affirmatively to Questions 25, 48, and 49 on their questionnaires, including those questions proposed by Defense counsel at that stage during trial. Further, the Court asked Juror 50 about several potential inconsistencies in his testimony. The Court did not permit questions that were inconsistent with the process as it played out in *voir dire* or otherwise irrelevant or redundant. Ultimately, Juror 50 testified that his experience would not affect his ability to be a fair and impartial juror. He affirmed that he did not harbor any bias against the Defendant nor in favor of the Government. He asserted that he would be able to assess the credibility of witnesses alleging sexual abuse. And he affirmed that the subject matter of the case would not upset him in such a way that would distract him from his duty as a juror, nor would he be thinking about his experience in a way that would prevent him from being fair or impartial.

At the conclusion of the hearing, the Court ordered the parties to submit supplemental briefing on Juror 50's testimony, which the parties simultaneously submitted on March 15, 2022. Dkt. Nos. 648, 649.[2]

II. LEGAL STANDARD

The Sixth Amendment guarantees criminal defendants "the right to a speedy and public trial[] by an impartial jury." U.S. Const. amend. VI. An impartial jury is one "capable and

[2] On April 1, 2022, the Defendant requested the Court stay its ruling pending the release of a documentary in which Juror 50 is expected to appear. Dkt. No. 651. That request is denied. The Defendant provides no basis to conclude that the interview would affect the Court's analysis or conclusion having held an evidentiary hearing.

willing to decide the case solely on the evidence before it." *Smith v. Phillips*, 455 U.S. 209, 217 (1982). One important means of ensuring an impartial jury is *voir dire* examination, which "expos[es] possible biases, both known and unknown, on the part of potential jurors," by eliciting information under oath. *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 554 (1984).

Once a jury has returned a verdict, a motion to set aside that verdict is "disfavored" and the moving party must overcome an "exacting hurdle" of proof. *United States v. Ventura*, No. 09-CR-1015 (JGK), 2014 WL 259655, at *3 (S.D.N.Y. Jan. 21, 2014); *see United States v. Ianniello*, 866 F.2d 540, 543 (2d Cir. 1989). And while Federal Rule of Criminal Procedure 33 permits a court to "vacate any judgment and grant a new trial if the interest of justice so requires," Fed. R. Crim. P. 33(a), the Second Circuit has cautioned district courts that "such action must be done 'sparingly' and in 'the most extraordinary circumstances.'" *United States v. Archer*, 977 F.3d 181, 187 (2d Cir. 2020) (quoting *United States v. Ferguson*, 246 F.3d 129, 134 (2d Cir. 2001)).

The parties agree that a defendant's Rule 33 motion premised on a juror's alleged nondisclosure during *voir dire* is governed by *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548 (1984). Maxwell Br. at 22–28, Dkt. No. 642; Gov. Br. at 11, Dkt. No. 643. In *McDonough*, the Supreme Court held that to obtain a new trial on the basis of juror nondisclosure during *voir dire*, "a party must first demonstrate that a juror failed to answer honestly a material question on *voir dire*, and then further show that a correct response would have provided a valid basis for a challenge for cause." *McDonough*, 464 U.S. at 556; *see also United States v. Shaoul*, 41 F.3d 811, 815–16 (2d Cir. 1994).

The parties dispute whether the first prong of *McDonough* requires "deliberate juror misconduct"—that is, whether the juror must have deliberately provided a false answer in *voir dire*. The Government, relying on Second Circuit precedent such as *United States v. Shaoul*, argues that a deliberate falsehood is required. Gov. Br. at 13 (citing *Shaoul*, 41 F.3d at 815–16). In contrast, the Defendant contends that *McDonough* does not require deliberateness and that an inadvertent false statement satisfies the first prong. Maxwell Br. at 23–28; Maxwell Reply at 9–14, Dkt. No. 644.[3] The Court does not resolve this legal dispute because, as explained in the analysis section below, regardless of which approach is the correct one, the Court finds that the false answers were not deliberate *and* that the second prong of *McDonough* is not satisfied.

Under the second prong of *McDonough*, the Court "must determine if it would have granted the hypothetical challenge" for cause if the juror had responded accurately. *United States v. Greer*, 285 F.3d 158, 171 (2d Cir. 2002); *United States v. Stewart*, 433 F.3d 273, 304 (2d Cir. 2006). "Challenges for cause are generally based on actual bias, implied bias, or inferable bias." *Greer*, 285 F.3d at 171. These categories do not always elucidate the analysis and there is overlap (and sometimes confusion) in how they are discussed in some of the cases. Nevertheless, it is important to attempt to delineate. Actual bias is "bias in fact," due either to the juror admitting partiality or a judge finding actual partiality based on the juror's *voir dire* answers. *United States v. Torres*, 128 F.3d 38, 43 (2d Cir. 1997). Implied bias is "bias presumed as a matter of law" due to a juror's relationship to the parties or connection to the actual crime itself. *Greer*, 285 F.3d at 171–72. Finally, a judge may infer bias when actual or implied bias does not apply. "Bias may be inferred when a juror discloses a fact that bespeaks a risk of partiality sufficiently significant to warrant granting the trial judge discretion to excuse

[3] In an amicus curiae brief, the National Association of Criminal Defense Lawyers also argues that deliberateness is not required under *McDonough*. *See* Dkt. No. 614.

the juror for cause, but not so great as to make mandatory a presumption of bias." *Id.* at 171 (quoting *Torres*, 128 F.3d at 47). The ensuing determination of whether the juror was biased or prejudiced against the defendant may be "affected both by whether the nondisclosure was deliberate and, if it was, by the juror's motivation to conceal the truth." *United States v. McCoy*, 995 F.3d 32, 51 (2d Cir. 2021); *see also Greer*, 285 F.3d at 172–73. It is important to consider whether a juror's answer was dishonest in the second part of the test "because it can show 'a personal interest in this particular case that was so powerful as to cause the juror to commit a serious crime [by lying during *voir dire*].'" *United States v. Nix*, 275 F. Supp. 3d 420, 438 (W.D.N.Y. 2017), *aff'd sub nom. United States v. McCoy*, 995 F.3d 32 (2d Cir. 2021) (alteration in original) (quoting *United States v. Colombo*, 869 F.2d 149, 151 (2d Cir. 1989)).

> The *McDonough* inquiry is restricted by Federal Rule of Evidence 606, which states:
>
> During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

Fed. R. Evid. 606(b)(1). As explained in this Court's prior opinion, the rule is subject to certain exceptions inapplicable here. *See* Feb. 25, 2022 Op. & Order, at 12. The rule, which embodies "long-accepted Federal law," is an important safeguard on the integrity of the jury trial system. *Tanner v. United States*, 483 U.S. 107, 120–21 (1987) (rejecting a constitutional challenge to the rule). It enables "full and frank discussion in the jury room" and secures "jurors' willingness to return an unpopular verdict." *Id.* Without the rule, the finality of verdicts, upon which the system relies, would be seriously disrupted. *See id.* at 120–21, 124–25; *see also Warger v. Shauers*, 574 U.S. 40, 45, 49–50 (2014). And though not at issue in this case, the rule plays a

critical role in those extreme cases where dissatisfied litigants may be tempted to harass or tamper with jurors in an attempt to impeach the verdict. *See Tanner*, 483 U.S. at 120–21.

Finally, what is not at issue in resolving this motion is whether the Defendant would have exercised a peremptory strike against this juror had he accurately disclosed his prior sexual abuse. Although the Defendant argues in her pre-hearing briefing that she is also entitled to a new trial because Juror 50's failure to disclose his history denied her the opportunity to exercise her peremptory challenges, that is not the law in federal court. Indeed, in making this argument she cites only decisions that relied on New Jersey state law. Maxwell Br. at 46–47. But the rule in New Jersey state courts is different than the rule that binds this Court. *See State v. Scher*, 650 A.2d 1012, 1019–20 (N.J. App. Div. 1994) (explaining that New Jersey's "rule differs from its federal counterpart" of *McDonough*). Under *McDonough*, a defendant seeking a new trial must show that "a correct response would have provided a valid basis for a challenge *for cause*." 464 U.S. at 555–56 (emphasis added). A desire to "wipe the slate clean simply to recreate the peremptory challenge process" is not enough. *Id.*; *see also Shaoul*, 41 F.3d at 816 (concluding that a defendant failed to satisfy the second prong of *McDonough* where the defendant "may certainly exclude such jurors by the use of peremptory challenges, but he has no basis for arguing that a district court is required to sustain such a challenge for cause"). That difference arises in part from the fact that "[u]nlike challenges for cause, peremptory strikes are not constitutionally required." *Torres*, 128 F.3d at 43 n.4.

III. ANALYSIS

A. *McDonough* Prong One

The Court begins with what Juror 50's testimony at the evidentiary hearing makes plain: Juror 50 provided inaccurate answers to Questions 25, 48, and 49 of the questionnaire. For each

of these questions, Juror 50 answered "No" on the questionnaire, but testified that the correct answer would have been "Yes (self)" for Questions 25 and 48 and "Yes (friend or family member)" for Question 49. Hearing Tr. at 7–12. Those three inaccurate answers all stem from Juror 50's failure to disclose that he was sexually abused as a child. Under the Defendant's interpretation of *McDonough*, that would be sufficient to satisfy the first prong. But the Government's interpretation requires that the Court make a further finding that the inaccurate answers were made deliberately.

After close consideration of the record, including Juror 50's testimony under oath, the Court concludes that Juror 50's answers to the questionnaire, while incorrect, were not deliberately inaccurate. Rather, for the reasons that follow, the Court credits Juror 50's explanation that he "flew through" the questionnaire, misread the relevant questions, and provided inadvertently inaccurate responses. *Id.* at 12.

As a preliminary matter, Juror 50 testified under oath pursuant to a grant of immunity. *Id.* at 5. He faces the possibility of perjury charges if he testified falsely at the hearing. Juror 50 therefore had a strong incentive to testify truthfully.

Moreover, the Court credits Juror 50's testimony in light of his demeanor in testifying under oath. At the hearing, the Court was able to closely observe Juror 50 as he testified and to assess his reaction to questions, including those he appeared not to expect, as well as to the overall tone of his answers. Juror 50 answered the Court's questions in a calm and straightforward manner. He was apologetic for his carelessness. His tone, demeanor, and responsiveness gave no indication of false testimony.

Further, Juror 50's answers to the Court's questions were logical explanations and generally internally consistent. He testified that his attention to the questionnaire was distracted

by several factors, among them the several hours that he had to wait in the courthouse's security line, to wait in the room to hear the Court's instructional video, and then to begin answering questions. And while he waited, he says, he was distracted by his thoughts on the recent end of a romantic relationship. *Id*. at 14 ("I didn't have a phone, I didn't have a book, I was sitting there twiddling my thumbs thinking about the break up that just happened a few weeks prior and sitting in my feelings and not very focused."). That explanation is not only consistent with his other hearing testimony, but also with his sworn statements months earlier at oral *voir dire*. *See* Nov. 16, 2021 Voir Dire Tr. at 133 (stating that he "just got out of a relationship and I didn't want to see anything regarding them").

Distractions continued, and increased, as he neared the end of the questionnaire. Juror 50 testified that he was seated near the table where prospective jurors dropped off their completed questionnaires. As more potential jurors completed their questionnaires, the noise and bustle at that table increased. And as more potential jurors completed their questionnaires, he "felt rushed" to finish so that he would not be the last to turn in a questionnaire. Hearing Tr. at 18. Moreover, the Court credits Juror 50's candid admission that he was not concerned with following the Court's instructions, and did not proceed with "diligence," because he had concluded that he would not be selected as a juror given the "sheer volume of people that were there." *Id*. at 13, 18; *see also id*. at 40.

This explanation coheres with Juror 50's testimony that his sexual abuse history was not a salient or front-of-mind consideration as he completed the questionnaire. He repeatedly testified that he does not often think about his sexual abuse. *See, e.g.*, *id*. at 16, 22. The summary of the charges, which do not use the terms "abuse" or "assault" but explained that the Defendant had been charged with a total of six counts that involved "travel to engage in criminal

sexual activity" and "sex trafficking of a minor," did not cause him to think of his own sexual abuse. Hearing Tr. at 47; Questionnaire at 4. The Court finds that explanation to be reasonable.

Last, the Court finds Juror 50's explanation that his answers were made inadvertently to be the most logical explanation of his overall behavior. Shortly after trial, Juror 50 readily disclosed the fact of his sexual abuse in several media interviews in which he used his real first name and pictures of himself. Finding that Juror 50 intentionally provided false answers on the questionnaire requires concluding that he willingly disclosed his deliberate and unlawful deception in public interviews. The more likely explanation for Juror 50's behavior is the one to which he credibly testified: Juror 50's inaccurate answers were provided inadvertently, and he was made aware of his mistake only after he completed his media interviews. That explanation is corroborated by a video recording of Juror 50's interview with the *Daily Mail*, which the Defendant entered into the record and previously cited in support of her claim for a new trial. *See* Maxwell Br. at 39–40. In that video, Juror 50 states that he was asked only about the sexual abuse history of his friends and family but not his own. When the interviewer asks Juror 50 about Question 48 in particular, he appears genuinely and completely surprised to learn that the questionnaire included this question. That moment of surprise is consistent with Juror 50's hearing testimony that this was the moment at which he realized he may have made a serious, but honest, mistake. *See* Hearing Tr. at 15 (stating that he first learned that the questionnaire may ask about his own sexual abuse history "during [his] Daily Mail interview with the reporter Laura Collins").

The Defendant raises several arguments for why the Court should instead find that Juror 50 committed perjury at the hearing and that his answers on the questionnaire were intentionally inaccurate. The Court is not persuaded. *First*, the Defendant characterizes much of Juror 50's

testimony as "self-serving" and "rehearsed." Maxwell Post-Hearing Br. at 7, 10, Dkt. No. 649. Juror 50 certainly appeared prepared to answer the Court's questions, but that is consistent with what any good counsel would have recommended he do. It is unremarkable that Juror 50 would have reflected on his experience in anticipation of testifying under oath and was prepared for anticipated questions. The Court did not detect in Juror 50's responses any fabrication or improper rehearsal of a false narrative. *Cf. Singh v. Barr*, 823 F. App'x 10, 12 (2d Cir. 2020) (summary order) (declining to discount a witness's testimony as "rehearsed" where that witness did "what any reasonable person . . . would do: namely, prepare for questioning at a potentially life-altering hearing"). As for being "self-serving," as noted above, Juror 50's personal interests were served by testifying truthfully at the hearing so as not to face criminal perjury charges.

Second, the Defendant argues that it is not credible that Juror 50 "did not see the word 'you' and the answer 'Yes (self)'" for Question 48. Maxwell Post-Hearing Br. at 8. She notes that he answered fifty-two prior questions and follow-up questions with the word "you" and that it is not plausible that Question 48 would ask only about friends and family. Yet the Court, in several lines of questioning, tested exactly this component of Juror 50's testimony and is satisfied by his answers. The Court first observed to Juror 50 that throughout the questionnaire, he "appeared to have followed the instructions." Hearing Tr. at 19. When asked how he correctly followed the instructions elsewhere, Juror 50 explained, as he had previously in his testimony, that for questions appearing earlier in the questionnaire, he "was still . . . in focus" and so more able to respond accurately. *Id.* That focus waned, he explained, in reading later questions, including Question 48.

Additionally, the Court observed that many questions were structured like Question 48, asking jurors both about their personal experience and providing options to check for "yes self,

yes friend or family, or no." *Id*. at 15, 21. Consistent with his explanation that he skimmed the questionnaire, he testified that he "did not pick up on" that pattern when filling out the questionnaire, *id*. at 15, and read only "the friend or family" and "missed that 'have you,' and then 'yes self' while reading," Question 48, *id*. at 21. And when asked a follow-up question, Juror 50 said he was not "surprised" at the time, but only surprised "thinking now" that the questionnaire had asked about the sexual abuse history of friends and family but not about a juror's own sexual abuse history. *Id*. at 21–22. The Court finds that Juror 50's answers to each of these lines of questioning were reasonable and credible.

Third, the Defendant argues that, as to Question 49, Juror 50 was inconsistent in first stating that he was sexually abused by "a family member, who is no longer part of the family," but then stating that he "never considered [the stepbrother] part of [his] family even when they lived with us for a few years." Maxwell Post-Hearing Br. at 9–10 (quoting Hearing Tr. at 8, 11). The Court acknowledges the tension between these two statements, but does not agree that tension suggests Juror 50 deliberately concealed his stepbrother's abuse. Juror 50's explanation of his answer to Question 49 proceeded in three stages. He clarified, first, that on November 4, he "didn't even consider . . . at all" whether his stepbrother's conduct was responsive to Question 49 as he "flew through" the questionnaire. Hearing Tr. at 11–12. At the hearing, he initially stated that "No" was an accurate answer because, as the Defendant notes, he "never considered" the stepbrother to be a member of his family. *Id*. And finally, when asked whether, "[a]s [he] sit[s] here now," what his answer to Question 49 would be, Juror 50 said "it would have been yes" because "by law, by marriage, that person was [his] stepbrother." *Id*. at 12–13. In short, it was only after Juror 50 was made to reflect on the question and its answer that he reached an

accurate response. Yet Juror 50 did not read closely Question 49 or consider carefully his answer to it on November 4.

These evolving answers do not reflect Juror 50 changing his story so much as an explanation of a complex and fraught set of events and relationships from decades before. The Court is cognizant that jurors may well assign their own emotional connotations to terms like "family" rather than interpret it in the technical or legal manner as would an attorney or judge. *Cf. United States v. Stewart*, 317 F. Supp. 2d 432, 438 (S.D.N.Y. 2004) ("Would a reasonable juror necessarily consider an ex-girlfriend to be 'someone close to him?'").

Fourth, the Defendant argues that Juror 50's proclaimed reluctance to disclose his sexual abuse is inconsistent with his post-trial conduct. Maxwell Post-Hearing Br. at 5–6, 10–11. In particular, Juror 50 testified that he "[doesn't] tell very many people" about his abuse. Hearing Tr. at 22. Yet he conducted several interviews with international media outlets in which he revealed his sexual abuse history. Further, Juror 50 posted a comment on social media to Annie Farmer, a witness in this case, in which he "thanked her for sharing [her] story." *Id*. at 43. These prominent disclosures of his sexual abuse, the Defendant argues, contradict Juror 50's statement that he rarely disclosed that abuse.

The Court confronted Juror 50 at length about each of these purported contradictions. As to his interviews, the Court asked Juror 50 how he "reconcile[d] what [he] just said" about nondisclosure with his high-profile disclosure in media interviews. *Id*. at 22. Juror 50 primarily provided two overlapping explanations. He first testified that he "didn't think this would happen." *Id*. That is, he explained, he "did not think that anybody— certainly [his] family or friends would find this out," despite the significant media attention that the case had received. *Id*. at 23. When the Court returned to this issue later in the hearing, Juror 50 added that in the

interviews he "wasn't using [his] full name," which Juror 50 apparently understood reduced the chance that people that knew him would draw the connection. *Id*. at 42. And, further, he explained that several friends that contacted him after the trial were unaware of the trial occurring, so he assumed his post-trial media interviews would not attract substantial attention.

Second, Juror 50 simultaneously acknowledged that because of his interviews, the fact that he was abused "would be a known fact in the world." *Id*. at 24. He explained that he had made a conscious decision in favor of disclosure because, "[a]fter sitting on this trial for several weeks and seeing the victims be brave enough to give their stories, [he] felt" that he could too. *Id.*; *see also id*. at 42 ("I'm also not ashamed about it. It's something that happened, and it's something that is relatively common that happened to multiple people throughout the world.").

In short, Juror 50's willingness to disclose his sexual abuse changed to some extent between November 4, 2021, and January 2022. He made a conscious decision to share the fact of his sexual abuse with a wider circle of people than he had prior to the time that he completed the questionnaire. At the same time, he presumed—in hindsight, mistakenly—that his interviews, given without his last name and predominantly to international media outlets, would not be seen by his friends or family in his life who, he believed, had not followed the trial up to that point. That explanation of partial public disclosure is further consistent with the fact that in his interviews he related only the fact that he had been abused, not any details of what had occurred. Juror 50's wishful thinking—or as the Government suggests, naivety—with respect to his post-trial interviews does not suggest that when he completed his questionnaire, he intended to deceive. *See* Government Post-Hearing Br. at 10 n.4, Dkt. No. 648.

The Court also asked Juror 50 about his social media interaction with Annie Farmer. On Twitter, Farmer shared an article that contained an interview with Juror 50 and she said that

Juror 50 "was brave enough to come forward," to which Juror 50 responded by "thank[ing] her for sharing her[] [story] as well." Hearing Tr. at 43. He explained that he had "randomly seen" Farmer's post and "felt like [he] wanted to comment." *Id.* That comment was unlikely to be seen by Juror 50's friends and family, he speculated, because at the time he had only "two followers," which "were random things," and he did not "normally use" Twitter. *Id.* The Court concludes that Juror 50's comment to Annie Farmer on Twitter, made in January 2022, does not provide a basis to question his testimony that as of November 4, 2021, he did not tell many people about his sexual abuse.

At bottom, based on Juror 50's demeanor and consistent responses while testifying under oath pursuant to a grant of immunity, the Court finds Juror 50 credible. His failure to attend with diligence and care to the questions on the jury selection questionnaire is frustrating and regrettable, but it was not motivated by intentional deception. In light of his testimony, the Court finds that Juror 50's answers to Questions 25, 48, and 49 were not deliberately incorrect.

B. *McDonough* Prong Two

Assuming without deciding that Juror 50's inadvertently inaccurate responses satisfy the first prong of *McDonough*, the Defendant has, in any event, not established that the Court would have excused Juror 50 for cause if he had answered the questions during jury selection accurately. *See McCoy*, 995 F.3d at 46. At the hearing, the Court asked Juror 50 the same set of questions that was asked of all prospective jurors during *voir dire* who indicated prior personal experience with sexual abuse. Juror 50's credible responses to those questions under oath at the hearing established that he would not have been struck for cause if he had provided accurate responses to the questionnaire.

1. Actual Bias

"Actual bias is 'bias in fact'—the existence of a state of mind that leads to an inference that the person will not act with entire impartiality." *Torres*, 128 F.3d at 43. A court may find a juror to be partial because the juror admits as much, or based on the juror's other *voir dire* answers. *Id.* (citing *United States v. Haynes*, 398 F.2d 980, 984 (2d Cir. 1968)). This finding is "based upon determinations of demeanor and credibility." *Id.* at 44 (quoting *Wainwright v. Witt*, 469 U.S. 412, 428 (1985)).

The record does not support a finding that Juror 50 was actually biased. As explained above, the Court finds Juror 50's sworn testimony to be credible overall. He was responsive and forthright, and his demeanor evinced that he answered the Court's questions truthfully. He repeatedly and credibly affirmed that his personal history of sexual abuse would not affect his ability to serve as a fair and impartial juror "in any way." Hearing Tr. at 25; *see also id.* at 9, 10, 13. He testified that there was "absolutely in no way" anything about his experience that would interfere with his "ability to assess the credibility of witnesses alleging sexual abuse," and that he would be able to conclude such a witness was not testifying truthfully if that was what the evidence suggested. *Id.* at 26. He testified that he did not harbor any bias against the Defendant nor any bias in favor of the Government. Indeed, he did not want to put his "thumb on the scale in any direction." *Id.* He declared that he had "no doubt" as to his ability to be fair to both sides. *Id.* at 27. As noted above, the Defendant dismisses these responses as "self-serving." Maxwell Post-Hearing Br. at 7. The Court disagrees; it finds each of these responses to be credible.

Moreover, Juror 50's hearing testimony is corroborated by his answers during *voir dire*. Without hesitation, he declared that he would follow the Court's instructions on the law, he "absolutely" could decide the case based on the evidence or lack of evidence presented in court,

he had no doubt about his ability to be fair to both sides, and he had no reason to think otherwise. Voir Dire Tr. at 128, 130, 134.

The Court is unpersuaded by the Defendant's arguments to the contrary. The Defendant argues that Juror 50 was actually biased because his post-trial statements reveal that at the time of *voir dire* he regarded himself as a non-neutral advocate for the victims. Maxwell Post-Hearing Br. at 6.[4] In particular, she relies on Juror 50's post-trial interviews, in which he "proclaim[ed]" that the guilty verdict was for "for all the victims." *Id.* But these *post-trial* statements do not establish that Juror 50 was actually biased against the Defendant. The evidence at trial established that there was more than one victim of the Defendant's crimes, making Juror 50's post-trial statement reasonable. And, more importantly, Juror 50's view of the Defendant after the thirteen-day trial, during which he heard evidence that swayed him and eleven other jurors to convict the Defendant on five counts, does not shed light on any bias he allegedly harbored "*before* he heard the evidence presented." *Stewart*, 317 F. Supp. 2d at 439–40 & n.4 (emphasis in original) (rejecting argument that juror's post-trial statements that the verdict was "a victory for the little guy who loses money in the markets" and that the defendant "thought she was above everything" revealed bias).

2. Implied and Inferred Bias

The Defendant's central argument is that the Court should imply—based on Juror 50's personal history of sexual abuse, post-trial actions, and hearing testimony—that Juror 50 was biased against the Defendant. She similarly argues that the Court should infer Juror 50's bias

[4] In her pre-hearing briefing, the Defendant reserved arguing that Juror 50 was actually biased in the event the Court held an evidentiary hearing. Maxwell Br. at 39. The Defendant does not expressly argue that Juror 50 was actually biased in her post-hearing briefing, but the Court understands this argument to raise an actual bias issue. *See* Maxwell Post-Hearing Br. at 2–3.

based on the purported similarities between his personal history and the issues at trial. Because these arguments overlap, the Court addresses implied and inferred bias together.[5]

"Implied bias" is "a concept that is reserved for 'extreme situations,' warranting a conclusive presumption of bias as a matter of law." *McCoy*, 995 F.3d at 48 (internal quotations omitted) (quoting *Greer*, 285 F.3d at 172). Such bias is "attributed to a prospective juror regardless of actual partiality" because the law presumes that "an average person in the position of the juror in controversy would be prejudiced." *Torres*, 128 F.3d at 45 (citing *United States v. Wood*, 299 U.S. 123, 133 (1936)); *see also Haynes*, 398 F.2d at 984. The category applies to "certain highly limited situations where a juror discloses a fact that creates such a high risk of partiality that the law requires the judge to excuse the juror for cause." *Torres*, 128 F.3d at 41. Namely, "jurors who are related to the parties or who were victims" or otherwise involved in the alleged crime itself are impliedly biased. *Id.* at 45; *see also Greer*, 285 F.3d at 172.

On the other hand, a finding of inferred bias is a determination within the trial court's discretion. *Greer*, 285 F.3d at 171; *see also McCoy*, 995 F.3d at 49. "Bias may be inferred when a juror discloses a fact that bespeaks a risk of partiality sufficiently significant to warrant granting the trial judge discretion to excuse the juror for cause, but not so great as to make mandatory a presumption of bias." *Greer*, 285 F.3d at 171 (quoting *Torres*, 128 F.3d at 47)). The inquiry is whether the juror's responses at *voir dire* "permit an inference that the juror in question would not be able to decide the matter objectively." *Torres*, 128 F.3d at 47. If such facts are elicited, "then, just as in the situation of implied bias, the juror's statements as to his or her ability to be impartial become irrelevant." *Id.* However, "a judge may—particularly when

[5] It is unsettled in the Second Circuit whether implied or inferred bias may serve as the basis for a post-trial allegation of juror partiality. *See Greer*, 285 F.3d at 172. Because the Court determines that Juror 50 is neither impliedly nor inferably biased, it need not resolve this issue.

considering whether some marginal types of disclosed facts are enough to show inferable bias—ask about a juror's impartiality and might be persuaded by the force of the juror's assurance." *Id.* at 47 n.12. For example, in *Torres*, the Second Circuit held that the trial court did not abuse its discretion when it concluded during *voir dire* that a juror was inferably biased because she had engaged in money-structuring activities that were highly similar to the conduct charged in the case. But the Second Circuit made clear that the district court would not have erred if it had kept the juror. *Id.* at 46–48.

The Court concludes that Juror 50 is neither impliedly nor inferably biased. First, none of the "extreme situations" in which the Court must conclusively presume bias as a matter of law apply here. *McCoy*, 995 F.3d at 48. Juror 50 was not a victim of the charged crime itself, nor is he related to any of the attorneys, witnesses, victims, or other case participants. *See Nix*, 275 F. Supp. 3d at 451. Thus, the Court would not have granted a hypothetical challenge for cause based on implied bias even if Juror 50 had provided correct answers to the questionnaire.

Second, Juror 50's personal experience of sexual abuse does not evidence partiality sufficient to infer that Juror 50 was biased against the Defendant. The Court need not imagine a wholly hypothetical universe for this conclusion. That is because the *voir dire* provides highly relevant indications of how the parties and Court would have reacted had Juror 50 provided accurate answers during jury selection. A review of the *voir dire* of jurors who responded "yes (self)" to Question 48 reveals that it is unlikely that the Defendant would have challenged Juror 50 for cause. It also reveals that the Court would not have granted a for-cause challenge had one been raised. *See McCoy*, 995 F.3d at 49.

Eight prospective jurors who answered "yes (self)" to Question 48 proceeded to *voir dire*. The Court asked every follow-up question requested by the Defendant with regard to a juror's

personal experience with sexual assault, abuse, or harassment; although, for a majority of these eight jurors, the Defendant did not propose any follow-up questions. The Defendant did not challenge any of these prospective jurors for cause on the basis of the juror's answer to Question 48.

Some of these jurors disclosed experiences distinct from that disclosed by Juror 50—for example, sexual harassment on the subway. Two jurors, however, disclosed experiences similar to that of Juror 50, neither of whom was challenged for cause. Juror A reported that she was "sexually molested by an uncle when [she] was 12, 13."[6] Although this juror was even closer in age to the victim-witnesses when they first were abused, and presumably abused by "someone familiar to [her] . . . who was part of [her] life," Maxwell Post-Hearing Br. at 4, the Defendant did not propose any follow-up questions or challenge the prospective juror for cause. Like Juror A, Juror 50 credibly affirmed that his personal experience would not impact his ability to be fair or impartial nor would the subject matter "upset [him] in such a way that would distract [him] from [his] duty as a juror." *See* Hearing Tr. at 26–27. Next, Juror B explained that just two years before jury selection, she had reported that a friend was being coerced and sexually abused by a professor. At the Defendant's request, the Court asked whether the experience might in any way interfere with her ability to be fair and impartial to the extent there may be issues in the case that arise around reporting or not reporting allegations related to sexual abuse. She affirmed that it would not, and the Defendant did not challenge her for cause. Like Juror B, Juror 50 credibly affirmed at the March 8 hearing that "issues of reporting or not reporting sexual abuse that might

[6] To further the important interest of protecting juror anonymity and privacy, the Court has redacted references to specific juror numbers. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006); *Press-Enter. Co. v. Superior Ct. of Cal., Riverside Cnty.*, 464 U.S. 501, 511–12 (1984). In this opinion, Juror A refers to Juror [redacted] Juror B refers to Juror [redacted] and Juror C refers to Juror [redacted] The Court has provided an unredacted copy of the Opinion & Order to the parties and will file an unredacted copy under seal.

be discussed at trial would [not] interfere with [his] ability to be fair or impartial as a juror in the case." *See* Hearing Tr. at 27.[7]

Accordingly, even if Juror 50 had disclosed his abuse during jury selection, the Court would not have granted a hypothetical challenge for cause, as consistent with other prospective jurors who disclosed similar experiences. This is so because our system of trial by jury does not exclude individuals with experiences similar to the issues at trial when those individuals can serve fairly and impartially. This Court has presided over a murder trial in which a juror who had a family member murdered was not struck for cause. So too victims of fraud serve faithfully in fraud trials and individuals who have been discriminated against have served without bias in discrimination trials.

So the critical question, as for any juror, is whether the juror has the ability to decide the case based only on the evidence presented in court, not extraneous information, and without bias, prejudice, or sympathy. *See U.S. ex rel. Owen v. McMann*, 435 F.2d 813, 818 (2d Cir. 1970). Juror 50 repeatedly and unequivocally affirmed his ability to do just that. And for all the reasons articulated above, the Court found that testimony credible. To imply or infer that Juror 50 was biased—simply because he was himself a victim of sexual abuse in a trial related to sexual abuse and sex trafficking, and despite his own credible testimony under the penalty of perjury, establishing that he could be an even-handed and impartial juror—would be tantamount to concluding that an individual with a history of sexual abuse can never serve as a fair and

[7] In her pre-hearing briefing, the Defendant raises that out of 694 prospective jurors, the parties jointly agreed to excuse 67 of the 114 prospective jurors who answered "yes (self)" to Question 48, and the "Court granted" the Defendant's challenges to 23 and the Government's challenges to 2 additional prospective jurors who answered "yes (self)." Maxwell Br. at 9–10. But that is a mischaracterization. First, a significant number of those prospective jurors stated that they could not be fair and impartial for a variety of reasons. Second, and as noted above, all of those excusals "resulted from the parties' agreement, not from the court's analysis of each challenged juror's ability to be impartial." *Stewart*, 317 F. Supp. 2d at 439. "The question now is whether [Juror 50's] omission reveals a bias sufficient to support a for-cause challenge." *Id.* As explained above, it does not.

impartial juror in such a trial. That is not the law, nor should it be. *See Gonzales v. Thomas*, 99 F.3d 978, 989–90 (10th Cir. 1996) ("To hold that no rape victim could ever be an impartial juror in a rape trial would, we think, insult not only all rape victims but also our entire jury system."); *Buckner v. Davis*, 945 F.3d 906, 914–15 (5th Cir. 2019) (affirming conclusion that juror who failed to disclose childhood abuse was not impliedly biased in conviction for sexual assault of a child). Thus, the Court finds no basis to infer that Juror 50 is biased.

The Defendant's arguments to the contrary do not disturb the Court's conclusion that Juror 50 was neither impliedly nor inferably biased. *First*, the Defendant argues that Juror 50 was impliedly biased because of multiple "dishonest answers." Maxwell Br. at 36; Maxwell Post-Hearing Br. at 11.[8] But this is not a case involving a juror's extreme deceit due to a desire to be selected. By contrast, in *United States v. Daugerdas*, on which the Defendant extensively relies, a juror "created a totally fictitious persona in her drive to get on the jury." 867 F. Supp. 2d 445, 473 (S.D.N.Y. 2012), *vacated and remanded on other grounds*, *United States v. Parse*, 789 F.3d 83 (2d Cir. 2015). The court granted the defendant's motion for a new trial, emphasizing the "deliberate lies engineered to create a fictitious, 'marketable' juror" warranted "extraordinary relief." *Id*. at 468. Such is not the case here. The Court credits Juror 50's explanation that his nondisclosure was an "inadvertent mistake," not intentional deception. Hearing Tr. at 14–15. Juror 50 explained how the circumstances surrounding his completion of the questionnaire—including his recent romantic breakup, that he had no expectation of being selected, the technical issues and ensuing long wait to begin the questionnaire, and the generally distracting environment—resulted in his "skimming" the questionnaire and missing the personal

[8] The Defendant argued that these repeated lies included Juror 50's use of social media in her pre-hearing briefing. Maxwell Br. at 36. For the reasons stated in this Court's February 25 Opinion, that Juror 50 used social media accounts *after* the completion of trial does not establish that he lied about having been inactive on social media *before* trial. Feb. 25, 2020 Op. & Order, at 9–10.

aspect of Questions 48 and 49. As he repeatedly explained, he never expected or even hoped to be selected. The Court finds Juror 50's testimony to be credible, forthright, and responsive and does not find as a factual matter that Juror 50 deliberately lied in order to be selected as a juror.

The Defendant's reliance on *Sampson v. United States*, 724 F.3d 150 (1st Cir. 2013), is similarly unavailing. *See* Maxwell Post-Hearing Br. at 11. There, a juror failed to disclose that her husband had previously threatened her with a shotgun during jury selection for a bank robbery case in which the defendants threatened the bank tellers at gunpoint. However, the juror had told a "litany of lies" during *voir dire* bearing on a number of issues, including her daughter's incarceration and her own substance abuse issues. *Id*. at 161–62, 168. By contrast, Juror 50's inadvertent nondisclosure, while implicating multiple questions on the questionnaire, stems only from his experience of sexual abuse.

Second, the Defendant contends that Juror 50 was biased due to the "similarities between [his] personal experiences . . . and the issues being litigated." Maxwell Br. at 30 (quoting *Daugerdas*, 867 F. Supp. 2d at 472). She expressly disavows arguing "that *every* person who has been a victim of sexual assault or sexual abuse was subject to a 'mandatory' challenge for cause based on implied bias." Maxwell Reply at 17. Distancing from that position is necessary—again, it is not the law that an individual with a history of sexual abuse cannot serve as a fair and impartial juror. Rather, the Defendant finesses the argument by saying that Juror 50's personal history is sufficiently similar to the issues at trial so as to warrant a mandatory finding of implied bias, or alternatively, a discretionary finding of inferred bias, and points to Juror 50's testimony and post-trial statements as evidence that these purported similarities made him biased. Maxwell Br. at 31–32; Maxwell Post-Hearing Br. at 5–6.

The Court is unpersuaded. First, the Second Circuit has not held that bias must be implied when a juror has a personal experience similar to the issues at trial. The Defendant's only in-circuit decision is the district court opinion in *Daugerdas*. *See* Maxwell Br. at 30–35; Maxwell Post-Hearing Br. at 5. In passing, the *Daugerdas* court noted that "[c]ourts imply bias 'when there are similarities between the personal experiences of the juror and the issues being litigated.'" 867 F. Supp. 2d at 472 (quoting *United States v. Sampson*, 820 F. Supp. 2d 151, 164 (D. Mass. 2011)). But the court resolved the motion on other grounds—it did not imply bias because that juror had similar experiences to those at issue in the trial, but instead (as discussed above) implied bias because of that juror's "brazen[]," "deliberate," and "repeated lies" and creation of "a totally fictitious persona in her drive to get on the jury." *Id.* at 472–74.

The Second Circuit has made clear that implied bias is an intentionally narrow category. The circuit has "consistently refused 'to create a set of unreasonably constricting presumptions that jurors be excused for cause due to certain occupational or other special relationships which might bear directly or indirectly on the circumstances of a given case, where . . . there is no showing of actual bias or prejudice.'" *Torres*, 128 F.3d at 46 (quoting *United States v. Brown*, 644 F.2d 101, 104–05 (2d Cir. 1981)); *see also United States v. Garcia*, 936 F.2d 648, 652 (2d Cir. 1991). As noted above, the *Torres* court held that it was not an abuse of discretion for the trial court to *infer* that a juror was biased when she engaged in money structuring activities that were similar to conduct charged in the case. 128 F.3d at 46–47. But the circuit "decline[d] to hold as a general matter that, where a juror has engaged in conduct similar to that of the defendant at trial, the trial judge *must presume* bias." *Id.* at 46 (emphasis added). As the court explained, "[s]uch cases are unlikely to present the 'extreme situations' that call for mandatory

removal." *Id.* Accordingly, this Court refuses the Defendant's invitation to expand this "strictly limited" category of "truly 'exceptional'" circumstances absent binding authority. *Id.*

Second, even if a court must imply bias on the basis of a juror's similar experience, the *voir dire* in this case of comparable jurors evinces that Juror 50's personal experience is not so similar to the issues in this case as to constitute a "truly exceptional" situation. Nor is it sufficiently similar to warrant the Court's exercise of discretion to infer bias. In arguing that Juror 50's experience is sufficiently similar, the Defendant highlights that Juror 50 was sexually abused as a minor on multiple occasions by "two people who were friends"—his stepbrother, who was "someone familiar to him . . . who was part of his life," and the stepbrother's friend. Maxwell Post-Hearing Br. at 4. He also delayed reporting the abuse. *Id.* But the Defendant overlooks the important differences. Juror 50 was younger—ages 9 and 10—than the victims testified they were when they were abused by the Defendant and Epstein. He disclosed his abuse to his mother in high school, unlike the victims here. And unlike the period of two years of abuse that Juror 50 endured, some of the trial witnesses testified about several years of abuse. Like Juror A and Juror B, the Court would not have implied or inferred bias if Juror 50 had disclosed his experience during jury selection. The Court would have asked appropriate follow-up questions proffered by counsel and determined based on the juror's answers to those questions whether he could serve as a fair and impartial juror.

Juror 50 is also dissimilar to the cases from other federal circuits and state courts cited by the Defendant. For example, as noted above, the Defendant's prominent citation to *Sampson v. United States* is misplaced because the juror in that case told a "litany of lies" bearing on a variety of issues. 724 F.3d at 161. Thus, unlike here, a "combination of factors" led the First

Circuit to affirm the district court's order for a new penalty-phase hearing. Maxwell Br. at 33 (citing *Sampson*, 724 F.3d at 168).

The Defendant next relies on a state court case, *State v. Afshar*, 196 A.3d 93 (N.H. 2018), in which a court granted a new trial in a child sexual assault case when a juror failed to disclose that a babysitter sexually assaulted him when he was five or six years old. Maxwell Post-Hearing Br. at 5; *see also* Maxwell Br. at 34. But that juror had previously reported an inability to be impartial in another case involving sexual assault of a minor, and the court concluded that there was "little in the way of logical explanation for how he could have differentiated between the two cases." 196 A.3d at 98. Such is not the case here.

Finally, in *Burton v. Johnson*, the Tenth Circuit concluded that a juror was impliedly biased when she suffered an abusive relationship with her husband that was highly similar to that of the defendant. 948 F.2d 1150, 1158–59 (10th Cir. 1991). However, not only had that juror deliberately lied during *voir dire* about the experience, but she was also living in that abusive situation during *voir dire*, the trial itself, and her post-verdict testimony to the court. *Id.* Conversely, Juror 50 credibly testified that his abuse "happened so long ago" that it is not something that he "think[s] about," "it's not part of who [he is]." Hearing Tr. at 47. And again, the Court has not found that Juror 50 deliberately lied about his personal history.

The Defendant's remaining arguments also fail to alter the Court's conclusion that Juror 50 is not biased. The Defendant contends that Juror 50's post-trial conduct—in particular, his posts on social media and his decision to give interviews using his picture and first name—is "strong evidence" of his bias because he was "not looking to avoid notice," but rather to "soak up his 15 minutes of fame." Maxwell Post-Hearing Br. at 10–11. The Court disagrees that this conduct reveals bias. Whether wise or foolish, the fact that a juror may give an interview

following a high-profile trial does not establish bias. This common occurrence is not necessarily nefarious. *See Stewart*, 317 F. Supp. 2d at 440. Even if Juror 50 were selfishly seeking his fifteen minutes of fame, his interview "would have garnered the same amount of media attention after a verdict of acquittal." *Id.*

The Defendant next argues that "the victims' testimony personally resonated with [Juror 50] in a way that jurors who had not been sexually abused as children would not have felt." Maxwell Post-Hearing Br. at 5–6. She argues this is evinced by his explanation that the victims' testimony inspired him to give post-trial interviews and "tell his story" despite his apparently normal reserve to discuss his sexual abuse pre-trial. *Id.* As noted above in this Court's finding that Juror 50 is not actually biased, Juror 50's statements regarding his post-trial view of the verdict and the Defendant do not illuminate pre-trial bias. A juror's view of a case and defendant would necessarily change after reviewing thirteen days of evidence that persuaded twelve jurors of the Defendant's guilt. *See Stewart*, 317 F. Supp. 2d at 439–40. It is unsurprising that such an experience might change the way a juror views his own life experiences.

The Defendant also argues that Juror 50 is biased because "his own experience of sexual abuse shaped his beliefs about how victims' memories of traumatic events work." Maxwell Post-Hearing Br. at 6. The Defendant relies on Juror 50's statements in post-trial interviews and his hearing testimony regarding his view of the evidence at trial. For example, Juror 50 noted at the hearing that he referenced his abuse in interviews "in order to talk to a reporter about jury deliberations" and to explain why he "believe[d] a certain way based on all the evidence that was provided during the trial." Hearing Tr. at 22. The Court does not agree, as an initial matter, that these statements demonstrate bias. A foundational principle is that jurors rely on their common sense and life experiences to adjudge guilt. All jurors have no doubt experienced the recall of

personal memories, some from decades earlier and some involving sensitive or tragic events. So long as jurors can be fair and impartial and decide the case based solely on the evidence and the law as instructed, then it is those "very human elements that constitute one of the strengths of our jury system, and we cannot and should not excommunicate them from jury deliberations." *U.S. ex rel. Owen*, 435 F.2d at 818. In any event, Rule 606(b) bars the Court from relying on these statements because they pertain to Juror 50's "mental processes concerning the verdict or indictment." Fed. R. Evid. 606(b)(1). "[P]arsing how jurors considered the evidence or their mental states while hearing testimony is exactly what *Tanner* and the plain text of Rule 606(b) seek to prevent." *United States v. Leung*, 796 F.3d 1032, 1036 (9th Cir. 2015) (cited favorably by *United States v. Baker*, 899 F.3d 123, 132 (2d Cir. 2018)); *see also United States v. Abcasis*, 811 F. Supp. 828, 834 (E.D.N.Y. 1992) (Rule 606 does not permit inquiry into jurors' discussions or "reactions to the evidence as it developed" (cleaned up)).

Finally, the Defendant argues that Juror 50's statements about his "healing process" and his hearing testimony as to Question 25 "reveal just how deeply the trauma affected him and continues to affect him." Maxwell Post-Hearing Br. at 9. The Court is unpersuaded. First, at the March 8 hearing, the Court rejected the Defendant's proposed follow-up questions on Juror 50's "healing process" because the Defendant had not proposed comparable questions during the *voir dire* process for other prospective jurors who indicated a personal history of sexual abuse on their questionnaires. Hearing Tr. at 28–29. Moreover, that an individual has undergone a "healing process" at some point in his life does not evince that the experience interferes with his ability to be fair and impartial. Juror 50 credibly testified that his sexual abuse is not usually on his mind, that the subject matter would not upset him in a way that would distract him from his duty, and that he would not think about his own experience in a way that

would prevent him from being fair or impartial. As discussed above, the minor discrepancies raised by the Defendant do not alter this assessment.[9]

Nor was Juror 50's inaccurate answer to Question 25 unreasonable. He testified that he understood the question to ask whether he "was robbed or mugged or some sort of crime like that," and that he did not think of his history of "sexual abuse as being a victim of a crime." Hearing Tr. at 10. Because neither he nor a friend or family member had been robbed or mugged or been the victim of a similar type of crime, he testified, he answered "No" to Question 25. That interpretation of what it means to be a victim of a crime, while technically incorrect, does not evince intentional deception or partiality. *Cf. United States v. Fell*, No. 2:01-CR-12, 2014 WL 3697810, at *7, *13 (D. Vt. July 24, 2014) (crediting the explanation of a juror that was sexually abused as a child that she "ha[d] not considered [herself] a victim of a crime in all these years" in part because the abuser was "not convicted of any crime"); *McDonough*, 464 U.S at 555 ("[J]urors are not necessarily experts in English usage. Called as they are from all walks of life, many may be uncertain as to the meaning of terms which are relatively easily understood by lawyers and judges."). Evidently, other prospective jurors similarly interpreted Question 25 to not refer to uncharged incidents of sexual abuse. For example, Juror C disclosed being "[redacted]," in response to Question 48, but in response to Question 25, reported only that a family member was mugged. *See* Juror C Questionnaire.

In sum, the Court concludes that Juror 50 is not impliedly or inferably biased.

[9] The Defendant also notes that Juror 50 apparently posted on social media about attending therapy to help "deal[] with the stress of the [Maxwell] case." Maxwell Post-Hearing Br. at 9; *see also* Maxwell Br. at 20. It is perfectly reasonable for a juror to go to therapy and use of such services does not disqualify a citizen from service. In fact, courts in this district routinely make counseling services available to jurors following the completion of a trial.

3. The Court rejects the Defendant's additional post-hearing argument that Juror 50 was biased because he failed to follow instructions.

In her post-hearing briefing, the Defendant argues that Juror 50's testimony that he was "absolutely not" concerned with following the Court's instructions when filling out the questionnaire is an additional ground for concluding that Juror 50 was unable to serve as an unbiased juror. Maxwell Post-Hearing Br. at 11–12 (quoting Hearing Tr. at 18). The Court disagrees.

Juror 50's testimony established that his lack of diligence was limited to the questionnaire session. Juror 50 showed up for trial on time every day and appeared to the Court that he was attentive throughout trial. There is no indication that Juror 50 failed to follow this Court's instructions during *voir dire*, trial, or deliberations. Juror 50 explained that he was unconcerned with following the Court's instructions while completing the questionnaire because he was "super distracted" and believed that there was no possibility that he would be selected for the jury. Hearing Tr. at 40. *Voir dire*, he testified, was a "different situation." *Id.* at 41. When he answered the Court's questions in person at *voir dire*, he had not been "sitting there for hours . . . thinking about [his] ex." *Id.* He felt confident that he accurately answered all of the Court's questions. This included affirming that he was able to follow the Court's instructions as to the presumption of innocence and the law generally, the prohibition on consuming media on the case or any other extraneous information, and his ability to put any prior knowledge to the side and decide the case based on the evidence, or lack of evidence, presented at trial. Voir Dire Tr. at 128–31. Under oath, he testified that although he "can become distracted," that "had no effect" on him serving and "listening to all the evidence given during the trial." Hearing Tr. at 41. The Court confirmed that Juror 50 "carefully" followed the Court's instructions during *voir dire* and trial. *Id.*

Even if confined to the questionnaire session, the Defendant argues that Juror 50's "willingness to disregard the Court's instructions" during the questionnaire "shows an inability to serve as an unbiased juror." Maxwell Post-Hearing Br. at 11. She relies on *Dyer v. Calderon*, 151 F.3d 970 (9th Cir. 1998) (en banc), as her sole support. But *Dyer* stands for the distinct proposition that a juror who deliberately lies, and thus commits perjury, cannot be trusted to "stand in judgment of other people's veracity." *Id.* at 983. It does not support that an uncareful and inattentive prospective juror who mistakenly provides an inaccurate response during jury selection is biased. As explained above, the Court does not conclude that Juror 50 committed perjury and lied in an effort to be on the jury. Accordingly, the Court rejects granting the Defendant's motion on this basis.

* * *

In sum, the Court concludes that the evidence in the record does not support finding that Juror 50 was biased. Juror 50's sworn testimony did not reveal actual partiality. And Juror 50 was not impliedly or inferably biased. He was neither a victim nor otherwise involved in the actual crimes. Nor does he have any sort of relationship with any of the parties or case participants. And as consistent with other jurors who answered "yes (self)" to Question 48, the Court would not have granted a for-cause challenge on the basis of Juror 50's personal history of sexual abuse. That Juror 50 was distracted during the questionnaire does not reveal that he was biased or failed to follow the Court's instructions during *voir dire* and the trial. Prong two of the demanding *McDonough* inquiry is not satisfied.

IV. CONCLUSION

For the reasons stated above, the Court concludes that Juror 50 testified credibly and truthfully at the post-trial hearing. His failure to disclose his prior sexual abuse during the jury

selection process was highly unfortunate, but not deliberate. The Court further concludes that Juror 50 harbored no bias toward the Defendant and could serve as a fair and impartial juror. The requirements for a new trial under *McDonough* are not satisfied. The Defendant's motion for a new trial pursuant to Rule 33 is therefore DENIED.

The Court orders the preparation of the presentence investigation report.

With respect to Counts 7 and 8, the Court hereby excludes time under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), from today's date through April 22, 2022. The Court finds that the ends of justice served by granting this exclusion from speedy trial computations outweigh the interests of the public and the Defendant in a speedy trial on these counts because the pending post-trial motions affect the scheduling considerations set forth in the Government's January 10, 2022 letter. *See* Dkt. No. 574. The Defendant consents to this exclusion. Dkt. No. 650.

The Court will rule on the Defendant's remaining post-verdict motions in due course. Sentencing remains scheduled for June 28, 2022. This resolves docket numbers 613, 614, 642, 650, and 651.

SO ORDERED.

Dated: April 1, 2022
New York, New York

ALISON J. NATHAN
United States Circuit Judge
Sitting by Designation

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DATE FILED: 4/29/22

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America,

–v–

Ghislaine Maxwell,

Defendant.

20-CR-330 (AJN)

OPINION & ORDER

ALISON J. NATHAN, Circuit Judge, sitting by designation:

In 2020, the Defendant Ghislaine Maxwell was indicted for her participation in a scheme to entice, transport, and traffic underage girls for sexual abuse by and with Jeffrey Epstein, her longtime companion. The Government at trial presented extensive witness testimony from multiple victim witnesses and others, as well as corroborating documentary and physical evidence. The testimony and other trial evidence established the Defendant's role in grooming and recruiting underage girls and using the cover of massage to perpetrate sexual abuse.

Following the thirteen-day trial, the Court submitted to the jury the six counts in the Indictment. The jury deliberated for over five days and returned a verdict of guilty on five of the six counts. Two of these counts of conviction charged the Defendant with substantive violations of federal statutes that target sexual abuse of minors—the Mann Act as to Count Four and the Trafficking Victims Protection Act as to Count Six. The other three counts of conviction, Counts One, Three, and Five, charged the Defendant with conspiring with Jeffrey Epstein to violate those same statutes from 1994 to 2004.

Before the Court are the Defendant's post-trial motions making four alternative arguments for vacating some or all of her five counts of conviction. First, the Defendant argues that judgment may be imposed on only one of the three conspiracy counts (*i.e.*, Counts One,

Three, and Five) because they are "multiplicitous"—meaning that they all charge the same offense—and therefore entry of judgment on all three counts would violate the Fifth Amendment's Double Jeopardy Clause. Second, she requests under Rule 29 of the Federal Rules of Criminal Procedure that the Court acquit her of all counts because there is insufficient evidence for any rational juror to find her guilty beyond a reasonable doubt. Third, the Defendant moves to vacate Counts One, Three, and Four under Rule 33 because, she claims, the convictions were based on a constructive amendment of, or variance from, the Indictment. And fourth, she requests that the Court vacate all five convictions because the Government intentionally and prejudicially delayed its prosecution.

With one exception, the motions are denied. The Rule 29 motion challenging all counts of conviction is denied because the jury's guilty verdicts were readily supported by the extensive witness testimony and documentary evidence admitted at trial. Further, those counts of conviction matched the core of criminality charged in the Indictment, presented by the Government at trial, and on which the jury was accurately instructed. The Defendant's contrary claim of a constructive amendment of or variance from the Indictment rests on an implausible and speculative interpretation of a single ambiguous jury note. In addition, the Court concludes that the Government did not intentionally delay its prosecution and, in any event, the Defendant's ability to prepare a defense was not prejudiced by any delay.

The Court does conclude, however, that the three conspiracy counts charge the same offense, and, accordingly, are multiplicitous. The Government concedes that Count One is multiplicitous with Count Three but argues that Count Three and Count Five nevertheless involve distinct conspiracies. The Court concludes that Count Five, like Counts One and Three, charges the Defendant's participation in the same decade-long unlawful agreement with the

Defendant's continuous coconspirator, Jeffrey Epstein. The overarching conspiracy—which, as the Government argued and proved at trial, employed a single "playbook" to groom and sexually abuse underage girls—constitutes a single conspiracy offense with multiple victims. Because the Double Jeopardy Clause prohibits the Court from imposing multiple punishments for the same offense, the Court will enter judgment on Count Three alone among the conspiracy counts. This legal conclusion in no way calls into question the factual findings made by the jury. Rather, it underscores that the jury unanimously found—three times over—that the Defendant is guilty of conspiring with Epstein to entice, transport, and traffic underage girls for sexual abuse.

I. The Court grants the Defendant's multiplicity claim.

The Defendant was indicted on six counts: (1) conspiracy to entice individuals under the age of seventeen to travel in interstate commerce with intent to engage in sexual activity illegal under New York law, in violation of 18 U.S.C. § 371; (2) enticement of individuals under the age of seventeen to travel in interstate commerce with intent to engage in sexual activity illegal under New York law, and aiding and abetting the same, in violation of 18 U.S.C. §§ 2422, 2; (3) conspiracy to transport individuals under the age of seventeen to travel in interstate commerce with intent to engage in sexual activity illegal under New York law, in violation of 18 U.S.C. § 371; (4) transportation of an individual under the age of seventeen with intent to engage in sexual activity illegal under New York law, and aiding and abetting the same, in violation of 18 U.S.C. §§ 2423(a), 2; (5) conspiracy to commit sex trafficking of individuals under the age of eighteen, in violation of 18 U.S.C. § 371; and (6) sex trafficking of an individual under the age of

eighteen, and aiding and abetting the same, in violation of 18 U.S.C. §§ 1591, 2. S2 Indictment, Dkt. No. 187.[1]

In two prior pretrial motions, the Defendant requested that the Court dismiss two of the three conspiracy counts—that is, Counts One, Three, and Five—as multiplicitous, given that all three were premised on the Defendant's participation in a single criminal conspiracy with Epstein. To punish her for all three counts, she argued, would violate the Double Jeopardy Clause. In opinions dated April 16, 2021, and August 13, 2021, the Court denied those motions as premature because the Double Jeopardy Clause would prohibit only multiple punishments for the same offense, but not indictments for the same offense. *United States v. Maxwell*, 534 F. Supp. 3d 299, 322 (S.D.N.Y. 2021) (citing *United States v. Josephberg*, 459 F.3d 350, 355 (2d Cir. 2006)); *United States v. Maxwell*, No. 20-CR-330 (AJN), 2021 WL 3591801, at *5 (S.D.N.Y. Aug. 13, 2021).

Because the jury convicted the Defendant on all three conspiracy counts, the Defendant now requests that the Court impose judgment on only one of these counts. Maxwell Br. at 19, Dkt. No. 600. The Government concedes that Counts One and Three are multiplicitous and agrees that the Court should not impose judgment on Count One, but it argues that Counts Three and Five are distinct offenses premised on distinct criminal conspiracies, and so the Court should impose judgment on both. Gov. Br. at 24, Dkt. No. 621.

On consent of both parties, the Court will not impose judgment on Count One because it is multiplicitous. For the reasons that follow, the Court further grants the Defendant's motion to also not enter judgment on Count Count Five because it is also multiplicitous with Count Three.

[1] The original and S2 Indictments also included two counts of perjury. *See* S2 Indictment ¶¶ 28–31. The Court granted the Defendant's motion to sever those counts for a separate trial. *United States v. Maxwell*, 534 F. Supp. 3d 299, 321 (S.D.N.Y. 2021).

A. Applicable law

The Double Jeopardy Clause of the Fifth Amendment guarantees that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V. That guarantee "serves principally as a restraint on courts and prosecutors," ensuring that a court does not "exceed its legislative authorization by imposing multiple punishments for the same offense." *Brown v. Ohio*, 432 U.S. 161, 165 (1977); *see also Morris v. Reynolds*, 264 F.3d 38, 48 (2d Cir. 2001). An indictment is multiplicitous, and therefore implicates double jeopardy, "when it charges a single offense as an offense multiple times, in separate counts, when, in law and fact, only one crime has been committed." *Maxwell*, 534 F. Supp. 3d at 322 (quoting *United States v. Chacko*, 169 F.3d 140, 145 (2d Cir. 1999)). "A claim of multiplicity cannot succeed, however, 'unless the charged offenses are the same in fact and in law.'" *United States v. Jones*, 482 F.3d 60, 72 (2d Cir. 2006) (quoting *United States v. Estrada*, 320 F.3d 173, 180 (2d Cir. 2003)).

If the two offenses at issue are both conspiracies charged under the same statute, then the multiplicity inquiry turns on whether the two conspiracies are the same "in fact," meaning they involve the same agreement. *United States v. Araujo*, No. 17-CR-438 (VEC), 2018 WL 3222527, at *3 (S.D.N.Y. July 2, 2018) (citing *United States v. Ansaldi*, 372 F.3d 118, 124–25 (2d Cir. 2004)); *United States v. Gaskin*, 364 F.3d 438, 454 (2d Cir. 2004) ("[T]o survive a double jeopardy attack, the government would have to show that the two schemes involved 'distinct' agreements."). Yet "whether the evidence shows a single conspiracy or more than one conspiracy is often not determinable as a matter of law or subject to bright-line formulations." *Jones*, 482 F.3d at 72. Rather, the parties agree that the Court's inquiry is guided by the Second Circuit's *Korfant* factors. *See, e.g.*, *United States v. Diallo*, 507 F. App'x 89, 91 (2d Cir. 2013)

(summary order) (citing *United States v. Korfant*, 771 F.2d 660, 662 (2d Cir. 1985) (per curiam)); *United States v. Villa*, 744 F. App'x 716, 720 (2d Cir. 2018) (summary order). Those factors include:

> (1) the criminal offenses charged in successive indictments; (2) the overlap of participants; (3) the overlap of time; (4) similarity of operation; (5) the existence of common overt acts; (6) the geographic scope of the alleged conspiracies or location where overt acts occurred; (7) common objectives; and (8) the degree of interdependence between alleged distinct conspiracies.

United States v. Macchia, 35 F.3d 662, 667 (2d Cir. 1994) (quoting *Korfant*, 771 F.2d at 662). In applying the *Korfant* factors, "no dominant factor or single touchstone" determines whether two allegedly distinct conspiracies "'appear in fact and in law the same.'" *Id*. at 668 (quoting *United States v. Reiter*, 848 F.2d 336, 340 (2d Cir. 1988)). Moreover, "the *Korfant* list is not exhaustive, and every case must be assessed on its own terms . . . based on the entire record." *United States v. Maslin*, 356 F.3d 191, 196 (2d Cir. 2004).

In assessing the evidence, the Second Circuit applies a burden-shifting framework. The defendant carries the initial burden of making a non-frivolous showing that the two counts in fact charge only one conspiracy. If met, the burden then shifts to the Government to show, "by a preponderance of the evidence, that there are in fact two distinct conspiracies and that the defendant is not being placed in jeopardy twice for the same crime." *United States v. Lopez*, 356 F.3d 463, 467 (2d Cir. 2004) (per curiam) (citing *United States v. DelVecchio*, 800 F.2d 21, 22 (2d Cir. 1986)); *see also United States v. Mallah*, 503 F.2d 971, 986 (2d Cir. 1974) (applying this burden-shifting approach post-conviction); *United States v. Hernandez*, No. 09-CR-625 (HB), 2009 WL 3169226, at *9 (S.D.N.Y. Oct. 1, 2009).

B. Analysis

A further summary of the two counts at issue is required. As briefly outlined above, Count Three of the Indictment charged the Defendant under 18 U.S.C. § 371, the general federal conspiracy statute, with conspiring to violate 18 U.S.C. § 2423(a) (the Mann Act), by transporting minors across state lines with the intent to engage in sexual activity criminalized by state law. S2 Indictment ¶¶ 16–18. In this case, the relevant state offense was New York Penal Law Section 130.55, which criminalizes sexual contact with an individual known to be under the age of seventeen. Trial Tr. 3034–35. The Count Three conspiracy spanned from 1994 to 2004. S2 Indictment ¶ 17. As the Government explained in its summation, the jury could convict the Defendant under Count Three based on evidence related to Jane, Carolyn, and Annie Farmer, three victims who testified at trial. Trial Tr. at 2895.[2]

Count Five of the Indictment also charged the Defendant under 18 U.S.C. § 371, but for conspiring to violate 18 U.S.C. §§ 1591(a) & (b) (the Trafficking Victims Protection Act), by trafficking individuals under the age of eighteen for commercial sex acts that affect interstate commerce. S2 Indictment ¶¶ 22–24. Count Five's conspiracy spanned from 2001 to 2004. *Id.* ¶ 23. The Government explained to the jury that it could convict the Defendant on Count Five based on evidence related to Carolyn and Virginia Roberts. Trial Tr. at 2896.

The Defendant primarily contends that Count Five is a subset of, is subsumed in, or is otherwise too similar to Count Three under the *Korfant* factors. The Court agrees. Although some *Korfant* factors favor the Government, the weight of the factors—supplemented by a review of the Government's case presented at trial—demonstrates that the Government has not

[2] The Court permitted certain victim witnesses to testify using a pseudonym or first name. *See* Nov. 1, 2021 Tr. at 6–7.

met its burden of proving by a preponderance of the evidence that the counts are not multiplicitous.

The offenses charged and common objectives. Both Counts Three and Five are charged under the same statute, 18 U.S.C. § 371, for conspiracy to commit an offense against the United States. But going beyond this "general level" of similarity, the statutory objectives of the two counts differ. *Macchia*, 35 F.3d at 669. Count Three is a conspiracy to violate § 2423(a) and Count Five a conspiracy to violate § 1591. These differing statutory objectives entail legal differences. Count Three, for example, charges unlawful sexual activity (defined as sexual touching of a minor) while Count Five charges commercial sexual activity with a minor. And each provision defines "minor" differently: under seventeen years old for Count Three but under eighteen years old for Count Five. Further, Count Three requires an agreement with intent to transport across state lines, while Count Five's agreement requires only intent of sexual activity that affects interstate commerce. These differences push the first *Korfant* factor in the Government's favor. *See Estrada*, 320 F.3d at 182 (distinguishing between a conspiracy to distribute cocaine and one to distribute crack); *United States v. Villa*, No. 3:12-CR-40 (JBA), 2014 WL 252013, at *4 (D. Conn. Jan. 22, 2014), *aff'd*, 744 F. App'x 716 (2d Cir. 2018) (summary order) (distinguishing between a § 371 conspiracy to "commit theft from an interstate shipment and to transport stolen property across state lines" and one to "sell stolen property").

The Government, however, errs in suggesting that this factor alone is "fatal" to the Defendant's multiplicity claim. Gov. Br. at 29. To the contrary, no single *Korfant* factor is dominant or dispositive. *Macchia*, 35 F.3d at 668. And courts in this district have found two conspiracy counts to be the same offense even when they have different statutory objectives because both counts can arise from the same agreement. *E.g.*, *Hernandez*, 2009 WL 3169226, at

*11 (concluding that conspiracies to defraud the United States and to commit mail and wire fraud were the same conspiracy as earlier conspiracy to use or transfer false IDs). After all, "[a] single agreement to commit several crimes constitutes one conspiracy." *United States v. Broce*, 488 U.S. 563, 570–71 (1989). The Government implicitly conceded this point of law when it agreed that Counts One and Three were multiplicitous. Count One charges a conspiracy to *entice* minors to travel across state lines in violation of 18 U.S.C. § 2422 while Count Three charges a conspiracy to *transport* minors across state lines in violation of 18 U.S.C. § 2423(a). Despite distinct statutory predicates for these two § 371 conspiracies, the Government did not contest that they were the same offense. Though Count Five is unquestionably less similar to Count Three than is Count One, the difference in statutory predicates does not end the matter. It is well established that a single conspiracy can contain multiple objectives, particularly if the objectives share important similarities, as they do here. *United States v. Salameh*, 152 F.3d 88, 148 (2d Cir. 1998) (citing *United States v. Aracri*, 968 F.2d 1512, 1518 (2d Cir. 1992)).

Overlap of participants. The participants in the two conspiracies in Counts Three and Five substantially overlap with one another. Of course, the defendant will always overlap between two allegedly multiplicitous conspiracies, so their participation in both conspiracies has negligible significance. *Villa*, 2014 WL 252013, at *5. More importantly here, Epstein was the Defendant's primary coconspirator in both conspiracies, and the Government argued that in both conspiracies the Defendant played the same role of acquiring underage girls for Epstein to sexually abuse. They were, the Government explained, "partners in crime" over the decade alleged in the Indictment. *E.g.*, Trial Tr. at 34, 2842, 2885; *see also id.* at 41 ("For a decade, the defendant played an essential role in this scheme."). This overlap in key participants, and in core

roles played by those participants, significantly favors the Defendant as to the second *Korfant* factor. *See Macchia*, 35 F.3d at 669; *Hernandez*, 2009 WL 3169226, at *11.

The Government responds that the Count Five conspiracy included Sarah Kellen, who was not involved in Count Three. Yet Kellen received far less attention than other conspirators in the Government's case, being mentioned only briefly in the Government's opening statement and closing arguments. *E.g.*, Trial Tr. at 2876 (noting, "and sometimes Sarah Kellen would call, too"). Conspiracies often change membership without forming a new, distinct conspiracy, particularly if key members of the conspiracy remain over the course of a decade. *See United States v. Eppolito*, 543 F.3d 25, 48 (2d Cir. 2008). Kellen's participation beginning in 2001 therefore does not shift the import of the second *Korfant* factor.

Overlap of time. The time periods of the two counts overlap completely. Namely, Count Five's period of 2001 to 2004 is "wholly within the time frame" of Count Three from 1994 to 2004, which substantially favors the Defendant on this *Korfant* factor. *United States v. Calderone*, 982 F.2d 42, 47 (2d Cir. 1992). The Government's attempt to minimize this factor by noting that most overt acts for Count Three occurred in the 1990s is simply not reflected in this circuit's case law. *See, e.g.*, *Macchia*, 35 F.3d at 669 (focusing on the overlap in time frame alleged in the indictment). The overlap in time here raises the inference that one conspiracy wholly encompasses the other, and that inference tips in the Defendant's favor. *See Araujo*, 2018 WL 3222527, at *6.

Similarity of operations. Counts Three and Five involve significant similarities in operations. The methods by which the Defendant groomed and facilitated the sexual abuse of minor victims was a central focus of both parties' cases at trial. The Government called as an expert witness Dr. Lisa Rocchio, who identified the typical steps in sexual abusers' grooming of

minors for sexual abuse. Trial Tr. at 714–19. Applying that expert testimony to the witnesses' testimony, the Government argued that the Defendant's conduct as to each victim followed a uniform "playbook." *E.g.*, *id.* at 2184 ("She ran the same playbook again and again and again. She manipulated her victims and she groomed them for sexual abuse."), 2853 ("The patterns you saw throughout this trial, the playbook that Maxwell ran for years, is just one of the many ways that you know that Maxwell is guilty."). And the Government emphasized the many similarities in the Defendant's conduct as recounted by all four witnesses. *Id.* at 2848 ("The similarities between what happened to Jane and Annie and Carolyn and Kate are incredibly powerful evidence of the defendant's guilt. So I want to talk to you about the playbook that Maxwell ran again and again and again."), 2901 ("Four women have testified at this trial about Maxwell. They all describe the same woman, the same playbook."). Carolyn was the only witness who testified regarding Count Five. The Government argued that her testimony "was corroborated by what Annie and Kate and Jane told [the jury] about Maxwell and how she operated for years." *Id.* at 2880; *see also id.* at 2895–96 ("Maxwell groomed both Annie and Carolyn as part of a broader agreement with Epstein to provide him with underage girls for abuse."). The Government, in short, argued that the Defendant engaged in substantially the same operations for a decade as to all victims under both Counts Three and Five.

The Government responds that while the Defendant and Epstein continuously conspired to sexually abuse minor victims, their conduct beginning in 2001 evolved from developing one-on-one relationships with their victims to include a "pyramid scheme of abuse," by which they acquired underage girls by paying them for so-called "massage" appointments. Gov. Br. at 32 (quoting Trial Tr. at 40). To be sure, the Government in both its opening statement and its closing arguments explained that the Defendant and Epstein's abuse "evolved over the course of

a decade," having both the "earlier phase" and the later "pyramid scheme." Trial Tr. at 40; *see also, e.g.*, *id.* at 2886 (describing 2001 as "the beginning of the pyramid scheme of abuse"). But a single conspiracy can enter "two or more phases or spheres of operation" without creating a discontinuity in the underlying unlawful agreement, particularly if the same people are serving the same roles in each phase. *United States v. Pena*, 846 F. App'x 49, 51 (2d Cir. 2021) (summary order) (quoting *United States v. Berger*, 224 F.3d 107, 114–15 (2d Cir. 2000)); *see also United States v. Maldonado-Rivera*, 922 F.2d 934, 963 (2d Cir. 1990). Notably, the Government, after distinguishing between earlier and later phases in the pattern of abuse, immediately emphasized that "[f]or a decade, the defendant played an essential role in this scheme," blurring any difference between the two phases. Trial Tr. at 41.

Moreover, though these phases did involve some differing means to acquire minor victims, the differences presented at trial were not as great as the Government suggests in its brief. As to both counts, both before and after 2001, the Government emphasized that massage was a primary means by which the Defendant and Epstein normalized bodily contact and also the means by which the Defendant and Epstein commonly instigated instances of sexual abuse. *Compare id.* at 40 ("You will learn that in the 1990s, they used the cover of mentoring young girls . . . to introduce massage . . . and that you will learn that they used these so called massages as a way to sexually abuse the victims."), *with id.* at 41 ("Under this pyramid scheme of abuse, the defendant could just call girls to schedule massage appointments and hand them cash afterwards . . . ."); *e.g.*, *id.* at 35 ("You will learn that the cover of massage was the primary way the defendant and Epstein lured girls into sexual abuse."), 2852 ("Again and again throughout this trial, you heard about how these girls were asked to perform sexualized massages on Jeffrey Epstein.").

Further, in both counts, the witnesses testified that they received financial gifts and payments as a means by which the Defendant and Epstein acquired their victims' trust and extended the period of sexual abuse. *E.g.*, *id*. at 302 (Jane testified that she was given money "[a]lmost every visit" and that Epstein paid for things like voice lessons and clothes). The Government emphasized such financial gifts as one step in the Defendant's playbook of grooming. *E.g.*, *id*. at 2851 ("Then came the next step in the playbook: Making these girls feel special, giving them gifts, making friends, giving them money, promising to help with their futures, promises like sending Annie on a trip to Thailand or helping to pay for Jane's voice lessons and tuition."), 2890 ("[Jane] told you that Epstein gave her money and gifts and paid for school. That money wasn't free . . . . That is inducement, that is enticement, that is coercion."). The financial quid pro quo may have become more explicit beginning in 2001, but that shift in approach is not nearly so dramatic as to suggest that the Defendant and Epstein at that time entered "a wholly new agreement" with a new "conspiratorial objective." *Haji v. Miller*, 584 F. Supp. 2d 498, 519 (E.D.N.Y. 2008). The similarity-of-operations factor therefore favors the Defendant.

Overlap of geographic scope. There is some, albeit incomplete, geographic overlap between the two counts. Count Three focused on travel to New York because the ultimate objective of the conspiracy was to transport minors to New York to engage in criminal sexual activity in violation of New York law. Count Five, by contrast, focused on Epstein's residence in Florida, where Carolyn and Virginia Roberts were paid to give Epstein sexualized massages. Nevertheless, some geographic overlap between the two counts remained. All four witnesses testified about sexual conduct by the Defendant or Epstein in locations other than New York, whether Florida, New Mexico, or London. The Court admitted such testimony concerning

sexual conduct outside of New York as relevant to Count Three because it tended to establish the existence of a conspiracy and of the Defendant and Epstein's intent to abuse the victims in New York. In sum, the same locations—particularly Florida—were part of the Government's case for both counts. And over time, a conspiracy's "shifting emphasis in the location of operations do[es] not necessarily require a finding of more than one conspiracy." *Eppolito*, 543 F.3d at 48 (quoting *Jones*, 482 F.3d at 72). This factor therefore favors the Defendant or, at least, is neutral.

Common overt acts. The Government correctly notes that the overt acts provided to the jury for Counts Three and Five are distinct. *See* Jury Charge, Dkt. No. 565 at 49–50. This factor therefore tips toward the Government—but only slightly. A number of the overt acts listed for Count Three could have been prosecuted under Count Five but for the fact that 18 U.S.C. § 1591, the Trafficking Victims Protection Act, was not enacted until 2000. *See* Gov. Br. at 28. That some identical overt acts were not listed for both conspiracies is therefore more a function of legal timing than an indication of two distinct conspiracies. *Cf. Hernandez*, 2009 WL 3169226, at *12.

Interdependence. Counts Three and Five are not interdependent because the success or failure of one conspiracy is independent of the success or failure of the other. *See Macchia*, 35 F.3d at 671. In other words, the success of the Defendant and Epstein's scheme to abuse Carolyn from 2001 to 2004 was not made more or less likely by the prior success or failure to abuse Jane, Annie, or any other underage girl. This factor, however, makes little difference in the final analysis if "what was ultimately proven was one common conspiracy." *Maslin*, 356 F.3d at 197.

The Government's theory at trial. The Second Circuit has instructed district courts to consider not only the enumerated *Korfant* factors but to consider the entire record. *See id.* at 196; *United States v. Olmeda*, 461 F.3d 271, 282 (2d Cir. 2006). In *Maslin*, the Second Circuit

first explained that applying the *Korfant* factors led to the conclusion that successive prosecutions for conspiracies to distribute marijuana were barred by double jeopardy, but then continued, stating that "several additional factors . . . not directly addressed in *Korfant* . . . further point toward a finding of double jeopardy," namely, "the fact that the Government, in its opening and closing arguments, presented both cases to the jury as broad conspiracies of an essentially identical nature." 356 F.3d at 197. The same is true here. As explained above, the Government's opening statement and closing arguments presented a theory of a singular conspiracy, highlighting: The degree of similarity between each victim witness's experience over a decade; the common "playbook" that the Defendant ran "over and over and over again," Trial Tr. at 2848; and the tight partnership between the Defendant and Epstein. And each of those features was accompanied by references to a singular "scheme" to abuse all victim witnesses. *Id*. at 36, 2843, 2853. At bottom, the case presented to the jury by the Government was of a single decade-long conspiracy by the Defendant and Epstein to sexually abuse underage girls. Having pursued such a broad and encompassing conspiracy, the Government cannot now claim, and cannot carry its burden of proving by a preponderance of the evidence, that Count Five was legally and factually distinct. *See Maslin*, 356 F.3d at 197.

Because Count Three and Count Five are multiplicitous, the proper remedy is to enter judgment on only one of the counts. *See Josephberg*, 459 F.3d at 355 ("If the jury convicts on more than one multiplicitous count, the defendant's right not to suffer multiple punishments for the same offense will be protected by having the court enter judgment on only one of the multiplicitous counts." (citing *Ball v. United States*, 470 U.S. 856, 865 (1985))). Because Count Five is factually subsumed by Count Three, the Court will impose judgment only on Count Three. The Court emphasizes, however, that finding Count Five to be multiplicitous "does not

overturn any of the factual findings made by the jury" —it means only that, "as a matter of law, the jury found the same thing twice." *Ansaldi*, 372 F.3d at 125. Or, in this case, three times.

II. The Court denies the Defendant's Rule 29 motion.

The Defendant argues there was insufficient evidence to support any of her five counts of conviction, and, therefore, the Court should enter a judgment of acquittal as to all counts under Rule 29 of the Federal Rules of Criminal Procedure. Rule 29 provides, in relevant part, that "[a]fter the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." Fed. R. Crim. P. 29(a); *United States v. Pugh*, 945 F.3d 9, 19 (2d Cir. 2019). "[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be . . . to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 318 (1979). "The court must make that determination with the evidence against a particular defendant, viewed in the light most favorable to the government, and with all reasonable inferences resolved in favor of the government." *Pugh*, 945 F.3d at 19 (cleaned up) (quoting *Eppolito*, 543 F.3d at 45). Under this inquiry, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 319 (citing *Johnson v. Louisiana*, 406 U.S. 356, 362 (1972)); *United States v. Zhong*, 26 F.4th 536, 560 (2d Cir. 2022).

At the close of the Government's case, the Defendant made her Rule 29 application "with respect to every count in the S2 indictment," but "confine[d] [her] comments to address specifically Counts One and Two." Trial Tr. at 2266. The Court denied the motion. *Id*. at 2274.

Following the close of the defense case, the Defendant renewed her previous Rule 29 application. *Id*. at 2736.

In her brief, the Defendant reiterates her request that the Court "enter a judgment of acquittal as to all counts." Maxwell Br. at 30. The Court has deemed Counts One and Five multiplicitous, *see supra* Part I, and therefore the Court will not enter judgment on those counts. And at trial, the jury found the Defendant not guilty on Count Two. Thus, the Court will consider the sufficiency of the evidence for the remaining counts: Three, Four, and Six. After considering the arguments and evidence, the Court denies the Defendant's Rule 29 motion.

The Court first notes that the Defendant has not provided substantive argument on the sufficiency of the evidence—in either the oral application or the post-conviction briefing—for Counts Three, Four, or Six. Instead, for these remaining counts, the Defendant simply asserts that the Court should "enter a judgment of acquittal as to all counts under Rule 29 . . . because the government failed to prove each element of the charges beyond a reasonable doubt." Maxwell Reply at 18, Dkt. No. 647; Maxwell Br. at 30. The Court disagrees.

The Court first considers the substantive counts. Count Four charged the Defendant with the substantive count of transportation of an individual under the age of seventeen with intent to engage in sexual activity in violation of New York law. This count related only to Jane during the period 1994 to 1997. The Government was required to establish the following elements beyond a reasonable doubt: (1) that the Defendant knowingly transported an individual in interstate commerce, as alleged in the Indictment; (2) that the Defendant transported the individual with the intent that the individual would engage in sexual activity for which any person can be charged with a criminal offense under New York law, as alleged in the Indictment; and (3) that the Defendant knew that the individual was less than seventeen years old at the time

of the acts alleged in Count Four; or that the Defendant aided and abetted the same. Jury Charge at 26, 37.

The Court concludes that there was sufficient evidence for the jury to find the Defendant guilty of Count Four beyond a reasonable doubt. Jane testified that Epstein first engaged in sexual activity with her in Palm Beach when she was fourteen years old. Trial Tr. at 305. She then began traveling from Palm Beach to New York with the Defendant and Epstein at that same age. *Id*. at 315–16. Jane explained that she traveled on commercial flights and Epstein's private jet. *Id*. at 316. She testified that the Defendant also traveled on some of these flights, and that the Defendant assisted her in making her travel arrangements to New York. *Id*. at 316–17. On one occasion when she was fifteen, Jane recounted, she had trouble getting on a commercial flight because she did not have proper identification. However, the Defendant "made it happen" for her by making a call and helping her get on the flight. *Id*. at 323–24. Jane also testified that the Defendant was present on some occasions when Epstein sexually abused Jane in New York when she was under the age of seventeen. *Id*. at 320. The Court concludes that this evidence, taken together, was sufficient for the jury to find beyond a reasonable doubt that the Defendant knowingly transported Jane to New York with the intent to engage in sexual activity illegal under New York law, or at minimum, aided and abetted Epstein in doing so.

Next, the Court concludes that there was sufficient evidence for the jury to find the Defendant guilty of Count Six. Count Six charged the Defendant with the substantive count of sex trafficking of an individual under the age of eighteen. The Government was required to prove beyond a reasonable doubt that: (1) the Defendant knowingly recruited, enticed, harbored, transported, provided, or obtained a person; (2) the Defendant knew that the person was under the age of eighteen; (3) the Defendant knew the person would be caused to engage in a

commercial sex act; and (4) the Defendant's acts were in or affecting interstate commerce; or that the Defendant aided and abetted the same. Jury Charge at 32, 37. Count Six applied solely to Carolyn during the period 2001 to 2004. *Id.* at 32.

Carolyn testified that when she was under the age of eighteen, the Defendant would call her to set up appointments for Carolyn to perform sexualized massages on Epstein. Trial Tr. 1527, 1530. Carolyn explained the sexual activities that occurred during the massages. *Id*. at 1544–47. Carolyn testified that the Defendant saw her naked in the massage room and continued to call Carolyn to schedule appointments with Epstein. *Id*. at 1538. She recalled a specific incident when she was fourteen in which she was naked in the massage room and the Defendant touched her breasts and commented that Carolyn "had a great body for Mr. Epstein and his friends." *Id*. at 1536–38. Carolyn testified that the Defendant knew that she was under the age of eighteen and continued to call her to schedule appointments with Epstein after learning that fact. *Id*. at 1535. Carolyn further testified that she received money in exchange for performing sexualized massages on Epstein. *E.g.*, *id*. 1523. She recalled that while money was often left on the sink outside of the massage room, the Defendant paid her directly after massages on one or two occasions. *Id*. at 1540–41. Carolyn's testimony was corroborated by Shawn, Carolyn's boyfriend at the time, and physical evidence including phone message pads. This evidence was plainly sufficient for the jury to find beyond a reasonable doubt that the Defendant committed sex trafficking of an individual under eighteen, or aided and abetted Epstein in doing so.[3]

[3] If the Court were to conclude that Count Five is not multiplicitous, it would deny the Defendant's Rule 29 motion as to Count Five. Count Five charged the Defendant with participating in a conspiracy to commit sex trafficking of individuals under the age of eighteen from about 2001 to 2004. The evidence that supports the Defendant's conviction of Count Six, the substantive count, also supports the Count Five conspiracy conviction. Additionally, Juan Alessi testified that the Defendant approached Virginia Roberts in a parking lot and that he then saw her at Epstein's Palm Beach residence later that day. Trial Tr. at 841–43. Documentary evidence, including flight records, established that Virginia was under the age of eighteen when she met the Defendant and Epstein. *See, e.g.*, *id.* at 1855 (December 2000 flight record including Epstein, the Defendant, and Virginia); *see also* GX-14 (birth certificate). Carolyn testified that Virginia recruited her and that Virginia performed sexualized massages on

Finally, Count Three charged the Defendant with conspiracy to transport individuals under the age of seventeen to travel in interstate commerce with intent to engage in illegal sexual activity in violation of New York law. The Government was required to prove beyond a reasonable doubt: (1) that two or more persons entered into the unlawful agreement charged; (2) the Defendant knowingly and willfully became a member of that conspiracy; (3) one of the members of the conspiracy knowingly committed at least one overt act; and (4) the overt act that the jury found to have been committed was committed in furtherance of that conspiracy. Jury Charge at 41.

The Court concludes that the trial evidence supported a finding of guilt beyond a reasonable doubt for each element of Count Three. The Government presented evidence that could lead a reasonable juror to conclude that the Defendant worked with Epstein between 1994 and 2004 to groom minor victims in an effort to transport them to New York to engage in sexual activity illegal under New York law. As noted above, Jane testified in detail about her travel to New York with the Defendant and Epstein where she was sexually abused. Trial Tr. at 319–20. Jane also testified about the steps taken by the Defendant and Epstein to make her feel comfortable before they began engaging in sexual activity with her and inviting her to travel. *Id.* 299–303; *see also id.* at 348 (Jane testifying that their behavior toward her made her "feel special").

Other witnesses testified to similar conduct. Annie testified that after she met Epstein in New York, she was invited to travel with the Defendant and Epstein to New Mexico when she was sixteen. *Id.* at 2068–69, 2075–77. She testified that on this trip, the Defendant and Epstein took her shopping and to the movies. *Id.* at 2080–81. She also testified that the Defendant

Epstein in exchange for money. Trial Tr. 1518–24. The Court concludes that the evidence related to Carolyn and Virginia was sufficient for the jury to convict the Defendant on Count Five.

encouraged her to massage Epstein's feet, and that the Defendant then gave her a massage during which the Defendant touched Annie's breasts. *Id*. at 2083–86. As noted above, Carolyn testified that the Defendant paid her for performing sexualized massages on Epstein. She also testified that Epstein and the Defendant asked her about her life and family and discussed sexual topics with her. *Id*. at 1533–36. Epstein then invited her to travel generally, and the Defendant invited her to travel to Epstein's private island in the Caribbean. *Id*. at 1535, 1540. A reasonable juror could have concluded that the Defendant's and Epstein's actions, including their efforts to normalize sexual conduct and invitations for underage girls to travel to New Mexico and the Caribbean, were in furtherance of the conspiracy's goal of transporting minors to New York for the purpose of engaging in sexual activity illegal under New York law. Finally, although the jury was instructed that it could not convict the Defendant solely on the basis of Kate's testimony, her testimony corroborated the testimony of other witnesses as to the Defendant's knowledge and role in the conspiracy. *Id*. at 1177–90. The Court concludes that this evidence was sufficient for a reasonable jury to convict the Defendant for conspiring to transport individuals in interstate commerce with intent to engage in sexual activity illegal under New York law.

Accordingly, the Court denies the Defendant's Rule 29 motion for a judgment of acquittal.

III. The Court denies the Defendant's motion claiming a constructive amendment or prejudicial variance.

The Defendant also seeks to vacate her convictions as to Counts One, Three, and Four (the Mann Act counts) pursuant to Federal Rule of Criminal Procedure 33. She contends that the jury convicted her of intending that Jane engage in sexual activity in New Mexico, rather than New York, thus resulting in a constructive amendment of the Indictment, or in the alternative, a

prejudicial variance. For the following reasons, the Court disagrees and denies the Defendant's motion on this basis.

A. Applicable Law

Under the Fifth Amendment's Grand Jury Clause, "a defendant has the right to be tried only on charges contained in an indictment returned by a grand jury." *United States v. Wozniak*, 126 F.3d 105, 109 (2d Cir. 1997). "[W]hen the charge upon which the defendant is tried differs significantly from the charge upon which the grand jury voted," a constructive amendment occurs and reversal is required. *United States v. Khalupsky*, 5 F.4th 279, 293 (2d Cir. 2021).

"To prevail on a constructive amendment claim, a defendant must demonstrate that either the proof at trial or the trial court's jury instructions so altered an essential element of the charge that, upon review, it is uncertain whether the defendant was convicted of conduct that was the subject of the grand jury's indictment." *United States v. Salmonese*, 352 F.3d 608, 620 (2d Cir. 2003) (quoting *United States v. Frank*, 156 F.3d 332, 337 (2d Cir. 1998)). In making this determination, the Court first delineates the "core of criminality" of the crime alleged. *United States v. Gross*, No. 15-cr-769 (AJN), 2017 WL 4685111, at *20 (S.D.N.Y. Oct. 18, 2017), *aff'd sub nom. United States v. Lebedev*, 932 F.3d 40 (2d Cir. 2019). The "core of criminality . . . involves the essence of a crime, in general terms." *United States v. Daugerdas*, 837 F.3d 212, 225 (2d Cir. 2016) (alteration in original) (quoting *United States v. D'Amelio*, 683 F.3d 412, 418 (2d Cir. 2012)). The Court then determines whether the evidence or jury instructions at trial created a "substantial likelihood" that the defendant was not convicted of the crime described in that core, but instead of a crime "distinctly different." *D'Amelio*, 683 F.3d at 416, 419. The Second Circuit has "consistently permitted significant flexibility in proof, provided that the defendant was given *notice* of the *core* of criminality to be proven at trial." *United States v.*

Banki, 685 F.3d 99, 118 (2d Cir. 2012) (quoting *United States v. Rigas*, 490 F.3d 208, 228 (2d Cir. 2007)). Thus, the defendant must show that "the challenged evidence or jury instructions tied a defendant's conviction to 'behavior *entirely separate* from that identified in the indictment.'" *United States v. Bastian*, 770 F.3d 212, 223 (2d Cir. 2014) (emphasis added) (quoting *United States v. Danielson*, 199 F.3d 666, 670 (2d Cir. 1999)).

By contrast, "[a] variance occurs when the charging terms of the indictment are left unaltered, but the evidence at trial proves facts materially different from those alleged in the indictment." *Salmonese*, 352 F.3d at 621 (quoting *Frank*, 156 F.3d at 337 n.5). "Although the distinction between constructive amendment and variance may appear 'merely one of degree,' there is an important difference in outcome: 'a constructive amendment of the indictment is considered to be a *per se* violation of the grand jury clause, while a defendant must show prejudice in order to prevail on a variance claim.'" *Id.* (quoting *Frank*, 156 F.3d at 337 n.5); *see also Rigas*, 490 F.3d at 226 ("[A] defendant alleging variance must show 'substantial prejudice' to warrant reversal."). "A defendant cannot demonstrate that [s]he has been prejudiced by a variance where the pleading and the proof substantially correspond, where the variance is not of a character that could have misled the defendant at the trial, and where the variance is not such as to deprive the accused of his right to be protected against another prosecution for the same offense." *Khalupsky*, 5 F.4th at 294 (quoting *Salmonese*, 352 F.3d at 621–22). Moreover, when a defendant has sufficient notice of the Government's theory at trial, she cannot claim that she was unfairly or substantially prejudiced. *See United States v. Kaplan*, 490 F.3d 119, 129–30 (2d Cir. 2007).

Finally, the Court bears in mind that the Defendant brings her motion pursuant to Rule 33, which permits the Court to "vacate any judgment and grant a new trial if the interest of

justice so requires." Fed. R. Civ. P. 33(a). Such a motion is granted "sparingly and in the most extraordinary circumstances, and only in order to avert a perceived miscarriage of justice." *United States v. Gramins*, 939 F.3d 429, 444 (2d Cir. 2019) (cleaned up).

B. No constructive amendment occurred.

Count Four charged the Defendant with transportation of an individual under the age of seventeen with intent to engage in illegal sexual activity, and Count Three charged a conspiracy to do the same. The core of criminality of these counts, the parties agree, was a scheme by Epstein and the Defendant to cause underage girls to travel to New York with the intent that they would engage in sexual activity in violation of New York law. Gov. Br. at 6; Maxwell Br. at 9.[4]

The Defendant contends that a jury note received during deliberations revealed that the jury convicted the Defendant on a crime different from this core of criminality. Namely, the Defendant argues that in convicting her of Count Four, the jury found she intended for Jane to engage in sexual activity in New Mexico, *without* finding that she intended for Jane to engage in sexual activity in New York. Maxwell Reply at 2. She argues the Court's decision to refer the jury back to the charge and refusal to give a supplemental instruction was error. As a result of this same error, she says, the jury also improperly convicted her of Count Three. For the reasons that follow, the Court concludes that there is not a "substantial likelihood" that the Defendant was "convicted of an offense other than that charged in the indictment." *D'Amelio*, 683 F.3d at 416 (quoting *United States v. Mollica*, 849 F.2d 723, 729 (2d Cir. 1988)).

[4] The Defendant also contends that her conviction on Count One was the result of a constructive amendment. Because the Court will not enter judgment on Count One per the parties' consent, the Court does not address Count One here. In any event, the Defendant's argument as to why Count One was constructively amended is the same as her argument as to Count Three, and the Court's analysis would be the same. *See* Maxwell Br. at 16.

1. The Court's instructions, the evidence at trial, and the Government's summation captured the core of criminality.

First, the Court's instructions to the jury during trial and after the close of evidence captured the core of criminality. As explained above, the Indictment charged the Defendant with four counts in violation of the Mann Act, each predicated on a violation of New York Penal Law Section 130.55. That provision of New York law criminalizes sexual contact with an individual known to be under the age of seventeen. Jury Charge at 24. The jury charge made clear that this provision of New York law served as the predicate offense for Counts Two and Four. *See id.* at 23–24 (Count Two), 28 (Count Four, instructing the jury to decide whether the Defendant had knowingly transported Jane with the intent to engage in sexual activity with Jane in violation of New York Penal Law Section 130.55, as alleged in the Indictment). The Court also accepted the Defendant's requested edits that further clarified that the predicate state offense was New York law. *See, e.g.*, Request to Charge at 19, 23, 26, 30, 31, Dkt. No. 410-1; Jury Charge at 20, 24, 26, 28 (specifying, *e.g.*, that the predicate state offense was "New York law," rather than an unspecified "criminal offense").

The jury charge also clearly instructed on the role of New York law in the jury's assessment of the Mann Act conspiracy counts, Counts One and Three. The charge explained that the object of the conspiracies was a violation of the same New York law at issue in Count Two. *See* Jury Charge at 44–45. In particular, the objects of Counts One and Three were the enticement of minors to travel and the transport of minors, respectively, with the intent to engage in sexual activity illegal under New York law. *See id.* As for the overt acts, the Court, at the parties' request, did not provide the jury with a copy of the Indictment. Trial Tr. at 2781–82. Rather, the charge specified the relevant overt acts. Jury Charge at 49–50. For Counts One and Three, this included the instruction: "the Indictment alleges as follows: . . . (2) In or about 1996,

when Jane was under the age of 17, Jane 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." *Id.* at 49.

The Court also gave two limiting instructions to ensure that the jury's consideration of certain relevant evidence was properly focused on the core of criminality. These instructions pertained to testimony about sexual activity that was not criminal conduct under New York Penal Law Section 130.55. The first limiting instruction pertained to Kate. This instruction informed the jury that it could not convict the Defendant on Counts One and Three solely on the basis of Kate's testimony because Kate could not be considered a victim of the crimes charged. Trial Tr. at 1167–68. This was so because she was older than seventeen at the time of the events, and, as explained, the object of the charged conspiracies was transport with intent to engage in sexual conduct in violation of New York Penal Law Section 130.55, which criminalizes sexual contact with individuals under the age of seventeen. *See* Nov. 1, 2021 Tr. at 67–68. The second limiting instruction pertained to Annie, who testified about sexual contact in New Mexico only. The instruction explained that her testimony about sexual conduct did not describe "illegal sexual activity" as alleged in the Indictment, which was a legal term that the Court would explain at the end of the case. Trial Tr. at 2048–49. This was so because, as explained, the object of the charged conspiracies was a violation of New York law, not New Mexico law. Both limiting instructions explained that the jury could determine that the testimony was relevant evidence. That was so because such evidence tended to establish the Defendant's intent that transport of a minor victim to New York was for the purpose of sexual activity illegal under New York law. The Defendant concedes this point as to testimony about sexual activity in states other than New

York. Maxwell Reply at 5. The jury charge and limiting instructions at trial thus instructed the jury on the core of criminality.

Second, the Government marshaled evidence that captured the core of criminality as pled in the Indictment and instructed by the Court. Jane testified that after she met the Defendant and Epstein at a summer camp, Epstein began engaging in sexual activity with her at his residence in Florida. Trial Tr. at 293–95, 305–06. Jane then began traveling with Epstein and the Defendant when she was fourteen years old. *Id.* at 315. As the Defendant notes, the majority of Jane's testimony discussing travel pertained to trips to New York and sexual activity that took place in New York. Maxwell Br. at 13. In her testimony, Jane recalled specific details of Epstein's New York residence and the sexual acts that occurred there. *See* Trial Tr. at 316–20. She explained that while she "mainly" traveled to New York on Epstein's private plane, she also took commercial flights. *Id.* at 316. She further testified that the Defendant assisted in making these travel arrangements. *Id.* at 316–17. Corroborating evidence included flight records to New York and photos of Epstein's New York residence matching Jane's description. *See id.* at 320.

In addition to the New York trips, Jane testified about a trip she took to New Mexico with the Defendant and Epstein when she was fifteen or sixteen years old. *Id.* at 321. In her testimony regarding this trip, which spanned only three transcript pages, Jane explained that during the trip Epstein engaged in sexual activity with her similar to what took place in New York. *See id*. at 321–23. As explained above, testimony about sexual activity in other states, including Florida and New Mexico, was relevant to the Defendant's intent. The testimony was part and parcel of the Defendant and Epstein's scheme to groom underage girls at Epstein's various properties, including in New Mexico and Palm Beach, to then be transported to New York for sexual activity illegal under New York law. Accordingly, this particular testimony was

part of the same "set of discrete facts consistent with the charge in the indictment," not a previously unidentified and independent theory of guilt. *D'Amelio*, 683 F.3d at 419; *see also United States v. Jones*, 847 F. App'x 28, 30 (2d Cir. 2021) (summary order) (no constructive amendment in sex trafficking case where indictment did not allege "advertising" but the evidence "fell squarely within the charged scheme" (cleaned up)).

Third, the Government's summation also reflected the core of criminality of transporting Jane and other underage girls to New York with the intention that sexual activity would occur in New York. In its summation regarding Count Four, the Government focused on travel to New York. *See* Trial Tr. at 2891–92.[5] The Government's explanation of Counts One and Three followed this pattern as well, with the summation again making clear that the Defendant and Epstein had intended for the victims to be "sexually abused in New York." *Id.* at 2895. Thus, the Court's instructions to the jury, the evidence presented at trial, and the Government's argument in summation did not describe "behavior entirely separate from that identified in the indictment," *Bastian*, 770 F.3d at 223 (quoting *Danielson*, 199 F.3d at 670), but instead consistently captured the core of criminality with which the Defendant was charged.

2. The jury note and the Court's response did not result in a constructive amendment.

The Defendant contends that regardless of whether the Court's prior instructions or Government's arguments at trial were proper, a jury note revealed that the jury convicted the Defendant for intending that Jane engage in sexual activity in New Mexico, not New York. *See* Maxwell Reply at 2. She argues that the Court then erred by refusing a supplemental instruction. The ambiguous note and the Court's rejection of the Defendant's proposed responses to it did not

[5] In its summation regarding Count Two, which introduced the New York predicate offense to the jury, the Government also repeatedly emphasized that the Defendant and Epstein enticed Jane to travel to New York to be abused. *See* Trial Tr. 2889–90.

alter the fact that the evidence and instructions at trial captured the core of criminality of the Indictment.

> The jury note at issue read:
>
> Under Count Four (4), if the defendant aided in the transportation of Jane's return flight, but not the flight to New Mexico where/if the intent was for Jane to engage in sexual activity, can she be found guilty under the second element?

Court Ex. 15, Dkt. No. 593 at 23. After hearing from the parties, the Court determined that it was unclear to what testimony the note referred and what legal question the note asked. Accordingly, the Court concluded that the appropriate course was to refer the jury back to the instruction for the second element of Count Four, with a reminder to consider carefully the full instruction. Trial Tr. at 3141. The Court also rejected the Defendant's supplemental instruction proposed the following day because it was partially unresponsive, partially redundant, and partially an erroneous statement of law. *Id.* at 3148–50.

The Defendant's contention that this series of events worked a constructive amendment to the Indictment is without merit. *First*, the Defendant speculates extensively about which flights and evidence the jury was referencing in the note, hazarding that the jury was focused on a 1997 flight from New York to New Mexico and an unidentified return flight to Florida. *See* Maxwell Br. at 14–15. But Jane testified about taking numerous flights both on Epstein's private plane and on commercial carriers. The note did not specify which of these many flights or other testimony the jury was considering. The Court could not provide supplemental instruction based on such a speculative foundation.

Second, the note was not "crystal clear" as the Defendant contends. Maxwell Reply at 6. Rather, as sometimes occurs, the note was decidedly ambiguous as to the precise legal question being asked. For example, the jury could have been asking about aiding-and-abetting liability as

to the second element. Or it could have been asking if it was permissible to consider the New Mexico testimony in its assessment of Count Four. Indeed, the Defendant proffered a different interpretation when the Court first read the note at trial. Initially, the Defendant argued that the jury was asking if the Defendant could be found guilty solely for aiding and abetting a flight home from New Mexico, which she said raised the issue of whether sexual activity could be the "significant or motivating purpose" for the travel. Trial Tr. at 3128–30. It was only after a protracted discussion, spanning ten pages of transcript, that the Defendant eventually suggested that the jury was considering convicting the Defendant on Count Four solely on conduct in New Mexico without any travel to New York. On this score, the Defendant argued at trial and argues now that the absence of a comma between "New Mexico" and "where/if" revealed the jury's thinking. Maxwell Reply at 6 n.2.[6] But hinging the note's meaning on an absent comma does not indicate a meaning "clear on [its] face." Maxwell Reply at 9. With or without the comma, the note was ambiguous as to the destination of the hypothetical return flight, the testimony being referenced, and the legal question being asked.

The note was clear on one point—the jury was asking about the second element of Count Four. Accordingly, the Court sent the jury back to the charge, which accurately instructed that Count Four had to be predicated on finding a violation of New York law. This response ensured that the jury focused on the correct instruction and, in turn, reminded the jury that the only state law at issue was *New York's*, even if sexual abuse in New Mexico was relevant evidence of intent. *See United States v. Rommy*, 506 F.3d 108, 126 (2d Cir. 2007) ("[A] trial court

[6] The Defendant also accuses the Government of muddying the inquiry by inserting a comma in this supposedly crucial spot. Maxwell Reply at 5, 6 n.2. It is apparent from the Government's brief that it relied on the trial transcript for its transcription of the jury note, which included a comma between these words. *See* Gov. Br. at 13 (quoting Trial Tr. at 3126).

responding to a note from a deliberating jury is only required to answer the particular inquiries posed."); *see also United States v. Parker*, 903 F.2d 91, 101 (2d Cir. 1990) ("The trial judge is in the best position to sense whether the jury is able to proceed properly with its deliberations, and [s]he has considerable discretion in determining how to respond to communications indicating that the jury is experiencing confusion."). The jury was free to send a clarifying or further note following the Court's instruction.

By contrast, the Defendant failed to propose a legally accurate response for the jury. Her proposed responses to the note on the day it was received and the following morning were erroneous. At the time the Court received the note and discussed it with counsel, the Defendant first proposed that the answer to the note's question was simply "no" because, she argued, a return flight is for the purpose of returning home, "not for the purpose of illegal sexual activity." Trial Tr. at 3128–30. But the Court could not respond "no" to an ambiguous question. *Id.* at 3138. Moreover, the Defendant eventually conceded the principle that assistance with a return flight home could aid and abet a trip that was for the purpose of illegal sexual activity. *See id.* at 3136. Alternatively, the Defendant requested that if the Court were to refer the jury to the charge, that it direct the jury to lines 14 to 17 of Instruction No. 21, which instructed on "significant or motivating purpose." *Id.* at 3131. But it was unclear that those particular lines addressed the jury's question, and the Court's decision to refer the jury to the entirety of Instruction No. 21 encompassed those lines.

The following day, although the jury had not sought further clarification, the Defendant took another pass at proposing an additional response to the note. She requested a three-paragraph supplemental instruction that referenced elements of Counts Two and Four. *See* Dkt.

No. 566.[7] The Second Circuit has cautioned that supplemental instructions "enjoy special prominence in the minds of jurors," *Arroyo v. Jones*, 685 F.2d 35, 39 (2d Cir. 1982), and that complete accuracy is of "crucial importance," *United States v. Kopstein*, 759 F.3d 168, 172 (2d Cir. 2014) (quoting *United States v. Lefkowitz*, 284 F.2d 310, 314 (2d Cir. 1960)). Portions of the requested instruction were unresponsive, portions were redundant, and portions were legally inaccurate. The first paragraph, which pertained to Count Two, was unresponsive to the jury's note that asked only about Count Four. The second paragraph was unnecessary because it was redundant. The Defendant now raises for the first time, in a footnote, that the Court should have *sua sponte* provided the jury this paragraph alone. Maxwell Reply at 9 n.4. But the charge as a whole already made clear that a violation of New York Penal Law Section 130.55 was the key inquiry. *See* Jury Charge at 20, 23, 26, (specifying "a criminal offense under New York law"), 24 (Count Two instructions on New York Penal Law Section 130.55), 28 (Count Four referring back to these instructions), 49–50 (specifying the overt act of Jane traveling "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"). Finally, the proposal also inaccurately stated that "sexual activity in any state other than New York *cannot form the basis*" of

[7] The requested instruction read:

> As to the third element of Count Two, you must determine whether the Government has proven beyond a reasonable doubt that the Defendant acted with the intent that Jane would engage in sexual activity within the state of New York in violation of New York Penal Law 130.55.
>
> As to the second element of Count Four, you must determine whether the Government has proven beyond a reasonable doubt that the Defendant transported Jane with the intent that Jane would engage in sexual activity within the state of New York in violation of New York Penal Law 130.55.
>
> An intent that Jane engage in sexual activity in any state other than New York cannot form the basis of these two elements of Counts Two and Four.

Dkt. No. 566 at 7.

convictions on Counts Two and Four, erroneously implying that such evidence was irrelevant. Dkt. No. 566 at 7 (emphasis added). Thus, in light of the note's ambiguity and the Defendant's failure to propose an accurate response in either the first attempt or the second attempt a day later, the Court's decision to refer the jury back to the legally sound charge was not error and plainly did not result in a constructive amendment to the Indictment.

The Defendant does not expressly contend that the instructions were legally erroneous—nor could she. As explained above, the charge made clear that the only predicate state law at issue was New York's. Instead, the Defendant objects that the charge was "stripped of any mention of 'travel to New York.'" Maxwell Br. at 15. But the Court rejected the Defendant's specific requests that were unnecessary, inaccurate, or would have confused the jury. For example, the Court rejected the Defendant's request to limit the charge to requiring travel from "Florida to New York," as alleged in the "to wit" clause of the Indictment, because travel from New Mexico to New York, for example, would also have been sufficient. *See* Trial Tr. at 2758–61 (Charging Conference); *see also United States v. Little*, 828 F. App'x 34, 37–38 (2d Cir. 2020) (summary order) (noting that generally, "'to wit' clauses do not modify essential elements of the offense"). The Court also denied the Defendant's request to instruct the jury on law governing the age of consent in New Mexico, the United Kingdom, and Florida. First, the Defendant's proposal oversimplified New Mexico's age of consent law. The Court could not accurately instruct the jury on New Mexico's law without potentially introducing a theory of guilt that the Government had not charged, or resolving a factual question on the use of force for the jury. Trial Tr. at 1712–13; Nov. 23, 2021, Final Pretrial Conference Tr. at 31–38. And second, instructing on state law that the Defendant was not alleged to have violated ran a serious risk of confusing the jury as to the role of that law. Indeed, it was the Defendant's proposal that

ran the risk of moving the jury away from consideration of the core of criminality alleged in the Indictment.[8]

The appropriate approach was to instruct the jury on the one and only predicate state offense for the Mann Act counts charged in the Indictment: New York Penal Law Section 130.55. For that reason, the Court also rejected the Defendant's request to repeat in the charge the limiting instructions as to Kate's and Annie's testimony and the Defendant's request, raised for the first time at the charging conference and well after completion of her testimony, to include an unspecified limiting instruction as to Jane's New Mexico testimony. Trial Tr. at 2773–77. During the witnesses' testimony, the jury had yet to be instructed on the meaning of "illegal sexual activity as alleged in the indictment." But it was unnecessary to repeat the limiting instructions alongside the charge's definition of "illegal sexual activity." *Id.* at 2774–75. The jury now had that phrase clearly defined as a violation of New York Penal Law Section 130.55. In sum, the jury instructions charged that the jury could convict the Defendant only on the predicate state offense of New York law. The jury is presumed to have followed these instructions. *See United States v. Joyner*, 313 F.3d 40, 47 (2d Cir. 2002).

At bottom, the Defendant asks the Court to speculate based on an ambiguous note that the jury disregarded Jane's substantial testimony about travel to New York and sexual conduct in New York and further assumed a violation of *New York* law could be based on conduct only in *New Mexico*. It is hardly plausible, let alone substantially likely, that this was the jury's

[8] The Defendant's proposed instruction on other jurisdictions' ages of consent first stated that "[t]o prove Counts One and Three, the government must establish beyond a reasonable doubt that Ms. Maxwell acted with the intent that the minors would engage in sexual activity for which any person can be charged with a criminal offense." Request to Charge at 51. It then instructed on the ages of consent in several jurisdictions and stated that "[i]f the individual was at or above the age of consent in the relevant jurisdiction when the sexual activity occurred, then for the purposes of Counts One and Three, the sexual activity was not illegal." *Id.* at 52. This proposed instruction would likely have created the confusion the Defendant raises now.

understanding. *See D'Amelio*, 683 F.3d at 416. Accordingly, the Court concludes that no constructive amendment resulted as to Count Four.

3. No constructive amendment occurred as to Count Three.

The Defendant's argument as to constructive amendment of Count Three, conspiracy to transport, wholly depends on her theory as to Count Four.[9] She argues that since it is "clear" that the jury convicted the Defendant of Count Four based only on Jane's New Mexico testimony, it must have convicted on the same basis for the conspiracy counts. Maxwell Br. at 16. Because no constructive amendment resulted as to Count Four, this argument is unavailing. But even if the Court were persuaded that the jury note revealed that the jury convicted the Defendant of Count Four on that basis, the note pertained only to Count Four and provided no basis to speculate as to the jury's conviction of Count Three. Moreover, it is not substantially likely that the jury convicted the Defendant of Count Three on Jane's New Mexico testimony alone. As described in detail above in the Court's denial of the Defendant's Rule 29 motion, the Government presented evidence that Annie and Carolyn were also victims of the conspiracy. Accordingly, even if a constructive amendment resulted as to Count Four, vacatur would still not be warranted as to Count Three.

C. No prejudicial variance occurred.

In the alternative, the Defendant argues that she was substantially prejudiced because the Indictment did not contain any allegations that Jane was sexually abused in New Mexico. She therefore claims she was unfairly surprised by its introduction. For purposes of this motion, the Court will assume that Jane's testimony regarding New Mexico constituted a variance from the

[9] As noted above, because the Court will not enter judgment on Count One on the parties' consent, the Court addresses only Count Three here. In any event, the Defendant's arguments as to why Counts One and Three were constructively amended are the same. *See* Maxwell Br. at 16.

Indictment. The Defendant has nevertheless failed to show that she was substantially prejudiced by this evidence. *See Salmonese*, 352 F.3d at 621.

When a defendant has notice of the government's theory of the case before trial, she is not prejudiced by a variance. *See Kaplan*, 490 F.3d at 129–30. Pretrial disclosures may put a defendant on notice of evidence not specifically included in the indictment. *See Khalupsky*, 5 F.4th at 294. And a defendant's failure to object to allegedly surprising evidence or to request a continuance when evidence is introduced suggests that a defendant was not unfairly surprised or prejudiced. *See Kaplan*, 490 F.3d at 130.

Here, the Defendant had sufficient notice of the Government's theory of the case, and of Jane's testimony regarding New Mexico specifically, to avoid substantial prejudice. The Indictment charged a scheme to sexually abuse underage girls in New York. In service of this scheme, the Indictment alleged that Epstein and the Defendant groomed the victims for abuse at various properties and in various states, including Epstein's ranch in New Mexico. Jane had long recalled traveling to New Mexico, *see* Maxwell Br. at 16–17, although she did not report that Epstein had engaged in sexual activity with her at this property until closer to trial. But the Defendant had adequate notice of this particular testimony such that there was no danger of substantial prejudice. The Defendant received the Government's notes of Jane's interview where she recalled abuse in New Mexico on November 6, 2021, more than three weeks before trial. At that point, the parties were still litigating the very instructions for Kate and Annie that the Defendant claims she would have sought for Jane had she received adequate notice. *See, e.g.*, Nov. 23, 2021 Tr. at 28–38; *see also Lebedev*, 932 F.3d at 54 (concluding in part that the defendant was not "unfairly and substantially" prejudiced because "[t]he government disclosed the evidence and exhibits . . . four weeks prior to trial"). Moreover, that the Defendant did not

request a continuance or object to Jane's testimony until the charging conference suggests that she was not unfairly surprised. *See Kaplan*, 490 F.3d at 130. Accordingly, there is no indication in the record that the evidence adduced at trial unfairly surprised or prejudiced the Defendant.

Finally, the Defendant argues that Jane's testimony resulted in the "ultimate prejudice" because it led to the jury improperly convicting her on three of the four Mann Act counts. Maxwell Br. at 18. For the same reasons noted above, the Defendant was not prejudiced by the Court's response to the jury note because the ambiguous note did not reveal that the jury improperly convicted the Defendant of the Mann Act counts. Moreover, as explained above, the Defendant's request for a limiting instruction in the jury charge and a supplemental instruction following the ambiguous jury note was unnecessary. While Kate's and Annie's limiting instructions were appropriate at the time of their testimony when the jury had not yet been instructed on the meaning of "illegal sexual activity," it was unnecessary and potentially confusing to repeat them again in the context of the charge. At that point, the charge made clear to the jury that only a violation of New York law could form the predicate for the Mann Act counts—not New Mexico law. In sum, the Defendant has not shown that she suffered "substantial prejudice" meriting the vacatur of the Mann Act counts.

IV. The Court denies the Defendant's pre-indictment delay claim.

Last, the Defendant argues, as she did in two pretrial motions, that all of her convictions should be vacated because of the Government's allegedly excessive and prejudicial delay in prosecuting the Defendant. As this Court previously explained, because "the statute of limitations is 'the primary guarantee against bringing overly stale criminal charges,'" the Defendant must satisfy a stringent two-part test. *Maxwell*, 534 F. Supp. 3d at 316 (quoting *United States v. Cornielle*, 171 F.3d 748, 751 (2d Cir. 1999)). The Defendant "must show both

that the Government intentionally delayed bringing charges for an improper purpose and that the delay seriously damaged [her] ability [to] defend against the charges." *Id.* (citing *Cornielle*, 171 F.3d at 751).

In its prior rulings, this Court concluded that the Defendant satisfied neither requirement: there was "no evidence that the Government's delay in bringing these charges was designed to thwart Maxwell's ability to prepare a defense," and she "failed to establish actual prejudice from the Government's delay." *Id.* at 316–17. But, the Court explained, the Defendant could renew her motion if the factual record at trial showed prejudice that the pretrial record did not. The Defendant now renews her motion, identifying a bevy of documentary records and witnesses that, she says, were unavailable because of the Government's delay. The Court, for the reasons stated below, disagrees and denies the motion.

As an initial matter, even if the Court accepts all of the Defendant's contentions in her briefing, her pre-indictment delay claim must fail because the Defendant has made no claim that the Government intentionally delayed the Indictment to gain a tactical advantage over the Defendant. *United States v. Alameh*, 341 F.3d 167, 176 (2d Cir. 2003). The Court has twice concluded that "nothing in the record indicates that the Government's delay in bringing these charges was designed to thwart Maxwell's ability to prepare a defense." *Maxwell*, 2021 WL 3591801, at *5. It is the Defendant's burden to prove the Government's improper motive, but in her briefing she does not attempt to present evidence of intentional delay for tactical advantage. The Court therefore does not alter its prior conclusion. If anything, as the Government notes, testimony at trial supplied legitimate explanations for the Government's failure to indict the Defendant at an earlier time. For example, several witnesses testified that their cooperation with

the Government's investigation was relatively recent, *e.g.*, Trial Tr. at 354 (Jane), 1245 (Kate), 1680–84 (Carolyn), suggesting that an earlier prosecution was not feasible.

Even on the first step of the inquiry, the Defendant has failed to demonstrate that she suffered actual and substantial prejudice from delay. *United States v. Pierre-Louis*, No. 16 CR 541 (CM), 2018 WL 4043140, at *5 (S.D.N.Y. Aug. 9, 2018). Substantial prejudice is a stringent standard. The Defendant's "proof of prejudice must be definite and not speculative." *United States v. Birney*, 686 F.2d 102, 105–06 (2d Cir. 1982). Actual prejudice "is commonly demonstrated by the loss of documentary evidence or the unavailability of a key witness." *Cornielle*, 171 F.3d at 752. But "claims of mere loss of memory resulting from the passage of time have been held to be insufficient." *Pierre-Louis*, 2018 WL 4043140, at *4. And for any evidence lost because of delay, the Defendant "must 'demonstrate how (the loss of evidence) is prejudicial' to her." *Birney*, 686 F.2d at 106 (quoting *United States v. Mays*, 549 F.2d 670, 677 (9th Cir. 1977)).

The Defendant identifies two major sets of lost evidence that, she says, demonstrate actual prejudice to her defense at trial. First, she points to documentary evidence absent at trial: (1) flight records, including passenger manifests and records from Epstein's travel agent, that may have been more detailed than the flight logs entered at trial; (2) financial documents, including bank records and credit card records, which would have revealed more about the Defendant's receipt of funds from Epstein and could have been used to verify or disprove certain dates; (3) a complete set of the Defendant's phone records; and (4) Epstein's property records for both his New York and New Mexico residences. Second, the Defendant identifies four deceased witnesses: Albert Pinto and Roger Salhi, architects that built and renovated Epstein's residences in Florida, New York, and New Mexico; Sally Markham, a property manager for Epstein in the

2000s that could have testified the household manual was created by "the Countess," not the Defendant; and Lynn Fontanilla, a live-in housekeeper for Epstein in New York that could have testified about the Defendant's and Epstein's habits.

None of these identified pieces of alleged evidence satisfies the Defendant's burden of proving actual and substantial prejudice. The Court addresses first the documentary evidence. *First*, the Defendant does not attest, or even suggest, what the absent documents are likely to show. Though the Defendant would herself be best positioned to explain her own financial transactions (or the lack thereof), her brief does not suggest what the absent financial records would have shown. Similarly, the Defendant does not identify what would have been shown in the absent phone records. The same is true of the flight records that the Defendant argues were missing. At trial, the Government elicited testimony that flight manifests from before September 11, 2001, were far less detailed than modern manifests. *E.g.*, Trial Tr. at 2518–22. The Defendant can therefore only speculate that more accurate records *ever* existed. The location and appearance of Epstein's residences were also the source of significant testimony at trial. The Defendant does not explain what additional information would have been contained in official property records.

Second, even if more detail of the contents of these documents were presented, the Defendant fails to show why the evidence, if admitted at trial, would have benefitted her case. The Defendant's motion presumes that each piece of missing evidence would have favored her: an absence of payments by Epstein to the Defendant, an absence of phone calls from the Defendant to victims, an absence of the victims on detailed flight manifests. But this presumption is purely speculative. Each piece of evidence may very well have further substantiated the Government's case. Because the Defendant carries the burden of proof, she is

not entitled to the inference that all absent evidence would have been both favorable and material to her case. *United States v. Berry*, No. 20-CR-84 (AJN), 2021 WL 2665585, at *2 (S.D.N.Y. June 29, 2021).

Third, the Defendant must show that the prejudicial loss of evidence was *caused* by the pre-indictment delay. That is, the Defendant must show that the evidence was at one point available but that at trial "the lost testimony or information was not available through other means." *Pierre-Louis*, 2018 WL 4043140, at *4 (quoting *United States v. Sprouts*, 282 F.3d 1037, 1041 (8th Cir. 2002)). Here, the Defendant has made only a "bare allegation that [certain] records have been lost or destroyed," but without explaining when or why they were lost. *United States v. Dornau*, 356 F. Supp. 1091, 1094 (S.D.N.Y. 1973). Further, the Defendant does not explain whether any attempt was made to acquire these records either directly or by other means. It is unexplained, for example, why the Defendant believes that government property records that at one point existed are no longer available. Or why the Defendant could not have proven Epstein's residency by any alternative means. Similarly, the Defendant does not explain why the flight manifests that pilot Larry Visoski delivered to Epstein's office in New York have been lost. *See* Trial Tr. at 172. In short, the Defendant fails to show that the absence of documentary evidence was causally related to any decision by the Government to delay the Indictment.

For similar reasons, the Defendant fails to demonstrate prejudice by reference to the deceased potential witnesses. *First*, "[c]ourts have generally found that vague assertions that a deceased witness might have provided favorable testimony do not justify dismissing an indictment for delay." *Maxwell*, 534 F. Supp. 3d at 317; *see, e.g.*, *United States v. Lovasco*, 431 U.S. 783, 785–86, 788–90 (1977) (reversing dismissal for pre-indictment delay where a material defense witness had died); *United States v. Snyder*, 668 F.2d 686, 689 (2d Cir. 1982) (two

defense witnesses died three years or more prior to indictment); *United States v. King*, 560 F.2d 122, 130 (2d Cir. 1977) (defense witness died a year prior to the indictment). Here, the Defendant largely speculates about the contents of these deceased witnesses' absent testimony. She states, for example, that the two architect witnesses "could have established" the timeline for Epstein's residences and renovations at each but does not say what that timeline is. Maxwell Br. at 29. Similarly, the Defendant states that Epstein's live-in housekeeper *could* have testified that the Defendant spent only limited time with Epstein at his townhouse in New York but provides little basis or detail for that anticipated testimony. As with the documentary evidence above, such speculation, with the apparent presumption that absent evidence would necessarily favor the Defendant, is insufficient to establish actual prejudice. *See United States v. Long*, 697 F. Supp. 651, 657 (S.D.N.Y. 1988) (no prejudice where there is "no way of knowing what [an absent witness's] testimony would have been").

Second, the Defendant fails to establish that the content of these witnesses' testimony could not have been introduced into trial by other means. At trial, witnesses testified that Epstein employed a significant number of individuals to work at his residences, renovate those residences, or fly his private airplane. Some, like Juan Alessi, Larry Visoski, and David Rodgers, testified at trial. Still others were listed on the parties' witness lists. The Defendant does not explain why these witnesses' testimony, or the testimony of those listed witnesses who were not called, could not have supplied the same information that she seeks from individuals who were unavailable to testify. Her assertion that only individuals that have since died could provide adequate testimony is entirely unsubstantiated. Similarly, the Defendant does not explain why evidence of construction or renovations at Epstein's residences could not be proven by other witness testimony or by documentary evidence.

And *third*, the Defendant does not demonstrate that such witnesses, even if available to testify as the Defendant speculates they may have, would have meaningfully altered her defense such that she was substantially prejudiced by their absence. *Pierre-Louis*, 2018 WL 4043140, at *4. No witness listed could testify directly to whether or not the Defendant and Epstein sexually abused the victims. Rather, each would at best provide additional corroboration of the Defendant's arguments at trial to impeach the witnesses' credibility as to particular aspects of their testimony. This falls short of substantial prejudice. *United States v. Lawson*, 683 F.2d 688, 694 (2d Cir. 1982) (no prejudice where absent witness's testimony was "at best corroborative on minor points").

Specifically, the housekeeper's anticipated testimony that the Defendant rarely spent the night at Epstein's townhouse and that she and Epstein were not "always" together contradicts little, if any, of the Government's case at trial. Maxwell Br. at 30. The Defendant does not claim that the housekeeper was always aware of the Defendant's or Epstein's actions, and so is unlikely to have rebutted testimony that at other times and other locations, the Defendant and Epstein committed crimes. *See Pierre-Louis*, 2018 WL 4043140, at *4 (absence of a witness not prejudicial because unless the witness was with the defendant "every moment," it would have been "impossible for him to testify that defendant did not commit the charged crimes").

The speculated testimony of Sally Markham—that an individual known only as "the Countess," not the Defendant, wrote the household manual—is similarly unhelpful to the Defendant's claim. In considering whether testimony would have been beneficial to the Defendant, the Court must consider whether the witness would have been credible and withstood cross-examination. *See Maxwell*, 534 F. Supp. 3d at 317 (citing *United States v. Spears*, 159 F.3d 1081, 1085 (7th Cir. 1999)). The Defendant provides no basis to conclude that the jury

would have credited this vague testimony about an unnamed individual over the evidence presented at trial, including the testimony of Juan Alessi and an email chain between the Defendant and Markham that indicates that the Defendant worked closely with Markham to create the manual and provided specific content, such as the checklists, to be included. *See* GX-424.

Finally, the Defendant refers to her prior briefing in which she alleged substantial prejudice because of the absence of other deceased potential witnesses, including Epstein, Epstein's mother, Jane's talent agent Michael Casey, and Palm Beach Police Department Detective Joseph Recarey. *See* Dkt. No. 138 at 8–11. The Court has previously considered and rejected the Defendant's claim of prejudice based on these absent witnesses. *Maxwell*, 534 F. Supp. 3d at 317. The Defendant points to no development at trial that she believes should alter the Court's conclusion, nor is the Court aware of any such reason for reconsideration.

The Defendant's reply brief devotes just a single sentence to her claim of pre-indictment delay and does not address any of the defects identified by the Government. She has not satisfied either element required for a claim of pre-indictment delay, as she has not demonstrated that the Government improperly delayed prosecution nor that she suffered actual and substantial prejudice from such delay. The Court therefore denies her motion to vacate her convictions on this basis.

V. Conclusion

For the foregoing reasons, the Court denies the Defendant's Rule 29 motion because the jury's guilty verdicts were supported by the witness testimony and documentary evidence presented at trial. The Court denies the Defendant's motion based on constructive amendment or variance because the jury instructions, the Government's evidence at trial, and summation all

captured the core of criminality charged in the Indictment, and the Defendant was not prejudiced by any alleged variance. Further, because the Government neither intentionally delayed its prosecution nor was the Defendant prejudiced by any delay, the Court also denies the Defendant's motion based on pre-indictment delay. Finally, the Court grants the Defendant's motion as to multiplicity. The Government concedes that Count One is multiplicitous with Count Three, and the Court further concludes that Count Five is multiplicitous with Count Three. Count Five, like Counts One and Three, charged the Defendant's participation in the same decade-long unlawful agreement with the Defendant's continuous coconspirator, Jeffrey Epstein, to groom and sexually abuse underage girls.

Accordingly, the Court will enter judgment of conviction on Counts Three, Four, and Six. The Defendant's sentencing date remains scheduled for June 28, 2022. The Court previously set a schedule for sentencing submissions that remains in effect. Dkt. No. 656.

This resolves Dkt. No. 599.

SO ORDERED.

Dated: April 29, 2022
New York, New York

ALISON J. NATHAN
United States Circuit Judge
Sitting by Designation

your Honor. If the Court remembers the record evidence, there was some evidence of money moving, but it was to buy a helicopter that was not for her. We heard testimony from Larry Visoski that he often kept assets of cars in his name for Mr. Epstein. That doesn't make Larry Visoski a participant in the criminal endeavors. I think it's a stretch for the government to point to that as some sort of evidence of continued involvement or continued profit after the end date of the conspiracy. I just wanted to make that one point, your Honor.

THE COURT: Anything on that, Ms. Moe?

MS. MOE: Your Honor, with respect to the financial transaction, we offered that along with other evidence to refute the claim that the defendant had moved on, which, as we noted, is an expression that has no legal meaning. And so contrary to the assertion that the defendant had moved on and was no longer associated with Epstein, the trial evidence established that she remained a close associate for many years, and that is the purpose for which we offered that evidence.

THE COURT: Understood. Thank you.

I do want to address -- do you have other -- I want to ask about 3(b)(1).

MR. EVERDELL: Yes, your Honor.

THE COURT: I think it's for the government. So as I see the question here, the guidelines require me to find that

the defendant was an organizer or leader, and that the criminal activity either involved five or more participants or was otherwise extensive. The guidelines defines a participant as a person who is criminally responsible for the commission of the offense but need not have been convicted.

So I think my question for the government is, you're asking the Court to look to as a criminally responsible -- a person who is criminally responsible for the commission of the offense over whom Ms. Maxwell exercised supervisory or leadership role.

MS. MOE: Yes, your Honor. As we noted in our briefing, our view is that the trial evidence establishes that the defendant had a supervisory role over Sarah Kellen. Here, we're not required to establish that there were five or more participants; that is, people who were criminally responsible for the charged conduct, but rather that it was extensive, and that the defendant supervised at least one other person. That's the text of the commentary, although as we noted, the Second Circuit in applying this factor hasn't really engaged with that from what we can tell, but on the factual question of the trial record and whether it establishes the defendant supervised another participant, it absolutely does.

THE COURT: And the government is pointing to Sarah Kellen for that conclusion, which you agree, there has to be one criminally responsible participant who we can point to.

MS. MOE: Yes, your Honor. Looking at the text of the application note -- again, it's unclear from some case law on this, but under the text of the application note, if we're looking to one criminal participant, we would direct the Court's attention to Sarah Kellen.

THE COURT: And the leadership over her as opposed to Epstein being the leader over her or them being -- Kellen sort of replacing the defendant's role, could you focus my mind on what specifically you point to to show supervision and leadership by Ms. Maxwell over Ms. Kellen.

MS. MOE: Yes, your Honor.

The trial evidence was that Sarah Kellen became an assistant, and that she worked for both Maxwell and Epstein. Essentially, when you look at defendant's role in earlier years, she was doing things like calling victims and arranging for massage appointments. As the scheme shifted, they brought in another member of the scheme beneath them in the structure and hierarchy of the scheme. The defendant remained a close associate. She was often traveling with them, often traveling with Kellen together. So as Kellen took on some of the tasks that were then delegated to a lower member of the conspiracy, the defendant was higher up in the leadership structure.

There wasn't direct evidence about, you know, the defendant directly instructing Kellen to make a certain phone call, and we acknowledge that, but we think the inference is

very clear that when you have two knowing conspirators, Maxwell and Epstein, and they bring in a much younger woman as an assistant and have her take on some of those roles while the defendant remains a lady of the house in the hierarchy of the structure to whom a person like Sarah Kellen would report, that she has leadership of that person; that she is directing that person; that she has control. Even the simple task of directing her to take on some of those responsibilities, which, of course, to transition parts of that role she would have to do would qualify for leadership.

THE COURT: And there's clear time overlap in the role?

MS. MOE: Yes, your Honor. As we noted in our brief, the flight records reflect that the defendant continued flying on Epstein's private jet at the same time that Sarah Kellen was also traveling, and that there was an overlap in the years of the time period where they were all close associates of Jeffrey Epstein and the scheme was ongoing.

THE COURT: Go ahead.

MR. EVERDELL: Yes. Your Honor, before I address the Sarah Kellen point, I would just make the point that the government seems to argue that there is some case law that is not clear that you don't have to necessarily show that they're supervising another criminal participant. That's just wrong. All those cases that the government cites, the issue has

already been decided or conceded by the defendant. The court found they were leader or the defendant didn't contest that, so the issue was only about whether the criminal activity was otherwise extensive. So that is not -- that is clear under Second Circuit law, that they have to supervise another criminal participant, and it's clear from the guidelines too, as the government concedes.

Let's just talk a bit about Sarah Kellen. I don't think it is a fair inference to say from the trial record that Ms. Maxwell was supervising Sarah Kellen. In fact, the inference is exactly the opposite. And you can rely on Carolyn's testimony alone for that; that she herself testified that there was a clear break between when she says that Ms. Maxwell was calling her to schedule for massage appointments versus when Sarah Kellen took over and scheduled for massage appointments. They did not overlap. There was a break. That is corroborated by Juan Alessi no less, who said the same thing. He said Sarah Kellen came at the end of my employment, to his recollection, and as soon as she got there, she took over the responsibility of scheduling the massage appointments. Again, a clear break.

What the record shows is that there was a replacement. Sarah Kellen replaced Ms. Maxwell, at least according to the trial testimony; not that there was some sort of ongoing supervision by Ms. Maxwell over Sarah Kellen. It couldn't be

clearer, your Honor, this notion that she was somehow -- Sarah Kellen was an assistant of both Epstein and Maxwell is again belied by the trial record.

If you look at Larry Visoski's testimony, which I believe is what the government is relying on there, he originally testified, oh, I think she was an assistant for both. But on cross-examination, he conceded that he really didn't know what her role was, and his best recollection was that she was an assistant for Epstein.

And again, just look again at Cimberly Espinosa's testimony who was the actual assistant for Ms. Maxwell, and she says unequivocally, "I was her assistant. Kellen was Epstein's assistant." So there is no fair inference that Ms. Maxwell was supervising Sarah Kellen. The inference is exactly the opposite, and it can't provide a basis for that leadership enhancement.

THE COURT: All right. Anything further on the enhancements for the government's objection?

MS. MOE: Your Honor, just very briefly with respect to the leadership question, I just want to direct the Court's attention, we noted this on page 27 of our brief, but the testimony at trial was that Carolyn recalled that even after Sarah Kellen took over calling to schedule massages, Maxwell was still present inside the Palm Beach residence when Carolyn arrived for massage appointments.

With respect to the testimony of the pilots who testified, whether they -- whether an employee was paid by Maxwell or Epstein or technically reported to one, according to their job descriptions, is not the question here. The fact that pilots based on their observation thought at one point that Kellen reported to Maxwell proves the point that she had supervisory authority over Kellen and exercised it, whether in the chain of command or on their formal employment paperwork, she was just an employee for one or the other, it makes no difference. There was an overlap here. They had different roles in the conspiracy, and the defendant had a supervisory roll over Kellen.

MR. EVERDELL: Your Honor, just to that point. Being present does not mean that you're a supervisor. That's way too far a stretch. So the fact that there was testimony she was present still in the house while Kellen was making the calls and scheduling the massage appointments means nothing in terms of supervisory authority.

THE COURT: Thank you. Other enhancements before the government's objection is to be addressed.

MS. MOE: No, your Honor. Thank you.

MR. EVERDELL: Your Honor, I assume you don't want to hear or have any questions about the five-point enhancement for repeated and dangerous sex offenders.

THE COURT: I believe I have what I need, but as I

said, I don't need repetition of the arguments in the papers, but if there is any additional points you want to make, you're welcome to.

MR. EVERDELL: Your Honor, just one point. I will be brief. The government in its papers makes the argument that the background commentary can't be relied upon as authoritative because it is not explanatory or interpretative of what the guideline is. I think that is incorrect.

It is not simply a recitation of what Congress was considering. That first sentence or two which talks about how this guideline can only be applied to offenders who represent a continuing danger to the community is interpretative of what the guideline is. The title of the guideline is repeat and dangerous sex offenders. That explanatory commentary explains how to interpret what dangerous means. It means someone who is continuously dangerous to the community, not someone who's never been accused of a crime in the 18 plus years since the crime in this case, and has never been accused of re-offending. So I don't agree with that point. This is authoritative guidance from the Sentencing Commission, and the Court should consider it as such. Thank you.

THE COURT: Ms. Moe, do you want to respond?

MS. MOE: No, your Honor. We rest on our briefing on this issue, but thank you.

THE COURT: Thank you. Anything else?

MR. EVERDELL: No, your Honor. We rest on the papers.

THE COURT: I thank you counsel for your thorough briefing. I am prepared to rule.

The defendant raises four objections to the calculation of the guideline range contained in the PSR. As we discussed, first, she argues I must apply the 2003 guidelines rather than the 2004 guidelines. Beyond that, she objects to the application of three sentencing enhancements. The government's sole objection to the calculation of the guidelines is that Virginia Roberts and Melissa should be considered victims. So I will address the defense objections and then the government's objections.

I begin by determining which of the Guideline manuals apply. Generally, a sentencing court applies the version of the guidelines in effect on the date that the defendant is sentenced. 18 U.S.C. Section 3553(a)(4)(A)(ii). But the *Ex Post Facto* Clause is violated if a defendant is sentenced under Guidelines issued after she's committed her offense and the new Guidelines provide a higher sentencing range than the version in place at the time of the offense. That's the principle of a case called *Peugh v. United States*, 569 U.S. 530 (2013). In that case, a sentencing court must -- in the case of a higher range at the time of sentencing than in place at the time of the offense, in that case the sentencing court must apply the guidelines in effect when the offense was committed.

United States v. Guerrero, 910 F.3d 72 (2d Cir. 2018). Here, the parties and the probation department agree that applying the current Guidelines would result in a significantly longer sentence than the application of the guidelines in place when the defendant committed her offense, whether that is the 2003 or 2004 guidelines.

The controlling date for ex post facto purposes is the last date of the offense of conviction. The 2004 Guidelines became effective on November 1, 2004. So I must determine if the last date of the offense was after November 1, 2004.

Because it seeks an increased punishment, the government bears the burden of persuasion. The government charged a decade-long conspiracy of sexual abuse that the indictment alleged ended in 2004. It's proof at trial that the conspiracy continued in 2004 related to Carolyn. And the charged conspiracy had to end no later than very early 2005 because that's when Carolyn turned 18 and can no longer be deemed a victim of the federal sex-trafficking offense charged which proscribes conduct with respect to individuals under the age of 18. So the government purports to carry its burden on this issue based on portions of Carolyn's testimony and some message pads regarding what occurred in 2004 and 2005.

Let me state clearly, I found, as I said repeatedly in my factual conclusions on the PSR objections, I found Carolyn to be a credible witness, as did the jury. The question before

me is specific and highly technical. Does the preponderance of the evidence demonstrate that the offense to sex traffic Carolyn continued after November 1, 2004 before she turned 18 in early 2005? In other words, does a preponderance of the evidence establish that acts in furtherance of the conspiracy to traffic Carolyn occurred in either November or December 2004? Although Carolyn testified regarding contact earlier in 2004 and after she turned 18 in 2005, there is no evidence, either in the form of testimony or documentary evidence, including the message pads, that demonstrates by a preponderance of the evidence conspiratorial conduct during those last two months of 2004 before Carolyn turned 18 in 2005.

In those portions of Carolyn's testimony cited by the government, Carolyn stated that she was 18 years old the last time she went to Epstein's house, which would have been in 2005. As Carolyn further explained, she returned more than four or five times to Epstein after she gave birth to her son in March of 2004, and that testimony is supported by message pads entered at trial that show Carolyn called Epstein several times in the summer of 2004: Once in late April or early May again on July 6, and again on July 30. When she did return to Epstein, Carolyn testified Epstein asked if she had younger friends, and she explained during her testimony that at 18 years old, she was too old for him. Carolyn wasn't asked, and her testimony doesn't specifically address, whether she went to

Epstein's house after November 2004 before she turned 18. Message pads entered at trial show contact only before November 1.

The government's reliance on two additional pads that were not entered into evidence doesn't change my analysis. The first message GX-4B, it's undated, and the context does not give sufficient confidence that it came after November 1. The other message pad is dated March 1, 2005, which falls outside the scope of the conspiracy alleged in the indictment, and after Carolyn turned 18. Because I cannot on this record find by a preponderance of the evidence that the offense continued during that two-month window after November 1, 2004, and before early 2005, I must apply the 2003 guidelines. Because I find that the date of the offense was not after November 1, 2004, I do not address the defendant's alternative argument that a jury must decide if the 2004 Guidelines apply.

Within the Guidelines themselves, the defendant objects to the application of three enhancements in the PSR. She takes issue first with 4B1.5(b). The enhancement statements that the offense level is increased by five if: One, the offense of conviction is a covered sex crime; two, 4B1.5(a) for prior convictions does not apply; three, the defendant engaged in a pattern of activity involving prohibited sexual conduct. All three requirements are met: The defendant was convicted of a covered sex crime; she was not previously

convicted of a sex crime; and I readily find she engaged in a pattern of activity involving prohibited sexual conduct. Specifically, the Guidelines define a pattern of such activity as the defendant engaging in prohibited sexual conduct with a minor on at least two separate occasions.

The defendant doesn't contest any of these enumerated requirements. Rather, she argues that I may apply this enhancement only if I further find that the defendant poses a continuing danger to the public. Here, the defense draws this requirement from background commentary by the Sentencing Commission and a few statements made by members of the Congress who of emphasized high recidivism rates in enhancing sentences for sex offenders.

I overrule this objection because it lacks any basis in the Guidelines. As with all interpretive matters, I start with the text of the Guidelines. If the text is unambiguous, I apply it as written and do not resort to background commentary. *United States v. Sash*, 396 F.3d 515 (2d Cir. 2005). Commentary cited by the defendant simply provides policy rationale for a particular enhancement. It does not purport to interpret the Guidelines and so is not binding. Nor can scattered legislative history override the clear text of the Guidelines, especially when that history amounts to only a few short floor statements which are "among the least illuminating forms of legislative history." *NLRB v. SW General, Inc.* 137, S. Ct. 929

(2017).

Moreover, the defendant fails to prove that 4B1.5(b) was enacted only to prevent future danger to the public. Background commentary explains that aside from recidivism, Congress "directed the Commission to ensure lengthy incarceration for offenders who engage in a pattern of activity involving the sexual abuse or exploitation of minors." That's 4B1.5 comment background.

Further, the legislative history quoted by the defendant says that Congress increased Guidelines sentences for sexual abuse of minors "to address the egregiousness of these crimes." And, in fact, the defendant's brief cites that I believe at 12. Thus, I find no basis for a requirement that I must first find the defendant to be a public danger before applying the enhancement. The defendant's remaining argument that applying this enhancement would result in an excessive sentence is appropriately considered as part of the defendant's request for a downward variance.

Next the defendant objects to the application 3B1.1(a), which we've discussed, which adds four offense levels for her leadership role in a criminal activity. "a court must make two specific factual findings before it can properly enhance a defendant's offense level under 3B1.1(a): (i) that the defendant was an organizer or leader; and (ii) that the criminal activity involved five or more participants or was

otherwise extensive." Quoting from *United States v. Patasnik*, 89 F.3d 63 (2d Cir. 1996). The Guidelines define a participant as a person who is criminally responsible for the commission of the offense, but need not have been convicted. That's Section 3B1.1, comment note 1. And in assessing whether criminal activity is extensive, all persons involved during the course of the entire offense are to be considered, including persons who provided services unknowingly. Comment note 3.

The defendant argues that she did not lead another criminal participant. I overrule this objection because I do conclude that the government has proved by a preponderance that the defendant supervised Sarah Kellen, who was a knowing participant in the criminal conspiracy.

Larry Visoski and David Rodgers both testified for that at least part of the time period at issue Sarah Kellen acted as a personal assistant to the defendant. I credit that testimony which is corroborated by further testimony that the defendant was Epstein's number two and the lady of the house. At some point, Kellen took over some of the defendants duties. But even after that time, the defendant retained her leadership position, as evidenced by Carolyn's testimony, by flight records in evidence, and the household manual in evidence. I do conclude by a preponderance of the evidence that the defendant led a criminally responsible participant.

I further find that the defendant's criminal activity

appellate rights. You have the right to appeal your conviction and your sentence. The notice of appeal must be filed within 14 days of the judgment of conviction.

Other matters to take up counsel?

MS. MOE: Not from the government, your Honor. Thank you.

MS. STERNHEIM: No. Thank you.

THE COURT: Let me note, I will issue a housekeeping order posttrial to ensure complete docketing of all -- any outstanding materials and complete records, so please look for that. I will issue the judgment -- I should just say, Ms. Moe, the Court intends to indicate the end of the conspiracy date as the last date in the record, which I believe is in July of 2004, of acts in furtherance of the criminal conduct, and obviously the government took a different position with respect to that. But in light of the Court's finding, any objection to that?

MS. MOE: No, your Honor. We will review the exhibits. If that date is different from the sentencing transcript, we will submit a letter to the Court, but otherwise no objection, your Honor.

MS. STERNHEIM: No objection.

THE COURT: All right.

MS. MOE: With apologies, your Honor, with respect to the judgment, in light of the Court's decision to impose an

above-guidelines sentence and an above-guidelines fine, we would respectfully request that the Court address both the sentence and the fine in the Court's statement of reasons.

THE COURT: Yeah, I actually -- guideline range, let me just check. I meant to talk about that. I'm not sure it is an above-guidelines, but it may be since, as we know, I read over five to mean five. So maybe I got that wrong. Let me just check.

Oh, you are right. It is 20 to 200,000 for each count. Do I have that right?

MS. MOE: Yes, your Honor. Thank you.

THE COURT: All right. Thank you.

I want to thank counsel. As I indicated, I do thank the victims who made statements in writing or orally and their counsel who supported them in that endeavor. I thank counsel for Ms. Maxwell and counsel for the government.

We are adjourned.

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United States District Court

Southern District of New York

Caption:
United States of America,
v.
Ghislaine Maxwell

Docket No. S2 20 Cr. 330
Alison J. Nathan (SBD)
(District Court Judge)

Notice is hereby given that Ghislaine Maxwell appeals to the United States Court of Appeals for the Second Circuit from the judgment [✓], other [ ] (specify)
entered in this action on 6/29/2022 (date).

This appeal concerns: Conviction only [ ] Sentence only [ ] Conviction & Sentence [✓] Other [ ]

Defendant found guilty by plea [ ] trial [✓] N/A [ ]

Offense occurred after November 1, 1987? Yes [✓] No [ ] N/A [ ]

Date of sentence: 6/28/2022 N/A [ ]

Bail/Jail Disposition: Committed [✓] Not committed [ ] N/A [ ]

Appellant is represented by counsel? Yes [✓*] No [✓**] If yes, provide the following information:

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22-1426-cr

United States Court of Appeals

for the

Second Circuit

UNITED STATES OF AMERICA,

Appellee,

– v. –

GHISLAINE MAXWELL, AKA Sealed Defendant 1,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF AND SPECIAL APPENDIX FOR DEFENDANT-APPELLANT

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STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

This is an appeal from a final judgment of the District Court (Alison Julie Nathan and a jury), rendered on June 28, 2022, convicting Defendant-Appellant Ghislaine Maxwell ("Defendant") of Conspiracy to Transport Minors with Intent to Engage in Criminal Sexual Activity in violation of Title 18 U.S.C. §371; Transportation of a Minor with Intent to Engage in Criminal Sexual Activity in violation of Title 18 U.S.C. §2423(a); and Sex Trafficking of a Minor in violation of Title 18 U.S.C. §1591(a), (b) (2), and §2. The trial judge imposed concurrent terms of imprisonment of 60 months, 120 months, and 240 months, respectively, to be followed by concurrent terms of supervised release of three years, three years, and five years, respectively. The court also imposed a fine of $250,000 on each count for a total of $750,000.

Timely Notice of Appeal was filed on July 7, 2022 (A420),[1] pursuant to 28 U.S.C. §1291 and Fed. R. App. P. 4(b).

[1] Numerical references preceded by "A" are to the Appendix and by "Tr" are to the trial.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the District Court misapplied *U.S. v. Annabi*, 771 F.2d 670 (2d Cir. 1985) (per curiam) to impose limits on a non-prosecution agreement contrary to the agreement's plain meaning and endorsed its untenable interpretation without discovery or a hearing to determine the intent of the parties.

2. Whether the District Court erred in extending the statute of limitations for violations of §2423(a) and §1591 under §3283 and whether the 2003 amendment to §3283 or §3299 applies retroactively to offenses committed before enactment of these statutes.

3. Whether the court should have granted a new trial after it learned that a juror made materially false statements in jury selection that concealed that he had experienced the "exact same thing" as the victims, namely, childhood sexual abuse, because truthful answers given at the time of *voir dire* would have provided a valid basis for a cause challenge.

4. Whether the District Court erred in refusing to correct the jury's misunderstanding (evident from a Jury Note) under Count 4 that sexual activity in New Mexico violated New York Penal Law §130.55), which caused the jury to convict Defendant solely based on evidence of sexual activity outside of New York, thereby constituting a constructive amendment and/or a variance from the Indictment.

5. Whether the District Court's sentence was based on a miscalculation of the guideline range that resulted in the imposition of an upward variance in the absence of providing the required explanation, and whether the District Court erred in applying the aggravating role adjustment when there was no evidence to support a finding that Defendant supervised another criminal participant.

STATEMENT OF THE CASE

By a second superseding indictment, Indictment No.1:20-cr-00330 (AJN) (A114),[2] filed in the United States District Court for the Southern District of New York on March 29, 2021, Defendant was charged with the following counts: **(1)** Conspiracy to Entice Minors to Travel to Engage in Illegal Sex Acts (18 U.S.C. §2422 and §371); **(2)** Enticement of a Minor to Travel to Engage in Illegal Sex Acts (8 U.S.C. §2422 and §2); **(3)** Conspiracy to Transport Minors with Intent to Engage in Criminal Sexual Activity (18 U.S.C. 2423(a) and §371); **(4)** Transportation of a Minor with Intent to Engage in Criminal Sexual Activity (18 U.S.C. §2423(a)); **(5)** Sex Trafficking Conspiracy 18 U.S.C. §1591(a) and (b) and § 371; **(6)** Sex Trafficking of a Minor in violation of Title 18 , United States Code , §§1591(a), (b)(2), and 2); and two counts **(7)** and **(8)** Perjury (18 USC §1623).[3]

Defendant proceeded to trial on Counts One through Six. Defendant was acquitted of Count Two and convicted on the remaining counts.

Prior to sentencing, Defendant moved for a new trial pursuant to Fed. R. Crim. P. 33 after a juror revealed that he had made materially false statements in *voir dire* by which he concealed that he was a child sexual assault victim. The

[2] The original indictment against Ms. Maxwell, was filed on June 29, 2020, and the first superseding indictment, was filed on July 8, 2020.
[3] The perjury counts were severed prior to trial and dismissed.

court conducted a hearing on March 8, 2022 (A264), after which it denied defendant's motion. A318.

On June 28, 2022, the court dismissed Counts One and Five on multiplicity grounds; dismissed the severed perjury counts at the request of the Government; and sentenced Defendant on Counts Three, Four, and Six as described above. Defendant is currently serving the sentence imposed by the District Court.

On appeal, Defendant argues, as she did below, that (1) the convictions were obtained in violation of a nonprosecution agreement ("NPA"); (2) all counts are time-barred; (3) she was deprived of her constitutional right to be tried by a fair and impartial jury when a juror concealed his traumatic experience as a victim of child sexual abuse during *voir dire* by providing false answers to the jury questionnaire on every question designed to ferret out this information; (4) the court's refusal to correct the jury's misunderstanding of an element of the transportation offense resulted in a constructive amendment of the indictment or a prejudicial variance; and (5) her sentence was predicated upon a miscalculation of the guideline range and the misapplication of an aggravating role adjustment.

A. The Trial

The evidence at trial was based on the testimony of four women – Jane, Carolyn, Annie Farmer, and Kate.

Jane testified that she met Epstein and Maxwell in 1994 when she was 14 and that, shortly thereafter, Epstein began sexually abusing her. Jane testified that the sexual abuse occurred in Florida, New York, and New Mexico and that Maxwell was in the room "more than twice." Tr. 308-311; 340. But in interviews with the Government, prior to trial, Jane stated that she had no memory of Maxwell being present when she and Epstein engaged in sexual contact (Tr. 477) and that she was not sure if Maxwell had *ever* touched her. Tr. 475-6, 479-80.

Carolyn testified that she gave Epstein massages that involved sexual contact in exchange for money in Florida between 2001 and 2004. Carolyn testified that in 2001 when she was 14, Virginia Giuffre, then 18, introduced her to Epstein. Tr. 1574-5. Maxwell would sometimes call to set up appointments and pay Carolyn. Maxwell saw her naked in the massage room a few times and once touched her breasts and buttocks. Carolyn spoke to the FBI and the AUSA-SDFL in 2007 and never mentioned Maxwell. Tr. 1604-5, 1620 1679. In 2008, Carolyn sued Epstein and Kellen for the exact same conduct she ascribed to Maxwell at trial, but never mentioned Maxwell in her detailed complaint. Tr. 1571, 1617.

Kate testified that she met Maxwell in 1994 when she was 17. Tr. 1172-73, 1236, 1253-4. Maxwell invited Kate to visit her at her home on Kinnerton Street in Belgravia. Tr. 1176, 1235, 1253-54, but land records show that Maxwell did not purchase Kinnerton Street until March 20,1997, when Kate was 20. T: 2729 -30.

Maxwell introduced Kate to Epstein. On two occasions, Maxwell called Kate and asked her to give Epstein a massage. T: 1183. In the massage room, Epstein took off his robe and Maxwell handed Kate massage oil and left. T: 1185. Epstein and Kate engaged in sexual activity during the massage. T: 1186.

Annie Farmer testified that in 1996, when she was 16, her sister introduced her to Epstein in New York and that, while there, Epstein held her hand and rubbed her leg in a movie theater. She also testified that a few months later she visited Epstein in New Mexico where she met Maxwell. There, she claimed that Maxwell gave her a massage in which Maxwell massaged her pectoral muscles. Tr. 2085

The jury was instructed that physical contact with Annie Farmer in New Mexico and Kate anywhere was not "illegal sexual activity," and that Kate was not a victim of any charges in the indictment. Tr. 1169, 2048-49.

SUMMARY OF THE ARGUMENT

1. The NPA immunized Maxwell from prosecution for all counts. Maxwell has standing to enforce the NPA as a third-party beneficiary. The "potential co-conspirators" provision binds the USAO-SDNY by its express terms. Hence, the canon of construction enunciated in United *States v. Annabi*, 771 F.2d 670 (2d Cir. 1985), that "[a] plea agreement binds only the office of the United States Attorney for the district in which the plea is entered unless it affirmatively appears that the agreement contemplates a broader restriction." is inapplicable here. *Id.* at 672. But even if the immunity provision was ambiguous, which it is not, *Annabi* should not apply here because (1) the NPA originated in a district outside this circuit with different rules that should control; (2) *Annabi* applies only if the new charges are sufficiently distinct and Count Six is not; (3) *Annabi* applies only where there is no affirmative indication that the agreement was intended to bind other districts and there were affirmative indications here; and (4) *Annabi* is a tiebreaking rule for ambiguous agreements which should be used only after an evidentiary hearing determines the intent of the parties. Here, the court refused to grant discovery or a hearing on this issue.

2. The convictions are time-barred. Section 3283 does not extend the statute of limitations for violations of § 2423(a), or conspiracy to do the same, because the "sexual or physical abuse…of a child" is not a necessary element of those offenses.

And even if it were, the Government cannot apply the 2003 amendment to §3283 to offenses that the Government alleges were committed *before* the enactment of this provision. *See Landgraf v. USI Film Prod.*, 511 U.S. 244 (1994). Rather, such offenses could only have been governed by the 1994 version of §3283, pursuant to which the statute of limitations expired once Defendant's accusers turned 25 and Defendant's accusers were all women above the age of 25 when the Government charged her in 2020. As to §1591, *Landgraf* precludes retroactive application of either §3283 or §3299.

3. In a trial about child sexual abuse, a juror's material misstatements on a juror Questionnaire, which allowed him to conceal the fact that he was a victim of child sexual abuse, and his post-verdict public statements about the effect of that traumatic experience on his participation as a juror in this case, satisfied the two prong test under *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548 (1984), namely, that the juror failed to answer honestly material questions in *voir dire* and that correct responses would have provided a valid basis for a challenge for cause. Irrespective of whether the juror's false statements were intentional, which they clearly were, the similarities between the traumatic experiences described by the juror and the victims in the case, together with the juror's public statements, established the juror's bias. In addition, the court unfairly limited the scope of the hearing.

4. Under Count Four, it was necessary to prove that Defendant caused Jane to travel to *New York* with the intent that she would engage in illegal sexual activity that violated New York Penal Law §130.55. A juror note plainly indicated that the jury believed that the sexual activity intended need not have occurred in New York. But the court refused to correct the jurors' misunderstanding, merely directing them to the charge which they had in their possession and to which they were already plainly referring when they asked about the "second element" of "count four." Jane's testimony about sexual abuse in New Mexico, to which the Note referred, presented the jury with an alternative basis for conviction that was entirely distinct from the charges in the Indictment. The Court's refusal to correct the jury's obvious misunderstanding, constituted a constructive amendment and/or a variance from the charges in the Indictment.

5. Defendant's sentence was predicated on a miscalculation of the guideline range and the court gave no explanation for her decision to sentence Defendant above the range. In addition, the court erroneously applied the aggravating role adjustment when there was no evidence that defendant supervised another criminal participant.

INTRODUCTION

The Government prosecuted Ms. Maxwell ("Maxwell") as a proxy for Jeffrey Epstein ("Epstein"). It did so to satisfy public outrage over an unpopular non-prosecution agreement and the death of the person responsible for the crimes. In its zeal to pin the blame for its own incompetence and for Epstein's crimes on Maxwell, the Government breached its promise not to prosecute Maxwell, charged her with time-barred offenses, resurrected and recast decades-old allegations for conduct previously ascribed to Epstein and other named assistants, and joined forces with complainants' civil attorneys, whose interests were financial, to develop new allegations that would support charges against Maxwell.

Immediately after Epstein's death, complainants' civil attorneys representing Epstein victims, including those who testified at trial, began to assist in the creation of the Epstein Victims Compensation Program (VCP), a non-adversarial and confidential claims resolution program set up to compensate self-identified victims of Epstein, even as they were actively involved in the Government's investigation. On June 25, 2020, the Program began accepting claims. An attorney for one complainant encouraged her to cooperate with the Government in its case against Maxwell because it would improve her prospects for receiving a larger sum of money from the VCP. Tr. 2731-32. It did. "Jane" received $5,000,000.

The Government announced its arrest of Maxwell on July 2, 2020, the anniversary of Epstein's indictment. From that day, Maxwell was held in solitary confinement in the Brooklyn Detention Center. As COVID raged, the District Court denied four bail applications and dozens of applications to ameliorate Maxwell's deplorable conditions of confinement. By the time of trial, Maxwell was so disoriented and diminished that she was unable meaningfully to assist in her own defense, much less to testify.

As trial approached, the vilification of Maxwell was unprecedented in both scale and severity. The bipartisan political pressure to obtain a conviction was enormous. Judge Nathan refused to apply the NPA to Maxwell in accordance with its terms and refused to dismiss the case as time-barred. She precluded Maxwell from presenting a meaningful defense by excluding evidence and argument that was central to her defense, such as the NPA, the 2006 FBI investigation, the terms of the VCP, and the direct involvement of the complainants' civil attorneys in both the VCP and the Government's investigation.

The trial itself involved the testimony of four women, three of whom (Jane, Kate, and Carolyn), were permitted to testify under pseudonyms. The result transformed the trial into a form of Kabuki theater designed to remind the jury at every turn that these adult women were being protected because their privacy interests, and not Maxwell's constitutional right to a public trial, were paramount.

That this was a manipulation designed to prejudice the jury against Maxwell was eloquently proven by Carolyn who wasted no time in granting an interview with the Daily Mail after the verdict was reached. And Kate did not even wait until after the verdict as she made public statements before trial.

POINT I

ALL COUNTS SHOULD BE DISMISSED PURSUANT TO THE NON-PROSECUTION AGREEMENT

The Government negotiated an agreement with a criminal defendant and that defendant fulfilled all the conditions to the enforcement of the agreement, including a state guilty plea. As the Supreme Court held, "when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled. *Santobello v. New York*, 92 S. Ct. 495, 499 (1971).

On September 24, 2007, the Government and Epstein entered into a nonprosecution agreement. The NPA immunized Maxwell as a "potential co-conspirator."

A. The NPA

The NPA begins with several factual recitals. The recitals state, among other things, that (i) the "United States Attorney's Office" and the Federal Bureau of

Investigation ("FBI") have "conducted their own investigation into Epstein's background and any offenses that may have been committed by Epstein against the United States from in or around 2001 through in or around September 2007, including" five enumerated federal criminal offenses; (ii) Epstein seeks "to resolve globally his state and federal criminal liability" and thus is agreeing to comply with the terms of the NPA "in exchange for the benefits provided by this agreement"; and (iii) "*the interests of the United States*, the State of Florida, and the Defendant will be served by the following procedure." A175 (emphasis added). Nowhere in the recitals is reference made specifically to the United States Attorney's Office for the Southern District of Florida ("SDFL" or "USAO-SDFL"), nor is there any suggestion that the parties in any way intended to limit the "global[]" resolution of Epstein's liability.

The NPA then provides that "prosecution [of Epstein] in this District for these offenses shall be deferred in favor of prosecution by the State of Florida, provided that Epstein abides by" the terms of the NPA. A175. The NPA also provides that, after its terms are fulfilled, no prosecution for the offenses set out on pages 1 and 2 of this Agreement [e.g., the five enumerated federal offenses], nor any other offenses that have been the subject of the joint investigation by the Federal Bureau of Investigation and the United States Attorney's Office, nor any

offenses that arose from the Federal Grand Jury investigation will be instituted in this District, and the charges against Epstein if any, will be dismissed. A175.

After detailing the terms of the agreement as they relate to Epstein, the NPA lays out the following provision:

> In consideration of Epstein's agreement to plead guilty and to provide compensation in the manner described above, if Epstein successfully fulfills all of the terms and conditions of this agreement, *the United States* also agrees that it will not institute any criminal charges against *any potential co-conspirators* of Epstein, *including but not limited to* Sarah Kellen, Adriana Ross, Lesley Groff, or Nadia Marcinkova.
>
> A178 (emphasis added).

The NPA clearly distinguishes "the United States" from the USAO-SDFL, repeatedly referring explicitly to the latter where such a limitation is intended. Thus, the NPA's references to the "United States" demonstrate a definitional intent not to limit such provisions to the USAO-SDFL. Unlike the provision that Epstein will not be prosecuted "in this District" (A175), the sentence regarding co-conspirators contains no provision limiting co-conspirators' immunity to the SDFL; no limitation on the scope of conduct for which "potential co-conspirators of Epstein" cannot be prosecuted, and no language limiting its binding effect on other USAOs, as standard agreements typically do.

B. Appellant may enforce the NPA as a third-party beneficiary.

Appellant is a third-party beneficiary of the NPA, and for that reason has standing to enforce it. The District Court declined to adopt the Government's arguments to the contrary, and this Court should do the same. *See U.S. v. Andreas*, 216 F.3d 645, 663 (7th Cir. 2000)

Here, the NPA grants immunity to "*any* potential co-conspirators of Epstein, including *but not limited to* [four named individuals]." A178 (emphasis added). As the court recognized, this is a definable class that includes Maxwell. A144.

C. The "potential co-conspirators" provision binds the USAO-SDNY, and *Annabi* is not to the contrary

1. Introduction

The court rejected Appellant's attempt to enforce the NPA against the S2 Indictment on only one ground: it found that the co-conspirator provision's reference to "the United States" did not really mean the United States, but only the USAO-SDFL, and thus did not bind other USAOs. A189-192. But in ruling that the NPA did not mean what it said, the District Court ignored the plain text of the NPA, unsettled the parties' objectively reasonable expectations, and misapplied Circuit precedent. What is more, the court abused its discretion by endorsing this

untenable reading without even granting Defendant's request for discovery or a hearing to determine the scope of the agreement.

To support its creative reading of the NPA, the court relied on *U.S. v. Annabi*, 771 F.2d 670 (2d Cir. 1985) (per curiam). That case warrants close attention. In *Annabi*, the defendants were charged under a three-count indictment in the Eastern District of New York with conspiring to import, importing, and possessing heroin with intent to distribute. *See* 771 F.2d at 671. After they pled guilty to the substantive importation charge, the prosecutor represented to the court that "the only agreement that exists between defendants and the Government is that at the time of the imposition of sentence …, the Government would move to dismiss the two open remaining counts…". *Id.* Accordingly, the conspiracy and possession counts were dismissed. *See id.* Subsequently, the defendants were indicted in the Southern District of New York with conspiracy to distribute heroin. *See id.* Whereas the dismissed EDNY charges had only alleged a conspiracy on or about a date in 1982, the new SDNY charges alleged criminal conduct extending from 1982 to 1985. The defendants argued that these new charges were barred by their plea agreement with the USAO-EDNY. *See id.* The court conducted an evidentiary hearing—obtaining testimony from both the prosecutor and the defense attorney from the Eastern District proceedings—and concluded that the agreement was not meant to bind the USAO-SDNY. *See id.* The Second Circuit noted that

this result was highly counterintuitive, acknowledging that "[a] plea agreement whereby a federal prosecutor agrees that 'the Government' will dismiss counts of an indictment…might be thought to bar the United States from reprosecuting the dismissed charges in any judicial district…." *Id.* at 672. Nevertheless, the Court declared, "the law has evolved to the contrary," adding, "[a] plea agreement binds only the office of the United States Attorney for the district in which the plea is entered unless it affirmatively appears that the agreement contemplates a broader restriction." *Id*. The Court concluded that, because the conspiracy alleged in the SDNY indictment "extended for an additional two years" beyond the date of the conspiracy alleged in the EDNY indictment, "the new charges are sufficiently distinct at least to warrant application of [this] rule concerning construction of plea agreements." *Id.*

Annabi has been sharply criticized. One circuit said it was "unable to discern a sound basis for the [*Annabi*] rule," adding that the decision "really has no analytically sound foundation." *U.S. v. Gebbie*, 294 F.3d 540, 547 (3d Cir. 2002). *Annabi* cited three prior cases from this Circuit in support of its statement that "[a] plea agreement binds only the office of the United States Attorney for the district in which the plea is entered." 771 F.2d at 672 (citing *U.S. v. Abbamonte*, 759 F.2d 1065 (2d Cir. 1985); *U.S. v. Alessi*, 544 F.2d 1139 (2d Cir. 1976); and *U.S. v.*

Papa, 533 F.2d 815 (2d Cir. 1976)). But, as *Gebbie* explained, *Annabi* misread this Court's precedent and fashioned an "illogical" rule out of whole cloth:

> The first case cited in *Annabi* is *Abbamonte*, but *Abbamonte* merely relies upon the other two cases cited in *Annabi*—*Alessi* and *Papa* …
>
> The court in *Alessi* relies upon *Papa*, which is a related case. …
>
> ***Papa*, however, provides no support for the rule the Second Circuit follows**. … Although *Papa* held that the plea agreement did not bind other districts *because the evidence revealed an intent to bind only one district*, the Second Circuit apparently has broadly interpreted this case as meaning that plea agreements do not bind other districts absent an affirmative appearance of doing so. *Papa* does not explain or attempt to rationalize the rule that has evolved.

294 F.3d at 547-48 (*brackets and italics in original; bold added*).

Annabi stands in tension with what the United States Supreme Court has written about plea and immunity agreements. In *Santobello*, 404 U.S. 257 (1971)—the seminal case on plea bargaining—the Supreme Court held that one prosecutor's promise in a plea agreement would bind other prosecutors, even those who might have been unaware of the promise. As *Santobello* explained, "[t]he staff lawyers in a prosecutor's office have the burden of 'letting the left hand know what the right hand is doing' or has done." 404 U.S. at 262. And in *Giglio v. United States*, the Supreme Court held that an Assistant United Stated Attorney ("AUSA") had a duty under *Brady* to disclose a promise of immunity that another AUSA had made to a testifying witness, even though the first AUSA had been falsely assured that

no such promise was made. *See* 405 U.S. 150, 154 (1972) ("The prosecutor's office is an entity and as such it is the spokesman for the Government. A promise made by one attorney must be attributed, for these purposes, to the Government") (citing Restatement (Second) of Agency § 272). These premises are inconsistent with the notion that a federal prosecutor in one district has no obligation to honor promises made by his or her counterpart in another.

It is thus unsurprising that few courts outside of this Circuit have found *Annabi* persuasive. Indeed, Defendant is not aware of *any* published authority from another circuit that follows *Annabi* in holding that an ambiguous promise made in a plea agreement by one USAO is presumed not to bind other USAOs. To the contrary, the weight of authority holds that a representation by the United States Attorney's Office or its agents will bind USAOs in other districts. *See Gebbie*, 294 F.3d at 550 ("[W]hen a United States Attorney negotiates and contracts on behalf of 'the United States' or 'the Government' in a plea agreement … that attorney speaks for and binds all of his or her fellow United States Attorneys with respect to those same crimes and those same defendants. … United States Attorneys should not be viewed as sovereigns of autonomous fiefdoms."); *U.S. v. Van Thournout*, 100 F.3d 590, 594 (8th Cir. 1996) ("Absent an express limitation, any promises made by an [AUSA] in one district will bind an [AUSA] in another district"); *Margalli-Olvera v. I.N.S.*, 43 F.3d 345, 353 (8th Cir. 1994)

("promises made by an [AUSA]" in a plea agreement "bind all agents of the United States government"); *Thomas v. I.N.S.*, 35 F.3d 1332 (9th Cir. 1994) (enforcing against the INS a cooperation agreement between defendant and an AUSA promising that "the government" would not oppose defendant's application for relief from deportation); *U.S. v. Levasseur*, 846 F.2d 786, 799 (1st Cir. 1988) (expressly declining to apply *Annabi* in the estoppel context, instead holding that "the representation of any [AUSA] may, in appropriate circumstances, be invoked to estop the United States…"); *U.S. v. Harvey*, 791 F.2d 294, 303 (4th Cir. 1986) ("Whenever a United States Attorney negotiates and enters a plea agreement, it is the Government that 'agrees' to whatever is agreed to."); *U.S. v. Carter*, 454 F.2d 426 (4th Cir. 1972) (en banc) (vacating conviction where a plea "bargain was allegedly breached in a neighboring district," adding that "[t]he United States government is the United States government throughout all of the states and districts"); *Young v. U.S.*, 953 F.Supp.2d 1049, 1069 n.4 (D.S.D. 2013) (plea agreement between defendant and "the United States" in West Virginia would bind federal prosecutors in South Dakota); *Little v. U.S.*, Nos. 1:08-cr-59, 1:09-cv-822, 2010 WL 3942749, at *3 (S.D. Ohio Oct. 7, 2010) (plea agreement between defendant "and the United States of America," which was "silent as to the effect it may have with respect to other United States Attorneys," would be interpreted to "bind[] the United States Attorneys in all other districts").

Annabi is also out of step with the law of *this* Circuit. It is well-settled that "we determine whether a plea agreement has been breached by looking to the reasonable understanding of the parties and by resolving any ambiguities against the Government." *Altro*, 180 F.3d at 375; *see also U.S. v. Carmichael*, 216 F.3d 224 (2d Cir. 2000) ("[W]e 'construe plea agreements strictly against the Government.'") (quoting *U.S. v. Ready*, 82 F.3d 551, 559 (2d Cir. 1996)). But *Annabi* flips this formulation on its head, holding that an ambiguous promise of immunity by "the United States" is to be construed *against the defendant*—binding just one USAO rather than the Government as a whole—"unless it affirmatively appears that the agreement contemplates a broader restriction." 771 F.2d at 672. *Annabi* did not explain or acknowledge its departure from this longstanding doctrine.

The District Court opined that this Court "has followed [*Annabi*] steadfastly." A190. Nothing could be further from the truth. This Court has been exceedingly reluctant to affirm a conviction on the force of *Annabi*'s reasoning. So reluctant, in fact, that it has *never* relied on *Annabi* in a published decision to hold that a plea agreement's reference to the "United States" or the "Government" was nonbinding on other districts. *Every* decision from this Court that cited *Annabi* has done so essentially in dictum (as in cases involving unambiguous plea

agreements, which do not require resort to *Annabi*'s canon of construction),[4] or for points unrelated to whether an agreement with one USAO will bind another,[5] or—in one case—in an unpublished decision that provided too little information to clarify whether the plea agreement as a whole was ambiguous.[6] *Annabi* is an island of a case—without friends in other circuits, or this one.

Annabi's analytical faults[7] counsel strongly against extending it to new facts or contexts. *Cf. Egbert v. Boule*, 142 S.Ct. 1793, 1803 (2022) (where underlying

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[4] *See U.S. v. Prisco*, 391 F. App'x 920, 921 (2d Cir. Sept. 2, 2010) (agreement stated it was "limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities"); *U.S. v. Ashraf*, 320 F. App'x 26, 28 (2d Cir. Apr. 6, 2009) (agreement, "by its express terms, bound only the U.S. Attorney's Office for the Eastern District of Virginia"); *U.S. v. Gonzales*, 93 F. App'x 268, 271 (2d Cir. Mar. 24, 2004) (agreement "explicitly states that the agreement binds only the United States Attorney's Office for the District of New Mexico"); *U.S. v. Salameh*, 152 F.3d 88, 119, 120 (2d Cir. 1998) ("[T]his agreement is limited to the United States Attorney's Office for the Eastern District of New York and cannot bind other federal, state or local prosecuting authorities."); *U.S. v. Russo*, 801 F.2d 624, 626 (2d Cir. 1986) ("[W]e need not resolve the question whether the Southern District is bound by this particular plea agreement…."); *U.S. v. Persico*, 774 F.2d 30 (2d Cir. 1985), *aff'g* 620 F.Supp. 836, 846 (S.D.N.Y. 1985) ("Persico's plea agreement explicitly states that it 'is binding on the United States only in [the Eastern] district'") (brackets in original).

[5] *See U.S. v. Reiter*, 848 F.2d 336, 340 (2d Cir. 1988) (discussing double jeopardy issue); *U.S. v. Rivera*, 844 F.2d 916, 923 (2d Cir. 1988) (plea agreement and later charges arose in the same district, unlike *Annabi*); *U.S. v. Nersesian*, 824 F.2d 1294, 1321-22 (2d Cir. 1987) (case related to *Annabi* itself).

[6] *See U.S. v. Brown*, Nos. 99-1230(L), 99-1762, 2002 WL 34244994, at *2 (2d Cir. Apr. 26, 2002).

[7] Appellant preserves her argument that *Annabi* should be overruled or abrogated.

precedent may have been doctrinally flawed, expanding it into "new…context[s]" would be "a disfavored judicial activity") (quoting *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1857, 1859 (2017)). In this case, the District Court did not just purport to follow *Annabi,* but expanded its questionable doctrine into new and inapplicable territory. In this regard, the District Court erred in four respects.

First, unlike the plea agreement in *Annabi*, the NPA originated in a federal district *outside* of the Second Circuit. Under textbook choice-of-law rules and principles of fairness, it would be unreasonable to graft a unique, pro-prosecution canon of construction, derived from the law of a foreign circuit—this circuit—onto a plea agreement negotiated with prosecutors elsewhere.

Second, *Annabi* recognized that its "rule concerning construction of plea agreements" was only "warrant[ed]" when "the new charges are sufficiently distinct" from the old ones. 771 F.2d at 672. And *Annabi* made clear that charges are "sufficiently distinct" when they cover a different or expanded period of time. *Id.* But here, the USAO-SDNY charged Appellant under Count Six with conduct from 2001 through 2004 that falls entirely within the 2001-2007 offense period contemplated by the NPA. Therefore, *Annabi* is inapplicable at least as to Count Six.

Third, *Annabi* and its predecessors involved situations where there was no "affirmative" indication whatsoever that the plea agreement was intended to bind

other USAOs. *See Annabi*, 771 F.2d at 671; *Alessi*, 544 F.2d at 1154; *Papa*, 533 F.2d at 823-25. That is not the case here; Defendant produced ample evidence that the NPA was intended to bind other USAOs as to possible co-conspirators.

Fourth, at most, *Annabi* embraces a tiebreaking rule: after the court conducts an evidentiary hearing and receives testimony from the attorneys involved in the plea agreement, if it still cannot decide the agreement's geographic scope, it may presume that it was limited to a single district. *See Annabi*, 771 F.2d at 671; *Papa*, 533 F.2d at 823. The court erred when it applied the *Annabi* canon without first granting Defendant's reasonable request for an evidentiary hearing.

For all of these reasons or any of them, the court's ruling was error.

2. *Annabi* does not apply because the NPA was negotiated and entered into outside of the Second Circuit

Remarkably, the court applied *Annabi* to the NPA without conducting a choice-of-law analysis and without addressing Defendant's contention that Eleventh Circuit law should apply. It did so even though the NPA was negotiated in Florida, with Southern District of Florida prosecutors, in exchange for Epstein's agreement to plead guilty in Florida state court. As shown below, applying the Second Circuit's minority *Annabi* rule in this context was improper and unfair:

improper because it conflicted with both federal and New York choice-of-law rules and unfair because it unsettled the parties' reasonable expectations.

As a threshold matter, none of this Court's precedents require applying *Annabi* to agreements formed outside of this Circuit. Although this Court has done so in a few unpublished decisions, these mostly involved *unambiguous* agreements which made resort to the *Annabi* canon unnecessary in the first place. *See Prisco*, 391 F. App'x at 921; *Ashraf*, 320 F. App'x at 28; *Gonzalez*, 93 F. App'x at 270; *but see Brown*, 2002 WL 34244994, at *2. None of these decisions discussed the threshold question of which circuit's law applied, and at least one magistrate judge, the Honorable Vera M. Scanlon, has openly questioned this line of cases. *See U.S. v. Bruno*, Case No. 14-cr-556, 2015 WL 13731357, at *16 n.11 (E.D.N.Y. Dec. 15, 2015) (noting that there was "a compelling argument" against applying *Annabi* to a plea agreement from outside of this Circuit), *report and recommendation adopted in part, rejected on other grounds in part*, 159 F.Supp.3d 311 (E.D.N.Y. 2016).

Courts have held that federal plea and immunity agreements are analyzed under the same choice-of-law principles that apply to contracts generally. *See U.S. v. Lindemuth*, Case No. 16-40047-01-DDC, 2017 WL 3593226, at *3 (D. Kan. Aug. 21, 2017) (applying Restatement (Second) of Conflict of Laws ["Restatement"] §188 to determine which jurisdiction's law governed federal plea agreement); *Kaplan v. C.I.R.*, Case No. 25652-12, 2014 WL 988456, at *8 n.14

(U.S. Tax Ct. Mar. 13, 2014) (same); *U.S. v. Oruche*, 257 F.Supp.2d 230, 239 n.7 (D.D.C. 2003) (same, for federal immunity agreement); *see also Samra v. Shaheen Bus. & Inv. Grp., Inc.*, 355 F.Supp.2d 483 (D.D.C. 2005) (emphasizing that, in "constru[ing] an immunity agreement executed during a criminal prosecution, our court [does] not simply adopt the contract law of the District of Columbia as a default," but will instead follow "choice of law rules"). "The Restatement (Second) of Conflict of Laws, to which both New York and the federal courts look, declares that courts will apply the laws of the state that 'has the most significant relationship to the transaction and the parties.'" *John Wiley & Sons, Inc. v. DRK Photo*, 882 F.3d 394, 412 (2d Cir. 2018) (quoting Restatement § 188). Here, it is clear that the Second Circuit is not the jurisdiction with the most significant relationship to the NPA, and the Government has not argued otherwise. Instead, the court should have construed the NPA under Eleventh Circuit law.

The Eleventh Circuit would hold that the NPA's promise on behalf of "the United States" not to prosecute Epstein's "potential co-conspirators" (including Defendant) is binding on other USAOs. That is because, under Eleventh Circuit precedent, even if the reference to "the United States" were deemed ambiguous, the ambiguity **"must be read against the government."** *U.S. v. Jefferies*, 908 F.2d 1520, 1523 (11th Cir. 1990) (citing *In re Arnett*, 804 F.2d 1200, 1203 (11th Cir. 1986)); *see also Rowe v. Griffin*, 676 F.2d 524, 526 n.4 (11th Cir. 1982). And

this result would bring the Eleventh Circuit in line with every circuit that has directly confronted this question (other than the Second Circuit). *See Gebbie*, 294 F.3d at 550; *Van Thournout*, 100 F.3d at 594; *Harvey*, 791 F.2d at 303.[8]

Because the NPA was almost certainly negotiated with Eleventh Circuit law in mind, it would be unfair to impose another circuit's minority rule of construction. A plea agreement must be enforced in accordance with the parties' reasonable expectations. *See Paradiso v. U.S.*, 689 F.2d 28, 31 (2d Cir. 1982) ("The dispositive question is what the parties to [the] plea agreement reasonably understood to be the terms of the agreement.") (quoting *U.S. v. Arnett*, 628 F.2d 1162, 1164 (9th Cir. 1979)). And as this Court has observed, "[p]arties entering a contract will expect … that the provisions of the contract will be binding"; "[t]heir expectations should not be disappointed by application of [a local rule] which would strike down the contract or a provision thereof …." *Eli Lilly Do Brasil, Ltda. v. Fed. Express Corp.*, 502 F.3d 78, 82 (2d Cir. 2007) (quoting Restatement § 188 cmt b). Here, application of Second Circuit law would render the co-conspirator provision unenforceable—"strike [it] down"—in every federal district but one. It would ambush the parties with the law of a circuit that they did not

[8] Alternatively, the NPA might be governed by Florida state law. It is ultimately irrelevant whether this Court applies Florida or Eleventh Circuit law. Florida courts, like the Eleventh Circuit, would look to the weight of authority on this topic. *See, e.g., Brazeail v. State*, 821 So.2d 364 (Fla. App. 2002) (following the "overwhelming weight of authority" among federal circuits on a question of federal law). As noted, the weight of authority rejects *Annabi*.

anticipate, disregard the NPA's carefully-crafted text for the Government's benefit, and violate settled canons within the Eleventh Circuit (and every other circuit) for construing such agreements. *See Jefferies*, 908 F.2d at 1523; *Rowe*, 676 F.2d at 526 n.4.

The Government will likely respond that, on matters of federal common law, this Court should apply the *lex fora* without regard to regional circuit differences. But in criminal cases, differences in circuit law can affect the Constitution's guarantees. This principle is illustrated by the inter-circuit exclusionary rule: where a search or seizure is executed in one circuit but the defendant is charged in a different circuit, courts will look to the law of the circuit where the search or seizure happened to "ensure[] that the proper level of deterrence is maintained in the locale where the violation occurred." *U.S. v. Restrepo*, 890 F.Supp. 180, 191 (E.D.N.Y. 1995) (Weinstein, J.); *see also U.S. v. Ozuna*, 129 F.Supp.2d 1345, 1354 (S.D. Fla. 2001); *U.S. v. Longo*, 70 F.Supp.2d 225, 261 (W.D.N.Y. 1999); *U.S. v. Gerena*, 667 F.Supp. 911 (D. Conn. 1987). This rule prevents the Government from parachuting into a new circuit and prosecuting a case it would not otherwise have been able to bring. That rationale applies with equal force here. Like the Fourth Amendment in the search and seizure context, the Fifth Amendment requires courts to hold the Government to a minimum standard of conduct in the plea-bargaining process. *See U.S. v. Pelletier*, 898 F.2d 297, 302 (2d Cir. 1990)

("[D]ue process requires that the government adhere to the terms of any plea bargain or immunity agreement it makes"); *Harvey*, 791 F.2d at 300 ("[C]onstitutional and supervisory concerns require holding the Government to a greater degree of responsibility…for imprecisions or ambiguities in plea agreements"). Thus, when the Government promises immunity on behalf of "the United States," in a legal context where such promise will be construed to mean *nationwide* immunity, this Court should ensure that the Government keeps its promise in accordance with the law of the place where it was made.

3. *Annabi* does not apply to Count Six because that count falls wholly within the timeframe contemplated by the NPA

Even if Second Circuit law applied, *Annabi*'s rule of construction is subject to an important caveat: the new charges must be "sufficiently distinct" from those resolved by the plea "to warrant application of [the] rule." 771 F.2d at 672. "[S]ufficiently distinct," in this context, means at least partially encompassing a different time period. *Id.* Because Count Six relates to a timeframe wholly swallowed by the NPA, (A144), *Annabi* does not apply to that count.

The paragraph within which *Annabi* articulates its "sufficiently distinct" standard responded to an argument by the defendants that included references to the Double Jeopardy Clause. The paragraph from *Annabi* reads, in pertinent part (and with context supplied), as follows:

> Even if, as appellants contend, the Southern District charges result from the same conspiratorial agreement that underlay the charges dismissed in the Eastern District, the allegation [*in the Southern District*] that the conspiracy extended for an additional two years suffices to show that the new charges are not identical to the dismissed charges. Therefore, regardless of what degree of preclusive effect [*under the Double Jeopardy Clause*] the dismissal of the Eastern District charges would have if the pending charges had been brought by the United States Attorney for [*the Eastern*] District, the [*Southern District*] charges are sufficiently distinct at least to warrant application of the *Abbamonte-Alessi* rule concerning construction of plea agreements [*viz., that '(a) plea agreement binds only the office of the United States Attorney for the district in which the plea is entered….'*]."

Id. (brackets and emphases added).

The court misread this portion of *Annabi* as pertaining only to "a claim based on the Double Jeopardy Clause, not a claim based on the plea agreement[.]". A191. A careful reading of the above shows that *Annabi*'s "sufficiently distinct" standard qualifies what the Court referred to as the "*Abbamonte-Alessi* rule," *i.e.*, the canon of construction for determining whether a plea agreement's ambiguous reference to "the Government" or "the United States" includes other USAOs. *Annabi*, 771 F.2d at 672. And under this test, it was dispositive that the later-brought SDNY charges in *Annabi* alleged a conspiracy period two years longer than the period alleged and resolved in the Eastern District. *See id.*

What this means is that, when new charges stem from "the same" conduct that "underlay" charges resolved by prior plea, *Annabi*'s rule of construction does not apply unless the new charges also cover a new time period; that is what makes

them "sufficiently distinct." A contrary rule—allowing the Government to gainsay a non-prosecution promise in plea agreement by hopping to a new district and prosecuting *the same crime*, covering *the same time period*—would upend federal plea bargaining nationally, disrupt expectations beyond this case, and turn the Second Circuit into a forum of convenience for the Government to reprosecute pled-out offenses that touch multiple federal districts. As the Fourth Circuit noted, prosecuting a defendant for the same charges resolved by plea agreement in a different district puts at stake "the honor of the government[,] public confidence in the fair administration of justice, and the efficient administration of justice in a federal scheme of government." *Carter*, 454 F.2d at 427-28.

Here, under the "sufficiently-distinct" qualification to *Annabi*, the Government was precluded, at minimum, from charging Appellant under Count Six. This count arose out of the 2006-08 SDFL investigation and is based on a trafficking statute, § 1591(a), that is explicitly mentioned in the NPA. A175. The only accuser on whom Count Six is based, Carolyn, was also a witness in the SDFL investigation. [T: 1604-5, 1614, 1679]. But unlike the SDNY charges in *Annabi*, Count Six falls wholly within the *time period* contemplated by the NPA as well. *Compare* 771 F.2d at 672. Count Six alleged that Defendant trafficked Carolyn from 2001 to 2004. The court held that the NPA "cover[s] any involvement of Maxwell in offenses committed by Epstein from 2001 to 2007,

other offenses that were the subject of the FBI and U.S. Attorney's Office investigation, and any offenses that arose from the related grand jury investigation." A144. Consequently, the charge is not "sufficiently distinct," *Annabi* does not apply, and the USAO-SDNY was bound by the NPA not to bring this charge. Count Six should be dismissed.

4. There is affirmative indication that the NPA binds the USAO-SDNY

The *Annabi* rule's presumption is unavailing by its own terms where "*it affirmatively appears that the agreement contemplates a broader restriction.*" *Annabi* at 672.

Here, the "affirmative appearance" that a broader restriction was intended for co-conspirators is evident within the four corners of the NPA, when the NPA is viewed as a whole. Unlike the agreement in *Annabi* and *Abbamonte*, the NPA is in written form and was carefully negotiated by sophisticated counsel. The absence of any limiting language in the co-conspirator immunity provision stands in sharp contrast to the NPA's provision regarding the non-prosecution of Epstein, which is expressly limited to prosecution "in this District." A175. It is difficult to envision a clearer "affirmative appearance" than the express inclusion elsewhere in the agreement of a limitation that is conspicuously absent here. Basic principles of contract interpretation require an inference that the parties considered the inclusion of the phrase "in this District" necessary to limit the scope of the non-prosecution

provision as to Epstein. *See, e.g., LaSalle Bank Nat'l Ass'n v. Nomura Asset Capital Corp.*, 424 F.3d 195, 206 (2d Cir. 2005) ("In interpreting a contract under New York law, 'words and phrases ... should be given their plain meaning,' and the contract 'should be construed so as to give full meaning and effect to all of its provisions.'") (*citations omitted*); *Port Consol., Inc. v. Int'l Ins. Co. of Hannover, PLC, 826 F. App'x* 822, 827 (11th Cir. 2020) (same under Florida law). The Justice Manual supports this view, admonishing prosecutors who do not wish to bind USAOs in other districts to "explicitly limit the scope" of the NPA to their districts. Justice Manual, Comment to § 9-27.630 (emphasis added). The absence of the phrase "in this District" from the co-conspirator immunity provision therefore compels the inference that the parties did not intend to so limit its reach.

As the NPA reflects, Epstein's objective in negotiating the NPA was to obtain a global resolution that would, among other things, provide maximum protection for any alleged co-conspirators. A175 (noting that Epstein "seeks to resolve globally his state and federal criminal liability"). The NPA makes clear that its identification of four "potential co-conspirators" by name was not intended to limit the immunity provision to those four individuals ("but not limited to"). A178; Dkt 142, Exh. H (9/16/07 email from Villafana to Lefkowitz stating that "I will mention 'co-conspirators,' but I would prefer not to highlight for the judge all of the other crimes and all of the other persons that we could charge")**.** The NPA on

its face immunizes assistants who worked for Epstein out of his New York office. For example, Leslie Groff worked for Epstein out of the New York Office. Tr. 201; *See Doe v. Indyke et al.*, Case No. 1:21-cv-08469-PKC, Dkt No. 1 (S.D. Fla.).

Moreover, a promise to bind other districts need not be express; rather, it can be inferred from the negotiations between defendant and prosecutor, *see United States v. Alessi,* 544 F.2d 1139, 1153-54 (2d Cir.), *cert. denied,* 429 U.S. 960, 97 S.Ct. 384 (1976). *United States v. Russo*, 801 F.2d 624, 626 (2d Cir. 1986) ("A promise to bind other districts can be inferred from the negotiations between defendant and prosecutor.") One relevant factor in this analysis is the extent to which the USAO negotiating the plea agreement acted on its own, as opposed to involving other USAOs or other offices within the Department of Justice. Cf., e.g., *United States v. D'Amico*, 734 F. Supp. 2d 321, 349 (S.D.N.Y. 2010) (finding that defendant "offers no meaningful support for his claim that he 'reasonably understood' the Agreement to bar subsequent prosecutions in this District. . . . He does not claim, for example, that the SDNY USAO was in any way consulted or involved in the plea negotiations."); *United States v. Laskow*, 688 F. Supp. 851, 854 (E.D.N.Y.) ("defendants concede [] that the Central District had no knowledge of the investigation that was taking place in the Eastern District at the time the Central District plea was being negotiated. . . . The Central District, unaware of defendants' potential criminal liability in the Eastern District, could not have

intended to insulate defendants from prosecution which they had no reason to foresee."), *aff'd*, 867 F.2d 1425 (2d Cir. 1988).

Unlike standard non-prosecution agreements, the NPA here was heavily negotiated. Negotiations began in January 2007, lasted for a period of eight months, and were "extensive" and involved the Department of Justice. The parties exchanged several drafts of an alternative plea agreement under which Epstein would have pled guilty to a federal offense. See, e.g., Dkt 142, Exh. E (9/15/07 email from Villafana to Lefkowitz attaching draft information and plea agreement); Dkt 142, Exh. F (draft plea agreement). Notably, those drafts of the plea agreement, unlike the NPA, expressly defined the term "United States" as limited to the United States Attorney for the SDFL.

The Office of Professional Responsibility's Report of the USAO-SDFL's resolution of its 2006-2008 investigation of Epstein ("OPR") (Dkt 142, Exh. A), reflects that negotiations involved the entire hierarchy of the USAO for the SDFL, all of whom signed off on the NPA. Senior levels of Main Justice were directly involved in the negotiation and approval of the NPA, even to the extent that separate presentations regarding the NPA were made to, and approval of the NPA was obtained from, the Office of the Deputy Attorney General. Further, the NPA itself reflects the involvement of the FBI. A174; Dkt 142, Exh. A at 1-2, 94-97, 103-18.

Moreover, the USAO-SDFL's involvement of the USAO for this District in its investigation of Epstein, as well its contact with witnesses in New York, reflect a coordinated effort that transcended the USAO-SDFL (Dkt 142, Exh. A at 46, 48, 60). From these facts, it affirmatively appears that the Government had every reason to foresee a potential prosecution of Epstein's co-conspirators in this District and, after multiple layers of review within the Department of Justice, intended to agree to preclude it. According to the OPR, the NPA originally read that it "resolves the federal criminal liability of the defendant and any co-conspirators in the Southern District of Florida…", but this language was modified and the final agreement was not so restricted as to the co-conspirators. Dkt 142, Exh. A at 74-75.

The OPR demonstrates the trans-district scope of the investigation and the negotiations.

- Dkt 142, Exh A at 27 n.38 (Feds considered arresting Epstein in the Virgin Islands, rather than Florida, indicating national scope of investigation);
- *Id.* at 46 ("[I]nvestigators had learned that Epstein used hidden cameras in his New York residence to record his sexual encounters");
- *Id.* at 58 (AUSA Villafana requested "enough time to go to New York, pursue investigative steps involving two of Epstein's assistants, do

witness interviews, and take additional legal steps to obtain Epstein's computers if Epstein rejected the deal.")

- *Id.* at 60 ("Villafana…reiterated that she wanted to contact Epstein's assistants in New York and to interview some of Epstein's colleagues and former employees there").
- *Id.* at 68 (Feds considered charging Epstein under 18 USC 113(a)(5), simple assault on an airplane, indicating possible bases to charge him in other districts).
- *Id.* at 69, 73, 75, 79-80 (Defense sought a government promise not to bring immigration proceedings against Epstein's assistants).

The NPA and the OPR provide ample evidence that the agreement as to the co-conspirators was intended to bind other districts. In contrast, in *Annabi*, *Abbamonte*, *Alessi*, and *Papa*, there was a complete absence of any evidence showing an intent to bind other districts.

5. If it is reasonable to conduct a hearing, then *Annabi* is a tiebreaker that only applies if ambiguity remains after the hearing

The language of the NPA and the evidence contained in the OPR are more than sufficient for the Court to find that the NPA bars the prosecution of Maxwell, particularly when any ambiguities are construed, as they must be, against the Government as drafter. In the alternative, however, the NPA and the circumstances of its execution merit discovery and an evidentiary hearing

regarding the parties' intent. To the extent that extrinsic materials do not make the parties' intent clear, the Court is obligated to make a finding as to the parties' "reasonable understanding," with ambiguities resolved in Maxwell's favor. *See United States v. Gonzalez*, 93 F. App'x 268 at 270 (2d Cir. 2004) (*emphasis and citation omitted*).

Courts in this circuit have routinely recognized the need for evidentiary hearings where the existence or scope of such agreements is in genuine dispute. *See, e.g., id.* at 270 (noting testimony from defendant's attorney); *United States v. Aleman*, 286 F.3d 86, 91 (2d Cir. 2002) *Annabi*, 771 F.2d at 671 (noting that district court heard testimony from two prosecutors, defendant, and defendant's counsel as of the time the plea agreement was reached); *United States v. Papa*, 533 F.2d 815, 820 (2d Cir. 1975) (describing "two evidentiary hearings"); *United States v. Sattar*, 2003 WL 22510398, at *1 (S.D.N.Y. Nov. 5, 2003) (noting conclusion that "an evidentiary hearing was warranted . . . to determine whether an agreement existed, what its terms were, and whether there was compliance with those terms").

At a minimum, a hearing should have been held here, as was the case in *Annabi*, itself, and *Papa* to ascertain the parties' intent. It is submitted that such a hearing would have established that Epstein intended tat any co-conspirators would

have total immunity from federal prosecution for matters that were the subject of the investigation.

D. All counts fall within the scope of the NPA and must be dismissed.

Given that the NPA binds the USAO-SDNY, all three remaining counts must be dismissed because the plain text of the co-conspirator provision is not limited to any particular offense or any time period. A172.

That the co-conspirator immunity provision is not limited to the 2006-2007 investigation or the 2001-2007 timeframe or to prosecution in the SDFL is reinforced by another provision of the agreement which reads, in pertinent part, that a breach of the agreement, "allows the *United States* to elect to terminate the agreement and *to investigate and prosecute* Epstein and *any other individual* or entity for *any and all federal offenses*. A172.

In any, event, at minimum, Counts Three and Six must be dismissed because they indisputably fall within the scope of the NPA even as construed by the District Court.

POINT II

ALL COUNTS ARE BARRED BY THE STATUTE OF LIMITATIONS

For noncapital offenses such as those with which Appellant was charged, the statute of limitations is five years. 18 U.S.C. § 3282(a). It is undisputed that a 5-year limitations period would bar all charges brought against Defendant.

To escape the consequences of its delay in bringing these charges, the Government hangs its hat on 18 U.S.C. § 3283. Section 3283 is a narrow exception to the statute of limitations, but its application can expose a person to criminal prosecution during the lifetime of anyone who accuses him or her of child abuse or kidnapping. To guard against overreach, it is important to recall the well-settled "principle that criminal limitations statutes are to be liberally interpreted in favor of repose." *Toussie*, 397 U.S. at 115 (quoting *U.S. v. Scharton*, 285 U.S. 518 (1926)). Indeed, the Government's and District Court's capacious reading of §3283 would have wide-ranging ramifications in this Circuit—beyond Maxwell's case—if blessed by this Court.

Section 3283 provides that "[n]o statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnaping, of a child under the age of 18 years shall preclude such prosecution during the life of the child, or for ten years after the offense, whichever is longer."

18 U.S.C. § 3283. Congress enacted the predecessor to this provision under the Crime Control Act of 1990, Pub.L. 101-647, 104 Stat. 4789, and codified it as § 3283 under the Violent Crime Control and Law Enforcement Act of 1994, Pub.L. 103-322, 108 Stat. 1796, commonly known as the "1994 Crime Bill." As promulgated in the 1994 Crime Bill, this section provided that the statute of limitations for an "offense involving the sexual or physical abuse of a child" would expire once the alleged victim "reaches the age of 25 years." 108 Stat. 2149. But it was not until 2003 that Congress amended § 3283 to provide for a limitations period running for the *entire life* of the alleged victim. *See* PROTECT Act, Pub.L. 108-21, § 220, 117 Stat. 650, 660.[9] The PROTECT Act was signed into law on April 30, 2003.

Contrary to what the Government argued below and what the District Court held, §3283 cannot salvage Counts Three and Four for two separate and independent reasons. ***First***, §3283 does not extend the statute of limitations for violations of § 2423(a), or conspiracy to do the same, because the "sexual or physical abuse…of a child" is not a necessary element of those offenses. ***Second***, the Government cannot apply the 2003 amendment to § 3283—the statute of limitations for the lifetime of one's accuser—to offenses that the Government alleges were committed *before* the enactment of this provision. *See Landgraf v.*

[9] Congress amended § 3283 again in 2006. The Government does not contend that that amendment is relevant here.

USI Film Prod., 511 U.S. 244 (1994). Rather, such offenses could only have been governed by the 1994 version of § 3283, pursuant to which the statute of limitations expired once Defendant's accusers turned 25 years old. And it is undisputed that Defendant's accusers were all women above the age of 25 when the Government charged her in 2020.

For these reasons, Appellant's convictions under Counts Three and Four must be vacated.

A. Section 3283 Does Not Apply to the Mann Act Violations (Counts Three and Four)

Under Counts Three and Four, the Government charged Defendant with substantive and conspiracy violations of the Mann Act, 18 U.S.C. § 2423(a), more than 15 years after the fact. To accomplish this, the Government relies on § 3283's extension of the limitations period. But by its text, § 3283 applies only to "offense[s] involving the sexual or physical abuse, or kidnaping, of a child." 18 U.S.C. § 3283. Transportation of a minor or conspiracy to transport in violation of § 2423(a) is not such an offense, so Counts Three and Four must be dismissed.

At first blush, it may seem counterintuitive to assert that Counts Three and Four do not allege "offense[s] involving the sexual … abuse … of a child." But longstanding legal precedent dictates a narrower application of § 3283. The Supreme Court has frequently adopted a "categorical approach" (or "essential ingredient" test) when interpreting a statute's references to other offenses or

crimes. Under this approach, a court "look[s] to the statute defining the crime of conviction, rather than to the specific facts underlying the crime." *Kawashima v. Holder*, 565 U.S. 478, 483 (2012); *see also U.S. v. Taylor*, 142 S.Ct. 2015, 2020 (2022) (the categorical approach asks only what the Government is required "to prove—beyond a reasonable doubt, as an element of its case," and "precludes…an inquiry into how any particular defendant may commit the crime").

Here, applying the categorical approach to § 3283 means holding that this provision is inapplicable here. That is because "sexual or physical abuse, or kidnaping, of a child" is not a required element of transporting minors in violation of § 2423(a), or conspiracy to do the same. 18 U.S.C. § 2423(a). The offense is accomplished once a person "transports" a minor with the requisite knowledge and intent; "[t]he government need not prove … that the unlawful sexual activity actually took place." *U.S. v. Vargas-Cordon*, 733 F.3d 366, 375 (2d Cir. 2013). Thus, Counts Three and Four should have been dismissed.

However, to save Counts Three and Four from dismissal, the court rejected this categorical approach altogether and opted instead for a "case-specific" one, which would permit it to examine whether *this particular defendant's* alleged conduct "involve[ed] the sexual or physical abuse…of a child." In so doing, the court brushed aside the clear weight of authority, which holds that statutes employing "offense…involves" or "offense…involving" language identical to §

3283 should be read through a categorical rather than case-specific lens. *See U.S. v. Davis*, 139 S. Ct. 2319 (2019) (interpreting 18 U.S.C. § 924(c)(3)); *Kawashima*, 565 U.S. at 483 (interpreting 8 U.S.C. § 1101(a)(43)(M)(i)); *Leocal v. Ashcroft*, 543 U.S. 1, 7 (2004) (interpreting 18 U.S.C. § 16(b)); *U.S. v. Morgan*, 393 F.3d 192, 198 (D.C. Cir. 2004) (interpreting 18 U.S.C. § 3237(a)).

Indeed, the Supreme Court has—on multiple occasions—firmly held that a categorical approach must be employed to interpret statutes of limitation that bear striking resemblance to §3283. For instance, the Supreme Court has held that a proviso of the internal revenue laws, extending from three to six years the statute of limitations for prosecuting "*offenses involving* defrauding or attempting to defraud the United States," applies only when "defrauding or an attempt to defraud the United States is an ingredient *under the statute defining the offense*." *U.S. v Noveck*, 271 U.S. 201, 202-203, 204 (1926) (emphasis added) (quoting Act of November 17, 1921, c. 124, 42 Stat. 220, codified in its present version at 26 U.S.C. § 6531). *Noveck* held that this provision did not extend the statute of limitations for perjury, because fraud is not a required element of that crime. *Id.*; *see also Scharton*, 285 U.S. at 522 (same, with respect to tax evasion). Indeed, *Noveck* found this statute inapplicable *even when the indictment specifically alleges fraud*, because such fraud allegations are "mere surplusage," not an element of the offense. 271 U.S. at 203.

Similarly, in *Bridges v. U.S.*, 346 U.S. 209 (1953), the Court applied a categorical approach to the Wartime Suspension of Limitations Act (WSLA), which provided, in pertinent part, that "[w]hen the United States is at war the running of any statute of limitations applicable to any *offense ... involving* fraud or attempted fraud against the United States … shall be suspended…." Act of June 25, 1948, c. 546, 62 Stat. 828 (emphasis added) (codified in its present version at 18 U.S.C. § 3287). The Government charged Bridges with willfully making a false statement, to wit, denying membership in the Communist Party, in connection with his 1945 naturalization application. Invoking the WSLA, the Government argued that the charges were timely. But the Supreme Court, recalling *Noveck* and *Scharton*, held that the WSLA was "limited strictly to offenses in which defrauding or attempting to defraud the United States is an *essential ingredient of the offense charged*." *Id.* at 221 (emphasis added).

In this case, the court made no attempt to distinguish *Scharton* or *Noveck*. And though it purported to distinguish *Bridges*, it blatantly mischaracterized the Supreme Court's opinion, asserting that *Bridges* applied a categorical approach "in large part" because of the WSLA's legislative history. A149. The District Court's statement was wrong. *Bridges*' passing reference to legislative history concerned a different issue: whether the kind of "fraud" contemplated by the WSLA had to be fraud "of a pecuniary nature." 346 U.S. at 216. But the Court then stated, as an

alternative holding — "[a] further ground for [its] conclusion" —that, even in cases where "fraud" occurs, a categorical analysis precludes extending the WSLA to prosecutions for making false statements. *Id.* at 221-22. And in applying this categorical approach, *Bridges* looked, not to the legislative history of the WSLA, but to *Scharton* and *Noveck* (which involved a different statute). *See Bridges*, 346 U.S. at 222 (citing, *inter alia*, *Scharton* and *Noveck*).

Here, *Bridges*, *Scharton*, and *Noveck* point the way. Because § 3283 employs the same "offense-involving" language as the statutes analyzed in those cases, *compare* 18 U.S.C. § 3283 *with id.* § 3287; 26 U.S.C. § 6531, a similar interpretation should govern. *See Smith v. City of Jackson, Miss.*, 544 U.S. 228, 233 (2005); *Wasser v. New York State Off. of Vocational & Educational Servs.*, 602 F.3d 476, 480 (2d Cir. 2010). The Court should apply a categorical approach and hold that § 3283 did not modify the statute of limitations for § 2423(a) violations.

Nothing in the text of § 3283 indicates a contrary result. Indeed, Congress has shown that when it wants to tether a statute of limitations to conduct occurring in a particular case, it knows how to do so—and uses unambiguous wording distinct from § 3283. Notably, in 2001, Congress eliminated the statute of limitations for certain terrorism offenses in which "*the commission of such offense* resulted in, or created a foreseeable risk of, death or serious bodily injury to

another person." *see U.S. v. Pham*, No. 12-cr-423, 2022 WL 993119, at *7 (S.D.N.Y. Apr. 1, 2022) (Nathan, J.) ("§3286(b)'s use of the terms 'foreseeable' and 'commission of such offense' … dictate a case-specific approach.").

It is noteworthy that the District Court could not identify a single page of legislative history supporting its expansive interpretation of § 3283. But that did not deter it from asserting, without citation to primary authority, that, when Congress extended the statute of limitations, it "evinced a general intention to cast a wide net to ensnare as many offenses against children as possible." A144. This questionable statement ultimately derives from a Third Circuit opinion, *U.S. v. Schneider*, 801 F.3d 186, 196 (3d Cir. 2015), which itself quotes an Eleventh Circuit case, *United States v. Dodge*, 597 F.3d 1347, 1355 (11th Cir. 2010). *Dodge*, however, had nothing to do with § 3283. Instead, *Dodge* addressed the Sex Offender Registration and Notification Act (SORNA), a completely different statute passed years after the relevant amendment to § 3283. Worse still, the full quote from *Dodge* is a comment about SORNA's *text*, not its legislative history. *See Dodge*, 597 F.3d at 1355 ("Our review *of the language of SORNA* confirms our conclusion that Congress cast a wide net to ensnare as many offenses against children as possible.") (emphasis added). Thus, the Third Circuit—and, by extension, the District Court—grossly misread *Dodge* and conjured up a legislative history for § 3283 that does not exist. If anything, § 3283's legislative history

corroborates Defendant's interpretation. The Joint Report accompanying the 2003 amendment to this provision opined that the prior statute of limitations would not go far enough to allow the Government to prosecute "a person who abducted and raped a child." H.R. Conf. Rep. No. 108-66, at 54 (2003). This legislative history makes no mention of crimes, such as Mann Act violations, that do not categorically involve the actual abuse of minors.

Rather than grounding its construction of § 3283 in the text or legislative history of the statute, the District Court relied almost exclusively on an inapposite decision from this Court, *Weingarten v. U.S.*, 865 F.3d 48 (2d Cir. 2017). The District Court conceded, as it had to, that *Weingarten* is not controlling (A147), but it essentially and erroneously treated *Weingarten* as though it were. The only question in *Weingarten* was whether the petitioner's trial counsel provided constitutionally deficient representation by conceding that an indictment charging Mann Act violations was timely. *See* 865 F.3d at 52. The petitioner contended that his trial counsel should have argued that § 3283 must be interpreted under a categorical standard. *See id.* at 58. This Court disagreed only because "*[i]t was not obvious* at the time of Weingarten's motion to dismiss, nor is it today, that a court must apply a categorical approach, rather than a fact-specific analysis, to determine whether an offense is subject to § 3282 or § 3283." *Id.* at 58-59

(emphasis added). *Weingarten* does not move the needle because it did not purport to decide how § 3283 should actually be construed.

The District Court's reliance on *Nijhawan v. Holder*, 557 U.S. 29 (2009), a case interpreting 8 U.S.C. § 1101(a)(43)(M)(i), was likewise misplaced. The District Court cited *Nijhawan* for the proposition that "the word 'involves' generally means courts should look to the circumstances of an offense as committed in each case." A148. But *Nijhawan* says otherwise; there, the Supreme Court reaffirmed its prior case law holding that statutory "language, covering 'crime[s]' that '*involv[e] conduct* that presents a serious potential risk of physical injury to another' … refers to crimes as generically defined." 557 U.S. at 36 (emphasis and brackets in original) (quoting *James v. U.S.*, 550 U.S. 192, 202 (2007)).[10] Indeed, the Supreme Court has explicitly held that the clause, "offense that … involves fraud or deceit," as used in § 1101(a)(43)(M)(i), *is* analyzed categorically, directly contrary to the District Court's apparent misreading of *Nijhawan*. *Compare Kawashima*, 565 U.S. at 483 ("employ[ing] a categorical approach") *with* A148.

This Court should decline to ratify the District Court's case-specific approach for an additional reason: it would conflict with at least two other circuits that have examined § 3283 and concluded that a categorical approach applies. *See*

[10] In *Johnson v. U.S.*, the Supreme Court overruled *James* on other grounds, but expressly reaffirmed *James*' categorical approach. *See* 576 U.S. 591, 604 (2015).

U.S. v. Diehl, 775 F.3d 714 (5th Cir. 2015) (Graves, J.); *U.S. v. Coutentos*, 651 F.3d 809 (8th Cir. 2011). In *Coutentos*, a jury found the defendant guilty on two counts: sexual exploitation or attempted sexual exploitation of a minor to produce child pornography (18 U.S.C. § 2251(a) and (d)) and possession or attempted possession of child pornography (18 U.S.C. § 2252A(a)(5)(B) and (b)(2)). Both counts were untimely unless § 3283 applied. As the Court's recitation of the facts made clear, the production and possession counts were based on the same underlying conduct: the defendant's abuse of his granddaughters to create child pornography. *See Coutentos*, 651 F.3d at 813-14. Thus, in a factual sense, the defendant's possession clearly involved the sexual abuse of a child. Nevertheless, the Eighth Circuit, while affirming the production conviction, vacated the possession conviction on the ground that it was not an "offense involving the sexual…abuse of a child" within the precise meaning of § 3283. The Court considered the possession statute in the abstract, asked whether it *necessarily* required proof of involvement in the sexual abuse of a child, and concluded that it does not:

> Does someone who merely possesses child pornography sexually abuse the child portrayed in the images? No more than the offense of possessing methamphetamine involves the act of producing it, does the offense of child pornography involve the sexual abuse of a child. That a producer of child pornography will possess it at the time of the abuse is insufficient to change our view that the offense of possessing child pornography itself does not involve an act against a child, i.e.,

> the sexual abuse of a child. Thus, we conclude that § 3283 is inapplicable….

Id. at 817.

In *Diehl*, the Fifth Circuit has similarly interpreted § 3283 through a categorical lens. The defendant was convicted of producing child pornography under 18 U.S.C. § 2251(a). To determine whether the defendant's offenses were "offense[s] involving the sexual…abuse of a child" under § 3283, the Court looked not to the facts of the case but, rather, "the language of the relevant statutes." *Diehl*, 775 F.3d at 720. The Court expressly cited *Coutentos* and held that § 2251(a) was an "offense involving the sexual … abuse of a child," as the statute "prohibits using or inducing children under the age of 18 to engage in sexually explicit conduct for the purpose of creating a visual depiction." *Id.* (citing *Coutentos*, 651 F.3d at 816-17).

B. The District Court erred in applying § 3283 retroactively

Even if the District Court were correct to afford § 3283 a case-specific rather than categorical construction (and it was not), it erred again when it held that the April 30, 2003 amendment to that provision—extending the statute of limitations for the life of the accuser—reached back to attach to conduct occurring before its enactment. Contrary to what the District Court held, the 2003 amendment was not retroactive.

Pursuant to *Landgraf v. USI Film Prods.*, 511 U.S. 244, 280 (1994), courts must follow a two-step framework to assess whether an act of Congress may be interpreted to apply retroactively. *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 280 (1994); *see also Enterprise Mortg. Acceptance Co., LLC, Securities Litig. v. Enterprise Mortg. Acceptance Co.*, 391 F.3d 401, 405-406 (2d Cir. 2004). "At the first stage, a court must 'determine whether Congress has expressly prescribed the statute's proper reach.' If Congress has done so, the inquiry ends[.]". *Enterprise*, 391 F.3d at 405-406 (quoting *Landgraf*, 511 U.S. at 280). If, however, "the statute is ambiguous or contains no express command, the court proceeds to the second stage of the *Landgraf* test and 'determine[s] whether the new statute would have retroactive effect[.]'" *Id.* (quoting *Landgraf*, 511 U.S. at 280). "If the statute, as applied, would have such an effect, it will not be applied retroactively 'absent clear congressional intent' to the contrary." *Id.* (quoting *Landgraf*, 511 U.S. at 280).

To apply the 2003 amendment to § 3283 retroactively, the Government must clear both hurdles of the *Landgraf* analysis. In fact, it cannot clear either of them. At step one, Congress clearly evinced an intent that the 2003 amendment operate only prospectively. Alternatively, at step two, the amendment would have an impermissible retroactive effect.

1. Congress evinced an intent that § 3283 operate only prospectively

The first step of *Landgraf* asks whether Congress "expressly prescribed" the temporal reach of the 2003 amendment. Here, Congress "expressly prescribed" that the 2003 Amendment was to apply prospectively only.

To begin with, the text of the 2003 amendment omits any mention of retroactivity. If anything, it points in the opposite direction. This section twice employs forward-looking modal verbs: "*would*" and "*shall*." *See* 18 U.S.C. 3283 ("No statute of limitations that *would* otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnaping, of a child under the age of 18 years *shall* preclude such prosecution during the life of the child, or for ten years after the offense, whichever is longer."); *see also Appalachian Power Co. v. E.P.A.*, 249 F.3d 1032, 1057 (D.C. Cir. 2001) (characterizing the phrase "would emit" as a "future conditional phrase"); *Salahuddin v. Mead*, 174 F.3d 271, 275 (2d Cir. 1999) ("There is no doubt that 'shall' is an imperative, but it is equally clear that it is an imperative that speaks to future conduct"); *Martin v. Hunter's Lessee*, 14 U.S. 304, 314 (1816) ("The word *shall*, is a sign of the future tense…."). This language indicates that § 3283 looks into the future, not the past.

Even if the text of § 3283 were unclear about its temporal reach, we would not proceed immediately to step two of *Landgraf*. Instead, courts must also "examin[e] legislative history to determine congressional intent at the first stage of

the *Landgraf* test." *Enterprise*, 391 F.3d at 408 (citing *Landgraf*, 511 U.S. at 262-63); *see also Martin v. Hadix*, 527 U.S. 343, 355-57 (1999); *Lattab v. Ashcroft*, 384 F.3d 8, 14 (1st Cir. 2004).

The legislative history of 2003's amendment makes it abundantly clear that Congress considered—and rejected—a retroactivity clause that would have expressly allowed § 3283's lifetime limitations period to attach to conduct predating its enactment. The House version of the bill included the following proviso:

> The amendments made by this section shall apply to the prosecution of any offense committed before, on, or after the date of the enactment of this section.

Child Abduction Prevention Act, H.R. 1104, 108th Cong. § 202 (2003). When the House and Senate conferenced, however, this retroactivity provision was rejected. Courts give great weight to Congress' consideration and rejection of a legislative proposal in interpreting federal statutes, and such a clear expression of congressional intent ought to end the *Landgraf* analysis at step one here. *See Food & Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 144 (2000); *Bureau of Alcohol, Tobacco & Firearms v. Fed. Labor Relations Auth.*, 464 U.S. 89, 104 (1983); *Hudson Valley Black Press v. I.R.S.*, 409 F.3d 106, 112 (2d Cir. 2005); *United States v. Napolitano*, 761 F.2d 135, 137 (2d Cir. 1985); *United States v. Lawson*, 683 F.2d 688, 693 (2d Cir. 1982).

Although the District Court was correct to recognize that Congress deleted the retroactivity provision purposefully, it failed to understand the reason. The District Court relied on a floor statement by Senator Leahy, in which the Senator offered his own reasons for opposing the retroactivity clause:

> I am pleased that the conference agreed to drop language from the original House-passed bill that would have extended the limitations period retroactively. That language, which would have revived the government's authority to prosecute crimes that were previously time-barred, is of doubtful constitutionality.

149 Cong. Rec. S5147. Based on this, the District Court theorized that Congress wanted only to ensure that the extended statute of limitations would not unconstitutionally revive time-barred claims. *See Stogner v. California*, 539 U.S. 607, 610 (2003).

But *Stogner* is an unilluminating lens through which to analyze Sen. Leahy's remark, as that case was not decided until after the PROTECT Act was passed. And though *Stogner* established, for Ex Post Facto Clause purposes, a clear division between statutes that revive time-barred prosecutions and those that merely extend the time to bring prosecutions not time-barred, this dichotomy would not have been apparent to Congress before *Stogner*. Indeed, the *Stogner* majority felt it necessary to clarify that its holding did "not prevent the State from extending time limits…for prosecutions not yet time barred," 539 U.S. at 632, while the dissent contended that this dichotomy was untenable, *see id.* at 650

(Kennedy, J., dissenting). Congress could not have known which point of view would carry the day; Sen. Leahy may very well have thought that *any* retroactive application of the statute would be of doubtful constitutionality.

In any event, Sen. Leahy's remark confirms that Congress's rejection of the provision was intentional—that it did not merely "agree to disagree," as in *Landgraf*, 511 U.S. at 623—his reasons *why* the provision was rejected cannot be ascribed to other members of Congress. *See Garcia v. U.S.*, 469 U.S. 70, 76 (1984) (noting floor statements by a single member are generally weak legislative history evidence). Indeed, we know that when Congress rejected the retroactivity provision in the 2003 House bill it almost certainly did *not* do so for constitutional-avoidance reasons. We know this because other criminal statutes of limitation passed by Congress contained language *identical* to the retroactivity provision that Congress rejected in the 2003 amendment to § 3283. *See* Pub.L. 107-56, § 809, 115 Stat. 272 (Oct. 26, 2001) (note to 18 U.S.C. § 3286) ("The amendments made by this section shall apply to the prosecution of any offense committed before, on, or after the date of the enactment of this section."); Pub.L. 101-647, § 2505, 104 Stat. 4789 (Nov. 29, 1990) (note to 18 U.S.C. § 3293) (similar).

For these reasons, applying § 3283 retroactively fails under step one of *Landgraf*.

2. The District Court's application of § 3283 creates "impermissible retroactive effects" without authorization from Congress

Even if the text and legislative history of § 3283 were unclear, *Landgraf*'s "presumption against statutory retroactivity" would foreclose retroactive operation of this statute at step two. 511 U.S. at 293. Because "retroactive application [must] be avoided 'absent clear congressional intent favoring such a result,'" which is lacking here, the District Court's retroactive application of § 3283 must be reversed. *Enterprise*, 391 F.3d at 410 (quoting *Landgraf*, 511 U.S. at 280).

Were this Court to hold otherwise, it would stand in conflict with the Third Circuit. In *U.S. v. Richardson*, 512 F.2d 105 (3d Cir. 1975), the Third Circuit rejected the retroactive application of a criminal statute of limitations, citing both a general presumption against retroactivity similar to what the Supreme Court would later echo in *Landgraf*, and the more specific canon in favor of repose articulated in *Toussie*. *See Richardson*, 512 F.2d at 106.

Although *Richardson* was decided before *Landgraf*, courts continue to follow its holding that criminal statutes of limitations are presumed not to apply retroactively, even as to conduct that fell within the limitations period and could have been prosecuted at the time of enactment. *See U.S. v. Gentile*, 235 F.Supp.3d at 655-56 (holding that expansion of securities fraud statute of limitations did not apply retrospectively although the limitations period in his case had not yet expired when statute was expanded); *U.S. v. Schneider*, C.A. No. 10-29, 2010 WL

3656027, at *1 & n.1 (E.D. Pa. Sept. 15, 2010) (agreeing with Government's concession that the Adam Walsh Child Protection Act, Pub.L. 109-248, 120 Stat. 587 (Jul. 27, 2006) (codified in relevant part at § 3299), which abolished the statute of limitations for certain offenses against minors, did not apply retroactively to allow prosecution of defendant under the Mann Act, even though the prior five-year statute of limitations had not yet expired).

Judge Rakoff in this circuit observed that an expansion of a statute of limitation is "retroactive" if it applies to past conduct, even when it merely extends the time to bring an action that is not yet time-barred. *Morales v. Irizarry*, 976 F.Supp. 256, 258 (S.D.N.Y. 1997) (citing *Landgraf*, 511 U.S. at 279) ("In the absence of some such legislative indication, such a retroactive expansion of a substantive provision like the statute of limitations will not be presumed"). *Morales* was a civil case. But *Landgraf*'s "presumption against retroactive legislation," which "is deeply rooted in our jurisprudence," 511 U.S. at 265, applies with even stronger force in the criminal context. Unlike civil statutes, "criminal limitations statutes are 'to be liberally interpreted in favor of respose.'" *Toussie*, 397 U.S. at 115 (quoting *Scharton*, 285 U.S. at 522). *See U.S. v. Gentile*, 235 F.Supp.3d 649, 655 (D.N.J. 2017). Consequently, the extension of a criminal statute of limitations will not apply to pre-enactment conduct unless Congress has clearly stated that it should.

The Government argued that there is no Ex Post Facto violation in applying § 3283 retroactively to Appellant's pre-April 30, 2003 conduct. We agree. *See Stogner*, 539 U.S. at 632. But the Government's reliance on Ex Post Facto principles is misdirection. As *Richardson*, *Gentile*, and *Schneider* illustrate, the Ex Post Facto Clause is not the final word on whether a statute is impermissibly retroactive. Indeed, the entire premise of *Landgraf* is that certain statutes must be presumed (absent a clear statement from Congress) to apply only prospectively, *even though retroactive application would be entirely constitutional*:

> **But while the *constitutional* impediments to retroactive civil legislation are now modest, prospectivity remains the appropriate default rule.** Because it accords with widely held intuitions about how statutes ordinarily operate, a presumption against retroactivity will generally coincide with legislative and public expectations. Requiring clear intent assures that Congress itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price *273 to pay for the countervailing benefits.

Landgraf, 511 U.S. at 272-73 (emphasis in original; bold added). [11] This view was echoed by no less a jurist than Judge Calabresi, who opined that "[*Landgraf*'s] anti-retroactivity presumption is triggered by statutes whose retroactive application, while not the equivalent of criminal *ex post facto*, nevertheless would

[11] *Landgraf* cannot be distinguished in this regard simply because it was a civil case. Non-criminal statutes, like criminal statutes, can be unconstitutionally retroactive (i.e. under the Takings or Due Process Clauses), but the constitutional standard is different from the *Landgraf* test. *See E. Enterprises v. Apfel*, 524 U.S. 498 (1998). Conversely, some criminal statutes are presumed not to apply retroactively even though doing so would be perfectly constitutional.

run afoul of 'familiar considerations of fair notice, reasonable reliance, and settled expectations.'" *Thom v. Ashcroft*, 369 F.3d 158, 163 n.6 (2d Cir. 2004) (Calabresi, J., majority opinion but "[s]peaking only for [him]self") (quoting *Landgraf*, 511 U.S. at 270).

The authority cited by the District Court is not to the contrary. In *Vernon v. Cassadaga Valley Cent. Sch. Dist.* 49 F.3d 886 (2d Cir. 1995), a civil case, the Court concluded that an amendment to a statute of limitations applied retroactively because it was procedural. *id.* at 891, But in *Enterprise*, Judge Cabranes—writing for a unanimous Court—retreated altogether from *Vernon*'s prior characterization of statutes of limitations as purely "procedural." As Judge Cabranes wrote, *Vernon* "did not create a categorical exception [for statutes of limitations] from *Landgraf*'s presumption against retroactive application of legislation." 391 F.3d at 409. Most importantly for this case, *Enterprise* indicated that an extension of the statute of limitations may operate with impermissible retroactive effect when it applies to pre-enactment conduct, regardless of whether or not it revives claims that are altogether time-barred. *See id.* at 410.

Finally, The District Court also relied on decisions from the Eighth and Ninth Circuits, which—in tension with the Third Circuit's reasoning in *Richardson*,—concluded that §3283 can be applied retroactively. *See U.S. v. Leo Sure Chief*, 438 F.3d 920 (9th Cir. 2006); *U.S. v. Jeffries*, 405 F.3d 682 (8th Cir.

2005). But neither decision cited *Landgraf*; purported to follow its two-step framework; or examined §3283's legislative history. Instead, both decisions simply assumed that a criminal statute of limitations can be applied retroactively absent an Ex Post Facto problem under *Stogner*. *See Leo Sure Chief*, 438 F.3d at 924; Jeffries, 405 F.3d at 685. *But see Richardson, supra.*

C. Count Six is also barred by the Statute of Limitations

Count Six (2001-2004) charging §1591 is also time-barred because the 2003 amendment to §3283 cannot be applied retroactively under *Landgraf* for the reasons stated above**.** In addition, §3299 cannot be applied retroactively. In 2006, Congress enacted §3299 to eliminate the limitations period for §1591. But since the sex trafficking in Count Six predates the enactment of §3299, Count Six is time-barred unless the statute applies retroactively. *Landgraf*'s "presumption against statutory retroactivity" forecloses retroactive operation of this statute at step two as the Government has conceded elsewhere. 511 U.S. at 293. *see U.S. v. Schneider*, C.A. No. 10-29, 2010 WL 3656027, at *1 n.1 (E.D. Pa. Sept. 15, 2010) *citing U.S. v. Richardson*, 512 F.2d 105 (3d Cir. 1975). Accordingly, Count Six is time-barred.

POINT III

DEFENDANT WAS DENIED HER CONSTITUTIONAL RIGHT TO A FAIR AND IMPARTIAL JURY BECAUSE A JUROR MADE FALSE STATEMENTS IN VOIR DIRE AS TO MATERIAL FACTS THAT, IF KNOWN, WOULD HAVE PROVIDED A VALID BASIS TO REMOVE HIM FOR CAUSE. U.S. Const. amend. VI.

A. Introduction

After the trial concluded, a juror gave multiple interviews in which he disclosed that he actively used his own self-described traumatic experience as a victim of child sexual abuse to convince certain members of the jury to overlook issues of credibility surrounding the victims and to convict Maxwell. Defendant moved for a new trial, contending that the juror's presence on the jury violated her Sixth Amendment right to an impartial jury. Dkt 613, 642. The court ordered an evidentiary hearing limited to questions concerning Juror 50's false statements on the juror questionnaire. A239.

At the hearing, Juror 50 gave a patently absurd explanation for his failure to give truthful answers to multiple questions on the juror questionnaire. Nevertheless, the court found that Juror 50 testified credibly at the hearing and that Juror 50 would not have been stricken for cause even if he had answered each question on the questionnaire accurately. Accordingly, the court concluded that Defendant failed to satisfy the demanding requirements of the controlling Supreme

Court decision, *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548, 104 S. Ct. 845 (1984).

In any event, there was ample evidence establishing that Juror 50 harbored actual bias and that the similarities of his child sexual abuse to the case supported a finding of implied and inferred bias at the time of jury selection such that, had Juror 50 given truthful answers at the time of jury selection, Defendant would have interposed a valid challenge for cause. A new trial must be ordered.

B. Applicable Law

"When it is discovered that a juror gave false answers during *voir dire*, any motion for a new trial must first be analyzed under the Supreme Court's test in *McDonough Power Equity v. Greenwood*, 464 U.S. 548 (1984). Under a two-part test, a party must show that "a juror failed to answer honestly a material question on *voir dire*." *McDonough*, 464 U.S. at 556. Second, the party must show that "a correct response would have provided a valid basis for a challenge for cause." *Id*. Moreover, a new trial can be ordered without a finding of actual prejudice. *Arizona v. Fulminante*, 499 U.S. 279, 307-10 (1991). The standard of review for a district court's denial of a motion for a new trial is abuse of discretion. *See, Rivas v. Brattesani*, 94 F.3d 802, 807 (2d. Cir. 1996).

C. Juror No. 50's False Responses Deprived Ms. Maxwell of her Constitutional Right to a Trial by an Impartial Jury

1. Juror 50 Did Not Truthfully Answer Material Questions During *Voir Dire*

Juror No. 50's answers to Questions 25 ,48, and 49 were indisputably false. *Juror Questionnaire* at A289

At the hearing, Juror No. 50 admitted that he gave multiple false answers during *voir dire* which resulted in the concealment of his experience as a victim of child sexual abuse but denied that his misstatements were intentional. Of some 50 questions, only questions that would have revealed his sexual abuse history were answered incorrectly. Juror 50 denied that he had ever been a victim of a crime because he was thinking about other types of crime and because his "healing process" meant that he did not consider himself a victim (#25); denied that he was the victim of sexual abuse because he was distracted and misread the question (#48); and denied that he had a family member who had been accused of a crime because he did not think of his step-brother who sexually abused him as family (#49). A268-270.

D. Under the McDonough Test, Juror 50's Actual, Implied and Inferred Bias was established.

1. The McDonough Test: The First Prong

"Intentionally false" answers are not a prerequisite to satisfying the first prong of the *McDonough* test. Although the Court held that "a party must first demonstrate that a juror failed to honestly answer a material question on *voir dire*," its focus on whether the juror was "honest," did not mean that an inadvertent mistake or inaccurate answer, not given deliberately, would not satisfy the test. *McDonough*, 464 U.S. at 556. Quite the opposite, a verdict can be undermined, and a new trial ordered, "regardless of whether a juror's answer is honest or dishonest." *Id*. at 557-59. Thus, "false" means inaccurate or materially misleading, not necessarily deliberately false or untruthful. *United States v. Langford*, 990 F. 2d 65, 68 (2d Cir. 1993). Here, as Juror No. 50's answers were plainly untrue, the first prong under *McDonough* was satisfied.

2. The McDonough Test: The Second Prong

Pursuant to *McDonough*, once an untrue *voir dire* response has been discovered, the next question is would truthful answers have provided a valid basis for a challenge for cause? *United States v. Stewart*, 433 F.3d 273, 303 (2006). "[T]he test is not whether the true facts would compel the Court to remove a juror for cause, but rather whether a truthful response 'would have provided a valid basis

for a challenge for cause'" *Daugerdas*, 867 F. Supp. 2d at 470. Challenges for cause can be based on implied bias, inferred bias, or actual bias. *United States v. Torres*, 128 F.3d 38, 43 (2d Cir. 1997). Clearly, had Juror No. 50 disclosed his "traumatic" victimization, his truthful answers to follow-up questions would have provided a valid basis for a challenge for cause because of the similarity of Juror 50's sexual abuse experience to the evidence in the case and the materiality of the nondisclosures.

In determining whether Juror No. 50 was biased, and whether a hypothetical challenge for cause would have been granted, a court should consider several factors, including (1) the similarity between Juror No. 50's past experience and the experiences of the witnesses who testified at trial, as well as (2) the severity of the juror's dishonesty, and (3) the juror's motives for lying. *See, Sampson v. United States*, 724 F.3d 150, 166 (1st Cir. 2013).

Here, Juror 50's undisclosed experience was strikingly similar to the experiences described by the witnesses at trial. Juror 50 was a victim of childhood sexual abuse; was abused as a minor on multiple occasions over the course of several years; was abused by someone he knew and trusted and another person; and delayed disclosing the abuse for years. A267-268. Juror 50's experience is more troubling because it directly bore upon Maxwell's central trial defense i.e., that the testimony of the complaining witnesses was unreliable because it

concerned memories of events that occurred so long ago and that those memories of Maxwell's peripheral involvement in the abuse were motivated and distorted by external events. This issue was so central to the trial that the defendant called an expert to testify about memories.

Assuming Juror 50 recounted a version of his abuse similar to what he described at the hearing and in media interviews, there is no question that he would have been excused on consent, stricken for cause or by an available peremptory challenge.[12] In the event that Juror 50 answered truthfully, Juror 50 would have been questioned at length by the court, *in camera*. Honest answers to those questions would certainly have resulted in a valid challenge for cause.

E. The District Court Abused its Discretion in the Manner in Which it Conducted the Post-Trial Hearing

The court abused its discretion in precluding cross-examination of Juror 50 by the defense and in limiting the scope of the questions.

[12] The potential jurors who admitted to being victims of sexual assault and were not stricken for cause, reported conduct such as groping, harassment at work or on the subway, and inappropriate touching in social settings - conduct that was drastically different than the abuse suffered by Juror 50 – drastically different from the abuse suffered by Juror 50 and the victims herein.

1. The Court Erred in Precluding Defense Counsel From Questioning Juror 50

Once the court ordered a hearing, it was essential that Maxwell be afforded a meaningful opportunity to have her counsel participate in the hearing. Although judges normally enjoy "broad flexibility" in addressing claims of jury misconduct, cases involving "media publicity or other outside influences" constrain their leeway. *United States v. Thai*, 29 F. 3d 785, 803 (2d Cir. 1994). *See, United States v. Daugerdas*, Case No. 09-CR-581 (William H. Pauly) (procedure followed in identical situation acknowledged that defense counsel was in best position to conduct the examination of the juror).

Defense counsel was not permitted to cross-examine Juror 50 and many of their proposed questions were rejected by the court. For example, the court refused inquiry into Juror 50's statements about his "healing process;" his therapy and specifically whether he spoke with a therapist about the case *during* the trial; the details of his sexual abuse to assess how similar it was to the stories of the accusers; his social media use to the extent it contradicted his statements in *voir dire*; and his public statements both about traumatic memories and his participation as a juror. A277-281. The court should have permitted Maxwell's attorneys to probe the impact that the sexual abuse had on the juror in other aspects of his life and assess whether his answers reflected an actual or implied bias as his voluntary post-verdict public comments surely did. The court's. hypothetical questions about

what he might have said in *voir dire* four months earlier, had he been truthful, were pointless.

2. FRE 606 Did Not Prevent Inquiry into Juror 50's Use of Prior Abuse in Persuading Jury to Convict Maxwell

The court erred in applying Federal Rule of Evidence 606 to preclude any testimony from Juror 50 about his statements to journalists.

Fed. R. Evid. 606(b) precludes a juror from testifying about deliberations and jurors' mental processes in the course thereof but allows testimony regarding extraneous prejudicial information, i.e., when certain outside influences on the jury are involved. Rule 606(b) expressly authorizes jurors to testify as to "extraneous prejudicial information" or "outside influences." The rationale behind 606(b) is the need to prevent post-trial scrutiny, the harassment of former jurors by losing parties, and to promote juror privacy. *See*, *Tanner v. United States*, 483 U.S. 107 (1987).

In this case, however, we are not faced with a conflict between policy considerations underlying Rule 606(b). Indeed, such public policy concerns are inapplicable in this case, where the juror, on his own, broadcast his experiences and the role he played in jury deliberations. Inquiry into these statements does not risk exposing a juror to harassment or intimidation. In fact, the only reason the

parties were aware of such statements is due to Juror 50's own conduct. In such a situation, Juror 50 does not get to use 606(b) as a shield.

Rule 606(b)'s exception for extraneous prejudicial information is applicable here. First, had this information been disclosed, Juror 50 would have been disqualified or excluded from being a member of the jury. Second, his statements demonstrate that he used information, concealed during *voir dire*, to operate as an unsworn expert on the subject of traumatic memory for which he was not qualified.[13] And, third, questioning Juror 50 about his statements to media would have provided the defense with an opportunity to establish through probing questions the credibility of Juror 50's conclusory protestations that he could be fair and establish a valid basis for a cause challenge. Thus, testimony on this topic was admissible as an exception to 606(b).

F. The District Court Erred in Finding that (1) Juror 50 was Not Biased and (2) Juror 50 Would Not Have Been Stricken Even if He Had Answered the Questions Accurately

Here, the District Court abused its discretion in unfairly limiting the hearing and in making clearly erroneous factual findings, namely, that Juror 50's hearing

[13] Dr. Elizabeth Loftus testified that people "don't just record events and play it back later like a recording device would work, like a video machine, but rather, we are actually constructing memories when we retrieve memories." (Tr. at 2427). However, Juror No. 50 stated that the memories of the abuse he suffered can be "replayed like a video." Lucia Osborn-Croweley, *Ghislaine Maxwell Juror Breaks Silence To The Independent: This Verdict Is For All The Victims*," Independent (Jan. 4, 2022).

testimony was credible and that, had he given truthful answers during *voir dire*, he would not have been dismissed for cause.

The District Court erred when it did not find any bias (actual, implied, or inferred) on the part of Juror 50. Juror 50's testimony revealed that he was not, and could not have been, a fair and impartial juror. At the outset, Juror 50's explanation for his untruthful responses on the questionnaire only as to questions that would have revealed his sexual abuse history were not credible, rendering his self-serving statements that he was unbiased unreliable. His post-verdict statements show how closely he identified with the victims in this case. For example, Juror 50 stated that the verdict against Maxwell was a verdict "for all the victims." During his hearing testimony, he told the trial court that after "seeing the victims be brave enough to give their story, I felt like if they can do it, so can I." (H. 24.) As a victim of child sexual abuse, he was not capable of "separating [his] own life experiences from the evidence in the case." *Sampson,* 724 F. 3d at 167.

The court abused its discretion when it credited Juror 50's patchwork of self-serving explanations for his false answers to questions that could have led to the disclosure of his sexual abuse history. His explanation that he did not see the word "you" in question #48 is implausible since he saw it everywhere else. Juxtaposed with his other excuses for false statements, namely, that he did not consider a step-

brother to be family (#49) and that he did not consider sexual abuse a crime (#25), his answers border on the absurd.

A review of Juror 50's statements to the media and hearing testimony reveals that, after he retained and was advised by counsel, he took great pains to downplay his prior sexual abuse. But his view of the way *all* victims recall memories – which are at odds with the defendant's expert – revealed a bias that would have prevented him from serving as a juror, were he to have disclosed it. Thus, the court erred when it found that Juror 50 would not have been stricken as a juror even if he had answered the questions accurately during *voir* dire.

POINT IV

THE COURT CONSTRUCTIVELY AMENDED COUNTS THREE AND FOUR OF THE INDICTMENT

A jury note sent during their deliberations (A230) clearly indicated that the jurors were considering convicting Maxwell on Count Four of the Indictment based solely on Jane's testimony about sexual activity in New Mexico. The Court denied the defense's request to give a clarifying instruction to the jury that the New Mexico conduct could not form the basis of a conviction on Count Four because it was not a violation of New York law. Instead, the Court directed the jury to the existing jury charge for Count Four. The jury ultimately convicted Maxwell on Count Four and the two Mann Act

conspiracies (Counts One and Three). There is a substantial likelihood that the jury believed that sexual activity that violated New York Penal Law §130.55 need not have occurred in New York and that Maxwell was convicted of Count Four based on Jane's testimony about sexual activity with Epstein at his ranch in *New Mexico*.

Jane's testimony about sexual abuse in New Mexico presented the jury with an alternative basis for conviction that was entirely distinct from the charges in the Indictment. The Court's refusal to correct the jury's obvious misunderstanding, constituted a constructive amendment and/or a variance from the charges in the Indictment. Accordingly, this Court should vacate Maxwell's convictions on Counts Three and Four and grant a new trial.

A. Background Facts

1. The Jury Note

During their deliberations, the jury sent a note (the "Jury Note" or the "Note") inquiring about the proper basis to convict under Count Four of the Indictment (the substantive transportation count). The Jury Note read as follows:

> Under Count Four (4), if the defendant aided in the transportation of Jane's return flight, but not the flight to New Mexico where/if the intent was for Jane to engage in sexual activity, can she be found guilty under the second element?

A238

The second element of Count Four in the Jury Charge to which the jury plainly refers requires "that Maxwell knowingly transported Jane in interstate commerce with the intent that Jane engage in sexual activity for which any person can be charged with a criminal offense in violation of New York law," namely, "New York Penal Law, Section 130.55, sexual abuse in the third degree." Tr. 3037:10-19

B. Applicable Law

To prevail on a constructive amendment claim, a defendant must demonstrate that "the terms of the indictment are, in effect, altered by the presentation of evidence and jury instructions which so modify *essential elements* of the offense charged that there is a substantial likelihood that the defendant may have been convicted of an offense other than that charged in the indictment." *United States v. D'Amelio*, 683 F.3d 412, 416 (2d Cir. 2012). A constructive amendment is a *per se* violation of the Grand Jury Clause requiring reversal. Id at 417.

The defendant must be "given notice of the core of criminality to be proven at trial." *Id*. "After identifying the core of criminality, a court must then determine whether the evidence or jury instructions at trial created a substantial likelihood that the defendant was not convicted of the crime described in that

core, but of a crime 'distinctly different' from the one alleged." *D'Amelio*, 683 F.3d at 419-21). The standard of review is *de novo. D'Amelio*, at 416.

In contrast, "[a] variance occurs when the charging terms of the indictment are left unaltered, but the evidence at trial proves facts materially different from those alleged in the indictment." *Id.* (quoting *United States v. Salmonese*, 352 F.3d 608, 621 (2d Cir. 2003)). A defendant alleging variance must show "substantial prejudice" to warrant reversal.

Rigas, 490 F.3d at 226.

1. The "Core of Criminality" of Counts Three and Four Was a Scheme to Cause Underaged Girls to Travel to New York with an Intent to Violate New York Law.

The "core of criminality" of the Mann Act transportation offenses was a scheme to cause underage girls to travel to *New York* with the intent that they would engage in sexual activity in violation of *New York* law. The Indictment itself was clear on its face. Count Four, specifically alleged in the "to wit" clauses that the charges were based on Jane's travel "from Florida to New York, New York" where Maxwell intended for her to engage in sex acts with Epstein "in violation of New York Penal Law, Section 130.55." Ind. ¶ 21 at A129. Count Three alleged that the object of the conspiracy was to cause underage girls to travel across state lines with the intent that they "engage in sexual activity for which a person can be charged with a criminal offense"

(Ind. ¶ 18 at A128) and specified that the relevant criminal offense was a "violation of New York Penal Law, Section 130.55." Ind. ¶19b at A128. And the Government consistently represented to the court, in numerous conferences and filings, that a conviction under the Mann Act counts had to be based on an intent or an agreement to violate New York Penal Law §130.55. *See, e.g.*, 11/1/2021 Tr. 68:2- 4; Dkt. 410-1 at 52; and Tr. 2775:3-6.

It follows, then, that evidence that Jane traveled to any other state besides New York and engaged in sexual activity, even if illegal under that state's laws, would be insufficient, by itself, to convict Maxwell of Count Four. If Maxwell were convicted on Counts Three or Four based solely on such conduct, that would be a constructive amendment of the charges in the Indictment. *See Millstein*, 401 F.3d at 65; *Wozniak*, 126 F.3d at 106-08; *Roshko*, 969 F.2d at 4-6.

2. There is a Substantial Likelihood that. Maxwell Was Convicted on Counts Three and Four Based on Conduct Not Charged in the Indictment.

There is a substantial likelihood that Defendant was convicted on Count Four based solely on conduct in New Mexico.

The jurors were not given the Indictment and the jury charge failed to include that the relevant interstate travel "as charged in the Indictment" was travel "from Florida to New York, New York," despite a defense request. Dkt.

410-1 at 19; Tr. 2758:23-2760:9.

Count Four rested exclusively on the testimony of Jane. Jane recalled one trip to New Mexico when she was "15 or 16." Tr. 321:6- 321:13. She flew to New Mexico with Epstein and Maxwell and stayed at Epstein's ranch. Tr. 321:14-322:6., and, while there, she was sexually abused. Tr. 322:7-323:19.

Based on Jane's testimony and the Note, there is a substantial likelihood that the jury improperly based its conviction solely on the sexual abuse that Jane experienced in New Mexico. The jurors had the mistaken impression that it would be sufficient to satisfy the second element of Count Four if they found that Maxwell had intended Jane to engage in sexual activity *in New Mexico*, even though such conduct was not and could not have been "sexual activity in violation of New York Penal Law, Section 130.55."

The corroborating evidence supports the theory that the jury did not credit Jane's testimony that Maxwell participated in or helped arrange Jane's sexual abuse in New York and was instead focused on her involvement in the New Mexico conduct. The most important piece of evidence corroborating Jane's testimony were the flight logs kept by Epstein's pilot, Dave Rodgers. *See* GX-662-R. The flight logs were the only contemporaneous evidence offered at trial that could corroborate that Jane, in fact, traveled to New York and New Mexico and when those trips may have taken place. According to the

flight logs, there were only two trips that Jane may have taken while she was under the relevant age of 17. The first from Palm Beach to New York (Teterboro) on November 11, 1996 (GX-662-R at 44) and the second from New York (Teterboro) to Santa Fe, New Mexico on May 9, 1997, both when Jane was 16 (GX- 662-R at 48). The critical difference between the two trips was that Maxwell was not a passenger on the first trip to New York but was a passenger on the second trip to New Mexico.

Given the text of the Note, it is likely that the jurors decided that there was no corroborating evidence that Maxwell was present for, or helped to arrange, any of Jane's trips to New York, but that the flight logs did corroborate that Maxwell was present for Jane's trip to New Mexico. As a result, the jury began evaluating Maxwell's involvement in the New Mexico trip to see if it supported a conviction under Count Four, which led to the question posed by the Jury Note.

This is also consistent with the jury's decision to acquit Maxwell on the substantive enticement offense (Count Two). The jury likely determined that the only corroborating evidence linking Maxwell to the New Mexico trip was a flight log showing that she was *present* on the trip but said nothing about whether she "persuaded, induced, enticed, or coerced" Jane to take the trip. Hence, the acquittal on Count Two. By contrast, the jury likely believed that if

they found that Maxwell had some role in arranging Jane's return flight from New Mexico, after the sexual abuse had already taken place, they could convict her on the substantive transportation count (Count Four), assuming that arranging the return flight was sufficient to satisfy the second element of Count Four. Hence, the question in the Jury Note.

Thus, it was necessary for the Court to give the jury a supplemental instruction, as requested by the defense, to clarify the correct basis for conviction under Count Four. The Court's refusal to do so allowed the jury to modify the essential elements of the charged offense and created a substantial likelihood that Maxwell was convicted of a crime other than the one alleged in the Indictment. *D'Amelio*, 683 F.3d at 419-21.

Moreover, given the substantial likelihood that the jury convicted Maxwell on Count Four based on the New Mexico conduct, there is also a substantial likelihood that they improperly convicted her on the related conspiracy count (Count Three) based on the same conduct. The substantive transportation offense charged in Count Four was the object of the conspiracy charged in Count Three, and both conspiracy counts required an agreement to violate New York law.

C. The Variance Between the Proof at Trial and the Allegations in the Indictment Substantially Prejudiced Maxwell.

In the alternative, the Court must vacate Maxwell's convictions on Counts Three and Four because the record demonstrates a variance between the proof at trial and the allegations in the Indictment that substantially prejudiced Maxwell as elaborated above.

Here, the Mann Act counts did not contain any allegations concerning Jane's sexual abuse in New Mexico. Indeed, although Jane had previously told the FBI about the trip to New Mexico, she had denied being sexually abused there. It was not until just before trial, that Jane claimed for the first time that she had engaged in sexual activity with Epstein while she was at the ranch.

For the foregoing reasons, Maxwell's convictions on Counts Three and Four were based on a constructive amendment to the charged offenses. The Court must vacate these convictions and grant a new trial on these counts.

POINT V

THE SENTENCE SHOULD BE VACATED AND REMANED FOR RESENTENCING AS THE DISTRICT COURT ERRED IN APPLYING AN INCORRECT GUIDLINE RANGE AND OFFENSE LEVEL.

The defendant's sentence should be vacated because the District Court erroneously calculated the guidelines range; imposed an upward variance, without providing the required explanation; and mistakenly applied the aggravating role adjustment. Accordingly, the sentence must be vacated and remanded back to the District Court for re-sentencing, or – in the interest of justice - the defendant's sentence should be substantially reduced.

A. Standard of Review.

The standard of review for all sentences requires a "deferential abuse-of-discretion standard." *United States v. Cavera*, 550 F.3d 180, 189 (2d. Cir. 2008). A review has two components: procedural and substantive. *Id.* The procedural review "must first ensure that the District Court committed no significant procedural errors. *Gall v. United States*, 552 U.S. 38, 51 (2007). Here, the District Court improperly calculated the guidelines range in the first instance and then deviated upwards without *any* explanation for doing so.

B. Procedural Errors.

The Presentence Report ("PSR"), using the 2004 Sentencing Guidelines, initially calculated a guidelines range of 292-365 months, based on a total offense level of 40 and a criminal history category of I, but recommended a downward variance to 240 months' imprisonment. SH19.[14]

The District Court, using the 2003 Guidelines, initially miscalculated the applicable guidelines range. After realizing its error and adjusting to the correct guideline range, the court imposed a sentence above the corrected guidelines range without accounting for the upward variance. The court's initial miscalculation of the guidelines range carried serious consequences for the defendant, as it appears that the court believed it was imposing a guidelines sentence when, in fact, it imposed a sentence above the guideline range. After the court's calculation error was pointed out, and the range was significantly reduced, the court did not amend its sentence, which then became an upward variance.

The PSR delineated mitigating factors and reasons for the downward variance. But the court simply stated that it agreed with the PSR's recommendation of 240 months, without addressing the variance. The court based its sentencing decision of 240 months on a miscalculation and then adhered to its pre-determined sentence

[14] Numerical references preceded by "SH" are to the Sentencing Hearing on June 28, 2022.

even after it was made aware that its sentence was predicated on a miscalculation in the first instance.

Importantly, the court procedurally erred because it then failed to provide reasons for its upward variance both orally and in writing. 18 U.S.C. Section 3553(c)(2).

C. The District Court improperly applied the four-level aggravating role adjustment under USSG § 3B1.1.

The court erred in applying the four-level aggravating role enhancement under USSG §3B1.1. Were this enhancement not applied, the proper offense level would be 33, which would correspond to a lesser guideline range of 135-168 months. To qualify for the enhancement under USSG §3B1.1, "the defendant must have been the organizer, leader, manager, or supervisor of one or more other participants." USSG §3B1.1., cmt. n.2. A "participant is defined as 'a person who is criminally responsible for the commission of the offense but need not have been convicted." *Id.*

The Government argued that Maxwell supervised Sarah Kellen. Yet the trial evidence belies this assertion. During the trial, Carolyn testified that Kellen scheduled massage appointments for her and took nude pictures of her at the Palm Beach residence. *Tr.* 1527-28; 1538-39. The Government acknowledged that

"there wasn't direct evidence about, you know, the defendant directly instructing Kellen to make a certain phone call, and we acknowledge that." A406. The court pointed to the testimony of Larry Visoski as support for the fact that Kellen was Maxwell's assistant. A417. But Visocki's testimony does not support this inference either. While Visoski initially testified that he "thought" Kellen was Maxwell's assistant, he later clarified that "he didn't know what her exact job" was; did not know whether Kellen was Epstein's assistant or Maxwell's assistant; and that his best recollection was that Kellen was "an employee who worked with Epstein." Tr. 204. Further, Cimberly Espinosa testified that Kellen was Epstein's assistant, and that she – not Kellen- was Maxwell's assistant. Tr. 2332-33, 2376-77. Espinosa further testified that, during the time Kellen interacted with Carolyn, Epstein and Maxwell had ended their romantic relationship and "went their separate ways." Tr. 2370-71. Indeed, even Carolyn testified that there was a clear break in the time when Maxwell called her to schedule massages and when Kellen began calling her. Tr. 1527.

Given the dearth of evidence, the government failed to meet its burden of establishing by a preponderance of the evidence that Maxwell supervised Kellen in *any* capacity, much less was there any inference available to suggest that there was supervision of a criminal nature. Thus, the court erred in applying the enhancement.

CONCLUSION

For the foregoing reasons, all counts should be vacated and the indictment dismissed. However, based on the preceding arguments, the Court may determine that only Counts Three and Four or Three and Six should be reversed. In either scenario, the Court should order a new trial on the remaining count. This is due to the prejudice having resulted from the admission of evidence to prove Counts Three and Four or Three and Six. *United States v. Rooney*, 37 F.3d 847, 855 (2d Cir. 1994). In weighing a claim of prejudicial spillover, courts look at several factors, one being the "similarities and differences" between the evidence on the reversed counts and the remaining counts. *Id.* When the evidence admissible to prove the remaining counts arises from a distinct set of facts in a different time-period, involving a different complainant and the evidence admissible to prove the dismissed counts would not have been admissible to prove the remaining count, courts will find prejudice warranting a new trial on the remaining counts. *Id.*

Here, Counts Four and Six arise from distinct facts, time-periods, and complainants. Count Four is based on the testimony of Jane concerning conduct between 1994 and 1997, while Count Six is based on the testimony of Carolyn concerning conduct between 2001 and 2004. Plainly, much of the evidence to prove the dismissed counts would not have been admissible to prove the remaining

count (whether it be Count Four or Six). Accordingly, a new trial on the remaining count would be required.

For the Reasons Stated in Points I and II, the Convictions Should Be Vacated and the Indictment Dismissed. For the Reasons Stated in Points III and IV, the Convictions should be Vacated and the Matter Remanded for a New Trial. For the Reasons Stated in Point V, the Court Should Remand To the District Court for Resentencing.

Dated: New York, New York
February 28, 2023

Respectfully Submitted,

/s/Diana Fabi Samson

ARTHUR L. AIDALA
DIANA FABI SAMSON
JOHN M. LEVENTHAL
AIDALA, BERTUNA & KAMINS, PC
Attorneys for Defendant-Appellant
Ghislaine Maxwell
546 Fifth Avenue, Sixth Floor
New York, New York 10036
212 486-0011

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of the court's Order dated January 18, 2023, granting the Appellant a word limit of 20,000 words. This document contains 19,950 words.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because: this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point font Times New Roman.

Dated: New York, New York
February 28, 2023

/s/Diana Fabi Samson

ARTHUR L. AIDALA
DIANA FABI SAMSON
JOHN M. LEVENTHAL
AIDALA, BERTUNA & KAMINS, PC
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Ghislaine Maxwell
546 Fifth Avenue, Sixth Floor
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SPECIAL APPENDIX

SPECIAL APPENDIX
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SPA-1

AO 245B (Rev. 09/19) Judgment in a Criminal Case Sheet 1 (form modified within District on Sept. 30, 2019)

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA
v.
GHISLAINE MAXWELL

JUDGMENT IN A CRIMINAL CASE

Case Number: S2 20 CR 330 (AJN)

USM Number: 02879-509

BOBBI C. STERNHEIM
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☑ was found guilty on count(s) after a plea of not guilty. 1, 3, 4, 5, 6 (judgment not entered on 1 & 5 as multiplicitous, Dkt. No. 657)

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC 371.F	CONSPIRACY TO TRANSPORT MINORS WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY	7/30/2004	3

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☑ The defendant has been found not guilty on count(s) 2

☑ Count(s) 7, 8 and underlying indictments ☐ is ☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

6/29/2022
Date of Imposition of Judgment

Alison J. Nathan
Signature of Judge

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 6/29/2022

ALISON J. NATHAN, US Circuit Judge sitting by designation
Name and Title of Judge

6/29/2022
Date

SPA-2

DEFENDANT: GHISLAINE MAXWELL
CASE NUMBER: S2 20 CR 330 (AJN)

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18 USC 2423.F	TRANSPORTATION OF A MINOR WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY	12/31/1997	4
18 USC 1591.F	SEX TRAFFICKING OF AN INDIVIDUAL UNDER THE AGE OF EIGHTEEN	7/30/2004	6

SPA-3

DEFENDANT: GHISLAINE MAXWELL
CASE NUMBER: S2 20 CR 330 (AJN)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

The Defendant is sentenced to a term of 240 Months.
Count 3 a sentence of 60 Months. Count 4 a sentence of 120 Months. Count 6 a sentence of 240 Months. All Counts to run concurrently.

Defendant was notified of her right to Appeal.

☑ The court makes the following recommendations to the Bureau of Prisons:
Defendant to be considered for designation to FCI Danbury.

Defendant to be considered for enrollment in FIT program.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

SPA-4

DEFENDANT: GHISLAINE MAXWELL
CASE NUMBER: S2 20 CR 330 (AJN)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

3 Years on Counts 3 and 4. 5 Years on Count 6 to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☑ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☑ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

SPA-5

DEFENDANT: GHISLAINE MAXWELL
CASE NUMBER: S2 20 CR 330 (AJN)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: GHISLAINE MAXWELL
CASE NUMBER: S2 20 CR 330 (AJN)

SPECIAL CONDITIONS OF SUPERVISION

You shall submit your person, and any property, residence, vehicle, papers, computer, other electronic communication, data storage devices, cloud storage or media, and effects to a search by any United States Probation Officer, and if needed, with the assistance of any law enforcement. The search is to be conducted when there is reasonable suspicion concerning violation of a condition of supervision or unlawful conduct by the person being supervised. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition. Any search shall be conducted at a reasonable time and in a reasonable manner.

You shall undergo a sex-offense-specific evaluation and participate in an outpatient sex offender treatment and/or outpatient mental health treatment program approved by the U.S. Probation Office. You shall abide by all rules, requirements, and conditions of the sex offender treatment program(s), including submission to polygraph testing and refraining from accessing websites, chatrooms, instant messaging, or social networking sites to the extent that the sex offender treatment and/or mental health treatment program determines that such access would be detrimental to your ongoing treatment. You will not view, access, possess, and/or download any pornography involving adults unless approved by the sex-offender specific treatment provider. You must waive your right of confidentiality in any records for mental health assessment and treatment imposed as a consequence of this judgment to allow the U.S. Probation Office to review the course of treatment and progress with the treatment provider. You must contribute to the cost of services rendered based on your ability to pay and the availability of third-party payments. The Court authorizes the release of available psychological and psychiatric evaluations and reports, including the presentence investigation report, to the sex offender treatment provider and/or mental health treatment provider.

You must not have contact with the victim(s) in this case. This includes any physical, visual, written, or telephonic contact with such persons. Additionally, you must not directly cause or encourage anyone else to have such contact with the victim (s).

You must not have deliberate contact with any child under 18 years of age, unless approved by the U.S. Probation Office. You must not loiter within 100 feet of places regularly frequented by children under the age of 18, such as schoolyards, playgrounds, and arcades. You must not view and/or access any web profile of users under the age of 18. This includes, but is not limited to, social networking websites, community portals, chat rooms or other online environment (audio/visual/messaging), etc. which allows for real time interaction with other users, without prior approval from your probation officer.

You must provide the probation officer with access to any requested financial information.

You must not incur new credit charges or open additional lines of credit without the approval of the probation officer unless you are in compliance with the installment payment schedule.

If you are sentenced to any period of supervision, it is recommended that you be supervised by the district of residence.

SPA-7

DEFENDANT: GHISLAINE MAXWELL
CASE NUMBER: S2 20 CR 330 (AJN)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 300.00	$	$ 750,000.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: GHISLAINE MAXWELL
CASE NUMBER: S2 20 CR 330 (AJN)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 300.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☑ Payment during the term of supervised release will commence within 30 *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

U.S. Department of Justice

United States Attorney
Southern District of New York

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

March 13, 2023

By CM/ECF

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, New York 10007

Re: United States v. Ghislaine Maxwell
Docket No. 22-1426

Dear Ms. Wolfe:

Pursuant to this Court's procedures for the setting of deadlines for filing briefs in criminal appeals, the Government respectfully submits this letter to advise the Court and its adversary that it intends to file its brief on appeal on or before May 30, 2023.

In addition, the Government requests permission to file, as needed, a supplemental appendix with its brief on appeal in order to satisfy the requirements of Fed. R. App. P. 30 or to provide parts of the record that will assist the Court in resolving the questions presented on appeal.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

By: /s/
Andrew Rohrbach
Maurene Comey
Alison Moe
Lara Pomerantz
Assistant United States Attorneys
Tel: (212) 637-2345

cc: Defense Counsel (via CM/ECF)

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 14th day of March, two thousand twenty-three,

---

United States of America,

Appellee,

v.

Ghislaine Maxwell, AKA Sealed Defendant 1,

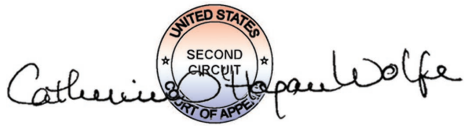
Defendant - Appellant.

ORDER
Docket No: 22-1426

Counsel for APPELLEE United States of America has filed a scheduling notification pursuant to the Court's Local Rule 31.2, setting May 30, 2023 as the brief filing date.

It is HEREBY ORDERED that Appellee's brief must be filed on or before May 30, 2023.

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): 22-1426 Caption [use short title] United States v. Ghislaine Maxwell

Motion for: Permission to file an oversized brief and extension of time to file the appellee's brief and appellant's reply brief

Set forth below precise, complete statement of relief sought:

(1) permission to file a brief of no more than 20,000 words; (2) 30-day extension of time to file the appellee's brief, until June 29, 2023; and (3) if that extension is granted, an extension of time for the appellant to file the reply brief until July 27, 2023.

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

☐ Plaintiff ☐ Defendant

☐ Appellant/Petitioner ☑ Appellee/Respondent

MOVING ATTORNEY: Damian Williams, U.S. Attorney, Southern District of New York **OPPOSING ATTORNEY:** Diana Samson

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

By: Andrew Rohrbach, Assistant U.S. Attorney
One Saint Andrew's Plaza, New York, NY 10007
(212) 637-2345; Email: Andrew.Rohrbach@usdoj.gov

Aidala, Bertuna, & Kamins PC
546 Fifth Avenue - Sixth Floor, New York, NY 10036
(212) 486-0011, Email: diana@aidalalaw.com

Court- Judge/ Agency appealed from: The Honorable Alison J. Nathan, United States Circuit Judge, sitting by designation

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:

Andrew A. Rohrbach **Date:** 4/26/23 Service by: ☑ CM/ECF ☐ Other [Attach proof of service]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, *Appellee*,	:	**AFFIRMATION**
	:	Docket No. 22-1426
- v. -	:	
GHISLAINE MAXWELL, *Defendant-Appellant*.	:	

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

ANDREW A. ROHRBACH, pursuant to 28 U.S.C. § 1746, hereby affirms under penalty of perjury:

1. I am an Assistant United States Attorney in the Office of Damian Williams, United States Attorney for the Southern District of New York. I am one of the attorneys representing the Government in this appeal.

2. I respectfully submit this Affirmation in support of the Government's unopposed motion (1) to file an oversized brief of no more than 20,000 words in order to respond adequately to the arguments raised in the brief of defendant-appellant Ghislaine Maxwell, which uses approximately 19,950 words, and (2) for a 30-day extension of time to file its brief from May 30, 2023, until June 29, 2023,

and a related extension of the deadline for Maxwell to file her reply brief until July 27, 2023.

3. Maxwell appeals from a judgment of conviction entered on June 29, 2022, in the United States District Court for the Southern District of New York, by the Honorable Alison J. Nathan, United States Circuit Judge, sitting by designation, following a four-and-a-half-week jury trial.

4. Superseding Indictment S2 20 Cr. 330 (AJN) (the "Indictment") was filed on March 29, 2021, in eight counts. Count One charged Maxwell with conspiracy to entice minors to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 371. Count Two charged Maxwell with enticement of a minor to engage in illegal sex acts, in violation of 18 U.S.C. §§ 2422 and 2. Count Three charged Maxwell with conspiracy to transport minors to engage in criminal sexual activity, in violation of 18 U.S.C. § 371. Count Four charged Maxwell with transportation of a minor with intent to engage in criminal sexual activity, in violation of 18 U.S.C. §§ 2423(a) and 2. Count Five charged Maxwell with sex trafficking conspiracy, in violation of 18 U.S.C. § 371. Count Six charged Maxwell with sex trafficking of a minor, in violation of 18 U.S.C. §§ 1591(a), (b)(2), and 2. Counts Seven and Eight charged Maxwell with perjury, in violation of 18 U.S.C. § 1623. The charges related to Maxwell's facilitation and participation in the sexual abuse of minor girls over the course of a decade.

5. Maxwell's trial on Counts One through Six commenced on November 29, 2021 and ended on December 29, 2021, when Maxwell was convicted on Counts One and Three through Six, and acquitted on Count Two.

6. On June 29, 2022, Judge Nathan sentenced Maxwell principally to 60 months' imprisonment on Count Three, 120 months' imprisonment on Count Four, 240 months' imprisonment on Count Six, all to run concurrently, as well as a $750,000 fine.

7. Maxwell is serving her sentence.

8. On July 7, 2022, Maxwell filed a notice of appeal from the judgment of conviction.

9. On July 28, 2022, Maxwell requested an extended deadline for her opening brief of January 30, 2023 (instead of the ordinary 91-day deadline of October 14, 2022), which this Court granted on August 1, 2022.

10. On January 12, 2023, Maxwell filed an unopposed motion for an extension of time to file her opening brief from January 30, 2023, until February 28, 2023, which this Court granted on January 17, 2023.

11. On January 16, 2023, Maxwell filed a motion to file an oversized brief of no more than 20,000 words, which this Court granted on January 18, 2023.

12. On February 14, 2023, Maxwell filed a motion to file an oversized brief of no more than 35,000 words, which this Court denied on February 22, 2023.

13. On February 28, 2023, Maxwell filed her opening brief on appeal, which contains approximately 19,950 words.

14. Maxwell's brief raises at least five issues: (1) whether the indictment should have been dismissed pursuant to a nonprosecution agreement signed by Jeffrey Epstein and the U.S. Attorney's Office for the Southern District of Florida; (2) whether all counts were barred by the applicable statute of limitations; (3) whether a juror's misstatements during *voir dire* deprived Maxwell of her right to a fair and impartial jury; (4) whether the District Court constructively amended two counts of the indictment when responding to a jury note; and (5) whether the District Court improperly applied an aggravating role adjustment when calculating the applicable U.S. Sentencing Guidelines range.

15. As the foregoing summary reflects, there is factual and legal complexity in the issues raised by Maxwell, and the Government's responses to these arguments require in-depth factual and legal analysis. Although the Government is endeavoring to limit the size of its brief, a complete and useful response to Maxwell's brief cannot reasonably be accomplished in fewer than 20,000 words.

16. The Government is requesting the 30-day extension due to an unavoidable scheduling conflict. Specifically, I am the attorney with primary responsibility for drafting the Government response brief in this appeal. On April 18, 2023, trial for another matter in which I am counsel was scheduled to begin on

May 22, 2023. *See United States v. Kenneth Wynder & Andrew Brown*, 20 Cr. 470 (PKC) (S.D.N.Y.). Accordingly, in the remaining weeks prior to the current deadline for the Government's brief in this appeal, I will need to prepare for and conduct a trial in another matter. A 30-day extension will permit the Government to fulfill its obligations both to this Court and the district court by allowing the Government time to prepare its response to Maxwell's brief without interfering with the preparation for and conduct of the *Wynder & Brown* trial. As noted above, Maxwell sought and received permission to file her opening brief at the end of February, more than four months after it ordinarily would have been due under this Court's rules. Accordingly, the comparatively modest adjournment requested by the Government will not substantially prejudice Maxwell.

17. On April 19, 2023, the Government conferred by email with Diana Samson, Esq., counsel for Maxwell, and she reported that Maxwell would not oppose this motion if the Government also were to request that Maxwell receive an extension of time to file her reply brief from July 20, 2023, to July 27, 2023. Assuming the Government receives its requested extension to June 29, 2023, the Government consents to the requested extension of time to file Maxwell's reply brief to July 27, 2023.

18. For the foregoing reasons, the Government respectfully requests (1) leave to file an oversized brief of no more than 20,000 words, which is the

approximate length of the brief to which it must respond in this appeal, and (2) an extension of time to file its brief until June 29, 2023, and, if that extension is granted, an extension of the time for Maxwell to file her reply brief until July 27, 2023.

19. I affirm under penalties of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated: New York, New York
April 26, 2023

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

By:

Andrew A. Rohrbach
Assistant United States Attorney
Tel: (212) 637-2345

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), 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 1135 words in this motion.

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

By: Andrew A. Rohrbach
Assistant United States Attorney
(212) 637-2345

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 April, two thousand twenty-three.

Before: Raymond J. Lohier, Jr.,
Circuit Judge,

United States of America,

Appellee,

v.

Ghislaine Maxwell, AKA Sealed Defendant 1,

Defendant - Appellant.

ORDER

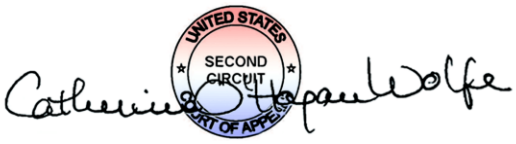
Docket No. 22-1426

The Government moves for leave to file an oversized opposition brief of no more than 20,000 words and for an extension of the briefing schedule for the opposition and reply briefs.

IT IS HEREBY ORDERED that the motion is GRANTED. The Government's brief is due June 29, 2023, and Appellant's reply brief is due July 27, 2023.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court



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

June 7, 2023

BY CM/ECF

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, New York 10007

Re: United States v. Maxwell
Docket No. 22-1426-cr

Dear Ms. Wolfe,

Please be advised that I am leaving the United States Attorney's Office for other employment. Accordingly, please remove me as counsel of record in this case.

Thank you very much for the Court's consideration.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney
Southern District of New York

/s/ Andrew Rohrbach
Andrew Rohrbach
Assistant U.S. Attorney
(212) 637-2345

22-1426

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 22-1426

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

SUPPLEMENTAL APPENDIX
VOLUME I OF II
(Pages SA-1 to SA-256)

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DEPARTMENT OF JUSTICE

OFFICE OF PROFESSIONAL RESPONSIBILITY

REPORT

Investigation into the
U.S. Attorney's Office for the Southern District of Florida's
Resolution of Its 2006–2008 Federal Criminal Investigation of
Jeffrey Epstein and Its Interactions with Victims during the Investigation

November 2020

NOTE: THIS REPORT CONTAINS SENSITIVE, PRIVILEGED, AND PRIVACY ACT PROTECTED INFORMATION. DO NOT DISTRIBUTE THE REPORT OR ITS CONTENTS WITHOUT THE PRIOR APPROVAL OF THE OFFICE OF PROFESSIONAL RESPONSIBILITY.

EXECUTIVE SUMMARY

The Department of Justice (Department) Office of Professional Responsibility (OPR) investigated allegations that in 2007-2008, prosecutors in the U.S. Attorney's Office for the Southern District of Florida (USAO) improperly resolved a federal investigation into the criminal conduct of Jeffrey Epstein by negotiating and executing a federal non-prosecution agreement (NPA). The NPA was intended to end a federal investigation into allegations that Epstein engaged in illegal sexual activity with girls.[1] OPR also investigated whether USAO prosecutors committed professional misconduct by failing to consult with victims of Epstein's crimes before the NPA was signed or by misleading victims regarding the status of the federal investigation after the signing.

I. OVERVIEW OF FACTUAL BACKGROUND

The Palm Beach (Florida) Police Department (PBPD) began investigating Jeffrey Epstein in 2005, after the parents of a 14-year-old girl complained that Epstein had paid her for a massage. Epstein was a multi-millionaire financier with residences in Palm Beach, New York City, and other United States and foreign locations. The investigation led to the discovery that Epstein used personal assistants to recruit girls to provide massages to him, and in many instances, those massages led to sexual activity. After the PBPD brought the case to the State Attorney's Office, a Palm Beach County grand jury indicted Epstein, on July 19, 2006, for felony solicitation of prostitution in violation of Florida Statute § 796.07. However, because the PBPD Chief and the lead Detective were dissatisfied with the State Attorney's handling of the case and believed that the state grand jury's charge did not address the totality of Epstein's conduct, they referred the matter to the Federal Bureau of Investigation (FBI) in West Palm Beach for a possible federal investigation.

The FBI brought the matter to an Assistant U.S. Attorney (AUSA), who opened a file with her supervisor's approval and with the knowledge of then U.S. Attorney R. Alexander Acosta. She worked with two FBI case agents to develop a federal case against Epstein and, in the course of the investigation, they discovered additional victims. In May 2007, the AUSA submitted to her supervisors a draft 60-count indictment outlining charges against Epstein. She also provided a lengthy memorandum summarizing the evidence she had assembled in support of the charges and addressing the legal issues related to the proposed charges.

For several weeks following submission of the prosecution memorandum and proposed indictment, the AUSA's supervisors reviewed the case to determine how to proceed. At a July 31, 2007 meeting with Epstein's attorneys, the USAO offered to end its investigation if Epstein pled guilty to state charges, agreed to serve a minimum of two years' incarceration, registered as a sexual offender, and agreed to a mechanism through which victims could obtain monetary damages. The USAO subsequently engaged in additional meetings and communications with Epstein's team of attorneys, ultimately negotiating the terms of a state-based resolution of the federal investigation, which culminated in the signing of the NPA on September 24, 2007. The

[1] As used in this Report, including in quoted documents and statements, the word "girls" refers to females who were under the age of 18 at the time of the alleged conduct. Under Florida law, a minor is a person under the age of 18.

NPA required Epstein to plead guilty in state court to the then-pending state indictment against him and to an additional criminal information charging him with a state offense that would require him to register as a sexual offender—specifically, procurement of minors to engage in prostitution, in violation of Florida Statute § 796.03. The NPA required Epstein to make a binding recommendation that the state court sentence him to serve 18 months in the county jail followed by 12 months of community control (home detention or "house arrest"). The NPA also included provisions designed to facilitate the victims' recovery of monetary damages from Epstein. In exchange, the USAO agreed to end its investigation of Epstein and to forgo federal prosecution in the Southern District of Florida of him, four named co-conspirators, and "any potential co-conspirators." Victims were not informed of, or consulted about, a potential state resolution or the NPA prior to its signing.

The signing of the NPA did not immediately lead to Epstein's guilty plea and incarceration, however. For the next nine months, Epstein deployed his extensive team of prominent attorneys to try to change the terms that his team had negotiated and he had approved, while simultaneously seeking to invalidate the entire NPA by persuading senior Department officials that there was no federal interest at issue and the matter should be left to the discretion of state law enforcement officials. Through repeated communications with the USAO and senior Department officials, defense counsel fought the government's interpretation of the NPA's terms. They also sought and obtained review by the Department's Criminal Division and then the Office of the Deputy Attorney General, primarily on the issue of federal jurisdiction over what the defense insisted was "a quintessentially state matter." After reviewing submissions by the defense and the USAO, on June 23, 2008, the Office of the Deputy Attorney General informed defense counsel that the Deputy Attorney General would not intervene in the matter. Only then did Epstein agree to fulfill his obligation under the NPA, and on June 30, 2008, he appeared in state court and pled guilty to the pending state indictment charging felony solicitation of prostitution and, pursuant to the NPA, to a criminal information charging him with procurement of minors to engage in prostitution. Upon the joint request of the defendant and the state prosecutor, and consistent with the NPA, the court immediately sentenced Epstein to consecutive terms of 12 months' incarceration on the solicitation charge and 6 months' incarceration on the procurement charge, followed by 12 months of community control. Epstein began serving the sentence that day, in a minimum-security Palm Beach County facility. A copy of the NPA was filed under seal with the state court.

On July 7, 2008, a victim, identified as "Jane Doe," filed in federal court in the Southern District of Florida an emergency petition alleging that the government violated the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, when it resolved the federal investigation of Epstein without consulting with victims, and seeking enforcement of her CVRA rights.[2] In responding to the petition, the government, represented by the USAO, revealed the existence of the NPA, but did not produce it to the petitioners until the court directed it to be turned over subject to a protective order; the NPA itself remained under seal in the federal district court. After the initial filings and hearings, the CVRA case was dormant for almost two years while the petitioners pursued civil cases against Epstein.

[2] Emergency Victim's Petition for Enforcement of Crime Victim's [*sic*] Rights Act, 18 U.S.C. Section 3771, *Doe v. United States,* Case No. 9:08-cv-80736-KAM (S.D. Fla. July 7, 2008). Another victim subsequently joined the litigation as "Jane Doe 2."

Soon after he was incarcerated, Epstein applied for the Palm Beach County Sheriff's work release program, and the Sheriff approved his application. In October 2008, Epstein began spending 12 hours a day purportedly working at the "Florida Science Foundation," an entity Epstein had recently incorporated that was co-located at the West Palm Beach office of one of Epstein's attorneys. Although the NPA specified a term of incarceration of 18 months, Epstein received "gain time," that is, time off for good behavior, and he actually served less than 13 months of incarceration. On July 22, 2009, Epstein was released from custody to a one-year term of home detention as a condition of community control, and he registered as a sexual offender with the Florida Department of Law Enforcement. After victims and news media filed suit in Florida courts for release of the copy of the NPA that had been filed under seal in the state court file, a state judge in September 2009 ordered it to be made public.

By mid-2010, Epstein reportedly settled multiple civil lawsuits brought against him by victims seeking monetary damages, including the two petitioners in the CVRA litigation. During the CVRA litigation, the petitioners sought discovery from the USAO, which made substantial document productions, filed lengthy privilege logs in support of its withholding of documents, and submitted declarations from the AUSA and the FBI case agents who conducted the federal investigation. The USAO opposed efforts to unseal various records, as did Epstein, who was permitted to intervene in the litigation with respect to certain issues. Nevertheless, the court ultimately ordered that substantial records relating to the USAO's resolution of the Epstein case be made public. During the course of the litigation, the court made numerous rulings interpreting the CVRA. After failed efforts to settle the case, the parties' cross motions for summary judgment remained pending for more than a year.

In 2017, President Donald Trump nominated Acosta to be Secretary of Labor. At his March 2017 confirmation hearing, Acosta was questioned only briefly about the Epstein case. On April 17, 2017, the Senate confirmed Acosta's appointment as Labor Secretary.

In the decade following his release from incarceration, Epstein reportedly continued to settle multiple civil suits brought by many, but not all, of his victims. Epstein was otherwise able to resume his lavish lifestyle, largely avoiding the interest of the press. On November 28, 2018, however, the *Miami Herald* published an extensive investigative report about state and federal criminal investigations initiated more than 12 years earlier into allegations that Epstein had coerced girls into engaging in sexual activity with him at his Palm Beach estate.[3] The *Miami Herald* reported that in 2007, Acosta entered into an "extraordinary" deal with Epstein in the form of the NPA, which permitted Epstein to avoid federal prosecution and a potentially lengthy prison sentence by pleading guilty in state court to "two prostitution charges." According to the *Miami Herald*, the government also immunized from prosecution Epstein's co-conspirators and concealed from Epstein's victims the terms of the NPA. Through its reporting, which included interviews of eight victims and information from publicly available documents, the newspaper painted a portrait of federal and state prosecutors who had ignored serious criminal conduct by a wealthy man with powerful and politically connected friends by granting him a "deal of a lifetime" that allowed him both to escape significant punishment for his past conduct and to continue his

[3] Julie K. Brown, "Perversion of Justice," *Miami Herald*, Nov. 28, 2018. https://www.miamiherald.com/news/local/article220097825 html.

abuse of minors. The *Miami Herald* report led to public outrage and media scrutiny of the government's actions.[4]

On February 21, 2019, the district court granted the CVRA case petitioners' Motion for Partial Summary Judgment, ruling that the government violated the CVRA in failing to advise the victims about its intention to enter into the NPA.[5] The court also found that letters the government sent to victims after the NPA was signed, describing the investigation as ongoing, "mislead [*sic*] the victims to believe that federal prosecution was still a possibility." The court also highlighted the inequity of the USAO's failure to communicate with the victims while at the same time engaging in "lengthy negotiations" with Epstein's counsel and assuring the defense that the NPA would not be "made public or filed with the court." The court ordered the parties to submit additional briefs regarding the appropriate remedies. After the court's order, the Department recused the USAO from the CVRA litigation and assigned the U.S. Attorney's Office for the Northern District of Georgia to handle the case for the government. Among the remedies sought by the petitioners, and opposed by the government, was rescission of the NPA and federal prosecution of Epstein.

On July 2, 2019, the U.S. Attorney's Office for the Southern District of New York obtained a federal grand jury indictment charging Epstein with one count of sex trafficking of minors and one count of conspiracy to commit sex trafficking of minors. The indictment alleged that from 2002 until 2005, Epstein created a vast network of underage victims in both New York and Florida whom he sexually abused and exploited. Epstein was arrested on the charges on July 6, 2019. In arguing for Epstein's pretrial detention, prosecutors asserted that agents searching Epstein's Manhattan residence found thousands of photos of nude and half-nude females, including at least one believed to be a minor. The court ordered Epstein detained pending trial, and he was remanded to the custody of the Bureau of Prisons and held at the Metropolitan Correctional Center in Manhattan.

Meanwhile, after publication of the November 2018 *Miami Herald* report, the media and Congress increasingly focused attention on Acosta as the government official responsible for the NPA. On July 10, 2019, Acosta held a televised press conference to defend his and the USAO's actions. Acosta stated that the Palm Beach State Attorney's Office "was ready to allow Epstein to walk free with no jail time, nothing." According to Acosta, because USAO prosecutors considered this outcome unacceptable, his office pursued a difficult and challenging case and obtained a resolution that put Epstein in jail, forced him to register as a sexual offender, and provided victims with the means to obtain monetary damages. Acosta's press conference did not end the controversy, however, and on July 12, 2019, Acosta submitted to the President his resignation as

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[4] *See, e.g.*, Ashley Collman, "Stunning new report details Trump's labor secretary's role in plea deal for billionaire sex abuser," *The Business Insider*, Nov. 29, 2018; Cynthia McFadden, "New Focus on Trump Labor Secretary's role in unusual plea deal for billionaire accused of sexual abuse," *NBC Nightly News*, Nov. 29, 2018; Anita Kumar, "Trump labor secretary out of running for attorney general after Miami Herald report," *McClatchy Washington Bureau*, Nov. 29, 2018; Emily Peck, "How Trump's Labor Secretary Covered For A Millionaire Sex Abuser," *Huffington Post*, Nov. 29, 2018; Julie K. Brown, et al., "Lawmakers issue call for investigation of serial sex abuser Jeffrey Epstein's plea deal," *Miami Herald*, Dec. 6, 2018.

[5] *Doe v. United States,* 359 F. Supp. 3d 1201 (S.D. Fla., Feb. 21, 2019) (Opinion and Order, 9:08-80736-CIV-Marra).

Secretary of Labor. In a brief oral statement, Acosta explained that continued media attention on his handling of the Epstein investigation rather than on the economy was unfair to the Labor Department.

On August 10, 2019, Epstein was found hanging in his cell and was later pronounced dead. The New York City Chief Medical Examiner concluded that Epstein had committed suicide.

As a result of Epstein's death, the U.S. Attorney's Office for the Southern District of New York filed a *nolle prosequi* to dismiss the pending indictment against Epstein. On August 27, 2019, the district court held a hearing at which more than a dozen of Epstein's victims—including victims of the conduct in Florida that was addressed through the NPA—spoke about the impact of Epstein's crimes. The court dismissed the Epstein indictment on August 29, 2019.

After Epstein's death, the federal district court in Florida overseeing the CVRA litigation denied the petitioners their requested remedies and closed the case as moot. Among its findings, the court concluded that although the government had violated the CVRA, the government had asserted "legitimate and legally supportable positions throughout this litigation," and therefore had not litigated in bad faith. The court also noted it expected the government to "honor its representation that it will provide training to its employees about the CVRA and the proper treatment of crime victims," as well as honoring its promise to meet with the victims.

On September 30, 2019, CVRA petitioner "Jane Doe 1" filed in her true name a petition for a writ of mandamus in the United States Court of Appeals for the Eleventh Circuit, seeking review of the district court's order denying all of her requested remedies. In its responsive brief, the government argued that "as a matter of law, the legal obligations under the CVRA do not attach prior to the government charging a case" and thus, "the CVRA was not triggered in [the Southern District of Florida] because no criminal charges were brought." Nevertheless, during oral argument, the government conceded that the USAO had not been "fully transparent" with the petitioner and had "made a mistake in causing her to believe that the case was ongoing when in fact the NPA had been signed." On April 14, 2020, a divided panel of the Court of Appeals denied the petition, ruling that CVRA rights do not attach until a defendant has been criminally charged. On August 7, 2020, the court granted the petition for rehearing *en banc* and vacated the panel's opinion; as of the date of this Report, a briefing schedule has been issued, and oral argument is set for December 3, 2020.

II. THE INITIATION AND SCOPE OF OPR'S INVESTIGATION

After the *Miami Herald* published its investigative report on November 28, 2018, U.S. Senator Ben Sasse, Chairman of the Senate Judiciary Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, sent a December 3, 2018 letter to OPR, citing the *Miami Herald*'s report and requesting that OPR "open an investigation into the instances identified in this reporting of possible misconduct by Department of Justice attorneys." On February 6, 2019, the Department of Justice Office of Legislative Affairs advised Senator Sasse that OPR had opened

an investigation into the matter and would review the USAO's decision to resolve the federal investigation of Epstein through the NPA.[6]

After the district court issued its ruling in the CVRA litigation, on February 21, 2019, OPR included within the scope of its investigation an examination of the government's conduct that formed the basis for the court's findings that the USAO violated the CVRA in failing to afford victims a reasonable right to confer with the government about the NPA before the agreement was signed and that the government affirmatively misled victims about the status of the federal investigation.

During the course of its investigation, OPR obtained and reviewed hundreds of thousands of records from the USAO, the FBI, and other Department components, including the Office of the Deputy Attorney General, the Criminal Division, and the Executive Office for U.S. Attorneys. The records included emails, letters, memoranda, and investigative materials. OPR also collected and reviewed materials relating to the state investigation and prosecution of Epstein. OPR also examined extensive publicly available information, including depositions, pleadings, orders, and other court records, and reviewed media reports and interviews, articles, podcasts, and books relating to the Epstein case.

In addition to this extensive documentary review, OPR conducted more than 60 interviews of witnesses, including the FBI case agents, their supervisors, and FBI administrative personnel; current and former USAO staff and attorneys; current and former Department attorneys and senior managers, including a former Deputy Attorney General and a former Assistant Attorney General for the Criminal Division; and the former State Attorney and former Assistant State Attorney in charge of the state investigation of Epstein. OPR also interviewed several victims and attorneys representing victims, and reviewed written submissions from victims, concerning victim contacts with the USAO and the FBI.

OPR identified former U.S. Attorney Acosta, three former USAO supervisors, and the AUSA as subjects of its investigation based on preliminary information indicating that each of them was involved in the decision to resolve the case through the NPA or in the negotiations leading to the agreement. OPR deems a current or former Department attorney to be a subject of its investigation when the individual's conduct is within the scope of OPR's review and may result in a finding of professional misconduct. OPR reviewed prior public statements made by Acosta and another subject. All five subjects cooperated fully with OPR's investigation. OPR requested that all of the subjects provide written responses detailing their involvement in the federal investigation of Epstein, the drafting and execution of the NPA, and decisions relating to victim notification and consultation. OPR received and reviewed written responses from all of the subjects, and subsequently conducted extensive interviews of each subject under oath and before a court reporter. Each subject was represented by counsel and had access to relevant contemporaneous documents before the subject's OPR interview. The subjects reviewed and provided comments on their respective interview transcripts and on OPR's draft report. OPR

[6] The federal government was closed from December 22, 2018, to January 25, 2019. After initiating its investigation, OPR also subsequently received other letters from U.S. Senators and Representatives inquiring into the status of the OPR investigation.

carefully considered the comments and made changes, or noted comments, as OPR deemed appropriate; OPR did not, however, alter its findings and conclusions.

Finally, OPR reviewed relevant case law, statutes, regulations, Department policy, and attorney professional responsibility rules as necessary to resolve the issues presented in this case and to determine whether the subjects committed professional misconduct.

As part of its investigation, OPR examined the interactions between state officials and the federal investigators and prosecutors, but because OPR does not have jurisdiction over state officials, OPR did not investigate, or reach conclusions about, their conduct regarding the state investigation.[7] Because OPR's mission is to ensure that Department attorneys adhere to the standards of professional conduct, OPR's investigation focused on the actions of the subject attorneys rather than on determining the full scope of Epstein's and his assistants' criminal behavior. Accordingly, OPR considered the evidence and information regarding Epstein's and his assistants' conduct as it was known to the subjects at the time they performed their duties as Department attorneys. Additional evidence and information that came to light after June 30, 2008, when Epstein entered his guilty plea under the NPA, did not affect the subjects' actions prior to that date, and OPR did not evaluate the subjects' conduct on the basis of that subsequent information.

OPR's investigation occurred approximately 12 years after most of the significant events relating to the USAO's investigation of Epstein, the NPA, and Epstein's guilty plea. As a result, many of the subjects and witnesses were unable to recall the details of events or their own or others' actions occurring in 2006-2008, such as conversations, meetings, or documents they reviewed at the time.[8] However, OPR's evaluation of the subjects' conduct was aided significantly by extensive, contemporaneous emails among the prosecutors and communications between the government and defense counsel. These records often referred to the interactions among the participants and described important decisions and, in some instances, the bases for them.

III. OVERVIEW OF OPR'S ANALYTICAL FRAMEWORK

OPR's primary mission is to ensure that Department attorneys perform their duties in accordance with the highest professional standards, as would be expected of the nation's principal law enforcement agency. Accordingly, OPR investigates allegations of professional misconduct against current or former Department attorneys related to the exercise of their authority to

[7] In August 2019, Florida Governor Ron DeSantis announced that he had directed the Florida Department of Law Enforcement to open an investigation into the conduct of state authorities relating to Epstein. As reported, the investigation focuses on Epstein's state plea agreement and the Palm Beach County work release program.

[8] OPR was cognizant that Acosta and the three managers all left the USAO during, or not long after resolution of, the Epstein case, while the AUSA remained with the USAO until mid-2019. Moreover, as the line prosecutor in the Epstein investigation and also as co-counsel in the CVRA litigation until the USAO was recused from that litigation in early 2019, the AUSA had continuous access to the USAO documentary record and numerous occasions to review these materials in the course of her official duties. Additionally, in responding to OPR's request for a written response, and in preparing to be interviewed by OPR, the AUSA was able to refresh her recollection with these materials to an extent not possible for the other subjects, who were provided with relevant documents by OPR in preparation for their interviews.

investigate, litigate, or provide legal advice.[9] OPR also has jurisdiction to investigate allegations of misconduct against Department law enforcement agents when they relate to a Department attorney's alleged professional misconduct.

In its investigations, OPR determines whether a clear and unambiguous standard governs the challenged conduct and whether a subject attorney violated that standard. Department attorneys are subject to various legal obligations and professional standards in the performance of their duties, including the Constitution, statutes, standards of conduct imposed by attorney licensing authorities, and Department regulations and policies. OPR finds misconduct when it concludes by a preponderance of the evidence that a subject attorney violated such a standard intentionally or recklessly. Pursuant to OPR's analytical framework, when OPR concludes that (1) no clear and unambiguous standard governs the conduct in question or (2) the subject did not intentionally or recklessly violate the standard that governs the conduct, then it concludes that the subject's conduct does not constitute professional misconduct. In some cases, OPR may conclude that a subject attorney's conduct does not satisfy the elements necessary for a professional misconduct finding, but that the circumstances warrant another finding. In such cases, OPR may conclude that a subject attorney exercised poor judgment, made a mistake, or otherwise acted inappropriately under the circumstances. OPR may also determine that the subject attorney's conduct was appropriate under the circumstances.[10]

IV. ISSUES CONSIDERED

In this investigation, OPR considered two distinct sets of allegations. The first relates to the negotiation, execution, and implementation of the NPA. The second relates to the USAO's interactions with Epstein's victims and adherence to the requirements of the CVRA. The two sets of issues are described below and are analyzed separately in this Report.

A. The Negotiation, Execution, and Implementation of the NPA

In evaluating whether any of the subjects committed professional misconduct, OPR considered whether any of the NPA's provisions violated a clear or unambiguous statute, professional responsibility rule or standard, or Department regulation or policy. In particular, OPR considered whether the NPA violated standards relating to (1) charging decisions, (2) declination of criminal charges, (3) deferred or non-prosecution agreements, (4) plea agreements, (5) grants

[9] 28 C.F.R. § 0.39a(a)(1). OPR has authority to investigate the professional conduct of attorneys occurring during their employment by the Department, regardless of whether the attorney left the Department before or during OPR's investigation. Over its 45-year history, OPR has routinely investigated the conduct of former Department attorneys. Although former Department attorneys cannot be disciplined by the Department, OPR's determination that a former Department attorney violated state rules of professional conduct for attorneys could result in a referral to an appropriate state attorney disciplinary authority. Furthermore, findings resulting from investigations of the conduct of Department attorneys, even former employees, may assist Department managers in supervising future cases.

[10] In some instances, OPR declines to open an investigation based upon a review of the initial complaint or after a preliminary inquiry into the matter. In December 2010, one of the attorneys representing victims in the CVRA litigation raised allegations that Epstein may have exerted improper influence over the federal criminal investigation and that the USAO had deceived the victims of Epstein's crimes about the existence of the NPA. Pursuant to its standard policy, OPR declined to open an investigation into those allegations at that time in deference to the then-pending CVRA litigation.

of immunity, or (6) the deportation of criminal aliens. The potentially applicable standards that OPR considered as to each of these issues are identified and discussed later in this Report. OPR also examined whether the evidence establishes that any of the subjects were influenced to enter into the NPA, or to include in the NPA terms favorable to Epstein, because of an improper motive, such as a bribe, political consideration, personal interest, or favoritism. OPR also examined and discusses in this Report significant events that occurred after the NPA was negotiated and signed that shed additional light on the USAO's handling of the Epstein investigation.

B. The District Court's Conclusion That the USAO Violated the CVRA

To address the district court's adverse judicial findings, OPR assessed the manner, content, and timing of the government's interactions with victims both before and after the NPA was signed, including victim notification letters issued by the USAO and the FBI and interviews conducted by the USAO. OPR considered whether any of the subject attorneys violated any clear and unambiguous standard governing victim consultation or notification. OPR examined the government's lack of consultation with the victims before the NPA was signed, as well as the circumstances relating to the district court's finding that the USAO affirmatively misled Epstein's victims about the status of the federal investigation after the NPA was signed.

V. OPR'S FINDINGS AND CONCLUSIONS

OPR evaluated the conduct of each subject and considered his or her individual role in various decisions and events. Acosta, however, made the pivotal decision to resolve the federal investigation of Epstein through a state-based plea and either developed or approved the terms of the initial offer to the defense that set the beginning point for the subsequent negotiations that led to the NPA. Although Acosta did not sign the NPA, he participated in its drafting and approved it, with knowledge of its terms. During his OPR interview, Acosta acknowledged that he approved the NPA and accepted responsibility for it. Therefore, OPR considers Acosta to be responsible for the NPA and for the actions of the other subjects who implemented his decisions. Acosta's overall responsibility for the government's interactions or lack of communication with the victims is less clear, but Acosta affirmatively made certain decisions regarding victim notification, and OPR evaluates his conduct with respect to those decisions.

A. Findings and Conclusions Relating to the NPA

With respect to all five subjects of OPR's investigation, OPR concludes that the subjects did not commit professional misconduct with respect to the development, negotiation, and approval of the NPA. Under OPR's framework, professional misconduct requires a finding that a subject attorney intentionally or recklessly violated a clear and unambiguous standard governing the conduct at issue. OPR found no clear and unambiguous standard that required Acosta to indict Epstein on federal charges or that prohibited his decision to defer prosecution to the state. Furthermore, none of the individual terms of the NPA violated Department or other applicable standards.

As the U.S. Attorney, Acosta had the "plenary authority" under established federal law and Department policy to resolve the case as he deemed necessary and appropriate, as long as his decision was not motivated or influenced by improper factors. Acosta's decision to decline to

initiate a federal prosecution of Epstein was within the scope of his authority, and OPR did not find evidence that his decision was based on corruption or other impermissible considerations, such as Epstein's wealth, status, or associations. Evidence shows that Acosta resisted defense efforts to have the matter returned to the state for whatever result state authorities deemed appropriate, and he refused to eliminate the incarceration and sexual offender registration requirements. OPR did not find evidence establishing that Acosta's "breakfast meeting" with one of Epstein's defense counsel in October 2007 led to the NPA, which had been signed weeks earlier, or to any other significant decision that benefited Epstein. The contemporaneous records show that USAO managers' concerns about legal issues, witness credibility, and the impact of a trial on the victims led them to prefer a pre-charge resolution and that Acosta's concerns about the proper role of the federal government in prosecuting solicitation crimes resulted in his preference for a state-based resolution. Accordingly, OPR does not find that Acosta engaged in professional misconduct by resolving the federal investigation of Epstein in the way he did or that the other subjects committed professional misconduct through their implementation of Acosta's decisions.

Nevertheless, OPR concludes that Acosta's decision to resolve the federal investigation through the NPA constitutes poor judgment. Although this decision was within the scope of Acosta's broad discretion and OPR does not find that it resulted from improper factors, the NPA was a flawed mechanism for satisfying the federal interest that caused the government to open its investigation of Epstein. In Acosta's view, the federal government's role in prosecuting Epstein was limited by principles of federalism, under which the independent authority of the state should be recognized, and the federal responsibility in this situation was to serve as a "backstop" to state authorities by encouraging them to do more. However, Acosta failed to consider the difficulties inherent in a resolution that relied heavily on action by numerous state officials over whom he had no authority; he resolved the federal investigation before significant investigative steps were completed; and he agreed to several unusual and problematic terms in the NPA without the consideration required under the circumstances. In sum, Acosta's application of federalism principles was too expansive, his view of the federal interest in prosecuting Epstein was too narrow, and his understanding of the state system was too imperfect to justify the decision to use the NPA. Furthermore, because Acosta assumed a significant role in reviewing and drafting the NPA and the other three subjects who were supervisors left the USAO, were transitioning to other jobs, or were absent at critical junctures, Acosta should have ensured more effective coordination and communication during the negotiations and before approving the final NPA. The NPA was a unique resolution, and one that required greater oversight and supervision than Acosta provided.

B. Findings and Conclusions Relating to the Government's Interactions with Victims

OPR further concludes that none of the subject attorneys committed professional misconduct with respect to the government's interactions with victims. The subjects did not have a clear and unambiguous duty under the CVRA to consult with victims before entering into the NPA because the USAO resolved the Epstein investigation without a federal criminal charge. Significantly, at the time the NPA was signed, the Department did not interpret CVRA rights to attach unless and until federal charges had been filed, and the federal courts had not established a clear and unambiguous standard applying the CVRA before criminal charges were brought. In addition, OPR did not find evidence that the lack of consultation was for the purpose of silencing victims. Nonetheless, the lack of consultation was part of a series of government

interactions with victims that ultimately led to public and court condemnation of the government's treatment of the victims, reflected poorly on the Department as a whole, and is contradictory to the Department's mission to minimize the frustration and confusion that victims of a crime endure.

OPR determined that none of the subjects was responsible for communications sent to certain victims after the NPA was signed that described the case as "under investigation" and that failed to inform them of the NPA. The letters were sent by an FBI administrative employee who was not directly involved in the investigation, incorporated standard form language used by the FBI when communicating with victims, and were not drafted or reviewed by the subjects. Moreover, the statement that the matter was "under investigation" was not false because the government in fact continued to investigate the case in anticipation that Epstein would not fulfill the terms of the NPA. However, the letters risked misleading the victims and contributed to victim frustration and confusion by failing to provide important information about the status of the investigation. The letters also demonstrated a lack of coordination between the federal agencies responsible for communicating with Epstein's victims and showed a lack of attention to and oversight regarding communication with victims.

After the NPA was signed, Acosta elected to defer to the State Attorney the decision whether to notify victims about the state's plea hearing pursuant to the state's own victim's rights requirements. Although Acosta's decision was within his authority and did not constitute professional misconduct, OPR concludes that Acosta exercised poor judgment when he failed to make certain that the state intended to and would notify victims identified through the federal investigation about the state plea hearing. His decision left victims uninformed about an important proceeding that resolved the federal investigation, an investigation about which the USAO had communicated with victims for months. It also ultimately created the misimpression that the Department intentionally sought to silence the victims. Acosta failed to ensure that victims were made aware of a court proceeding that was related to their own cases, and thus he failed to ensure that victims were treated with forthrightness and dignity.

OPR concludes that the decision to postpone notifying victims about the terms of the NPA after it was signed and the omission of information about the NPA during victim interviews and conversations with victims' attorneys in 2008 do not constitute professional misconduct. Contemporaneous records show that these actions were based on strategic concerns about creating impeachment evidence that Epstein's victims had financial motives to make claims against him, evidence that could be used against victims at a trial, and were not for the purpose of silencing victims. Nonetheless, the failure to reevaluate the strategy prior to interviews of victims and discussions with victims' attorneys occurring in 2008 led to interactions that contributed to victims' feelings that the government was intentionally concealing information from them.

After examining the full scope and context of the government's interactions with victims, OPR concludes that the government's lack of transparency and its inconsistent messages led to victims feeling confused and ill-treated by the government; gave victims and the public the misimpression that the government had colluded with Epstein's counsel to keep the NPA secret from the victims; and undercut public confidence in the legitimacy of the resulting agreement. The overall result of the subjects' anomalous handling of this case understandably left many victims feeling ignored and frustrated and resulted in extensive public criticism. In sum, OPR concludes

that the victims were not treated with the forthrightness and sensitivity expected by the Department.

VI. ORGANIZATION OF THE REPORT

The Report is divided into three chapters. In Chapter One, OPR describes the relevant federal, state, and local law enforcement entities involved in investigating Epstein's criminal conduct, as well as the backgrounds of the five subjects and their roles in the events in question. OPR provides a brief profile of Epstein and identifies the defense attorneys who interacted with the subjects.

In Chapter Two, OPR sets forth an extensive account of events relating to the federal investigation of Epstein. The account begins with the initial complaint in March 2005 by a young victim and her parents to the local police—a complaint that launched an investigation by local law enforcement authorities—and continues through the mid-2006 opening of the federal investigation; the September 2007 negotiation and signing of the NPA; Epstein's subsequent efforts to invalidate the NPA through appeals to senior Department officials; Epstein's June 2008 guilty plea in state court; and, finally, efforts by the AUSA to ensure Epstein's compliance with the terms of the NPA during his incarceration and until his term of home detention ended in July 2010. After describing the relevant events, OPR analyzes the professional misconduct allegations relating to the decisions made regarding the development and execution of the NPA. OPR describes the relevant standards and sets forth its findings and conclusions regarding the subjects' conduct.

Chapter Three concerns the government's interactions with victims and the district court's findings regarding the CVRA. OPR describes the relevant events and analyzes the subjects' conduct in light of the pertinent standards.

OPR sets forth the extensive factual detail provided in Chapters Two and Three, including internal USAO and Department communications, because doing so is necessary for a full understanding of the subjects' actions and of the bases for OPR's conclusions.

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CHAPTER ONE

SIGNIFICANT ENTITIES AND INDIVIDUALS

I. THE FEDERAL AND LOCAL LAW ENFORCEMENT AGENCIES

A. The Department of Justice, the U.S. Attorney's Office for the Southern District of Florida, and the Federal Bureau of Investigation

The Department of Justice (Department) is a cabinet-level executive branch department headed by the United States Attorney General. The stated mission of the Department is to enforce federal law and defend the interests of the United States; ensure public safety; provide federal leadership in preventing and controlling crime; seek just punishment for those guilty of unlawful behavior; and ensure the fair and impartial administration of justice. The Department enforces federal criminal law through investigations and prosecutions of violations of federal criminal statutes. It also engages in civil litigation. During the period relevant to this Report, the Department had approximately 110,000 employees in 40 components. The Department's headquarters are in Washington, D.C., and it conducts most of its work through field locations around the nation and overseas.

The prosecution of federal criminal laws is handled primarily through 94 U.S. Attorney's Offices, each headed by a presidentially appointed (with advice and consent of the U.S. Senate) U.S. Attorney who has independent authority over his or her office but is overseen by the Attorney General through the Deputy Attorney General.[1] The Department's Criminal Division, headed by an Assistant Attorney General, includes components with specialized areas of expertise that also prosecute cases, assist in the prosecutions handled by U.S. Attorney's Offices, and provide legal expertise and policy guidance. Among the Criminal Division components mentioned in this Report are the Appellate Section, the Office of Enforcement Operations, the Computer Crime and Intellectual Property Section, and, most prominently, the Child Exploitation and Obscenity Section (CEOS).

CEOS, based in Washington, D.C., comprises attorneys and investigators who specialize in investigating and prosecuting child exploitation crimes, especially those involving technology, and they assist U.S. Attorney's Offices in investigations, trials, and appeals related to these offenses. CEOS provides advice and training to federal prosecutors, law enforcement personnel, and government officials. CEOS also works to develop and refine proposals for prosecution policies, legislation, government practices, and agency regulations.

The U.S. Attorneys' Manual (USAM) (revised in 2018 and renamed the Justice Manual) is a compilation of Department rules, policies, and guidance governing the conduct of Department employees. It includes requirements for approval by, or consultation with, the Criminal Division

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[1] Two U.S. Attorney's Offices, in the judicial districts of Guam and of the Northern Mariana Islands, are headed by a single U.S. Attorney. The Attorney General and the U.S. District Court have authority to appoint acting and interim U.S. Attorneys.

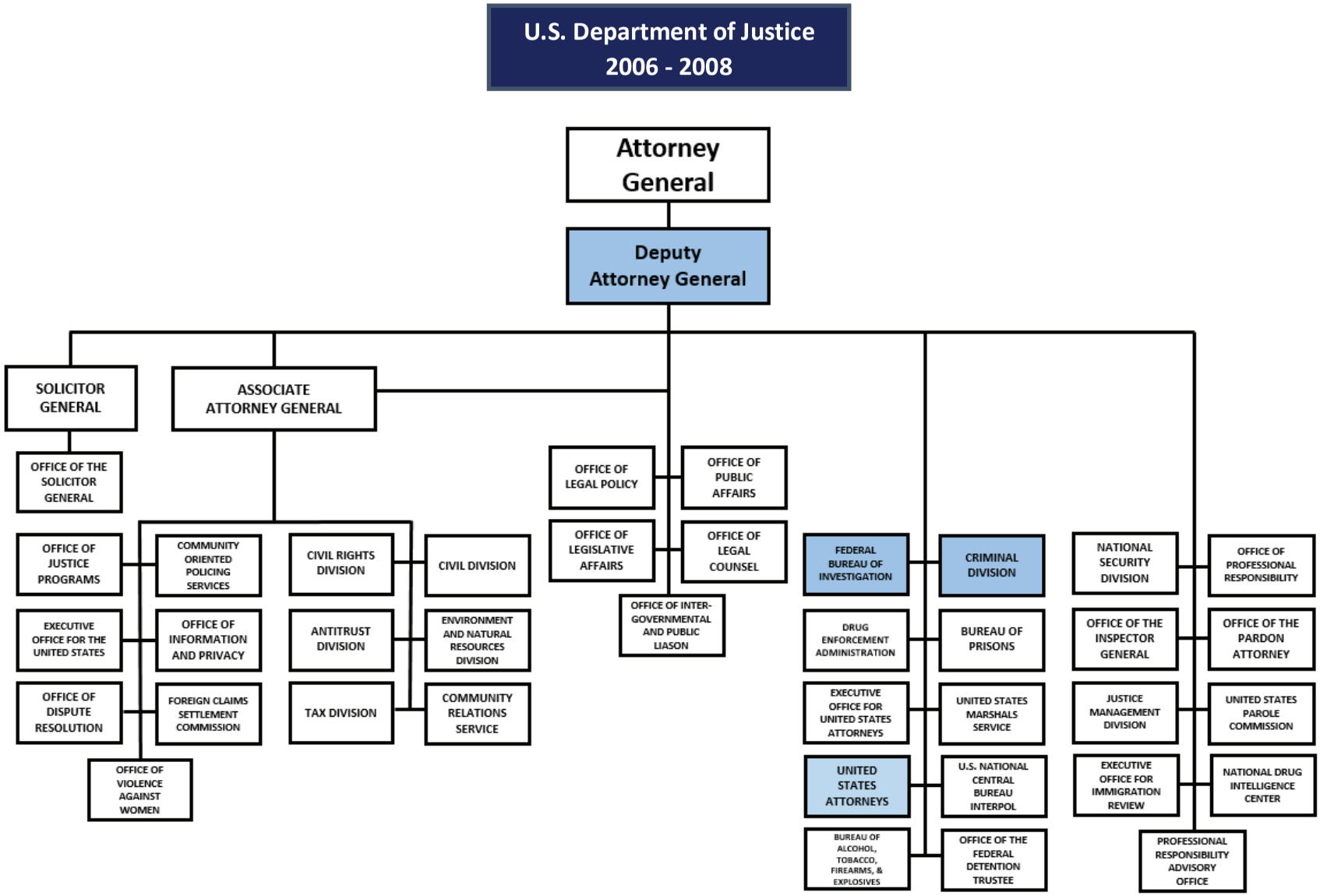
or other divisions having responsibility for specific criminal enforcement, such as the Civil Rights Division. In this Report, OPR applies the USAM provisions in effect at the relevant time.

During the period most relevant to this Report, the Attorney General was Michael Mukasey, the Deputy Attorney General was Mark Filip, and the Assistant Attorney General for the Criminal Division was Alice Fisher. The Chief of CEOS was Andrew Oosterbaan.

The U.S. Attorney's Office for the Southern District of Florida (USAO) handles federal matters in the Southern District of Florida judicial district, which covers the counties of Miami-Dade, Broward, Monroe, Palm Beach, Martin, St. Lucie, Indian River, Okeechobee, and Highlands, an area of over 15,000 square miles. During the period relevant to this Report, the USAO had a staff of approximately 200 Assistant U.S. Attorneys (AUSAs) and 200 support personnel. The main office is in Miami; staffed branch offices are located in Fort Lauderdale, West Palm Beach (covering Palm Beach County), and Fort Pierce; and an unstaffed branch office is located in Key West. The West Palm Beach USAO office is approximately 70 miles from the Miami office. The USAO is headed by the U.S. Attorney; the second-in-command is the First Assistant U.S. Attorney (FAUSA), who serves as principal advisor to the U.S. Attorney and supervises all components of the USAO, including the Criminal, Civil, and Appellate Divisions, each of which is headed by a Chief. During the period relevant to this Report, the West Palm Beach office consisted of two criminal sections and was headed by a Managing AUSA.

The Federal Bureau of Investigation (FBI) is the principal federal law enforcement agency and is part of the Department. It maintains field offices that work with U.S. Attorney's Offices. The FBI field office in Miami, headed by a Special Agent in Charge, has satellite offices, known as Resident Agencies, one of which is located in West Palm Beach and covers Palm Beach County. The Epstein investigation was handled by Special Agents assigned to a particular West Palm Beach Resident Agency squad, headed by a Supervisory Special Agent. FBI responsibility for advising crime victims of their rights and of victim services available to them is handled by non-agent Victim Specialists.

The following chart shows the Department's organizational structure during the period relevant to this Report:



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B. The State and Local Law Enforcement Agencies

Florida state criminal prosecutions are primarily managed by an Office of State Attorney in each of the state's 20 judicial circuits, headed by a State Attorney who is elected to a four-year term. Palm Beach County constitutes the 15th Judicial Circuit. Barry Krischer was the elected State Attorney for that circuit from 1992 until January 2009. During the period relevant to this Report, the Palm Beach County State Attorney's Office, based in the City of West Palm Beach, had more than 100 attorneys and several investigators, and a Crimes Against Children Unit headed by Assistant State Attorney Lanna Belohlavek.

The incorporated Town of Palm Beach occupies the coastal barrier island off the city of West Palm Beach. Its law enforcement agency is the Palm Beach Police Department (PBPD). Michael Reiter, who joined the PBPD in 1981, served as PBPD Chief from 2001 to February 2009.

The Palm Beach County Sheriff's Office (PBSO), based in the City of West Palm Beach, is the largest law enforcement agency in the county. Through its Department of Corrections, the PBSO operates the Main Detention Center and, during the period relevant to this Report, housed minimum-security detainees, including those on work release, at its Stockade facility. The current Sheriff has served continuously since January 2005.

II. THE SUBJECT ATTORNEYS AND THEIR ROLES IN THE EPSTEIN CASE

R. Alexander Acosta was appointed Interim U.S. Attorney for the Southern District of Florida in June 2005, at age 36. In June 2006, President George W. Bush formally nominated Acosta, and after Senate confirmation, Acosta was sworn in as the U.S. Attorney in October 2006.

After graduating from law school, Acosta served a federal appellate clerkship; an 18-month term as an associate at the firm of Kirkland & Ellis in Washington, D.C.; approximately four years as a policy fellow and law school lecturer; and nearly two years as a Deputy Assistant Attorney General in the Department's Civil Rights Division. He was presidentially appointed in 2002 as a member of the National Labor Relations Board, and in 2003 as Assistant Attorney General in charge of the Department's Civil Rights Division, where he served from August 2003 until his appointment as Interim U.S. Attorney, and where he oversaw, among other things, the prosecution of human trafficking and child sex-trafficking cases. As U.S. Attorney, Acosta's office was in the USAO's Miami headquarters, although he traveled to the USAO's branch offices.

During Acosta's tenure as U.S. Attorney, the USAO initiated the federal investigation of Epstein, engaged in plea discussions with Epstein's counsel, and negotiated the federal non-prosecution agreement (NPA) that is the subject of this Report. Acosta made the decision to resolve the federal investigation into Epstein's conduct by allowing Epstein to enter a state plea. Acosta was personally involved in the negotiations that led to the NPA, reviewed various iterations of the agreement, and approved the final agreement signed by the USAO. Acosta continued to provide supervisory oversight and to have meetings and other communications with Epstein's attorneys during the nine-month period between the signing of the NPA on September 24, 2007, and Epstein's entry of guilty pleas in state court pursuant to the terms of the agreement, on June 30, 2008. On December 8, 2008, after the presidential election and while Epstein was serving his state prison sentence, Acosta was formally recused from all matters involving the law firm of

Kirkland & Ellis, which was representing Epstein, because Acosta had begun discussions with the firm about possible employment.

After leaving the USAO in June 2009, Acosta became the Dean of the Florida International University College of Law. In April 2017, Acosta became the U.S. Secretary of Labor, but he resigned from that post effective July 19, 2019, following public criticism of the USAO's handling of the Epstein case.

Jeffrey H. Sloman joined the USAO in 1990 as a line AUSA. In 2001, he became Deputy Chief of the USAO's Fort Lauderdale branch office Narcotics and Violent Crimes Section, and in 2003, became the Managing AUSA for that branch office. In early 2004, Sloman was appointed Chief of the USAO's Criminal Division. In October 2006, Sloman became the FAUSA, and Sloman's office was located with Acosta's in the Miami office's executive suite.

As FAUSA, Sloman was responsible for supervising the Civil, Criminal, and Appellate Divisions, and he was part of the supervisory team that oversaw the Epstein investigation. Although Sloman had relatively little involvement in the decisions and negotiations that led to the NPA and did not review it before it was signed, he personally negotiated an addendum to the NPA, which he signed on behalf of the USAO in October 2007. After subordinates Matthew Menchel and Andrew Lourie left the USAO, Sloman directly engaged with the line AUSA, Marie Villafaña, on Epstein matters, and participated in meetings and other communications with defense counsel. After Acosta was formally recused from the Epstein matter in December 2008, Sloman became the senior USAO official supervising the matter. When Acosta left the USAO, Sloman became the Acting U.S. Attorney for the Southern District of Florida, and in January 2010, the Attorney General appointed Sloman to be the Interim U.S. Attorney for the district. Sloman left the USAO to enter private practice in June 2010.

Matthew I. Menchel joined the USAO in 1998 after having served as a New York County (Manhattan) Assistant District Attorney for 11 years. After several years as a line AUSA, Menchel became Chief of the USAO's Major Crimes Section. In October 2006, Menchel became the Chief of the USAO's Criminal Division, based in Miami. As Criminal Division Chief, Menchel was part of the supervisory team that oversaw the Epstein investigation, and he participated in meetings and other communications with defense counsel. Menchel participated in the decision to extend a two-year state-based plea proposal to Epstein and communicated it to the defense. Shortly after that plea offer was extended to Epstein in early August 2007, and before the precise terms of the NPA were negotiated with defense counsel, Menchel left the USAO to enter private practice.

Andrew C. Lourie joined the USAO as a line AUSA in 1994, after having served for three years as an AUSA in New Jersey. During his 13-year tenure at the USAO, Lourie served two terms on detail as the Acting Chief of the Department's Criminal Division's Public Integrity Section, first from September 2001 until September 2002, and then from February 2006 until July 2006. Between those two details, and again after his return to the USAO in July 2006, Lourie was a Deputy Chief of the USAO's Criminal Division, serving as the Managing AUSA for the West Palm Beach branch office. Lourie was part of the supervisory team that oversaw the Epstein investigation and negotiated the NPA, participating in meetings and other communications with defense counsel. During September 2007, while the NPA was being negotiated, Lourie transitioned out of the USAO to serve on detail as the Principal Deputy Assistant Attorney General

for the Department's Criminal Division, a position in which he served as Chief of Staff to Assistant Attorney General Alice Fisher. Lourie left the Department in February 2008 to enter private practice.

Ann Marie C. Villafaña joined the USAO in September 2001 as a line AUSA. She served in the Major Crimes Section in Miami until January 2004, when she transferred to the West Palm Beach branch office. Villafaña handled the majority of the child exploitation cases in West Palm Beach, along with other criminal matters. In 2006, she was designated as the USAO's first coordinator for Project Safe Childhood, a new Department initiative focusing on child sexual exploitation and abuse.[2]

In 2006, Villafaña assumed responsibility for the Epstein investigation. As the line AUSA, Villafaña handled all aspects of the investigation. Villafaña determined the lines of inquiry to pursue, identified the witnesses to be interviewed, conducted legal research to support possible charges, and sought guidance from others at the USAO and in the Department. Villafaña, along with the FBI case agents and the FBI Victim Specialist, had direct contact with Epstein's victims. She handled court proceedings related to the investigation. She drafted a prosecution memorandum, indictment, and related documents, and revised those documents in response to comments from those in her supervisory chain of command. Villafaña participated in meetings between members of the USAO and counsel for Epstein, and prepared briefing materials for management in preparation for those meetings and in response to issues raised during those meetings. Although Acosta made the decision to utilize a non-prosecution agreement to resolve the federal investigation and approved the terms of the NPA, Villafaña was the primary USAO representative negotiating with defense counsel and drafting the language of the NPA, under her supervisors' direction and guidance, and she signed the NPA on behalf of the USAO. Thereafter, Villafaña monitored Epstein's compliance with the NPA and addressed issues relating to his conduct. After two victims pursued a federal civil lawsuit seeking enforcement of their rights under the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771 ("the CVRA litigation" or "the CVRA case"), in July 2008, Villafaña served as co-counsel to the lead attorney representing the USAO until February 2019, when the USAO was recused from handling the litigation.[3] Villafaña left the USAO in August 2019 to join another federal government agency.

The following chart shows the USAO positions filled by the subjects, or other USAO personnel, during the period of the Epstein investigation.

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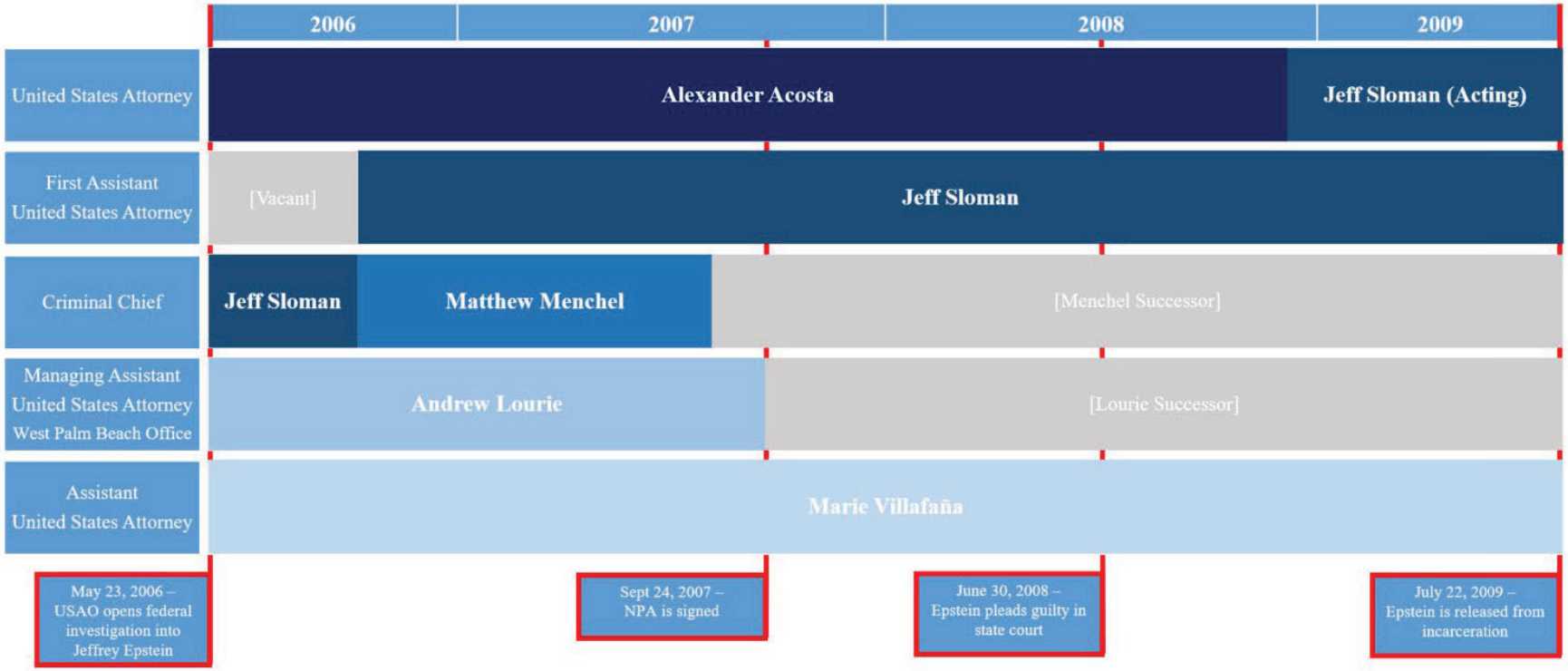
[2] Project Safe Childhood is a nationwide initiative launched by the Department in May 2006 to combat the growing epidemic of technology-facilitated child sexual exploitation and abuse. Led by the U.S. Attorneys' Offices and CEOS, Project Safe Childhood marshals federal, state, and local resources to locate, apprehend, and prosecute individuals who exploit children via the internet, as well as to identify and rescue victims.

[3] After the district court issued its February 21, 2019 opinion finding misconduct on the part of the government, the Department re-assigned the CVRA case to the U.S. Attorney's Office for the Northern District of Georgia.

USAO Roles and Responsibilities in Epstein Investigation
Mid-2006 through Mid-2009



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III. JEFFREY EPSTEIN AND HIS DEFENSE ATTORNEYS

A. Jeffrey Epstein

Jeffrey Epstein was born in Brooklyn, New York, in 1953.[4] Although he did not graduate from college, he taught physics and mathematics to teens at an elite private school in Manhattan from 1974 until 1976. Through connections made at the school, he was hired at the Wall Street firm of Bear Stearns, where he rose from junior assistant to a floor trader to become a limited partner before leaving in 1981. An enigmatic individual whose source of wealth was never clear, Epstein reportedly provided wealth management and advisory services to a business entrepreneur through whom Epstein acquired a mansion in midtown Manhattan, where he resided. In the early 1990s, Epstein acquired a large residence in Palm Beach, Florida. He also owned a private island in the U.S. Virgin Islands, a ranch in New Mexico, and a residence in Paris, France. He traveled among his residences in a private Boeing 727 jet.

Epstein reportedly was an investor, founder, or principal in myriad businesses and other entities, in numerous locations. Although frequently referred to as a billionaire, the sources and extent of his wealth were never publicly established during his lifetime.[5] He associated with prominent and wealthy individuals from business, political, academic, and social circles, and engaged in substantial philanthropy. Epstein maintained a large corps of employees, including housekeeping staff and pilots, as well as numerous female personal assistants, several of whom traveled with him.

B. Epstein's Defense Attorneys

Jeffrey Epstein employed numerous criminal defense attorneys in responding to the allegations that he had coerced girls into engaging in sexual activity with him at his Palm Beach, Florida estate. As different law enforcement entities became involved in investigating the allegations, he added attorneys having particular relevant knowledge of, or connections with, those entities. At the outset of the state investigation, Epstein retained nationally prominent Miami criminal trial attorney **Roy Black**. He was also represented by a local criminal defense attorney who was a former Palm Beach County Assistant State Attorney, and by nationally prominent Harvard Law School professor and criminal defense attorney **Alan Dershowitz**, who was a self-described close friend of Epstein. After initial plea negotiations with the State Attorney's Office, Epstein replaced the local attorney with **Jack Goldberger**, a prominent West Palm Beach criminal defense attorney whose law partner was married to the Assistant State Attorney handling the Epstein case; once Epstein hired Goldberger, the Assistant State Attorney was removed from the Epstein case on the basis of that conflict of interest. Another prominent attorney who began representing Epstein during the state investigation was New York City attorney **Gerald Lefcourt**,

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[4] Epstein's background has been extensively researched and reported in the media. *See, e.g.,* Landon Thomas Jr., "Jeffrey Epstein: International Moneyman of Mystery," *New York*, Oct. 28, 2002; Vicky Ward, "The Talented Mr. Epstein," *Vanity Fair*, Mar. 2003; James Barron, "Who Is Jeffrey Epstein? An Opulent Life, Celebrity Friends and Lurid Accusations," *New York Times*, July 9, 2019; Lisette Voytko, "Jeffrey Epstein's Dark Façade Finally Cracks," *Forbes*, July 12, 2019.

[5] After Epstein's death, his net worth was estimated to be approximately $577 million, based on his will and trust documents. https://time.com/5656776/jeffrey-epstein-will-estate/.

whose law firm website cites his "national reputation for the aggressive defense" of "high-profile defendants in criminal matters."

In late 2006, after the USAO opened its investigation, Epstein hired Miami criminal defense attorneys who were former AUSAs. One, **Guy Lewis**, had also served as the U.S. Attorney for the Southern District of Florida and as Director of the Department's Executive Office for United States Attorneys, the component charged with providing close liaison between the Department and the U.S. Attorneys. Another, **Lilly Ann Sanchez**, had served in the USAO and as a Deputy Chief in the Major Crimes Section before leaving in 2005. In August 2007, immediately after the USAO offered the terms that ultimately led to the NPA, two attorneys from the firm of Kirkland & Ellis, one of the largest law firms in the country, contacted the USAO on Epstein's behalf: **Kenneth Starr**, former federal judge and Solicitor General, who was serving as Dean of Pepperdine University School of Law while of counsel to the firm; and **Jay Lefkowitz**, a litigation partner who had served in high-level positions in the administrations of Presidents George H.W. Bush and George W. Bush. They were joined by nationally prominent Boston criminal defense attorney **Martin Weinberg**. After the NPA was signed, former U.S. Attorney **Joe D. Whitley** joined the defense team, as did the former Principal Deputy Chief of CEOS and another former U.S. Attorney, who was also a retired federal judge.

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CHAPTER TWO

THE NON-PROSECUTION AGREEMENT

PART ONE: FACTUAL BACKGROUND

I. OVERVIEW

In the following sections in this chapter, the Office of Professional Responsibility (OPR) details the significant events leading to, and during, the federal investigation of Epstein; the negotiation and signing of the NPA; and the defense's subsequent nine-month effort to stop the NPA from taking effect. OPR also describes more briefly the events occurring after Epstein pled guilty in state court, as the USAO sought to hold him to the terms of the agreement. In describing events, OPR relies heavily on contemporaneous documents, particularly emails. In many instances, the emails not only describe meetings and identify the participants, but also set forth the issues under discussion, the alternatives considered, and the basis for certain decisions. When helpful to explain the actions taken by the subjects, OPR also includes the subjects' explanations as provided in their written responses to, or interviews with, OPR, or explanations provided by witnesses.

A timeline of key events is set forth on the following page.

II. MARCH 2005 – MAY 2006: EPSTEIN IS INVESTIGATED BY THE PALM BEACH POLICE DEPARTMENT AND THE PALM BEACH COUNTY STATE ATTORNEY'S OFFICE

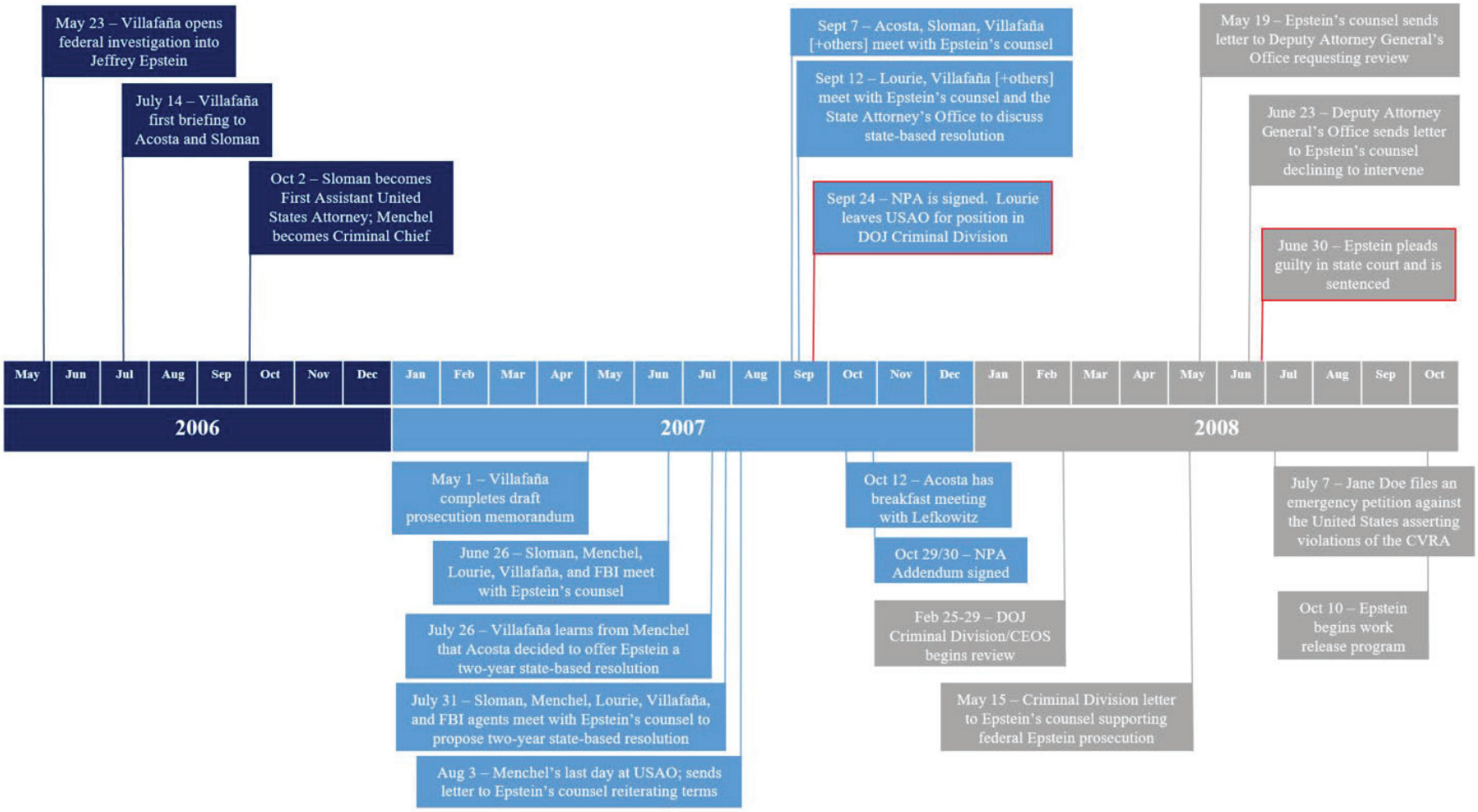
A. The Initial Allegations and the PBPD Investigation

In March 2005, the parents of a 14-year-old girl reported to the PBPD that a man had paid their daughter $300 to give him a massage in his Palm Beach home.[6] The PBPD began investigating Epstein, identified as the recipient of the massage, and two of his personal assistants, who were also implicated by the complainant. The investigation soon expanded beyond the initial claim, to encompass allegations that during 2004 and 2005, Epstein, through his female assistants

[6] As previously noted, "girls" refers to females under the age of 18. Epstein's contacts with girls and young women previously had come to the attention of the PBPD. In March 2004, a PBPD officer documented a telephone complaint that a 17-year-old girl had been giving Epstein topless massages at his residence for several months for $200 per massage. The girl claimed that there were nude photos of other girls throughout Epstein's home and offered to cooperate with a police investigation. The PBPD report relating to this complaint described the information as "unverified," and it was not pursued.

On November 28, 2004, the police received and recorded information that young women had been observed coming and going from Epstein's residence. The police suspected Epstein was procuring prostitutes, but because the PBPD did not have evidence that the women seen entering Epstein's home were minors, and typically did not investigate prostitution occurring in private residences, it did not open an investigation into the matter.

Timeline of Key Events for Federal Epstein Investigation – May 2006 through October 2008



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and some of the victims as well, regularly recruited local high-school-age girls to give him massages in his home that, in some cases, led to sexual activity.

Through their interviews with victims, the police learned more about Epstein's conduct. Some girls had only one encounter with Epstein, while others had many encounters with him. The nature of the massages varied. According to victims, some girls remained fully clothed while they massaged Epstein, some wore only their underwear, and some were fully nude. Victims stated that during these massages, Epstein masturbated himself. Some victims alleged that he touched them during the massage, usually fondling their breasts or touching their vaginas directly or through their clothing. Some victims reported that Epstein used a vibrator to masturbate them, and some stated that he digitally penetrated them. Some victims who stated that they saw him more often alleged that Epstein engaged in oral and vaginal sex with them. According to one victim, an Epstein female assistant participated, on at least one occasion, in sexual activity with the victim at Epstein's direction.[7]

Although the allegations varied in the specific details, for the most part they were consistent in describing a general pattern of conduct by Epstein and several of his assistants. According to the information provided to, and evidence gathered by, the PBPD, Epstein's assistants scheduled up to three massage appointments each day, often contacting the girls to make an appointment while Epstein was en route to Palm Beach from one of his other residences. Typically, when a girl arrived at Epstein's home for a massage, she was taken upstairs to the master bedroom and bathroom area by one of Epstein's assistants, who set up a massage table and massage oils. When the assistant left the room, Epstein entered, wearing only a robe or a towel. After removing his clothing, Epstein lay face down and nude on the massage table, instructed the girl to remove her clothing, and then explained to her how he wished her to perform the massage. During the massage, Epstein masturbated himself, often while fondling the girl performing the massage. When Epstein climaxed, the massage was over. Usually, Epstein paid the girl $200 for the massage, and if she had not been to his home before, Epstein asked for her phone number to contact her in the future. Epstein encouraged the girls who performed these massages to find other girls interested in performing massages for him, and promised that if a girl brought a friend along to perform a massage, each girl would receive $200. Several of the victims acknowledged to the PBPD that they had recruited other girls on Epstein's behalf.

The evidence regarding Epstein's knowledge of the girls' ages was mixed. Some girls who recruited other girls reportedly instructed the new recruits to tell Epstein, if asked, that they were over 18 years old. However, some girls informed the PBPD that they told Epstein their real ages. Police were able to corroborate one girl's report that Epstein sent flowers to her at her high school after she performed in a school play. In addition, an employee of Epstein told the PBPD that some of the females who came to Epstein's residence appeared to be underage.

Epstein was aware of the PBPD investigation almost from the beginning. He retained local criminal defense counsel, who in turn hired private investigators. In October 2005, the PBPD, with the assistance of the State Attorney's Office, obtained a search warrant for Epstein's residence. When police arrived at Epstein's home on October 20, 2005, to execute the warrant,

[7] According to the PBPD records, investigators obtained no allegations or evidence that any person other than this female assistant participated in the sexual activity with the girls.

they found computer monitors and keyboards in the home, as well as disconnected surveillance cameras, but the computer equipment itself—including video recordings and other electronic storage media—were gone. Nonetheless, the PBPD retrieved some evidence from Epstein's home, including notepads on which Epstein's assistants documented messages from many girls over a two-year span returning phone calls to confirm appointments. The police also found numerous photographs of naked young females of indeterminate age. Police photographs taken of the interior of Epstein's home corroborated the victims' descriptions to police of the layout of the home and master bedroom and bathroom area. The police also found massage tables and oils, one victim's high school transcript, and items the police believed to be sex toys.

B. The State Attorney's Office Decides to Present the Case to a State Grand Jury

State Attorney Barry Krischer explained to OPR that the Epstein case was unusual in that police brought the case to his office without having made an arrest. Krischer was unfamiliar with Epstein, and the case was assigned to the Crimes Against Children Unit. PBPD Chief Michael Reiter stated in a 2009 civil deposition that when the PBPD initially brought the case to the State Attorney's Office in 2005, Krischer was supportive of the investigation and told Reiter, "Let's go for it," because, given the nature of the allegations, Epstein was "somebody we have to stop." Krischer told OPR, however, that both the detectives and the prosecutors came to recognize that "there were witness problems."

Assistant State Attorney and Crimes Against Children Unit Chief Lanna Belohlavek told OPR that she and an experienced Assistant State Attorney who initially worked with her on the case "were at a disagreement" with the PBPD "over what the state . . . could ethically charge." According to Belohlavek, she did not believe the evidence the police presented would satisfy the elements of proof required to charge Epstein with the two felony crimes the police wanted filed, unlawful sexual activity with a minor (Florida Statute § 794.05(1)) and lewd and lascivious molestation of a minor (Florida Statute § 800.04(5)), and the police "were not happy with that."[8] In addition, victims had given contradictory statements to police, and the original complainant, who could have supported a charge requiring sexual offender registration, recanted her allegation of sexual contact. Belohlavek offered Epstein a resolution that would result in a five-year term of probation, which he rejected.[9]

Records publicly released by the State Attorney's Office show that, beginning in early 2006, attorneys for Epstein sought to persuade the state prosecutors to allow Epstein to plead "no contest" rather than guilty. To that end, the defense team aggressively investigated victims and presented the State Attorney's Office with voluminous material in an effort to undermine some of the victims' credibility, including criminal records, victims' social media postings (such as MySpace pages) about their own sexual activity and drug use, and victim statements that appeared to undercut allegations of criminal activity and Epstein's knowledge of victims' ages. Krischer

[8] Belohlavek stated that she did not consider charging procurement of a minor for prostitution—the charge Epstein ultimately pled to pursuant to the NPA—because the police had not presented it.

[9] In April 2006, the State Attorney's Office offered Epstein an opportunity to plead guilty to the third degree felony of aggravated assault with the intent to commit a felony, with adjudication withheld and five years of probation with no unsupervised contact with minors.

told OPR that Epstein's local counsel brought attorney Alan Dershowitz to see Krischer and the Assistant State Attorney, but Dershowitz was "overly aggressive" and threatened, "We're going to destroy your witnesses; don't go to court because we're going to destroy those girls." According to Krischer, Dershowitz so "tainted the waters" that Epstein also hired local attorney Jack Goldberger, with whom Krischer had "a working relationship." Because the husband of the Assistant State Attorney was Goldberger's law partner, Belohlavek recused the Assistant State Attorney to remove "even the appearance of any kind of conflict" of interest, and Belohlavek took over the case. Goldberger, together with Gerald Lefcourt, a nationally known New York criminal defense attorney also representing Epstein, then directed their efforts at Belohlavek and Krischer to dissuade the office from prosecuting Epstein, largely by attacking the credibility of the victim witnesses.

Meanwhile, the State Attorney's Office took the unusual step of preparing to present the case to a grand jury. Krischer told OPR that under state law as it existed until changed in 2016, his office prosecuted minors as young as 14 for prostitution.[10] The possibility that Epstein's victims themselves could have been prosecuted caused "great consternation within the office," and according to Krischer, resulted in the decision to put the case before the grand jury.[11] Belohlavek told OPR that her office took the allegations against Epstein "seriously, because . . . it was an organized scheme to involve young girls by offering them money. And I wouldn't say that we . . . thought they were prostitutes . . . [but] I think there was solicitation." However, she said, although Epstein's "behavior was reprehensible, . . . I'm limited by . . . the state statutes as to what I can charge." Krischer told OPR, "There were so many issues involving the victim-witnesses that to my mind, in consultation with my [prosecutors], the only way to achieve, to my mind, real justice was to present the case to the grand jury and not to direct-file" criminal charges against Epstein.

C. Florida State Procedure for Bringing Criminal Charges

Federal criminal procedure requires that a felony charge—that is, any charge punishable by imprisonment for one year or more—be brought by a grand jury unless waived by a defendant.[12] Under Florida law, however, a grand jury is required to bring criminal charges only in a death penalty case.[13] For all other cases, a State Attorney has concurrent authority to file criminal charges by means of a document called an "information" or to seek a grand jury indictment. Although Florida criminal cases are routinely charged by information, state grand juries are often utilized in sensitive or high-profile cases, such as those involving allegations of wrongdoing by public officials.[14] Florida grand jury proceedings are subject to strict secrecy rules that, among

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[10] Belohlavek told OPR that prostitution was a misdemeanor charge, and she did not handle misdemeanors.

[11] Because the Florida Department of Law Enforcement investigation into the State Attorney's Office's handling of the Epstein case was pending at the time OPR interviewed Krischer, he declined to further explain to OPR his office's prosecutive decisions.

[12] U.S. Const. amend. V; Fed. R. Crim. P. 7(a), (b). The sole exception under the rule is felony criminal contempt, which need not be charged by indictment. Fed. R. Crim. P. 7(a)(1).

[13] Fla. Const. Art. I, § 15(a).

[14] The Florida Bar, The Grand Jury, Reporters Handbook – The Grand Jury, available at https://www floridabar.org/news/resources/rpt-hbk/rpt-hbk-13/.

other things, prohibit anyone from being present while grand jurors deliberate and vote, and proscribe the release of the notes, records, and transcripts of a grand jury.[15]

D. PBPD Chief Reiter Becomes Concerned with the State Attorney's Office's Handling of the State Investigation and Seeks a Federal Investigation

In 2006, PBPD Chief Reiter perceived that Krischer's attitude had changed and, according to Reiter's statements in his 2009 deposition, Krischer said that he did not believe the victims were credible. Reiter was disturbed when Krischer suggested that the PBPD issue a notice for Epstein to appear in court on misdemeanor charges, leading Reiter to begin questioning Krischer's objectivity and the State Attorney's Office's approach to the case. As Reiter explained in his deposition:

> This was a case that I felt absolutely needed the attention of the State Attorney's Office, that needed to be prosecuted in state court. It's not generally something that's prosecuted in a federal court. And I knew that it didn't really matter what the facts were in this case, it was pretty clear to me that Mr. Krischer did not want to prosecute this case.

On May 1, 2006, Reiter submitted to Krischer probable cause affidavits and a case filing package relating to Epstein, one of his personal assistants, and a young local woman whom Epstein first victimized and then used to recruit other girls. In his transmittal letter, which was later made public, Reiter criticized Krischer, noting that he found the State Attorney's Office's "treatment of these cases [to be] highly unusual."[16] Reiter urged Krischer "to examine the unusual course that your office's handling of this matter has taken" and to consider disqualifying himself from prosecuting Epstein.[17]

III. THE FBI AND THE USAO INVESTIGATE EPSTEIN, AND THE DEFENSE TEAM ENGAGES WITH THE USAO

A. May 2006 – February 2007: The Federal Investigation Is Initiated, and the USAO Opens a Case File

In early 2006, a West Palm Beach FBI Special Agent who worked closely with AUSA Ann Marie Villafaña on child exploitation cases—and who is referred to in this Report as "the case agent"—mentioned to Villafaña in "casual conversations" having learned that the PBPD was investigating a wealthy Palm Beach man who recruited minors for sexual activity. The case agent told Villafaña that the PBPD had reached out to the FBI because the State Attorney's Office was considering either not charging the case or allowing the defendant to plead to a misdemeanor

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[15] Fla. Stat. § 905.27 (2007).

[16] *See* Larry Keller, "Palm Beach chief focus of fire in Epstein case," *Palm Beach Post*, Aug. 14, 2006.

[17] As noted, Krischer generally declined in his OPR interview to explain his office's prosecutive decisions; however, regarding allegations of favoritism to Epstein's defense counsel, Krischer told OPR, "I just don't play that way."

charge. Villafaña suggested meeting with the PBPD, but the case agent explained that before formally presenting the case to the FBI, the PBPD wanted to see how the State Attorney's Office decided to charge Epstein.

1. The PBPD Presents the Matter to the FBI and the USAO

In May 2006, the lead Detective handling the state's investigation met with Villafaña and the FBI case agent to summarize for them the information learned during the state's investigation.[18] At the time, neither Villafaña nor the case agent had heard of Epstein or had any knowledge of his background.

According to Villafaña, during this meeting, the Detective expressed concern that "pressure had been brought to bear on . . . Krischer by Epstein's attorneys," and he and Chief Reiter were concerned the state would charge Epstein with only a misdemeanor or not at all.[19] The Detective explained that the defense had hired private investigators to trail Reiter and the Detective, had raised claims of various improprieties by the police, and, in the view of the PBPD, had orchestrated the removal of the Assistant State Attorney initially assigned to handle the matter, who was viewed as an aggressive prosecutor, by hiring a defense attorney whose relationship with the Assistant State Attorney created a conflict of interest for the prosecutor. Further, given the missing computer equipment and surveillance camera videotapes, the Detective believed Epstein may have been "tipped off" in advance about the search warrant.

During the meeting, Villafaña reviewed the U.S. Code to see what federal charges could be brought against Epstein. She focused on 18 U.S.C. §§ 2422 (enticement of minors into prostitution or other illegal sexual activity and use of a facility of interstate or foreign commerce to persuade or induce a minor to engage in prostitution or other illegal sexual activity) and 2423 (travel for purposes of engaging in illegal sexual conduct). As they discussed these charges, the Detective told Villafaña that Epstein and his assistants had traveled out of the Palm Beach International Airport on Epstein's private airplane, and flight logs sometimes referred to passengers as "female" without a name or age, which the Detective suspected might be references to underage girls. However, the Detective acknowledged that he was unable to confirm that suspicion and did not have firm evidence indicating that Epstein had transported any girls interstate or internationally. Nevertheless, Villafaña believed Epstein could be prosecuted federally, in part because of his own interstate and international travel to the Southern District of Florida to abuse girls. Villafaña discussed with the Detective and the case agent the additional investigation needed to prove violations of the federal statutes she had identified. She told them that if the evidence supported it, the case could be prosecuted federally, but she assured them that opening a federal investigation would not preclude the State Attorney's Office from charging Epstein should it choose to do so.

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[18] The Detective died in May 2018.

[19] In his 2009 deposition, Reiter testified that after he referred the Epstein matter to the FBI, a Town of Palm Beach official approached Reiter and criticized his referral of the investigation to the FBI, telling Reiter that the victims were not believable and "Palm Beach solves its own problems."

2. May 2006: The USAO Accepts the Case and Opens a Case File

On May 23, 2006, Villafaña prepared the paperwork to open a USAO case file. Villafaña told OPR that several aspects of the case implicated federal interests and potentially merited a federal prosecution: (1) the victimization of minors through the use of facilities of interstate commerce (the telephone and airports); (2) the number of victims involved; (3) the possibility that Epstein had been producing or possessing child pornography (suggested by the removal of the computer equipment from his residence); and (4) the possibility that improper political pressure had affected the State Attorney Office's handling of the case. The investigation was named "Operation Leap Year" because the state investigation had identified approximately 29 girls as victims of Epstein's conduct.[20]

Villafaña told OPR that from the outset of the federal investigation, she understood that the case would require a great deal of time and effort given the number of potential victims and Epstein's financial resources. Nonetheless, Villafaña was willing to put in the effort and believed that the FBI was similarly committed to the case. Villafaña discussed the case with her immediate supervisor, who also "thought it would be a good case" and approved it to be opened within the USAO's file management system, and on May 23, 2006, it was formally initiated.

3. July 14, 2006: Villafaña Informs Acosta and Sloman about the Case

Because Villafaña was not familiar with Epstein, she researched his background and learned that he "took a scorched earth approach" to litigation. Villafaña was aware that Epstein had hired multiple lawyers to interact with the State Attorney's Office in an effort to derail the state case, and she believed he would likely do the same in connection with any federal investigation.

Therefore, Villafaña arranged to meet with U.S. Attorney Alexander Acosta and Jeffrey Sloman, who at the time was the Criminal Division Chief.[21] Villafaña told OPR that she had never before asked to meet with "executive management" about initiating a case, but the allegations that Epstein had improperly influenced the State Attorney's Office greatly troubled her. Villafaña explained to OPR that she wanted to ensure that her senior supervisors were "on board" with the Epstein investigation. In addition, she viewed Sloman as a friend, in whom she had particular confidence. At this point, although Villafaña's immediate supervisor was aware of the case, Villafaña did not inform Andrew Lourie, who was then in charge of the West Palm Beach office and her second-line supervisor, about the matter or that she was briefing Acosta and Sloman.

Villafaña met with Acosta and Sloman in Miami on July 14, 2006. She told OPR that at the meeting, she informed them that the PBPD had identified a group of girls who had provided to

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[20] Villafaña opened "Operation Leap Year" during the same month in which the Department launched its "Project Safe Childhood" initiative, and Acosta designated Villafaña to serve as the USAO's Project Safe Childhood coordinator.

[21] Although Acosta had been formally nominated to the U.S. Attorney position on June 9, he was not confirmed by the Senate until August 3, 2006, and was not sworn in until October 2006. In September 2006, Acosta announced the appointments of Sloman as FAUSA and Matthew Menchel as Chief of the USAO's Criminal Division, and they assumed their respective new offices in October 2006.

Epstein massages that were sexual in nature, and that Epstein had used "various types of pressure" to avoid prosecution by the state, including hiring attorneys who had personal connections to the State Attorney. Villafaña said that part of her goal in speaking to Acosta and Sloman at the outset of the federal investigation was to sensitize them to the tactics Epstein's legal team would likely employ. Villafaña explained, "When you have a case that you know people are going to be getting calls about . . . you just want to make sure that they know about it so they don't get . . . a call from out of the blue." According to Villafaña, she told Acosta and Sloman that the FBI was willing to put the necessary resources into the case, and she was willing to put in the time, but she "didn't want to get to the end and have [the] same situation occur" with a federal prosecution as had occurred with the state. She told OPR, "I remember specifically saying to them that I expected the case would be time and resource-intensive and I did not want to invest the time and the FBI's resources if the Office would just back down to pressure at the end." According to Villafaña, Acosta and Sloman promised that "if the evidence is there, we will prosecute the case." In a later email to Lourie and her immediate supervisor, Villafaña recounted that she spoke with Acosta and Sloman because she "knew that what has happened to the state prosecution can happen to a federal prosecution if the U.S. Attorney isn't on board," but Acosta and Sloman had given her "the green light" to go forward with the Epstein investigation.

Both Acosta and Sloman told OPR that they did not recall the July 2006 meeting with Villafaña. Each told OPR that at the time the federal investigation was initiated, he had not previously heard of Epstein.[22]

Acosta told OPR that he understood from the outset that the case involved a wealthy man who was "doing sordid things" with girls, and that it "seemed a reasonable matter to pursue" federally. Epstein's wealth and status did not raise any concern for him, because, as Acosta told OPR, the USAO had prosecuted "lots of influential folks." When asked by OPR to articulate the federal interest he perceived at the time to be implicated by the case, Acosta responded, "the exploitation of girls or minor females." Regarding Villafaña's view that she had been given a "green light" to proceed with the investigation, Acosta told OPR that he would not likely have explicitly told Villafaña to "go spend your time" on the case; rather, his practice would have been simply to acknowledge the information she shared about the case and confirm that a federal investigation "sound[ed] reasonable."

Sloman told OPR that he could not recall what he initially knew about the Epstein investigation, other than that he had a basic understanding that the State Attorney's Office had "abdicated their responsibility" to investigate and prosecute Epstein. In his OPR interview, Sloman did not recall with specificity Villafaña's concern about Epstein's team pressuring the State Attorney's Office, but he said he was never concerned that political pressure would affect the USAO, noting that as of July 2006, the USAO had recently prosecuted wealthy and politically connected lobbyist Jack Abramoff.

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[22] Lourie told OPR that when he first heard about the Leap Year investigation, he likewise was unaware of Epstein. On July 24, 2006, Villafaña emailed to Sloman a link to a *Palm Beach Post* article that described Epstein as a "Manhattan money manager" and "part-time Palm Beacher who has socialized with Donald Trump, Bill Clinton and Kevin Spacey." Sloman forwarded the article to Acosta.

4. Late July 2006: The State Indicts Epstein, and the USAO Moves Forward with a Federal Investigation

Several days after Villafaña spoke with Acosta and Sloman, on July 19, 2006, Assistant State Attorney Belohlavek presented the case to the state grand jury.[23] Krischer told OPR that "the whole thing" was put before the grand jury. According to a statement made at the time by the State Attorney's Office spokesman, the grand jury was presented with a list of charges from highest to lowest, without a recommendation by the prosecutor, and deliberated with the prosecutor out of the room.[24] The state grand jury returned an indictment charging Epstein with one count of felony solicitation of prostitution, in violation of Florida Statute § 796.07, a felony under state law because it alleged three or more instances of solicitation.[25] The indictment did not identify the person or persons solicited and made no mention of the fact that Epstein had solicited minors.[26] On July 23, 2006, Epstein self-surrendered to be arrested on the indictment, but was not detained, and the charges were made public.

Villafaña told OPR that she decided to move forward with the federal investigation at that point because she believed the State Attorney's Office would permit Epstein to enter a plea to a reduced misdemeanor charge and that once he entered a guilty plea, the Department's Petite policy might preclude a federal prosecution.[27] Villafaña told OPR that at the time, she "definitely believed that we were going to proceed to [a federal] indictment, assuming that . . . we had sufficient evidence."

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[23] Villafaña and the FBI obtained and examined records of the state grand jury proceeding, and Lourie reviewed them. Because the grand jury records have not been ordered released publicly, OPR does not discuss their substance in this Report.

[24] Larry Keller, "Police say lawyer tried to discredit teenage girls," *Palm Beach Post*, July 29, 2006, citing statement by State Attorney's Office spokesman Michael Edmondson.

[25] Indictment in *State v. Epstein*, 2006CF9454AXX (July 19, 2006), attached as Exhibit 1 to this Report.

[26] In pertinent part, the state indictment read, "[B]etween the 1st day of August [2004] and October 31, 2005, [Epstein] did solicit, induce, entice, or procure another to commit prostitution lewdness, or assignation, . . . on three or more occasions." The 15-month time frame and lack of detail regarding the place or manner of the offense made it impossible to identify from the charging document which victim or victims served as the basis for the charge in the state indictment. Belohlavek explained to OPR that the charge did not list specific victims so that she could go forward at trial with whichever victim or victims might be available and willing to testify at that time.

[27] The Petite policy is a set of guidelines used by federal prosecutors when considering whether to pursue federal charges for defendants previously prosecuted for state or local offenses. The Constitution does not prohibit the federal government from prosecuting defendants who have been charged, acquitted, or convicted on state charges based on the same criminal conduct. The Supreme Court has repeatedly upheld the long-standing principle that the prohibition against double jeopardy does not apply to prosecutions brought by different sovereigns. *See, e.g., Gamble v. United States*, 587 U.S. ___, 139 S. Ct. 1960, 1966-67 (2019) (and cases cited therein); *Abbate v. United States*, 359 U.S. 187, 195 (1959) (and cases cited therein); and *United States v. Lanza,* 260 U.S. 377, 382 (1922). Nonetheless, to better promote the efficient use of criminal justice resources, the Department developed policies in 1959 and 1960 to guide federal prosecutors in the use of their charging discretion. *See* Chapter Two, Part Two, Section II.A.2, for a more detailed discussion of the Petite policy.

On July 24, 2006, Villafaña alerted Sloman, who informed Acosta, that the State Attorney's Office had charged and arrested Epstein.[28] On that same day, the FBI in West Palm Beach formally opened the case, assigning the case agent and, later, a co-case agent, to investigate it. Villafaña told Sloman that the FBI agents "are getting copies of all of the evidence and we are going to review everything at [the] FBI on Wednesday," and she noted that her target date for filing federal charges against Epstein was August 25, 2006. Acosta emailed Sloman, asking whether it was "appropriate to approach [State Attorney Krischer] and give him a heads up re where we might go?" Sloman replied, "No for fear that it will be leaked straight to Epstein."[29]

Although Lourie learned of the case at this point from Sloman, and eventually took a more active role in supervising the investigation, Villafaña continued to update Acosta and Sloman directly on the progress of the case.[30] Villafaña's immediate supervisor in West Palm Beach had little involvement in supervising the Epstein investigation, and at times, Villafaña directed her emails to Sloman, Menchel, and Lourie without copying her immediate supervisor. In the immediate supervisor's view, however, "Miami" purposefully assumed all the "authority" for the case, which the immediate supervisor regarded as "highly unusual."[31]

By late August 2006, Villafaña and the FBI had identified several additional victims and obtained "some flight manifests, telephone messages, and cell phone records that show the communication and travel in interstate commerce" by Epstein and his associates. Villafaña reported to her supervisors that the State Attorney's Office would not provide transcripts from the state grand jury voluntarily, and that she would be meeting with Chief Reiter "to convince him to relinquish the evidence to the FBI." Villafaña also told her supervisors that she expected "a number of fights" over her document demands, and that some parties were refusing to comply "after having contact with Epstein or his attorneys."

Villafaña's reference to anticipated "fights" and lack of compliance led Sloman to ask whether she was referring to the victims. Villafaña responded that the problems did not involve victims, but rather a former employee of Epstein and some business entities that had objected to document demands as overly burdensome. Villafaña explained to Sloman and Lourie that some victims were "scared and/or embarrassed," and some had been intimidated by the defense, but "everyone [with] whom the agents have spoken so far has been willing to tell her story." Villafaña

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[28] On the same day, Sloman emailed Lourie, whom Villafaña had not yet briefed about the case, noting that Operation Leap Year was "a highly sensitive case involving some Palm Beach rich guy."

[29] During his OPR interview, Sloman did not recall what he meant by this remark, but speculated that it was likely that "we didn't trust the Palm Beach State Attorney's Office," and that he believed there may have been "some type of relationship between somebody in the [State Attorney's Office] and the defense team."

[30] After Villafaña sent a lengthy substantive email about the case to her immediate supervisor, Lourie, Sloman, and Acosta on August 23, 2006, Lourie emailed Sloman: "Do you and Alex [Acosta] want her updating you on the case?" Sloman responded, "At this point, I don't really care. If Alex says something then I'll tell her to just run it through you guys."

[31] OPR understood "Miami" to be a reference to the senior managers who were located in the Miami office, that is, Acosta, Sloman, and Menchel. Records show, and Villafaña told OPR, that she believed Epstein's attorneys "made a conscious decision to skip" her immediate supervisor and directed their communications to the supervisory chain above the immediate supervisor—Lourie, Menchel, Sloman, and Acosta.

also informed Sloman and Lourie that the FBI was re-interviewing victims who had given taped statements to the PBPD, to ensure their stories "have not changed," and that "[a]ny discrepancies will be noted and considered." She conceded that "[g]etting them to tell their stories in front of a jury at trial may be much harder," but expressed confidence that the two key victims "will stay the course." She acknowledged that the case "needs to be rock solid."

The case agent told OPR that in this initial stage of the investigation, the FBI "partnered up very well" with the USAO. She recalled that there was little higher-level management oversight either from the FBI or the USAO, and "we were allowed to do what we needed to do to get our job done." This included continuing to identify, locate, and interview victims and Epstein employees, and obtaining records relating to Epstein's travel, communications, and financial transactions. The case agent viewed the case as "strong."

5. October 2006 – February 2007: Epstein's Defense Counsel Initiate Contact with Villafaña, Lourie, and Sloman, and Press for a Meeting

Just as Epstein had learned of the PBPD investigation at its early stage, he quickly became aware of the federal investigation, both because the FBI was interviewing his employees and because the government was seeking records from his businesses. One of Epstein's New York attorneys, Gerald Lefcourt, made initial contact with Villafaña in August 2006. As the investigation progressed, Epstein took steps to persuade the USAO to decline federal prosecution.[32] As with the state investigation, Epstein employed attorneys who had experience with the Department and relationships with individual USAO personnel.[33] One of Epstein's Miami lawyers, Guy Lewis, a former career AUSA and U.S. Attorney for the Southern District of Florida, made an overture on Epstein's behalf in early November 2006.[34] Lewis telephoned Villafaña, a call that Sloman joined at Villafaña's request. Lewis offered to provide Villafaña

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[32] Villafaña told OPR that Epstein's lawyers wanted to stop the investigation "prematurely."

[33] Chapter One, Section III.B of this Report identifies several of the attorneys known to have represented Epstein in connection with the federal investigation, along with a brief summary of their connections to the Department, the USAO, or individuals involved in the investigation. At least one former AUSA also represented during civil depositions individuals associated with Epstein. Menchel told OPR that he and his colleagues recognized Epstein was selecting attorneys based on their perceived influence within the USAO, and they viewed this tactic as "ham-fisted" and "clumsy." Menchel told OPR, "[O]ur perspective was this is not going to . . . change anything."

[34] Lewis served in the USAO for over 10 years, and was U.S. Attorney from 2000 to 2002. He then served for two years as Director of the Executive Office for U.S. Attorneys, the Department's administrative office serving the U.S. Attorneys.

Early in the investigation, Lourie voluntarily notified the USAO's Professional Responsibility Officer that Lourie was friends with Lewis and also had a close friendship with Lewis's law partner, who also was a former AUSA and also represented Epstein. Lourie requested guidance as to whether his relationships with Lewis and Lewis's law partner created either a conflict of interest or an appearance of impropriety mandating recusal. The Professional Responsibility Officer responded that Lourie's relationships with the two men were not "covered" relationships under the conflict of interest guidelines but deferred to Sloman or Menchel "to make the call." Thereafter, Sloman authorized Lourie to continue supervising the case. During his OPR interview, Lourie asserted that his personal connection to Lewis did not influence his handling of the case.

"'anything' she wanted" without the necessity of legal process. Lewis asked to meet with Villafaña and Sloman to discuss the Epstein investigation, but Villafaña declined.

Shortly thereafter, Lilly Ann Sanchez, a former AUSA, contacted Sloman and advised him that she also represented Epstein. Sanchez was employed by the USAO from 2000 to September 2005 and had been a Deputy Chief of the USAO's Major Crimes section at the time Menchel was the Chief. According to Sloman's contemporaneous email recounting the conversation, when Sanchez indicated to him that his participation in Lewis's call with Villafaña led the defense team to believe that the matter had been "elevated" within the USAO, Sloman tried to "disabuse" her of that notion. Sanchez said that Epstein "wanted to be as transparent and cooperative as possible" in working with the USAO. Despite the fact that Lewis had already made contact with the USAO on Epstein's behalf, Sanchez sent a letter to Villafaña on November 15, 2006, in which she asserted that she and Gerald Lefcourt were representing Epstein and asked that the USAO direct all contact or communications about Epstein to them. In response, Villafaña requested that the defense provide documents and information pertinent to the federal investigation, including the documents and information that Epstein had previously provided to the State Attorney's Office, and "computers, hard drives, CPUs [computer processing units], and any other computer media" removed from Epstein's home before the PBPD executed its search warrant in October 2005. In January 2007, Sanchez contacted Villafaña to schedule a meeting, but Villafaña responded that she wanted to receive and review the documents before scheduling a meeting with Sanchez.

Immediately after receiving Villafaña's response, Sanchez bypassed Villafaña and phoned Lourie, with whom she had worked when she was an AUSA, to press for a meeting. Lourie agreed to meet with Sanchez and Lefcourt. Lourie explained to Villafaña that Sanchez was concerned that federal charges were "imminent," wanted to meet with the USAO and "make a pitch," and promised that once given the opportunity to do so, if the USAO "wanted to interview Epstein, that would be a possibility." Villafaña told Lourie that Sanchez had not yet provided the documents she had promised, and Villafaña wanted "the documents not the pitch." Lourie explained to OPR, however, that it was his practice to grant meetings to defense counsel; he considered it "good for us" to learn the defense theories of a case and believed that "information is power." Lourie further explained that learning what information the defense viewed as important could help the USAO form its strategy and determine which counts relating to which victims should be charged. Lourie also believed that as a general matter, prosecutors should grant defense requests to make a presentation, because "[p]art of [the] process is for them to believe they are heard." In addition to agreeing to a meeting, Lourie sent Sanchez a narrowed document request, which responded to Sanchez's complaint that the USAO's earlier request was overbroad but which retained the demand for the computer-related items removed from Epstein's home. The meeting was scheduled for February 1, 2007, and Lourie asked Sanchez to provide the documents and materials to the USAO by January 25, 2007.

Villafaña did not agree with Lourie's decision to meet with Sanchez and Lefcourt. Indeed, two days after Lourie agreed to the meeting, Villafaña alerted him that she had spoken again with Sanchez and learned that Epstein was not going to provide the requested documents. As Villafaña told Lourie, "I just get to listen to the pitch and hear about how the girls are liars and drug users." She told OPR that in her view, "it was way too early to have a meeting," she already knew what the defense would say, and she could not see how a meeting would benefit the federal investigation. She explained to Lourie the basis for her objections to the meeting, but Lourie "vehemently"

disagreed with her position. Villafaña and a West Palm Beach AUSA with whom she was consulting about the investigation, and who served for a time as her co-counsel, both recalled meeting with Lourie in his office to express their concerns about meeting with defense counsel. They perceived Lourie to be dismissive of their views.[35] According to Villafaña, Lourie believed that a meeting with the defense attorneys would be the USAO's chance to learn the defense's legal theories and would position the USAO to arrange a debriefing of Epstein, through which the USAO might learn information helpful to a prosecution. Villafaña told OPR, however, that while this strategy might make sense in a white-collar crime case, she did not believe it was appropriate or worthwhile in a child exploitation case, in which the perpetrator would be unlikely to confess to the conduct. Villafaña also told OPR that she did not believe the USAO could extract information about the defense legal theories without telling the defense the precise crimes the USAO intended to charge, which Villafaña did not want to reveal.

6. February 2007: Defense Counsel Meet with Lourie and Villafaña and Present the Defense Objections to a Federal Case

At the February 1, 2007 meeting with Lourie and Villafaña, Sanchez and Lefcourt set out arguments that would be repeated throughout the months-long defense campaign to stop the federal investigation. In support of their arguments, the defense attorneys provided a 25-page letter, along with documents the defense had obtained from the state's investigative file and potential impeachment material the defense had developed relating to the victims.

In the letter and at the meeting, defense counsel argued that (1) the allegations did not provide a basis for the exercise of federal jurisdiction; (2) the evidence did not establish that Epstein knew girls who provided him with massages were minors; (3) no evidence existed proving that any girl traveled interstate to engage in sex with Epstein; (4) the USAO would violate the Petite policy by initiating federal prosecution of a matter that had already been addressed by the state; and (5) there were "forensic barriers" to prosecution, referring to witness credibility issues. The letter suggested that "misleading and inaccurate reports" from the PBPD "may well have affected" the USAO's view of the case. The letter also claimed that the State Attorney's Office had taken into account the "damaging histories of lies, illegal drug use, and crime" of the state's two principal victims (identified by name in the letter), and argued that "with witnesses of their ilk," the state might have been unable "to make any case against Epstein at all." Lourie told OPR that he did not recall the meeting, but Villafaña told OPR that neither she nor Lourie was persuaded by the defense presentation at this "listening session."

B. February – May 2007: Villafaña and the FBI Continue to Investigate; Villafaña Drafts a Prosecution Memorandum and Proposed Indictment for USAO Managers to Review

Correspondence between Villafaña and defense counsel show that Villafaña carefully considered the defense arguments concerning the victims' credibility, and she reviewed audiotapes

[35] Villafaña told OPR that in a "heated conversation" on the subject, Lourie told them they were not being "strategic thinkers." Her fellow AUSA remembered Lourie's "strategic thinker" comment as well, but recalled it as having occurred later in connection with another proposed action in the Epstein case. Lourie did not recall making the statement but acknowledged that he could have.

of the state's victim interviews and partial transcripts provided by defense counsel.[36] Villafaña also pursued other investigative steps, which included working with the FBI to locate an expert witness to testify about the effect of sexual abuse on victims. She also continued collecting records relating to Epstein's business entities, in part to help establish the interstate nexus of Epstein's activity. On several occasions, Villafaña sought guidance from CEOS, which had considerable national expertise in child exploitation cases, about legal issues relating to the case, such as whether charges she was considering required proof that the defendant knew a minor victim's age.

USAO procedures generally required that a proposed indictment be accompanied by a prosecution memorandum from the AUSA handling the case. The prosecution memorandum was expected to explain the factual and legal bases for the proposed charges and address any significant procedural, factual, and legal issues of which the AUSA was aware; witness-related issues; expected defenses; and sentencing issues. Routine prosecutions could be approved by lower-level supervisors, but in high-profile or complex cases, proposed indictments might require review and approval by the Criminal Division Chief, the FAUSA, or even the U.S. Attorney.

Accordingly, Villafaña drafted an 82-page prosecution memorandum directed to Acosta, Sloman, Menchel (who had replaced Sloman as the USAO's Criminal Division Chief the previous October, when Sloman became the FAUSA), Lourie, and her immediate supervisor, dated May 1, 2007, supporting a proposed 60-count indictment that charged Epstein with various federal crimes relating to sexual conduct with and trafficking of minors. The prosecution memorandum set forth legal issues and potential defenses relating to each proposed charge; explained why certain other statutes were rejected as proposed charges; described the evidence supporting each count and potential evidentiary issues; and addressed the viability and credibility of each of the victims who were expected to testify at trial.

Villafaña's immediate supervisor told OPR that she read the prosecution memorandum, had only a few small edits to the indictment, and advised Lourie that she approved of it. The immediate supervisor told OPR that she viewed the case as prosecutable, but recognized that the case was complex and that Villafaña would need co-counsel.

In his OPR interview, Lourie recalled thinking that the prosecution memorandum and proposed indictment "were very thorough and contained a lot of hard work," but that he wanted to employ a different strategy for charging the case, focusing initially only on the victims that presented "the toughest cases" for Epstein—meaning those about whom Epstein had not already raised credibility issues to use in cross-examination. Lourie told OPR that although he had some concerns about the case—particularly the government's ability to prevail on certain legal issues and the credibility challenges some of the victims would face—he did not see those concerns as insurmountable and was generally in favor of going forward with the prosecution.

Although indictments coming out of the West Palm Beach office usually did not require approval in Miami, in this case, Lourie understood that "[b]ecause there was front office involvement from the get-go," he would not be the one making the final decision whether to go

[36] Lefcourt and Sanchez provided the recordings during a follow-up meeting with Lourie and Villafaña on February 20, 2007, and thereafter furnished the transcripts.

forward with charges in this case. Lourie forwarded a copy of the prosecution memorandum to Menchel. Lourie's transmittal message read:

> Marie did a 50 [*sic*] page pros memo in the Epstein case. I am going to start reading it tonight. . . . It's a major case because the target is one of the richest men in the country and it has been big news. He has a stable of attorneys, including Dershowitz, [Roy] Black, Lefcourt, Lewis, and Lily [*sic*] Sanchez. Jeff Sloman is familiar with the investigation. The state intentionally torpedoed it in the grand jury so it was brought to us. I am going to forward the pros memo to you so you can start reading it at the same time I do. The FBI is pushing to do it in Mid [*sic*] May, which I think is not critical, but we might as well get a jump on it. I have some ideas about the indictment (needs to be ultra lean with only clean victims), so I am not sending that yet.

Lourie explained to OPR that by "clean" victims, he meant those for whom the defense did not have impeachment evidence to use against them.

A few days later, Lourie emailed Menchel, asking if Menchel had read the prosecution memorandum. Lourie directed Menchel's attention to particular pages of the prosecution memorandum, noting that the "keys" were whether the USAO could prove that Epstein traveled for the purpose of engaging in sexual acts, and the fact that some minor victims told Epstein they were 18.[37] Lourie asked for Menchel's "very general opinion as to whether this is a case you think the office should do," and reminded Menchel that the State Attorney's Office "went out of their way to get a no-bill on this . . . and thus only charged adult solicitation, which they would bargain away to nothing."

During his OPR interview, Menchel said that Lourie's email transmitting the prosecution memorandum was his "official introduction" to the case and at that point in time, he had never heard of Epstein and had no information about his background. He recalled that the USAO had been asked to review the case because the state had not handled it appropriately. Menchel told OPR, however, that he had little memory about the facts of the case or what contemporaneous opinions he formed about it.

Acosta told OPR that he could not recall whether he ever read Villafaña's prosecution memorandum, explaining that he "would typically rely on senior staff," who had more prosecutorial experience, and that instead of reading the memorandum, he may have discussed the case with Sloman, Menchel, and Lourie, who he assumed would have read the document. Acosta

[37] In various submissions to the USAO, the defense contended that the federal statute required proof that engaging in a sexual act was the "paramount or dominant purpose" of Epstein's travel, but that Epstein's travel was motivated by his desire to live outside of New York for over half of each year for tax purposes. The defense also asserted that the federal statutes at issue required proof that the defendant knew the victims were under 18, but that Epstein "took affirmative steps to ensure that every woman was at least 18 years of age." In her prosecution memorandum, however, Villafaña set forth her conclusion that the statute only required proof that engaging in a sexual act was one of the motivating factors for the travel. She also concluded that the statutes did not require proof that the defendant knew the victims were minors.

recalled generally having conversations with Sloman and Menchel about the Epstein case, but he could not recall with specificity when those conversations took place or the details of the discussions.

Sloman told OPR that because of his broad responsibilities as FAUSA, he left it to Menchel, as a highly experienced trial attorney and the Criminal Division Chief, to work directly with Acosta, and Sloman recalled that it was Menchel and Lourie who conducted a "granular review" of the charging package. Acosta confirmed to OPR that Sloman and Menchel "were a team" who became involved in issues as needed, and if Sloman perceived that Menchel was taking the lead on the Epstein matter, Sloman may have deferred to Menchel.

C. May – June 2007: Miami Managers Consider the Prosecution Memorandum and Proposed Charges

When she submitted the prosecution memorandum, Villafaña intended to file charges by May 15, 2007, and the FBI planned to arrest Epstein immediately thereafter. Villafaña, however, had not obtained authorization to indict on that schedule. The managers in Miami wanted time to analyze the lengthy prosecution memorandum and consider the potential charges and charging strategy. Just a few days after he received the prosecution memorandum, and after learning that the FBI was planning a press conference for May 15, Sloman advised Villafaña that "[t]his Office has not approved the indictment. Therefore, please do not commit us to anything at this time."[38]

On May 10, 2007, with Menchel's concurrence, Lourie sent a copy of Villafaña's prosecution memorandum to CEOS Chief Andrew Oosterbaan, who in turn sent it to his deputy and another CEOS attorney, asking them to assess the legal issues involved in the case and describing it as a "highly sensitive" case involving "a high profile, very rich defendant."[39] After CEOS reviewed the materials, Oosterbaan responded to Lourie with an email stating that the memorandum was "exhaustive" and "well done" and noting that Villafaña "has correctly focused on the issues as we see them." He summarized CEOS's analysis of the application of key facts to the statutes she proposed charging, concurring in Villafaña's assessments but noting that further research was needed to determine whether certain statutes required proof of a defendant's knowledge of victims' ages. Oosterbaan offered to assign a CEOS attorney to work with Villafaña on the case. Lourie forwarded Oosterbaan's email to Menchel and Villafaña.

Meanwhile, contemporaneous emails show that Lourie, at least, was already considering an early resolution of the case through a pre-indictment plea agreement.[40] After Lourie spoke with

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[38] Lourie later reported to Menchel that the FBI had "wanted to arrest [Epstein] in [the] Virgin Islands during a beauty pageant . . . where he is a judge." The case agent recalled that she and her co-case agent were disappointed with the decision, and that the Supervisory Special Agent was "extremely upset" about it. After the federal investigation began, and except for his self-surrender to face the state indictment in July 2006, Epstein largely stayed away from West Palm Beach, only returning occasionally.

[39] Before becoming Chief of CEOS, Oosterbaan was an AUSA at the USAO for about ten years and was good friends with Lourie.

[40] In her prosecution memorandum, Villafaña argued against pre-charge plea negotiations, arguing that it "may undermine our arguments for pretrial detention." Menchel, however, told OPR that he did not consider strengthening a bail argument to be a valid ground to decline to meet with defense counsel about a case.

the FBI squad supervisor on May 9, 2007, to explain that charges against Epstein would not be quickly approved, he reported to Menchel that the FBI was "not happy" about the delay, adding, "I did not even tell them I think we should bring [Epstein] in, once we decide to charge him, and offer a pre-indictment deal, figuring a judge might never agree to such a deal post indictment. That would have sent them thru the roof." Lourie explained to OPR that he thought a judge, after seeing an indictment charging the full nature and scope of Epstein's conduct, might not agree to a plea involving substantially less time or to dismiss substantive charges.[41]

Lourie told OPR that despite Oosterbaan's favorable opinion of the case, "[t]his was . . . a bit of uncharted territory," involving facts that were unlike the case law Oosterbaan had cited. Although Lourie had some concerns about the legal issues and about the witnesses, he "probably" did not see any impediment to going forward with the case; in fact, Lourie "was not in favor of walking away, which is what the defense wanted [the USAO] to do." But while Lourie "thought we could have won and we could have prevailed through appeal," he "didn't think the odds were nearly as good as you want in a criminal case, and . . . the things that we had to gain [through a plea agreement] were much more than [in] a normal criminal case," in which the only cost of a loss would be that the defendant did not go to jail. Lourie told OPR that to the best of his recollection, he thought a plea agreement would be a good result, and although the government might have to "give up some jail time," there were other benefits to a plea, such as the ability to require Epstein to register as a sex offender and the availability of monetary damages for the victims. Lourie recalled "thinking that this case should settle and we should set it up so we can settle it" by, for example, charging Epstein by complaint and then negotiating a plea to limited charges in a criminal information. Villafaña told OPR that she agreed with Lourie that a criminal complaint charging an "omnibus conspiracy" containing "all of the information related to what the case was about" would be a good way to "get things moving" toward a pre-indictment plea.

Although Lourie and Villafaña believed a pre-indictment plea agreement was a desired resolution, there was no guarantee that Epstein would agree to plead guilty, and they continued to work together to shape an indictment. On May 10, 2007, Lourie emailed Villafaña:

> [M]arie
> I believe that Epstein's att[orneys] are scared of the victims they don't know. Epstein has no doubt told them that there were many. Thus I believe the f[ir]st indictment should contain only the victims they have nothing on at all. We can add in the other ones that have myspace [*sic*] pages and prior testimony in a [superseding indictment]. I think for the first strike we should make all their nightmare[]s come true. Thoughts?[42]

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[41] Lourie explained to OPR that the government's dismissal of counts in an indictment required the court's approval, and that, while "it's rare," it was possible that a judge, seeing the nature and extent of Epstein's conduct as set forth in an extensive indictment, might not allow substantive counts to be dismissed.

[42] Lourie's references to MySpace pages and "prior testimony" referred to the impeachment information brought forward by defense counsel.

Lourie followed up his email to Villafaña with one to Menchel, in which Lourie reiterated the potential benefits of a pre-indictment plea, explaining that he and Villafaña believed "the best thing to do is charge Epstein by complaint, assuming we decide to charge him. . . . The [sentencing] guidelines will be in the 20 year range, so we would need to plead him to one or two conspiracies to cap him and there is no telling if a judge would go for that once we indict."[43] Menchel responded that he and Acosta would read the prosecution memorandum and "[w]e can discuss after that."

Later that afternoon, Villafaña sent Lourie an email, which Lourie forwarded to Menchel, explaining that a "conservative calculation" of Epstein's potential sentencing exposure under the U.S. Sentencing Guidelines would be 168 to 210 months, and that in her view, the facts warranted an upward departure from that range. Villafaña told OPR that although Lourie proposed some changes to the draft indictment, at that point no one had told her that the evidence was insufficient to support the proposed charges or that the office did not want to go forward with the case.

In an email to Acosta and Menchel on May 11, 2007, Lourie recommended charging Epstein by complaint and seeking a pre-indictment plea:

> My current thoughts are that we should charge him. Not sure that I agree with the charging strategy as it is now, but at this point I think we only need to get on the same page as to whether the statutes cover the conduct and whether the conduct is the type we should charge. I think the answer to both is yes, although there is some risk on some of the statutes as this is uncharted territory to some degree. We can decide later what the [charging document] should look like precisely and which victims should be charged.
>
> I also think if we choose to go forward, we should start with a complaint, arrest him, detain him . . . and then try to see if he wants a pre-indictment resolution. That would give us more control [over] a plea than if we indict him and need the court's approval to dismiss counts. We will need to cap him with conspiracy counts to make a plea attractive and the court could give us a hard time with that if we try to dismiss indicted counts.

Although her supervisors were communicating among themselves about the case, Villafaña was unaware of those discussions and was frustrated that she was not receiving more feedback. She continued preparing to charge Epstein. Two weeks after submitting the prosecution memorandum, on May 14, 2007, Villafaña informed Lourie and Menchel by email that Epstein was flying to New Jersey from the Virgin Islands, and she asked whether she could file charges the next day. Menchel responded that "[y]ou will not have approval to go forward tomorrow," and explained that Acosta "has your [prosecution] memo," but was at an out-of-town conference, adding, "This is obviously a very significant case and [A]lex wants to take his time making sure

[43] Lourie told OPR that he was referring to one or two counts of conspiracy under 18 U.S.C. § 371, the general "omnibus" federal conspiracy statute that carries a maximum sentence of five years.

he is comfortable before proceeding." Menchel told Villafaña he had "trouble understanding" why she was in a "rush" "given how long this case has been pending."[44]

OPR questioned Lourie, Menchel, Sloman, and Acosta about the timeline for reviewing the prosecution memorandum and the proposed charges. Acosta and Menchel believed Villafaña's timeline was unrealistic from the start. Acosta told OPR that Villafaña was "very hard charging," but her timeline for filing charges in the case was "really, really fast." Menchel described Villafaña as "out over her skis a little bit" and "ahead of" Acosta in terms of his analysis of the case.[45] Menchel said it was clear to him that Acosta "was going to be the one making the call" about whether to go forward with charges, and Acosta needed more time to make a decision. Menchel told OPR, "This [was] not a case [we were] going to review in two weeks and make a decision on." Sloman told OPR that although he did not conduct a "granular review" of the proposed charges, he believed Menchel and Lourie had done so and "obviously" had concluded that "the facts and the law didn't suggest that the right thing to do was to automatically indict." Lourie told OPR that he believed "the case was moving ahead."

Villafaña continued to seek direction from her managers. On May 15, 2007, she emailed Sloman, noting that "[i]t seemed from our discussion yesterday that pestering Alex [Acosta] will not do any good. Am I right about that?" Sloman responded, "Yes." On May 21, 2007, three weeks after submitting the prosecution memorandum, Villafaña emailed Sloman and Menchel asking for "a sense of the direction where we are headed–i.e., approval of an indictment something like the current draft, a complaint to allow for pre-indictment negotiations, an indictment drastically different from the current draft?" Sloman responded only, "Taken care of."[46]

D. Defense Counsel Seek a Meeting with Senior USAO Managers, which Villafaña Opposes

Meanwhile, Epstein's defense counsel continued to seek additional information about the federal investigation and a meeting with senior USAO managers, including Acosta. In a May 10, 2007 email to Menchel, Lourie reported that Epstein's attorneys "want me to tell them the statutes

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[44] Villafaña explained to OPR that the "rush" related to her concern that Epstein was continuing to abuse girls: "In terms of the issue of why the hurry, because child sex offenders don't stop until they're behind bars. That was our time concern." Menchel, however, told OPR that he did not recall Villafaña offering this explanation to him. OPR notes that in their respective statements to OPR and in their comments on OPR's draft report, Menchel and Villafaña expressed contradictory accounts or interpretations of certain events. When it was necessary for OPR to resolve those conflicts in order to reach its findings and conclusions, OPR considered the extensive documentary record and the testimony of other subjects and witnesses, to the extent available.

[45] Sloman similarly recalled that Menchel thought Villafaña was "ahead of where the office was internally" and that caused "discontent" between Villafaña and Menchel. Villafaña was not the only one, however, who was surprised that the indictment was not approved immediately. The case agent told OPR that it seemed "everything changed" after Villafaña submitted the prosecution memorandum, and the momentum towards an indictment abated. Villafaña's immediate supervisor told OPR that from her perspective, it appeared "Miami didn't want the case prosecuted." However, Menchel rebuked Villafaña in his July 5, 2007 email to her for having "led the agents to believe that [filing charges in] this matter was a foregone conclusion."

[46] Sloman could not recall during his OPR interview what he meant by this remark, but he speculated that he had spoken to Menchel, and Menchel was going to take care of it.

we are contemplating so Dershowitz can tell us why they don't apply."[47] Lourie told Menchel, "I don't see the downside," but added, "Marie is against it." Menchel responded that it was "premature" to provide the information. During his OPR interview, Menchel could not specifically recall why he believed it was "premature" to provide the defense with the requested information, but speculated that it was too soon after the prosecution memorandum had been circulated for Acosta to have made a decision about how he wanted to proceed. This recollection is consistent with the May 2007 emails reflecting that Acosta wanted time to consider the proposed prosecution.

On May 22, 2007, defense counsel Lefcourt emailed Lourie a letter to "confirm" that Epstein's attorneys would be given an opportunity to meet with Lourie before the USAO reached a final decision on charging Epstein. Lourie forwarded the letter to Menchel and Sloman, but noted that Epstein's defense team was "really ready for the next level," rather than another meeting with him. Lourie suggested that Menchel meet with defense counsel, adding, "Whether Alex would be present or grant them another meeting after that is his call." Lourie also emailed Lefcourt, clarifying that Lourie had not promised to call Epstein's counsel before filing charges, and suggesting that Epstein's counsel make their next presentation to Menchel.

Although Lourie's emails show that he had no objection to more senior USAO managers meeting with defense counsel, Villafaña opposed such a meeting. Several emails indicate that Menchel traveled to West Palm Beach to meet with Lourie and Villafaña on the afternoon of May 23, 2007.[48] On that same date, Villafaña drafted an email, which she planned to send to Sloman and Menchel, expressing her disagreement with meeting with defense counsel. Although the email was written for Sloman and Menchel, Villafaña sent it as a draft only to her immediate supervisor, seeking her "guidance and counsel" as to how to proceed.

> Hi Jeff and Matt – I just want to again voice my disagreement with promising to have a meeting or having a meeting with Lefcourt or any other of Epstein's attorneys. As I mentioned, this is not a case where we will be sitting down to negotiate whether a defendant will serve one year versus two years of probation. This is a case where the defendant is facing the possibility of dozens of years of prison time. Just as the defense will defend a case like that differently than they would handle a probation-type case, we need to handle this case differently. Part of our prosecution strategy was already disclosed at the last meeting, and I am concerned that more will be disclosed at a future meeting.
>
> My co-chair . . . who has prosecuted more of these cases than the rest of us combined and who actually worked on the drafting of some of the child exploitation statutes, also opposes a meeting. We have been accused of not being "strategic thinkers" because of our

[47] Dershowitz had joined Lefcourt and Sanchez in representing Epstein for the federal case.

[48] During her OPR interview, Villafaña could not recall the meeting with specificity, but believed the purpose was to discuss whether the USAO should agree to additional meetings with Epstein's counsel. Menchel, similarly, told OPR that he could not remember anything specific about the meeting.

> opposition to these meetings, but we are simply looking at this case as a violent crime prosecution involving stiff penalties rather than as a white collar or public corruption case where the parties can amicably work out a light sentence.[49]
>
> With respect to the "policy reasons" that Lefcourt wants to discuss, those were already raised in his letter (which is part of the indictment package) and during his meeting with Andy and myself. Those reasons are: (1) he wants the Petit [*sic*] policy to trump our ability to prosecute Epstein, (2) this shouldn't be a federal offense, and (3) the victims were willing participants so the crime shouldn't be prosecuted at all. Unless the Office thinks that any of those arguments will be persuasive, a meeting will not be beneficial to the prosecution, it will only benefit the defense. With respect to Lefcourt's promised legal analysis, that also has already been provided. The only way to get additional analysis is to expose to the defense the other charges that we are considering. In my opinion this would seriously undermine the prosecution.
>
> The defense is anxious to have a meeting in order to delay the investigation/prosecution, to find out more about our investigation, and to use political pressure to stop the investigation.
>
> I have no control over the Office's decisions regarding whether to meet with the defense or to whom the facts and analysis of the case will be disclosed. However, if you all do decide to go forward with these meetings in a way that is detrimental to the investigation, then I will have to ask to have the case reassigned to an AUSA who is in agreement with the handling of the case.

After receiving this draft, the immediate supervisor cautioned Villafaña, "Let's talk before this is sent, please."[50] Villafaña told OPR that the supervisor counseled Villafaña not to send the email to Sloman or Menchel because Villafaña could be viewed as insubordinate. She also told Villafaña that if Villafaña did not stay with the case, "the case would go away" and Epstein "would never serve a day in jail."

Villafaña told OPR that at that point in time, she believed the USAO was preparing to file charges against Epstein despite agreeing to accommodate the defense request for meetings. She also told OPR, on the other hand, that she feared the USAO was "going down the same path that the State Attorney's Office had gone down." Villafaña believed the purpose of the defense request

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[49] In commenting on OPR's draft report, Menchel's counsel noted Menchel's view that the nature of a defendant's crimes and potential penalty does not affect whether prosecutors are willing to meet with defense counsel to discuss the merits of a case.

[50] The immediate supervisor recalled telling Villafaña that she and Villafaña were "not driving the ship," and once "the bosses" made the decision, "there's nothing else you can do."

for meetings was to cause delay, but "the people in my office either couldn't see that or didn't want to see that," perhaps because of "their lack of experience with these types of cases" or a misguided belief "that [Epstein's] attorneys would not engage in this behavior." Villafaña told OPR that she "could not seem to get [her supervisors] to understand the seriousness of Epstein's behavior and the fact that he was probably continuing to commit the behavior, and that there was a need to move with necessary speed." Nonetheless, Villafaña followed the guidance of her immediate supervisor and did not send the email.

Like Lourie, Menchel told OPR that he believed meeting with defense counsel was good practice. Menchel told OPR that he saw "no downside" to hearing the defense point of view. Defense counsel might make a persuasive point "that's actually going to change our mind," or alternatively, present arguments the defense would inevitably raise if the case went forward, and Menchel believed it would be to the USAO's advantage to learn about such arguments in advance. Menchel also told OPR that he did not recall Villafaña ever articulating a concern that Epstein was continuing to offend, and in Menchel's view, Epstein was "already under a microscope, at least in Florida," and it would have been "the height of stupidity" for Epstein to continue to offend in those circumstances.

E. June 2007: Villafaña Supplements the Prosecution Memorandum

While Villafaña's supervisors were considering whether to go forward with the proposed charges, Villafaña took additional steps to support them. On June 14, 2007, she supplemented the prosecution memorandum with an addendum addressing "credibility concerns" relating to one of the victims. In the email transmitting the addendum to Lourie, Menchel, Sloman, and her immediate supervisor, Villafaña reported, "another Jane Doe has been identified and interviewed," and the "different strategies" about how to structure the charges left Villafaña unsure whether "to make . . . changes now or wait until we have received approval of the current charging strategy." The addendum itself related to a particular victim referred to as the minor who "saw Epstein most frequently" and who had allegedly engaged in sexual activity with both Epstein and an Epstein assistant. In the addendum, Villafaña identified documents she had found corroborating four separate statements made by this victim.

Villafaña told OPR that the only victim about whom any supervisor ever articulated specific credibility issues was the victim discussed in the addendum. Lourie told OPR that he had no specific recollection of the addendum, but it was "reasonable" to assume that the addendum addressed one particular victim because no one had identified specific concerns relating to any other victim. Villafaña's immediate supervisor similarly told OPR that to her recollection, the discussions about credibility issues were generic rather than tied to specific victims.

F. The June 26, 2007 Meeting with Defense Counsel

Menchel agreed to meet with defense counsel on June 26, 2007, communicating directly with Sanchez about the arrangements. At Menchel's instruction, on June 18, 2007, Villafaña sent a letter to defense counsel identifying what she described as "the statutes under consideration."[51]

[51] Villafaña sent copies of this letter to both Menchel and Sanchez. Villafaña told OPR that she objected to sending this information to the defense. Although Menchel did not recall directing Villafaña to send the letter to

On that same day, Villafaña emailed Lourie, Menchel, Sloman, and her immediate supervisor complaining that she had received no reply to her query about making changes to the proposed indictment and asking again for feedback. During his OPR interview, Lourie observed that Villafaña's request for feedback reflected her desire to "charge this case sooner than . . . everybody else," but Acosta was still considering what strategy to pursue. Sloman told OPR that he did not know whether Villafaña received any response to her request, but he believed that at that point in time, Menchel and Lourie were evaluating the case to make a decision about how to proceed.

The day before the June 26 meeting, defense counsel Lefcourt transmitted to the USAO a 19-page letter intended to provide "an overview of our position and the materials we plan to present in order to demonstrate that none of the statutes identified by you can rightly be applied to the conduct at issue here." Reiterating their prior arguments and themes, defense counsel strongly contested the appropriateness of federal involvement in the matter. Among other issues, Lefcourt's letter argued:

- Voluntary sexual activity involving "young adults–16 or 17 years of age"–was "strictly a state concern."

- Federal statutes were not meant to apply to circumstances in which the defendant reasonably believed that the person with whom he engaged in sexual activity was 18 years of age.

- One of the chief statutes the USAO had focused upon, 18 U.S.C. § 2422(b), was intended to address use of the internet to prey upon child victims through "internet trolling," but Epstein did not use the internet to lure victims.

- The "travel" statute, 18 U.S.C. § 2423(b), prohibits travel "for the purpose of" engaging in illicit sexual conduct, but Epstein traveled to Florida to visit family, oversee his Florida-based flight operations, and "engage in the routine activities of daily living."

Lefcourt also argued again that "irregularities" had tainted the state's case and would "have a significant impact on any federal prosecution."[52]

Lourie sent to Menchel, with a copy to Villafaña, an email dividing the defense arguments into "weaker" and "stronger" points. Lourie disagreed with the argument that 18 U.S.C. § 2422(b) was limited to "internet trolling," and described this as "our best charge and the most defensible for federal interest." On the other hand, Lourie believed the defense argument that Epstein did not travel to Florida "'with the purpose'" of engaging in illicit sex with a minor was more persuasive.

Lefcourt, he told OPR that he "wouldn't take issue" with Villafaña's claim that he had done so. Menchel also told OPR that he did not recall Villafaña objecting at that point to providing the information to the defense.

[52] Lefcourt claimed there were deficiencies in the PBPD search warrant and "material misstatements and omissions" in the PBPD probable cause affidavit. As an example, he contended that the police had lacked probable cause to search for videotapes, "since all the women who were asked whether they had been videotaped *denied knowledge* of any videotaping." (Emphasis in original).

Lourie opined that the government could argue "that over time [Epstein] set up a network of illegal high school massage recruits that would be difficult to duplicate anywhere else," which supported the conclusion that the massages must have been a motivating purpose of his travel, if not the sole purpose. However, Lourie expressed concern about "getting to the jury" on this issue and noted that he had not found a legal case factually on point. Villafaña told OPR that she disagreed with Lourie's analysis of the purpose of travel issue and had discussed the matter with him.[53] Villafaña also recalled that there were aspects of the defense submissions she and her colleagues considered "particularly weak."

On June 26, 2007, Sloman, Menchel, Lourie, Villafaña, the case agent, and the West Palm Beach squad supervisor met at the Miami USAO with Epstein attorneys Dershowitz, Black, Lefcourt, and Sanchez. Dershowitz led the defense team's presentation. From the USAO perspective, the meeting was merely a "listening session."[54] Echoing the arguments made in Lefcourt's letter, Dershowitz argued that the USAO should permit the state to handle the case because these were "traditionally state offenses." The case agent recalled being uncomfortable that the defense was asking questions in an attempt to gain information about the federal investigation, including the number of victims and the types of sexual contact that had been involved.

Villafaña told OPR that when Epstein's attorneys left the meeting, they appeared to be "under the impression that they had convinced us not to proceed." But Menchel told OPR, "[T]hey obviously did not persuade" the USAO because "we . . . didn't drop the investigation." According to Villafaña, Lourie, and Menchel, during a short post-meeting discussion at which Lourie expressed concern about the purpose of travel issue and Menchel raised issues related to general credibility of the victims, the prevailing sense among the USAO participants was that the defense presentation had not been persuasive. Villafaña told OPR that she "left [the meeting] with the impression that we were continuing towards" filing charges.

IV. ACOSTA DECIDES TO OFFER EPSTEIN A TWO-YEAR STATE PLEA TO RESOLVE THE FEDERAL INVESTIGATION

USAO internal communications show that in July 2007, Acosta developed, or adopted, the broad outline of an agreement that could resolve the federal investigation. The agreement would leave the case in state court by requiring Epstein to plead guilty to state charges, but would accomplish three goals important to the federal prosecutors: Epstein's incarceration; his registration as a sexual offender; and a mechanism to provide for the victims to recover monetary

[53] Villafaña also told OPR that Lourie had, at times, expressed concern about the prosecution's ability to prove Epstein's knowledge of the victims' ages, particularly with regard to those who were 16 or 17 at the time they provided massages.

[54] In his written response to OPR, Menchel indicated that he had no independent recollection of the June 26, 2007 meeting. In his OPR interview, Menchel said that although he had little memory of the meeting, to the best of his recollection the USAO simply listened to the defense presentation, and in a contemporaneous email, Menchel opined that he viewed the upcoming June 26 meeting as "more as [the USAO] listening and them presenting their position."

damages.[55] During a two-month period, the subject attorneys were involved to varying degrees in converting the broad outline into specific terms, resulting in the NPA signed by Epstein on September 24, 2007. The subjects, including Acosta, were generally able to explain to OPR both the larger goals and the case-related factors they likely considered during the process of conceptualizing, negotiating, and finalizing this resolution. However, the contemporaneous emails and other records do not reflect all of the conversations among the decision makers, and their deliberative and decision-making process is therefore not entirely clear. In particular, Menchel and Acosta had offices located near each other and likely spoke in person about the case, but neither had a clear memory of their conversations. Therefore, OPR could not determine all of the facts surrounding the development of the two-year state plea resolution or the NPA.

In the following account, OPR discusses the initial key decision to resolve the federal investigation through state, rather than federal, charges, and sets forth many of the numerous communications that reflect the negotiations between the parties that led to the final NPA. OPR questioned each of the subjects about how the decision was reached to pursue a state resolution, and OPR includes below the subjects' explanations. The subjects' memories of particular conversations about this topic were unclear, but from their statements to OPR, a general consensus emerged that there were overlapping concerns about the viability of the legal theories, the willingness of the victims to testify, the impact of a trial on the victims, the overall strength of the case that had been developed at that time, and the uncertainty about the USAO's ability to prevail at trial and through appeal. In addition, Acosta was concerned about usurping the state's authority to prosecute a case involving an offense that was traditionally handled by state prosecutors. Based on this evidence, OPR concludes that Acosta may well have formulated the initial plan to resolve the matter through a state plea. In any event, Acosta acknowledged to OPR that, at a minimum, he approved of the concept of a state-based resolution after being made aware of the allegations and the evidence against Epstein as set forth in Villafaña's prosecution memorandum. Furthermore, Acosta approved of the final terms of the NPA.

A. June – July 2007: The USAO Proposes a State Plea Resolution, which the Defense Rejects

A few days after the June 26, 2007 meeting, Sanchez emailed Villafaña, advising her that Epstein's defense team would submit additional material to the USAO by July 11, 2007, and hoped "to be able to reach a state-based resolution shortly thereafter."[56] In a July 3, 2007 email, Villafaña told Sloman, Menchel, Lourie, and her immediate supervisor that she intended to initiate plea discussions by inviting Sanchez "to discuss a resolution of the federal investigation that could

[55] State laws require that a person convicted of specified sexual offenses register in a database intended to allow law enforcement and the public to know the whereabouts of sexual offenders after release from punitive custody, and, in some cases, to restrict such individuals' movements and activities. The Florida Sexual Offender/Predator Registry is administered by the Florida Department of Law Enforcement. The Adam Walsh Child Protection and Safety Act of 2006 established a comprehensive, national sex offender registration system called the Sex Offender Registration and Notification Act (SORNA), to close potential gaps and loopholes that existed under prior laws and to strengthen the nationwide network of sex offender registrations.

[56] In this email, Sanchez also requested a two-week extension of time for compliance with the USAO's demands for records, which included a demand for the computer equipment that had been taken from Epstein's residence before the October 2005 state search warrant and that Villafaña had been requesting from the defense since late 2006.

include concurrent time." The email primarily concerned other issues, and Villafaña did not explain what the resolution she had in mind would entail.[57] Villafaña requested to be advised, "[i]f anyone has communicated anything to Epstein's attorneys that is contrary to this." Villafaña, who was aware that Menchel and Lourie had been in direct contact with defense counsel about the case, explained to OPR that she made this request because "people were communicating with the defense attorneys," and she suspected that those communications may have included discussions about a possible plea.

In response to Villafaña's email, Menchel notified Villafaña that he had told Sanchez "a state plea [with] jail time and sex offender status may satisfy the [U.S. Attorney]," but Sanchez had responded that it "was a non-starter for them."[58] During his OPR interview, Menchel had no independent recollection of his conversation with Sanchez and did not remember why the defense deemed the proposal a "non-starter." However, Menchel explained that he would not have made the proposal to Sanchez without Acosta's knowledge. He also pointed out that in numerous emails before the June 26, 2007 meeting, he repeatedly noted that Acosta was still deciding what he wanted to do with the Epstein case. Acosta agreed, telling OPR that although he did not remember a specific conversation with Menchel concerning a state-based resolution, Menchel would not have discussed a potential resolution with Sanchez "without having discussed it with me."

1. Acosta's Explanation for His Decision to Pursue a State-based Resolution

Subsequent events showed that the decision to resolve the case through state charges was pivotal, and OPR extensively questioned Acosta about his reasoning. In his OPR interview, Acosta explained the various factors that influenced his decision to pursue a state-based resolution. Acosta said that although he, Sloman, and Menchel "believed the victims" and "believed [Epstein] did what he did," they were concerned "about some of the legal issues . . . and some of the issues in terms of testimony."[59] Acosta also recalled discussions with his "senior team" about how the victims would "do on the stand."

Acosta told OPR that "from the earliest point" in the investigation, he considered whether, because the state had indicted the case, the USAO should pursue it.

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[57] Villafaña explained to OPR that she intended to recommend a plea to a federal conspiracy charge and a substantive charge, "consistent with the Ashcroft Memo, which would be the most readily provable offense," with "a recommendation that the sentence on the federal charges run concurrent with the state sentence, or that [Epstein] would receive credit for time in state custody towards his federal release date." *See* n.65 for an explanation of the Ashcroft Memo.

[58] Villafaña was then in trial and on July 4, 2007, likely before reading Menchel's email, Villafaña responded to defense counsel regarding the demand for records and also noted, "If you would like to discuss the possibility of a federal resolution . . . that could run concurrently with any state resolution, please leave a message on my voicemail."

[59] In commenting on OPR's draft report, Sloman stated he had no involvement in assessing the Epstein case or deciding how to resolve it, and that OPR should not identify him as among the people upon whom Acosta relied in reaching the two-year-state-plea resolution through the NPA. However, Sloman also told OPR that he had little recollection of the Epstein case, while Acosta specifically recalled having discussed the case with both Sloman and Menchel.

> [The prosecution] was going forward on the part of the state, and so here is the big bad federal government stepping on a sovereign . . . state, saying you're not doing enough, [when] to my mind . . . the whole idea of the [P]etite policy is to recognize that the []state . . . is an independent entity, and that we should presume that what they're doing is correct, even if we don't like the outcome, except in the most unusual of circumstances.

Acosta told OPR that "absent USAO intervention," the state's prosecution of Epstein would have become final, and accordingly, it was "prudent" to employ Petite policy analysis. As Acosta explained in a public statement he issued in 2011, "the federal responsibility" in this unique situation was merely to serve as a "backstop [to] state authorities to ensure that there [was] no miscarriage of justice."[60] Furthermore, Acosta saw a distinction between a case that originated as a federal investigation and one that had already been indicted by the state but was brought to the federal government because of a perception that the state charge was inadequate. In the latter circumstance, Acosta viewed the USAO's role only as preventing a "manifest injustice."[61] Acosta explained that "no jail time" would have been a manifest injustice. But it was his understanding that if Epstein had pled guilty to state charges and received a two-year sentence to a registrable offense, "it would never have come to the office in the first place," and therefore would not be viewed as a manifest injustice.

Acosta also told OPR he was concerned that a federal prosecution in this case would result in unfavorable precedent, because the Epstein case straddled the line between "solicitation" or "prostitution," which Acosta described as a traditional state concern, and "trafficking," which was an emerging matter of federal interest. Acosta contended that in 2006, "it would have been extremely unusual for any United States Attorney's Office to become involved in a state solicitation case, even one involving underage teens," because solicitation was "the province of state prosecutors." Acosta told OPR, "I'm not saying it was the right view -- but there are at least some individuals who would have looked at this and said, this is a solicitation case, not a trafficking case." Acosta was concerned that if the USAO convicted Epstein of a federal charge, an appeal might result in an adverse opinion about the distinction between prostitution and sex trafficking.

Acosta also told OPR that he was concerned that a trial would be difficult for Epstein's victims. In Acosta's estimation, a trial court in 2007 might have permitted "victim shaming," which would have been traumatic for them. In addition, the fact that the state grand jury returned a one-count indictment with a charge that would not require jail time suggested to Acosta that the state grand jury found little merit to the case.[62] Acosta told OPR:

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[60] Letter from R. Alexander Acosta "To whom it may concern" at 1 (Mar. 20, 2011), published online in *The Daily Beast*.

[61] Acosta was referring to the Petite policy provision allowing the presumption that a prior state prosecution has vindicated the relevant federal interest to be "overcome . . . if the prior [state] sentence was manifestly inadequate in light of the federal interest involved and a substantially enhanced sentence . . . is available through the contemplated federal prosecution." USAM § 9-2.031.D.

[62] Acosta told OPR he was unaware that USAO prosecutors believed the State Attorney's Office had deliberately undermined the case before the state grand jury. Menchel told OPR that he understood that the State

> I do think it's important to look back on this, and try to be in the shoes of the thought process in 2006 and '07 when trafficking prosecutions were fairly new, when . . . more so than today, some jurors may have looked at this as prostitution, and . . . [a] judge's tolerance for victim shaming may have . . . caused more hesitation on the part of victims . . . .[63]

Finally, Acosta told OPR that a state-based resolution offered more flexibility in fashioning a sentence, because he believed prosecutors would have difficulty persuading a federal district court in the Southern District of Florida to approve a federal plea for a stipulated binding sentence that differed from the otherwise applicable federal sentencing guidelines range.[64]

In summarizing his thinking at the time, Acosta told OPR,

> The way the matter came to the office was, the state wasn't doing enough. It didn't provide for prison time. It didn't provide for registration, and then you had the restitution issue. There were legal issues . . . . There were witness issues. And . . . we could go to trial . . . and we may or may not prevail. Alternatively, we could look at a pre-indictment resolution, and at various points, the office went back and forth between a federal pre-indictment resolution, and a state pre-indictment resolution.

Acosta told OPR that, in the end, "there was a preference for deferring to the state" because, in part, the facts of the Epstein case at the time appeared to constitute solicitation or prostitution rather than trafficking, and a federal prosecution would be "uncharted territory." Acosta explained that he did not view it as problematic to defer resolution of the case to the state, although as the Epstein case played out, the federal role became "more intrusive" than he had anticipated, because the defense tried to get the state to "circumvent and undermine" the outcome.

Attorney's Office could have proceeded against Epstein by way of an information, but decided to go into the grand jury because the State Attorney's Office "didn't like the case" and wanted "political cover" for declining the case or proceeding on a lesser charge.

[63] Menchel told OPR, however, that the federal judges in West Palm Beach were highly regarded and were generally viewed as "pro-prosecution."

[64] Acosta said that "dismissing a number of counts and then doing a [R]ule 11 is not something that [South Florida federal district] judges tend to do." Other subjects also told OPR that the federal judges in the Southern District of Florida were generally considered averse to pleas that bound them on sentencing, commonly referred to as "Rule 11(c) pleas."

Federal Rule of Criminal Procedure 11(c)(1)(C) allows the parties to agree on a specific sentence as part of a plea agreement. The court is required to impose that sentence if the court accepts the plea agreement; if the court does not accept the agreed upon plea and sentence, the agreement is void. Villafaña told OPR that Rule 11(c) pleas were "uncommon" in the Southern District of Florida, as the "judges do not like to be told . . . what sentence to impose." Menchel similarly told OPR that the USAO viewed federal judges in the Southern District of Florida as averse to Rule 11(c) pleas, although Menchel had negotiated such pleas. Villafaña told OPR that she had never offered a Rule 11(c) plea in any of her cases and had no experience with such pleas.

Menchel could not recall who initially suggested a state plea, but noted to OPR that his own "emails . . . make clear that this course of action was ultimately decided by Alex Acosta." He referenced, among others, his May 14, 2007 email to Villafaña informing her that Acosta was deciding how he wanted to handle the case. Menchel surmised that a state resolution accomplished two things that Acosta viewed as important: first, it resolved any Petite policy concerns, and second, it afforded more flexibility in sentencing than a federal plea would have allowed. Menchel told OPR that the state plea proposal did not reflect any minimization of Epstein's conduct and that any state plea would have been to an offense that required sexual offender registration. He told OPR, "I don't think anybody sat around and said, you know, it's not that big a deal. That was not the reaction that I think anybody had from the federal side of this case." Rather, Menchel said, "The concern was if we charge him [as proposed], there's going to be a trial."

2. July 2007: Villafaña and Menchel Disagree about the Proposed State Resolution

Villafaña told OPR that she was angry when she received Menchel's July email explaining that he had proposed to Sanchez resolving the federal investigation through a state plea. In Villafaña's view, the proposed state resolution "didn't make any sense" and "did not correspond" to Department policy requiring that a plea offer reflect "the most serious readily provable offense."[65] In her view, a plea to a state charge "obviously" would not satisfy this policy. Villafaña also told OPR that in her view, the USAM required the USAO to confer with the investigative agency about plea negotiations, and Villafaña did not believe the FBI would be in favor of a state plea. Villafaña also believed the CVRA required attorneys for the government to confer with victims before making a plea offer, but the victims had not been consulted about this proposal. Villafaña told OPR she had met with some of the victims during the course of the investigation who had negative impressions of the State Attorney's Office, and she believed that "sending them back to the State Attorney's Office was not something" those victims would support.

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[65] This policy was set forth in a September 22, 2003 memorandum from then Attorney General John Ashcroft regarding "Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing" (known as the "Ashcroft Memo"), which provided, in pertinent part:

> [I]n all federal criminal cases, federal prosecutors must charge and pursue the most serious, readily provable offense or offenses that are supported by the facts of the case, except as authorized by an Assistant Attorney General, United States Attorney, or designated supervisory attorney in the limited circumstances described below. The most serious offense or offenses are those that generate the most substantial sentence under the Sentencing Guidelines, unless a mandatory minimum sentence or count requiring a consecutive sentence would generate a longer sentence. A charge is not "readily provable" if the prosecutor has a good faith doubt, for legal or evidentiary reasons, as to the Government's ability readily to prove a charge at trial. Thus, charges should not be filed simply to exert leverage to induce a plea. Once filed, the most serious readily provable charges may not be dismissed except to the extent permitted [elsewhere in this Memorandum].

See also Chapter Two, Part Two, Section II.B.1.

In light of these concerns, Villafaña emailed Menchel, expressing her strong disagreement with the process:

> [I]t is inappropriate for you to enter into plea negotiations without consulting with me or the investigative agencies, and it is more inappropriate to make a plea offer that you know is completely unacceptable to the FBI, ICE [Immigration and Customs Enforcement], the victims, and me. These plea negotiations violate the Ashcroft memo, the U.S. Attorney[s'] Manual, and all of the various iterations of the victims' rights legislation. Strategically, you have started the plea negotiations as though we are in a position of weakness, anxious to make the case go away, by telling the defense that we will demand no federal conviction. We left the meeting on June 26th in a stronger position than when we entered, and your statement that a state resolution would satisfy us takes away that advantage. If you make it seem like the U.S. Attorney doesn't have faith in our investigation, Epstein has no incentive to make a deal.
>
> Second, your discussion makes it appear that my investigation is for "show" only and completely undermines my ability to deal with Epstein's attorneys directly. . . .
>
> . . . .
>
> I would like to make a presentation to the U.S. Attorney, Jeff [Sloman], Andy [Lourie], and you with our side of the investigation and a revised indictment. The presentation will address the points raised by Epstein's counsel and will convince you all of the strength of the case.
>
> In the meantime, please direct all communications from Epstein's counsel to me.

Menchel told OPR he realized Villafaña was "very anxious" to file charges in the case. Villafaña had put a "tremendous" amount of effort into the investigation, and Menchel "was not unsympathetic at all to her desires" to pursue a federal case. However, as Menchel told OPR, Villafaña's supervisors, including Acosta, were "trying to be a little bit more dispassionate," and her urgency was "not respectful" of Acosta's position. Menchel viewed the tone of Villafaña's email as "highly unacceptable," and her understanding of applicable law and policy incorrect. In particular, Menchel pointed out that although the Ashcroft Memo requires prosecutors to charge the "most readily provable offense," there is nevertheless room for "flexibility," and that the U.S. Attorney has discretion—directly or through a designated supervisor such as Menchel—to waive the policy.

Menchel's reply email began with a rebuke:

> Both the tone and substance of your email are totally inappropriate and, in combination with other matters in the past, it seriously calls your judgment into question.
>
> As you well know, the US Attorney has not even decided whether to go forward with a prosecution in this matter, thus you should have respected his position before engaging in plea negotiations.
>
> Along that same line, despite whatever contrary representations you made to the agents in this matter, it was made clear to you by the US Attorney and the First Assistant from the time when you were first authorized to investigate Mr. Epstein that the office had concerns about taking this case because of petit [*sic*] policy and a number of legal issues. Despite being told these things, you prepared a pros memo and indictment that included a definitive date for indictment. It has come to my attention that you led the agents to believe that the indictment of this matter was a foregone conclusion and that our decision to put off that date and listen to the defense attorneys' concerns is indicative of the office having second thoughts about indicting. As you well knew, you were never given authorization by anyone to seek an indictment in this case.[66]

In the email, Menchel went on to explain the circumstances of his conversation with Sanchez and respond to Villafaña's complaints:

> Lilly Sanchez called me before, not after, the June 26th meeting. It was an informal discussion and not in the nature of an official plea offer but rather a feeling out by both sides as to what it might take to resolve the matter. As you are also well aware, the only reason why this office even agreed to look into the Epstein matter in the first instance was because of concerns that the State had not done an adequate job in vindicating the victims' rights. As you and the agents conceded, had Epstein been convicted of a felony that resulted in a jail sentence and sex offender status, neither the FBI nor our office ever would have interceded. You should also know that my discussion with Lilly Sanchez was made with the US Attorney's full knowledge. Had Lilly Sanchez expressed interest in pursuing this avenue further, I certainly would have raised it with all the interested individuals in this case, including you and the agents. In any event, I fail to see how a discussion that went nowhere has hurt our bargaining position. I am also quite confident that no one

[66] Menchel also sent this message to Sloman and copied Lourie.

> on the defense team believes that the federal investigation in this matter has been for show.
>
> Nor are your arguments that I have violated the Ashcroft memo, the USAM or any other policy well taken. As Chief of the Criminal Division, I am the person designated by the US Attorney to exercise appropriate discretion in deciding whether certain pleas are appropriate and consistent with the Ashcroft memo and the USAM – not you.
>
> As for your statement that my concerns about this case hurting Project Safe Childhood are unfounded, I made it clear to you that those concerns were voiced by the US Attorney.[67] Whether or not you are correct, matters of policy are always within his purview and any decisions in that area ultimately rest with him.
>
> Finally, you may not dictate the dates and people you will meet with about this or any other case. If the U.S. Attorney or the First Assistant desire to meet with you, they will let you know. Nor will I direct Epstein's lawyers to communicate only with you. If you want to work major cases in the district you must understand and accept the fact that there is a chain of command – something you disregard with great regularity.

Villafaña acknowledged to OPR that as Criminal Division Chief, Menchel had authority to deviate from the Ashcroft Memo requiring that guilty pleas be to the most serious readily provable offense. She disagreed, however, with his representation about her initial meeting with Acosta and Sloman regarding the Epstein investigation, noting that Menchel had not been at that meeting.[68] Villafaña told OPR that no one had communicated to her the "concerns" Menchel mentioned, and she had not been given an opportunity to respond to those concerns.[69]

A week later, Villafaña replied to Menchel's email, reiterating her concerns about the process and that filing charges against Epstein was not moving forward:

> Hi Matt -- My trial is over, so I now have [ ] time to focus back on this case and our e-mail exchange. There are several points in your

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[67] Neither Menchel nor Villafaña could recall for OPR to what concerns they were referring. In commenting on OPR's draft report, Acosta's attorney noted that Acosta's concerns were "the possibility that bringing a case with serious evidentiary challenges pressing novel legal issues could result in an outcome that set back the development of trafficking laws and result in an aggregate greater harm to trafficking victims."

[68] Menchel confirmed to OPR that he was not involved in the decision to initiate the federal investigation.

[69] Villafaña characterized Menchel's email as "meant to intimidate" and told OPR that she felt "put in [her] place" by him. She perceived that Menchel was making it clear that she should not "jump the chain of command." Menchel, however, asserted to OPR that Villafaña had a "history of resisting supervisory authority" that warranted his strong response.

e-mail that I would like to address, and I also would like to address where we are in the case.

First, I wanted to address the comment about jumping the chain of command. After that concern was brought to my attention several months ago, I have tried very hard to be cognizant of the chain of command. . . . If there is a particular instance of violating the chain of command that you would like to discuss, I would be happy to discuss it with you.

. . . .

The statement that I have not respected Alex's position regarding the prosecution of the case demonstrates why you hear the frustration in the tone of my e-mail. For two and a half months I have been asking about what that position is. I have asked for direction on whether to revise the indictment, whether there are other issues that Alex wants addressed prior to deciding, whether there is additional investigation that needs to be done, etc. None of that direction has been forthcoming, so I am left with . . . victims, and agents all demanding to know why we aren't presenting an indictment. Perhaps that lack of direction is through no fault of yours, but I have been dealing with a black box, so I do not know to whom I should address my frustration. My recollection of the original meeting with Alex and Jeff is quite different than your summary. In that meeting, I summarized the case and the State Attorney's Office's handling of it. I acknowledged that we needed to do work to collect the evidence establishing a federal nexus, and I noted the time and money that would be required for an investigation. I said that I was willing to invest that time and the FBI was willing to invest the money, but I didn't want to get to the end and then have the Office be intimidated by the high-powered lawyers. I was assured that that would not happen. Now I feel like there is a glass ceiling that prevents me from moving forward while evidence suggests that Epstein is continuing to engage in this criminal behavior. Additionally, the FBI has identified two more victims. If the case is not going to go forward, I think it is unfair to give hope to more girls.

As far as promising the FBI that an indictment was a foregone conclusion, I don't know of any case in the Office where an investigation has been opened with the plan NOT to indict. And I have never presented an indictment package that has resulted in a declination. I didn't treat this case any differently. I worked with the agents to gather the evidence, and I prepared an indictment package that I believe establishes probable cause that a series of crimes have been committed. More importantly, I believe there is

> proof beyond a reasonable doubt of Epstein's criminal culpability. Lastly, I was not trying to "dictate" a meeting with the U.S. Attorney or anyone else. I stated that I "would like" to schedule a meeting, asking to have the same courtesy that was extended to the defense attorneys extended to the FBI and an Assistant in the Office. With respect to your questions regarding my judgment, I will simply say that disagreements about strategy and raising concerns about the forgotten voices of the victims in this case should not be classified as a lapse in judgment. This Office should seek to foster spirited debate about the law and the use of prosecutorial discretion . . . . [M]y first and only concern in this case (and my other child exploitation cases) is the victims. If our personality differences threaten their access to justice, then please put someone on the case whom you trust more, and who will also protect their rights.
>
> In the meantime, I will be meeting with the agents on Monday to begin preparing a revised indictment package containing your suggestions on the indictment and responding to the issues raised by Epstein's attorneys. . . . If there are any specific issues that you or the U.S. Attorney would like to see addressed, please let me know.[70]

Villafaña did not get the meeting with Acosta that she requested. She viewed Menchel's message as a rejection of her request to make a presentation to Acosta, and she told OPR that even though she regarded Sloman as a friend, she did not feel she could reach out even to him to raise her concerns.[71] Menchel, however, told OPR that he did not "order" Villafaña to refrain from raising her concerns with Acosta, Sloman, or Lourie, and he did not believe his email to Villafaña foreclosed her from meeting with Acosta. Rather, "the context of this exchange is, she is running roughshod over the U.S. Attorney, and what I am saying to her is, there is a process. You're not in charge of it. I'm not in charge of it. [Acosta's] in charge of it." Acosta, who was apparently not aware of Villafaña's email exchange with Menchel, told OPR that from his perspective, Villafaña was not "frozen out" of the case and that he would have met with her had she asked him directly for a meeting.

B. Villafaña Attempts to Obtain the Computer Equipment Missing from Epstein's Palm Beach Home, but the Defense Team Opposes Her Efforts

As the USAO managers considered in July 2007 how to resolve the federal investigation, one item of evidence they did not have available to assist in that decision was the computer equipment removed from Epstein's home before the PBPD executed its search warrant. Although Villafaña took steps to obtain the evidence, defense counsel continued to oppose her efforts.

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[70] Menchel forwarded this email to Sloman.

[71] Villafaña told OPR that she later spoke to Menchel, asking Menchel to redirect Sanchez to Villafaña, but that Menchel responded it was not Villafaña's "place" to tell him to whom he should direct communications.

Early in the federal investigation, Villafaña recognized the potential significance of obtaining the missing computer equipment. Villafaña told OPR that she and the FBI agents went through every photograph found in Epstein's house, but found none that could be characterized as child pornography. Nevertheless, Villafaña told OPR that investigators had learned that Epstein used hidden cameras in his New York residence to record his sexual encounters, and she believed he could have engaged in similar conduct in his Palm Beach home. In addition, the computer equipment potentially contained surveillance video that might have corroborated victim statements about visiting Epstein's home. More generally, in Villafaña's experience, individuals involved in child exploitation often possessed child pornography.[72] Villafaña's co-counsel, who had substantial experience prosecuting child pornography cases, similarly told OPR, "Epstein was a billionaire. We knew his house was wired with video, it would be unusual [for] someone with his capabilities not to be video recording" his encounters.

As the investigation continued, Villafaña took various steps to acquire the computer equipment removed from Epstein's Palm Beach residence. As noted previously in this Report, in her initial request to Epstein's counsel for documents, she asked defense counsel to provide "[t]he computers, hard drives, CPUs, and any other computer media (including CD-ROMs, DVDs, floppy disks, flash drives, etc.) removed from" the residence. Although Lourie subsequently narrowed the government's request for documents, the request for computer equipment remained. The defense, however, failed to comply with the request.

Villafaña learned that the computer equipment was in the possession of a particular individual. After consulting the Department's Computer Crime and Intellectual Property Section and Office of Enforcement Operations about the appropriate legal steps to obtain the computer equipment, Villafaña described her plan in an email to Menchel. She asked Menchel for any comments or concerns, but OPR did not find an email response from him, and Menchel told OPR that he did not recall Villafaña's efforts to obtain the computer equipment.

In May 2007, following the plan she had outlined to Menchel, Villafaña initiated action requiring production of the computer equipment by a particular date. In her email to Villafaña on June 29, 2007, Sanchez requested a two-week extension, indicating that she hoped a "state-based resolution" to the case would soon be reached.[73] Villafaña advised her supervisors of the request, and responded to Sanchez that she "would like to get the computer equipment as soon as possible." Nonetheless, Villafaña eventually agreed to an extension.

Meanwhile, Epstein attorney Roy Black wrote separately to Villafaña, demanding to know whether Villafaña had complied with applicable Department policies before seeking the computer

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[72] In addition, Villafaña became aware that in August 2007, FBI agents interviewed a minor victim who stated that she had been photographed in the nude by Epstein's assistant, who told the victim that Epstein took pictures of the girls.

[73] This email led Villafaña to ask her supervisors if any of them had discussed with the defense a possible resolution of the case, which resulted in Villafaña's exchange of emails with Menchel about their respective views of the case. *See* Section IV.A.2 in this Part.

equipment.[74] After further communications on this issue involving Black, Sanchez, Villafaña, and Lourie, Black took legal action that effectively halted production of the computer equipment to the USAO until the issue could be decided by the court—which, as explained below, never happened because the parties entered into the NPA.

C. July 2007: The Defense Continues Its Efforts to Stop the Federal Investigation

In addition to their efforts to stop the government from obtaining the computer equipment, defense counsel also sent letters to the USAO, dated July 6, 2007, and July 25, 2007, reiterating their objections to a federal investigation of Epstein. The July 25, 2007 letter included a lengthy "case analysis chart" purporting to support the defense argument that Epstein had committed no federal offense. The July 25 letter also noted that the defense had been consulting with the former Principal Deputy Chief of CEOS, reporting that she "supports our position without reservation that this is not a matter upon which the federal statu[t]es should be brought to bear."[75]

While the defense was reiterating its objections to the federal investigation, CEOS expressed its endorsement of Villafaña's legal analysis and proposed charges. On July 18, 2007, CEOS Chief Oosterbaan emailed Sloman, Menchel, and Lourie, stating that he had read Villafaña's prosecution memorandum "closely," and noting that "[s]he did a terrific job. As we opined to Andy [Lourie] back in May, [CEOS] agree[s] with her legal analysis. Her charging decisions are legally sound." Oosterbaan observed:

> I have also reviewed the arguments contained in the letters from defense counsel. Their legal analysis is detailed and comprehensive, but I find none of their arguments persuasive. That is not to say that all the arguments are completely devoid of merit. I expect the judge to consider some of the arguments closely. Nevertheless, while the law applicable here is not always crystal clear, the balance of available precedent favors us. From the prosecution memorandum it is clear that Marie has anticipated the strongest legal arguments, scrutinized the applicable law, and has charged the case accordingly. And, while with this prosecution the government clearly faces a strong and determined defense team, it is a challenge well worth facing. I also happen to know that there is absolutely no concern . . . about facing the challenges this case presents.

In closing, Oosterbaan renewed his offer to have CEOS "help you with this prosecution," and to send "whatever and whoever you need" to assist.

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[74] Villafaña forwarded Black's letter to Menchel, explaining the circumstances relating to the removal of the computer equipment from Epstein's home, the steps she had taken to make the required consultations in the Department, and that she and Lourie had worked together on her response to Black.

[75] The news that the former CEOS Principal Deputy Chief was advising the Epstein team led to an email exchange between Sloman and CEOS Chief Oosterbaan, who commented, "By the way, let me know if you want me to put something in writing to you with our position and detailing all of the child prostitution cases she supervised with similar facts."

D. Acosta Decides on a Resolution That Includes a Two-Year Term of Incarceration

The next critical step in the development of the NPA was the decision to propose a two-year term of imprisonment. Although presented to the defense as the "minimum" the USAO would accept, in actuality the two-year proposal became only the starting point for the negotiations, with the result that the defense continued to chip away at it as the negotiations continued. The contemporaneous emails make no mention of any rationale for the decision to propose two years as the government's beginning negotiating position, and nobody with whom OPR spoke was able to recall how the decision was made. As discussed below, Acosta did offer OPR an explanation, but OPR was unable to find contemporaneous evidence supporting it.[76]

While the defense was communicating its objections to the federal investigation to Villafaña, Lourie, Menchel, and Sloman, Villafaña continued moving toward filing charges. On July 19, 2007, the day after receiving Oosterbaan's email supporting a potential prosecution, Villafaña emailed Lourie and Menchel seeking approval to take further investigative steps regarding three of Epstein's assistants. However, Menchel directed Villafaña to "hold off . . . until we decide what course of action we are going to take on [E]pstein which should happen next week." Menchel told OPR that he did not specifically recall why he asked Villafaña to wait, but he assumed it was because Acosta was deciding what course of action to take on the case.

On Monday, July 23, 2007, Menchel submitted a resignation notice to Acosta, stating that he would be leaving the USAO effective August 6, 2007.[77]

1. The July 26, 2007 Meeting in Miami

Early on the morning of Thursday, July 26, 2007, Villafaña informed Menchel that she was preparing a new draft indictment containing revisions he had suggested, including removal of all but three of the "travel counts" and "a large number of [the] overt acts," and the addition of overt acts and counts relating to two additional victims; she would not, however, have the revised indictment ready in time "for our discussion today" at their 2:00 p.m. meeting. Menchel told OPR that the fact that he had both proposed revisions to the indictment and also directed Villafaña to delay the investigative steps involving the assistants indicated that he was "trying to do something" with the case, but was waiting for Acosta to decide the "underlying issue" of whether to proceed with federal charges.

Acosta made that decision on or before July 26, 2007. On that afternoon, Villafaña met in Miami with Menchel. She told OPR that Sloman, as well as the FBI case agents and their supervisors, were also present, with Lourie participating by telephone. Villafaña told OPR that she expected that the meeting, requested by Menchel, would address the direction of the investigation. However, Villafaña told OPR that after everyone had assembled, Menchel entered the room and stated that Acosta "has decided to offer a two-year state deal." According to

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[76] *See* Section IV.D.2 in this Part.

[77] As early as May 4, 2007, Menchel had informed Acosta that he was intending to leave the USAO to enter private practice.

Villafaña, Menchel left the meeting after almost no discussion, leaving Villafaña "shocked and stunned."

Menchel told OPR that he did not recall the July 26, 2007 meeting. Nonetheless, he strongly disputed Villafaña's description of events, asserting that it would have been "directly at odds with his management style" to convene such a meeting, announce Acosta's decision, and leave without discussion. Acosta told OPR that he had "decided and endorsed this resolution at some point," but he did not recall being aware that Menchel was going to announce the decision at the July 26 meeting; in addition, although Acosta did not recall the circumstances of Menchel's relaying of that decision, he said it "would have been consistent with" his decision for Menchel to do so. Neither Sloman nor Lourie recalled the meeting. The FBI case agent recalled attending a meeting at the USAO in Miami with her co-case agent and supervisors, together with Villafaña, Lourie (by telephone), Menchel, and Sloman, at which they discussed how to proceed with the Epstein case. According to the case agent, at this meeting the FBI insisted that Epstein be registered for life as a sexual offender, and the co-case agent advocated for waiting until the court had ruled on the USAO's ability to obtain Epstein's computer equipment.

Regardless of exactly how Acosta's decision regarding the two-year term was communicated to Villafaña and the FBI agents, and regardless of who initially proposed the specific term, the record shows that Acosta ultimately made the decision to offer Epstein a resolution that included a two-year term of imprisonment, as he acknowledged.[78]

2. The Subjects' Explanations for the Decision to Offer Epstein a Sentence with a Two-Year Term of Incarceration

Villafaña asserted that she was not consulted about the specific two-year term before the decision was made.[79] Villafaña told OPR that she had worked hard to develop a strong case, and none of her supervisors had identified to her any specific problem with the case that, in her view, explained the decision to extend an offer for a two-year sentence. Villafaña also told OPR that Menchel provided no explanation for this decision during the July 26, 2007 meeting, and Villafaña did not ask for an explanation because she accepted his statement that it was Acosta's decision. Villafaña described the proposal as "random," and told OPR, "[W]e're all [sentencing] guidelines people, so 24 months just makes no sense in the context of the guidelines. There's no way to get to 24 months with this set of offenses."[80]

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[78] OPR notes that Villafaña did not appear hesitant to send emails to her supervisors setting forth her views and objections, and there is no reference before this meeting in any of her emails indicating that a decision had been made to offer a two-year term of incarceration. Therefore, given that a meeting had been arranged involving Menchel and Villafaña, and possibly most of the other primary USAO and FBI participants, it seems logical that Acosta made a decision to resolve the case with a two-year state plea not long before the meeting.

[79] OPR found no evidence in the documentary record indicating that Villafaña had knowledge of Acosta's decision or the two-year term before the July 26, 2007 meeting at which she said she learned of it.

[80] From the time the U.S. Sentencing Guidelines went into effect in 1987, they have been the mechanism for calculating federal criminal sentences. Since 2005, the Guidelines have been non-binding, but the federal courts are required to consider them. As noted in the commentary to USAM § 9-27.710,

Sloman also told OPR that he did not know how the decision to offer a two-year plea offer was reached, but he believed that Acosta made the decision based on recommendations from Menchel, Lourie, and Villafaña. He opined to OPR that the decision was likely based on an assessment by Menchel and Lourie of the litigation risks presented by the case.[81] Sloman added that he did not know how a two-year sentence might have related to specific charges or to either state or federal sentencing guidelines. Lourie likewise told OPR he did not recall how the two-year term was decided upon, or by whom, but he speculated that it may have been presented by the defense as the most Epstein would accept, and that the decision would have been reached by Acosta following "extended consideration, research, and discussion," among Acosta, Sloman, Menchel, Lourie, and Villafaña.[82]

Menchel told OPR that he did not recall discussing a two-year plea deal with Acosta or who reached the decision that two years was an appropriate sentence. Menchel also told OPR, however, that he recalled believing that if the USAO had filed the contemplated federal charges, Epstein would have felt he had "nothing to lose" and "undoubtedly" would have chosen to take the case to trial. Menchel recalled believing there was a real risk that the USAO might lose at trial, and in so doing, might cause more trauma to the victims, particularly those who were reluctant to testify. Menchel told OPR that he did not believe that anyone at the time looked at two years "as a fair result in terms of the conduct. I think that was not the issue. The issue was whether or not if we took this case to trial, would we risk losing everything," and "if we . . . felt we could have gotten more time, we would have, without having to press it to the trial."

Acosta told OPR that "I had decided and endorsed" the two-year resolution "at some point," and that it resulted from "back and forth" discussion "over the course of some days or a week or two." As noted earlier in this Report, Acosta viewed the USAO's role in this case merely as a "backstop" to the state's prosecution, which he explained to OPR was "a polite way of saying[, ']encouraging the state to do a little bit more.[']"[83] Acosta said that he understood two years' imprisonment to have represented the sentence Epstein faced under one of the original charges the PBPD was considering at the outset of the state investigation.[84] Acosta also told OPR that he

> the attorney for the government has a continuing obligation to assist the court in its determination of the sentence to be imposed. The prosecutor must be familiar with the guidelines generally and with the specific guideline provisions applicable to his or her case. In discharging these duties, the attorney for the government should . . . endeavor to ensure the accuracy and completeness of the information upon which the sentencing decisions will be based.

[81] In Sloman's view, Menchel and Lourie were "two of the finest trial lawyers" in the USAO.

[82] Lourie noted that Sloman and Menchel were "two extraordinarily experienced people in [Acosta's] front office who had tried . . . gobs and gobs of cases."

[83] In commenting on OPR's draft report, Acosta's attorney asserted that OPR's use of Acosta's quote, "a little bit more," "unfairly minimized" Acosta's and the USAO's efforts to achieve justice in this case. Acosta's attorney also asserted that the phrase was "clearly soft-spoken understatement," that the terms obtained were "substantially more onerous than the state's alternative resolution," and that Acosta was "clearly declining the invitation to take the State to task and soft-pedaling an obvious distinction."

[84] OPR examined this assertion and was unable to verify that the proposed two-year term of imprisonment corresponded with the charges that the PBPD considered at the outset of the state investigation or with the charge in

understood that the PBPD would not have asked the FBI to investigate Epstein if the state had pursued the appropriate charges. In other words, in Acosta's view, "[T]his was, rightly or wrongly, an analysis that distinguished between what is necessary to prevent manifest injustice, versus what is the appropriate federal outcome to that." Acosta told OPR that he believed he had discussed his concerns about the case with Lourie, Sloman, or Menchel, although he could not recall any specific conversation with them.

E. Villafaña Drafts a "Term Sheet" Listing the Requirements of a Potential Agreement with the Defense

A meeting with defense counsel was scheduled for Tuesday, July 31, 2007. Villafaña told OPR that between July 26 and July 30, 2007, she had "some sort of discussion" with her supervisors that resulted in her creation of a "term sheet" identifying the proposed terms for resolving the federal investigation through state charges. Sometime during that period, Villafaña left a voicemail message for Menchel. During their OPR interviews, neither Villafaña nor Menchel could recall what Villafaña said in that message. On July 30, 2007, Menchel emailed Villafaña:

> I received your voicemail this morning. I don't see any reason to change our approach. I think telling them that unless the state resolves this in a way that appropriately vindicates our interests and the interests of the victims, we will seek [federal charges] conveys that we are serious. While Lilly [Sanchez] has represented in the past that this would likely not happen, I never conveyed it in quite these terms before. In any event, this is the course of action that the US Attorney feels comfortable taking at this juncture.

The following day, July 31, 2007, Villafaña emailed a one-page "Terms of Epstein Non-Prosecution Agreement" to Sloman, Menchel, and Lourie. Villafaña told OPR she had never before seen or heard of a non-prosecution agreement and that it was a concept "completely foreign" to her.[85] Villafaña told OPR that the idea of styling the two-year state plea agreement with Epstein

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the state indictment. OPR considered various potential state charges involving various numbers of victims and found no obvious reasonable state sentencing guidelines calculation that would have resulted in a two-year sentence.

[85] Deferred prosecution and non-prosecution agreements were standard, though infrequently used, vehicles for resolving certain federal criminal cases against corporate entities. A 2008 Departmental memorandum explained:

> The terms "deferred prosecution agreement" and "non-prosecution agreement" have often been used loosely by prosecutors, defense counsel, courts and commentators. As the terms are used in these Principles [of Federal Prosecution of Business Organizations], a deferred prosecution agreement is typically predicated upon the filing of a formal charging document by the government, and the agreement is filed with the appropriate court. In the non-prosecution agreement context, formal charges are not filed and the agreement is maintained by the parties rather than being filed with a court. Clear and consistent use of these terms will enable the Department to more effectively identify and share best practices and to track the use of such agreements. These Principles do not apply

as a "non-prosecution agreement" came from Acosta, although Menchel may have communicated that terminology to her. According to Villafaña, she asked that it include a mechanism for the victims to be provided monetary compensation through 18 U.S.C. § 2255 in lieu of the restitution that would have been available if Epstein were pleading guilty to federal charges.[86] Acosta told OPR that he "developed and approved" the term sheet."

Before the document was presented to defense counsel, two terms were dropped from Villafaña's draft—one providing that the agreement would apply only to already-identified victims, and another requiring the deal to be accepted, and Epstein to plead guilty, within the month. The final term sheet was as follows:

> to plea agreements, which involve the formal conviction of a corporation in a court proceeding.

Memorandum from Acting Deputy Attorney General Craig S. Morford to Heads of Departmental Components and United States Attorneys at n.2 (Mar. 7, 2008), available at https://www.justice.gov/archives/jm/criminal-resource-manual-163-selection-and-use-monitors. Villafaña did not have significant experience prosecuting corporate entities.

[86] A civil remedy for personal injuries suffered by victims of certain crimes is provided for in the federal criminal code at 18 U.S.C. § 2255. Subsection (a) of the statute, as in effect from July 27, 2006, to March 6, 2013, provided as follows:

> Any person who, while a minor, was a victim of a violation of section 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title and who suffers personal injury as a result of such violation, regardless of whether the injury occurred while such person was a minor, may sue in any appropriate United States District Court and shall recover the actual damages such person sustains and the cost of the suit, including a reasonable attorney's fee. Any person as described in the preceding sentence shall be deemed to have sustained damages of no less than $150,000 in value.

Villafaña also told OPR that she asked that the terms include the requirement that Epstein plead to an offense that required him to register as a sexual offender; however, sex offender status was also mentioned in Menchel's July 3, 2007 email to Villafaña recounting his preliminary discussions with Sanchez.

CONFIDENTIAL PLEA NEGOTIATIONS

TERMS OF EPSTEIN NON-PROSECUTION AGREEMENT

- Epstein pleads guilty (not nolo contendere) to an Information filed by the Palm Beach County State Attorney's Office charging him with:
  (a) lewd and lascivious battery on a child, in violation of Fl. Stat. 800.04(4);
  (b) solicitation of minors to engage in prostitution, in violation of Fl. Stat. 796.03; and
  (c) engaging in sexual activity with minors at least sixteen years of age, in violation of Fl. Stat. 794.05.

- Epstein and the State Attorney's Office make a joint, binding recommendation that Epstein serve at least two years in prison, without any opportunity for withholding adjudication or sentencing; and without probation or community control in lieu of imprisonment.

- Epstein agrees to waive all challenges to the information filed by the State and the right to appeal.

- Epstein agrees that, if any of the victims identified in the federal investigation file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the U.S. District Court for the Southern District of Florida over his person and the subject matter. Epstein will not contest that the identified victims are persons who, while minors, were victims of violations of Title 18, United States Code, Sections(s) 2422 and/or 2423.

- After Epstein enters his state court plea and is sentenced, the FBI and the U.S. Attorney's Office will close their investigations.

V. THE USAO PRESENTS EPSTEIN WITH KEY TERMS OF A DEAL: PLEAD GUILTY TO STATE CHARGES REQUIRING A TWO-YEAR TERM OF INCARCERATION AND SEXUAL OFFENDER REGISTRATION, AND AGREE TO A MEANS FOR THE VICTIMS TO OBTAIN MONETARY DAMAGES

Although the USAO term sheet was presented to Epstein's defense team on July 31, 2007, it took almost another two months to reach a final agreement in the form of the NPA. The contemporaneous emails show that over the course of those two months, defense counsel offered multiple counter-proposals to the USAO's stated terms, and alternated between working out the state plea disposition and seeking an alternative federal plea arrangement. The emails make clear that as the negotiations intensified in September 2007, the prosecutors became increasingly frustrated, particularly with what they perceived as the defense tactic of agreeing to terms and provisions but then backtracking or altering the agreed-upon terms in subsequent communications. It is apparent that the defense persistence achieved some measure of success, at least concerning

the period of imprisonment, because the USAO failed to hold firm to its proposal of "at least two years in prison." The USAO did, however, consistently reject defense proposals to change other terms, particularly the requirement that Epstein register as a sexual offender.

A. July 31, 2007: The USAO Presents Its Proposal to the Defense Team, which Makes a Counteroffer

Menchel, Sloman, Lourie, Villafaña, and the case agents met with Epstein attorneys Lefcourt, Sanchez, and Black on July 31, 2007, with Menchel "leading the meeting" for the USAO.[87] The USAO presented the term sheet, and Villafaña distributed a federal sentencing guidelines calculation showing that if prosecuted federally, Epstein faced a sentencing range of 188 to 235 months' incarceration.

Villafaña recalled that during the meeting, Epstein's attorneys opposed the requirement of sexual offender registration, argued that Epstein would not be safe in prison, suggested that Epstein serve a sentence of home confinement or "community control"[88] in lieu of incarceration, and emphasized that a state resolution provided greater sentencing flexibility.[89] Villafaña told OPR that when Epstein's attorneys expressed concern during the meeting about Epstein's security in a state prison and argued for a home confinement sentence, Menchel suggested Epstein plead to a federal charge so that he could serve his time in a federal facility. A few days after the meeting, Villafaña emailed Menchel, stating that she had "figured out a way to do a federal plea with a 2-1/2 year cap."

Although Acosta had authorized a plea to state charges, emails and other correspondence show that during the negotiations, the parties also considered structuring a plea around federal

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87 Villafaña was the only witness with whom OPR spoke who had a substantive memory of this meeting.

88 According to the Florida Department of Corrections fact sheet for defendants subjected to community control,

> The Community Control supervision program was created as a diversion to incarceration or imprisonment; therefore it is an intensive supervision program where you are confined to your home unless you are working, attending school, performing public service hours, participating in treatment or another special activity that has been approved in advance by your officer. The program was designed to build accountability and responsibility along with providing a punishment alternative to imprisonment. While on Community Control supervision (also known as "house arrest") you will not be allowed to leave your home to visit family or friends, go out to dinner or to the movies, go on vacation, or many of the other activities you are used to being able to do . . . , but it does allow you to continue to work to support yourself and your family or attend school in lieu of being incarcerated and away from loved ones.

Florida Dept. of Corrections, Succeeding on Community Control at 1, http://www.dc.state.fl.us/cc/ccforms/Succeeding-on-Community-Control.pdf.

89 Villafaña told OPR that she was concerned about a state resolution because the defense team "had a lot of experience with the state system. We did not." Villafaña anticipated there would be ways to "manipulate" a state sentence and the USAO would be "giving up all control," and she told OPR that she discussed this concern with Lourie, although she could not recall when that discussion occurred.

charges in addition to state charges. On behalf of the defense team, Sanchez followed up on the July 31, 2007 meeting with an August 2, 2007 letter to Menchel:

> We welcomed your recognition that a state prison sentence is neither appropriate for, nor acceptable to, Mr. Epstein, as the dangers of the state prison system pose risks that are clearly untenable. We acknowledge that your suggestion of a plea to two federal misdemeanors was an attempt to resolve this dilemma. Our proposal is significantly punitive, and if implemented, would, we believe, leave little doubt that the federal interest was demonstrably vindicated.[90]

Sanchez added, "We must keep in mind that Jeffrey Epstein is a 54-year-old man who has never been arrested before. He has lived an otherwise exemplary life."

The "significantly punitive" proposal described in the defense letter involved no period of mandatory incarceration. Instead, Sanchez suggested two years of home confinement, with regular reporting to and visits from a community control officer; payment of restitution, damages, court and probationary costs, and law enforcement costs; random drug testing; community service; psychological counseling; and a prohibition on unsupervised contact with the victims. The letter specifically referred to the victim damages-recovery procedure that the government had proposed under 18 U.S.C. § 2255 and represented that Epstein was "prepared to fully fund the identified group of victims which are the focus of the [USAO] – that is, the 12 individuals noted at the meeting on July 31, 2007." Under the defense proposal, the state would incarcerate Epstein only if he failed to comply with the terms of supervised custody. Sanchez also advised that the defense team was seeking a meeting with Acosta.

B. In an August 3, 2007 Letter, the USAO States That a Two-Year Term of Imprisonment Is the Minimum That Will Vindicate the Federal Interest

Villafaña told OPR that she and her managers agreed the counteroffer was unacceptable, and she conferred with Lourie or Menchel about the government's response. Villafaña drafted for Menchel's signature a letter asserting that the USAO considered a two-year term of imprisonment to be the minimum sentence that would "vindicate" the federal interest in the Epstein investigation. Villafaña's draft stated that the USAO "has never agreed that a state prison sentence is not appropriate for Mr. Epstein," but was willing to allow Epstein to enter a guilty plea under Federal Rule of Criminal Procedure 11(c)(1)(C) to a federal felony charge with a binding recommendation for a two-year term of incarceration. Villafaña specified that Epstein would also be required to concede liability under 18 U.S.C. § 2255 for all of the victims identified during the federal investigation, "not just the 12 that formed the basis of an initial planned charging instrument."

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[90] The USAO countered, however, that it "never agreed that a state prison sentence is not appropriate" and that "a plea to two federal misdemeanors was never extended or meant as an offer." Records show that throughout the Epstein matter, the USAO attorneys identified instances when defense attorneys misstated or otherwise did not accurately describe events or statements. Accordingly, in evaluating the subject attorneys' conduct, OPR did not rely on uncorroborated defense assertions.

Menchel made several substantive changes to Villafaña's draft letter. He specified that "a two-year term of *state* imprisonment" was the minimum sentence that would satisfy the federal interest in the case. (Emphasis added.) With regard to the option of a federal plea, Menchel wrote that the USAO "would be willing to explore a federal conviction" and retained the reference to a Rule 11(c) plea. Menchel also removed the reference to the specific state offenses to which Epstein would be required to plead guilty. Menchel forwarded the redraft to Acosta, suggesting that they speak about it the next morning, as well as to Sloman, Lourie, and Villafaña.

The final letter, as shown on the following pages, was identical to Menchel's redraft, except that it omitted all reference to a federal plea under Rule 11(c).[91]

[91] Menchel told OPR that he did not disfavor Rule 11(c) pleas but knew that the USAO believed the judges were generally averse to them. He did not recall why the provision was dropped from the letter, but "assumed" it was a decision by Acosta. In a September 6, 2007 email, Villafaña told Sloman that she and Menchel had discussed a Rule 11(c) plea, but she opined that Menchel "must have asked Alex about it and it was nixed." Villafaña told OPR that Lourie, too, had told her Acosta did not want to do a Rule 11(c) plea.

U.S. Department of Justice

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August 3, 2007

VIA FACSIMILE
Lilly Ann Sanchez, Esq.
[redacted]

Re: Jeffrey Epstein

Dear Lilly:

Thank you for your letter of August 2nd regarding your proposal on how to resolve the Epstein matter.

As we explained at our meeting on July 31, 2007, the Office believes that the federal interest will not be vindicated in the absence of a two-year term of state imprisonment for Mr. Epstein. That offer was not meant as a starting point for negotiations, it is the minimum term of imprisonment that will obviate the need for federal prosecution. The Office has never agreed that a state prison sentence is not appropriate for Mr. Epstein. Rather we simply stated that if Mr. Epstein preferred to serve his sentence in a federal penetentiary, we would be willing to explore a federal conviction that may allow that in lieu of any state resolution. Further, as I made clear in our follow up telephone conversation after the meeting, a plea to two federal misdemeanors was never extended or meant as an offer.

We also would reiterate that the agreement to Section 2255 liability applies to all of the minor girls identified during the federal investigation, not just the 12 that form the basis of an initial planned charging instrument.

As you know, the ability to engage in flexible plea negotiations is dramatically changed upon the return of an indictment. Once an indictment is returned, the Office does not intend to file a Superseding Information containing a lesser charge or to dismiss the case in favor of state prosecution.

Please let us know your client's decision by no later than August 17. I have conferred with U.S. Attorney Acosta who has asked me to communicate that the two-year term of incarceration is a non-negotiable minimum to vindicate a federal interest, and, at this time, he is not inclined to meet with counsel for Mr. Epstein.

Sincerely,

R. Alexander Acosta
United States Attorney

By: Matthew Menchel
Chief, Criminal Division

cc: Roy Black
Gerald B. Lefcourt
R. Alexander Acosta
Jeffrey Sloman
Andrew Lourie
A. Marie Villafaña

Menchel told OPR that in his view, the two-year sentence established a "floor" for negotiations and if Epstein rejected the offer, subsequent offers would require him to accept more jail time rather than less. Menchel told OPR that the USAO was "leaving our options open" by retaining the option of a federal plea because he thought the defense was "trying . . . to get him into a federal penitentiary." The letter's deadline of August 17, 2007, for acceptance of the government's offer was intended to accommodate Villafaña's request that the deadline provide her with enough time to go to New York, pursue investigative steps involving two of Epstein's assistants, do witness interviews, and take additional legal steps to obtain Epstein's computers if Epstein rejected the deal. Menchel told OPR he considered August 17 to be a firm deadline: "[I]f you tell someone they have two weeks, it should be two weeks." Menchel signed and sent the letter on Friday, August 3, 2007, which was his last day at the USAO before joining a private law firm.[92]

The following Monday, August 6, 2007, Villafaña contacted Menchel by email at his new firm to inquire whether the letter to Epstein's counsel had gone out on Friday. Villafaña explained

[92] Menchel told OPR that the timing of the letter to Sanchez was a "total coincidence," and had nothing to do with his impending departure from the USAO.

to OPR that she "wanted to know whether this letter went out. Because . . . if the letter didn't go out we can make this all go away and restart." Menchel confirmed to her that he had sent the letter out by email.

Later that day, the West Palm Beach FBI squad supervisor told Sloman that he understood Epstein had rejected the USAO's proposal, and he asked when Epstein would be charged. Villafaña told OPR that the squad supervisor "yelled at" Sloman about the USAO's decision not to prosecute Epstein federally. Sloman similarly told OPR that the squad supervisor "like [Villafaña] . . . [a]nd the agents felt very strongly about the case."[93]

C. August – September 2007: Epstein Hires Additional Attorneys, Who Meet with Acosta

1. Acosta Agrees to Meet with Epstein's New Attorneys

Villafaña told OPR that Epstein's team was "incensed" that Acosta would not meet with them and that the USAO had set such a short deadline to respond to its offer. Around this time, Epstein added to his team Kenneth Starr and Jay Lefkowitz, two prominent attorneys from the law firm Kirkland & Ellis, whom Acosta knew from his employment a decade earlier as an associate at the firm.[94] On the evening of August 6, 2007, Sloman emailed Acosta: "Just saw Menchel. I didn't know Kirkland made a call into you. You were right. Unbelievable." During their OPR interviews, neither Acosta nor Sloman remembered the call from Kirkland & Ellis and could provide no additional information about the contact.[95] A reply email from Acosta to Sloman indicates that the Kirkland & Ellis attorneys were considering elevating to the Department their objections to the USAO's involvement in the Epstein matter. In that email, Acosta stated, "They are likely to go to DC. We should strategize a bit. We are not changing positions, and that should be made clear."

The next day, Acosta wrote to Sloman:

> [Epstein's] attorneys want to go to DC on the case, on the grounds of a process foul, *i.e.*, that I have not met with them. I'm concerned that this will delay matters.
>
> I am thinking of heading this off, by (i) agreeing to meet to discuss general legal policy only (the only matter in which DC has arguable

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[93] In an email to Lourie reporting the conversation, Sloman reported that he told the squad supervisor that "it's a tad more complicated" and commented, "The guy is killing me." The squad supervisor told OPR that he did not remember this exchange with Sloman, but he recalled the agents being "upset" with the proposed resolution of the case and he likely would have told Sloman, "When do we indict? Why don't we just move forward?"

[94] Acosta told OPR that as a junior associate with Kirkland & Ellis from September 1995 to March 1997, he had worked on at least one matter each with Starr and Lefkowitz, and since that time, he had professional acquaintanceships with both.

[95] Menchel told OPR that he did not remember the timing of the call, but he did remember an occasion on which he entered Acosta's office as Acosta was finishing a phone conversation, and Acosta stated, "[T]hat was Ken Starr," and told Menchel the call related to the Epstein case.

> jurisdiction), while making clear that we are not talking about the details of the case, and (ii) asking [CEOS Chief] Oosterba[an] to participate by teleconference, thereby intercepting the DC meeting.
>
> Thoughts?

Acosta told OPR that he had no concern about Departmental "scrutiny of the NPA scheme" and that "[i]f anything," he was concerned whether the Department might direct the USAO to "drop this case."[96]

2. Leading to the Meeting with Defense Counsel, Investigative Steps Are Postponed, and the Defense Continues to Oppose Villafaña's Efforts to Obtain the Computer Evidence

On August 8, 2007, Villafaña informed Acosta that she had spoken with Oosterbaan, who was willing to join a meeting with the defense; although he could not do so in person until after August 21, he was willing to participate by phone in order "to stay firm on our August 17th deadline." Villafaña also reiterated that she wanted to contact Epstein's assistants in New York and to interview some of Epstein's colleagues and former employees there. Noting that "there was some concern about [taking the proposed investigative steps] while we are trying to negotiate a plea," Villafaña asked Acosta for guidance. Lourie also emailed Acosta and Sloman, asking that the USAO "stick to our deadline if possible." Lourie pointed out that CEOS "has no approval authority" and opined it was "a bit extreme to allow the defense to keep arguing this [case] to different agencies." Acosta replied, "This will end up [at the Department] anyhow, if we don't meet with them. I'd rather keep it here. Brin[g]ing [the Chief of CEOS] in visibly does so. If our deadline has to slip a bit . . . it's worth it."

As a result, the investigative steps were postponed. On August 10, 2007, Villafaña emailed Lourie inquiring whether she could "still go ahead" with the New York trip and whether she could oppose Black's request to stay the litigation concerning the government's efforts to obtain Epstein's computer equipment until after Acosta's meeting with the defense team. Villafaña was reluctant to delay the litigation and reported to Lourie that agents recently had interviewed a girl who began seeing Epstein at age 14 and who was photographed in the nude by an Epstein assistant. On August 13, 2007, Villafaña advised Black that the USAO was not willing to agree to a stay of the litigation. However, Sanchez reached out to Lourie on August 22, 2007, and obtained his agreement to a joint request for a stay until the week after Acosta's meeting with defense counsel, which was scheduled for September 7, 2007.

Villafaña told OPR that, in her opinion, the defense efforts to put off the litigation concerning the computers was "further evidence of the importance of [this] evidence."[97] Villafaña suspected the computers contained evidence that "would have put this case completely to bed."

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[96] In context, Acosta appeared to mean that although he was not concerned about the Department reviewing the NPA or its terms, he did have concerns that the Department would decide the USAO should not have accepted the case because of a lack of federal interest and might direct the USAO to end its involvement in the matter.

[97] Menchel told OPR, on the other hand, "there could be a lot of reasons why" defense counsel would resist "turn[ing] over an entire computer."

She believed that access to the computer evidence would strengthen the government's negotiating position, but that her supervisors "did not seem to recognize that." Villafaña said she did not understand why her supervisors were uninterested in determining what the computers contained. Instead, they instructed Villafaña to "keep calling the judge" to ask for a delay in the litigation proceedings.

Sloman told OPR that he recalled an issue about the computers, but did not recall "what the thinking was at the time" about pursuing that evidence or why Villafaña was "ordered to stand down." Acosta, Menchel, and Lourie all told OPR that they did not recall Villafaña's effort to obtain the computer evidence or that there had been litigation relating to it. Lourie, however, told OPR that the computers might have contained "very powerful evidence" that possibly "could have changed our advice to [Acosta], or his decision making." In his OPR interview, Menchel was uncertain whether the computer evidence would have been useful, but also acknowledged to OPR, "You always want more as a prosecutor."

On August 31, 2007, in preparation for the upcoming September 7, 2007 meeting with defense counsel that he planned to attend, CEOS Chief Oosterbaan traveled to West Palm Beach to meet with Villafaña and the case agents and to examine the case file. He explained to OPR that he wanted to see the file before meeting with the defense so that he could best "represent[] the interests of the prosecution team," and that he was in favor of going forward with the case. According to Villafaña, during his review of the file, Oosterbaan told her that the case was "really good" and offered to assist Villafaña at trial.

On September 6, 2007, the day before the meeting with defense counsel, Sloman sent Villafaña an email asking, "Please refresh my recollection. What is the 'deal' on the table?" Sloman told OPR that his question reflected the fact that in his capacity as FAUSA, he was involved in "a hundred other things" at that time.[98] Villafaña sent Sloman the term sheet and explained to him, "You and Matt [Menchel] and I had also discussed a possible federal plea to an Information charging a 371 conspiracy, with a Rule 11 plea with a two-year cap, but I think Matt must have asked Alex about it and it was nixed." Villafaña continued:

> There are three concerns that I hope we can address tomorrow. First, that there is an absolute drop-dead date for accepting or rejecting because it is strategically important that we indict before the end of September, which means . . . September 25th. Second, the agents and I have not reached out to the victims to get their approval, which as Drew [Oosterbaan] politely reminded me, is required under the law. And third, I do not want to make any promises about allowing Epstein to self-surrender because I still believe that we have a good chance of getting him detained.[99]

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[98] Sloman noted that with the attention given to the Epstein investigation, "it seems like . . . this was the only case [in the office], but there were other cases."

[99] As Villafaña explained in her OPR interview, when a violent crime defendant self-surrenders, the government may have difficulty winning an argument for pretrial detention or bond. Contrary to Villafaña's assertion in the email, the CVRA, even when applicable, required only victim consultation, not victim approval, and as is explained in

Villafaña added that the PBPD Chief had alerted the FBI that an upcoming news article would report that Epstein was "going to plead to a state charge" and the PBPD Chief "wanted to know if the victims had been consulted about the deal." Sloman forwarded Villafaña's email to Acosta with a note that read simply, "fyi."

Later that evening, Villafaña circulated to Sloman, Lourie, and Oosterbaan two alternative documents: a draft federal plea agreement and a draft NPA.[100] The draft federal plea agreement, following the USAO's standard format, called for Epstein to plead guilty to a five-year conspiracy under 18 U.S.C. § 371 to entice minors to engage in prostitution, an offense requiring registration as a sexual offender, with a Rule 11(c) binding sentence of two years' imprisonment. The draft NPA contained the terms presented to the defense team on July 31, 2007, and called for Epstein to enter a state plea by September 28, 2007. Villafaña told OPR that because she had never seen a non-prosecution agreement before, she relied on a template she found either using USAO or the Department's internal online resources, but she did not do any additional research regarding the use of non-prosecution agreements.[101]

3. September 7, 2007: Acosta, Other USAO Attorneys, and FBI Supervisors Meet with Epstein Attorneys Starr, Lefkowitz, and Sanchez

On Friday, September 7, 2007, Acosta, Sloman, Villafaña, Villafaña's co-counsel, Oosterbaan, and one or two supervisory FBI agents met at the USAO's West Palm Beach office with defense attorneys Sanchez and, for the first time, Starr and Lefkowitz.[102] This was Acosta's first meeting with Epstein's defense team. Villafaña understood the purpose of this meeting was to afford Epstein's counsel an opportunity to "make a pitch" as to why the case should not be prosecuted federally. Villafaña recalled that at a "pre-meet" before defense counsel arrived, Acosta did not express concern about the viability of the prosecution or the strength of the case.

Acosta told OPR that the meeting was not "a negotiation," but a chance for the defense to present their arguments, which were made by Starr and focused primarily on federalism. Villafaña similarly recalled that the meeting mainly consisted of the defense argument that the Epstein case should remain a state matter in which the USAO should not interfere. Both Villafaña and her co-counsel recalled that Starr addressed himself directly to Acosta, and that Starr, who had held Senate-confirmed positions in the government, commented to Acosta that he and Acosta were "the only people in this room who have run the [gantlet] of confirmation by the Senate." Acosta did not recall the comment, but he told OPR, "[B]ack in July, we had decided that we were going

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Chapter Three, the Department's position at the time was that victim consultation was not required in matters in which the government did not pursue a federal charge. The USAO's actions with respect to victim consultation and the Department's interpretation of the CVRA are discussed in detail in Chapter Three of this Report.

100 The initial draft NPA is attached as Exhibit 2 to this Report.

101 OPR was unable to identify a template upon which she might have relied.

102 Lourie was not present. During September 2007, he was traveling between Florida and Washington, D.C., as he transitioned to his new detail post as Principal Deputy Assistant Attorney General and Chief of Staff to the head of the Department's Criminal Division, Assistant Attorney General Alice Fisher. He served in that detail until he left the Department in February 2008.

forward, that either there is this pre-indictment resolution, or we go forward with an indictment. The September meeting did not alter or shift our position."[103]

Villafaña told OPR that after hearing the defense argument, Acosta reiterated that the federal interest in the case could be vindicated only by a state plea to an offense that required sexual offender registration, resulted in a two-year term of incarceration, and was subject to the 18 U.S.C. § 2255 process for providing compensation to the victims. When defense counsel objected to the registration requirement, Acosta held firm, and he also rejected the defense proposal for a sentence of home confinement. In a subsequent email exchange with Criminal Division Deputy Assistant Attorney General Sigal Mandelker, who supervised CEOS, Oosterbaan reported that the meeting was "non-eventful," noting that defense counsel argued "federalism" and might approach Criminal Division Assistant Attorney General Alice Fisher to present that argument directly to her.

VI. SEPTEMBER 2007: THE PLEA NEGOTIATIONS INTENSIFY, AND IN THE PROCESS, THE REQUIRED TERM OF IMPRISONMENT IS REDUCED

Acosta had dispensed with the August 17, 2007 plea deadline specified in Menchel's August 3, 2007 letter, in order to allow the defense to meet with him. After that meeting, and although Villafaña continued to plan to file charges on September 25, no new plea deadline was established, and the negotiations continued through most of September.

The defense used that time to push the USAO to make concessions. Because Acosta was not willing to compromise on the issue of sexual offender registration or providing a means through which the victims could seek monetary damages, the negotiations focused on the term of imprisonment. As the contemporaneous emails show, the USAO did not hold to its position that a two-year term of imprisonment was "the minimum" that the USAO would accept. To reach an agreement with the defense on Epstein's sentence, the USAO explored possible pleas in either federal or state court, or both, and Villafaña spent considerable time and effort working with defense counsel on developing alternative pleas with various outcomes. In the course of that process, the agreement was revised to require that Epstein accept a sentence of 18 months, with the understanding that under the state's sentencing procedures, he would likely serve just 15 months.

A. The Incarceration Term Is Reduced from 24 Months to 20 Months

Shortly after the September 7, 2007 meeting, Epstein attorney Gerald Lefcourt, who had not been present at the meeting, spoke with both Acosta and Lourie, and made a new counteroffer, proposing that Epstein serve 15 months in jail followed by 15 months in home confinement. On the afternoon of Monday, September 10, 2007, Villafaña emailed Sloman, identifying issues she wanted to discuss with him, including her concern that defense counsel was pushing for a resolution that would allow Epstein to avoid incarceration and possibly sexual offender registration. Villafaña stated that Lefcourt's counteroffer was "a reasonable counteroffer in light of our starting position of 24 months," but added that it was "a really low sentence." Villafaña

[103] Sloman echoed this point, telling OPR that Starr's presentation focused on the issue of federalism, but the USAO had already decided to defer prosecution to the state and after the meeting, the USAO continued on that path.

noted that the revised charges involved 19 victims, so the defense proposal for a 15-month sentence amounted to less than one month per victim. Villafaña requested that "whatever the U.S. Attorney decides to do," the agreement with Epstein should "follow . . . a version of my written non-prosecution agreement" in order to "avoid any state shenanigans and . . . keep the defense on a strict timeline."

Later that day, Villafaña circulated to Acosta and Sloman a revised NPA that called for a 20-month jail sentence to be followed by 10 months of home confinement. This redrafted NPA contained a provision that specified, "With credit for gain time, Epstein shall serve at least 17 months in a state correctional institution."[104] Acosta reviewed the revised NPA and amended it to include a statement clarifying that it was Epstein's obligation "to undertake discussions with the State of Florida to ensure compliance with these procedures." Villafaña sent her version of the revised NPA to Lefcourt that afternoon and forwarded Acosta's proposed change to him the following day, after she learned of it.

On September 11, 2007, the court contacted Villafaña to inquire whether the USAO would be prepared to proceed with the litigation concerning the computers the following day. At Sloman's direction, Villafaña asked the court to delay the hearing, and the court rescheduled it for the following week. At the same time, anticipating that plea negotiations would fail, Villafaña circulated a revised indictment to her co-counsel and Oosterbaan, seeking their feedback before sending it "through the chain of command." Villafaña also sent Oosterbaan the revised NPA and told him she was "still shooting for 9/25" to bring charges, assuming the defense declined the USAO's offer. Oosterbaan responded, "The counter-offering is unfortunate, but I suppose it's understandable."[105]

That afternoon, Lourie asked Villafaña, "What is our latest offer?" Villafaña responded, "Plead to the three specified [state] charges, a 30-month sentence, split 20 in jail and 10 in 'community control,' and agree that the girls are victims for purposes of damages. We also put in deadlines for a plea and sentencing date."

B. September 12, 2007: The USAO and Defense Counsel Meet with the State Attorney

Although the USAO and defense counsel had been discussing resolving the federal investigation with a plea to state charges, there is no evidence that the USAO involved the State Attorney's Office in those discussions until September 12, 2007. On that day, Lourie, Villafaña, and another USAO supervisor who would be replacing Lourie as manager of the USAO's West Palm Beach office, and Epstein attorneys Lefkowitz, Lefcourt, and Goldberger met with State Attorney Barry Krischer and Assistant State Attorney Lanna Belohlavek. Other than Villafaña, few of the participants had any memory of the meeting or the results of it. The available evidence indicates that the USAO made additional concessions during the meeting.

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104 Through "gain time," Florida inmates can earn a reduction in their sentence for good behavior.

105 Oosterbaan told OPR that he did not recall having read the NPA at this juncture and "had no involvement with it."

Villafaña told OPR that during the meeting, the group discussed the draft NPA, but she did not think they gave a copy to Krischer and Belohlavek. Neither Krischer nor Belohlavek expressed concern about proceeding as the USAO was proposing. According to Villafaña, Belohlavek explained that a plea to the three state counts identified in the draft NPA would affect the state's sentencing guidelines, and that it would be better for the guidelines calculation if Epstein pled guilty to just one of the three counts. Villafaña recalled that when Belohlavek confirmed that Epstein would be required to register as a sexual offender if he pled to any one of the three charges, Lourie, speaking for the USAO, agreed to allow Epstein to enter his plea to just one state charge in addition to the pending state indictment, and the defense attorneys selected the charge of procurement of minors to engage in prostitution.[106] Lourie, however, disputed Villafaña's recollection that he made the final decision, stating that it was "illogical" to conclude that he had the authority to change the terms of agreement unilaterally.[107]

During the meeting, defense counsel raised concerns about Epstein serving time in state prison. Villafaña also told OPR that Lourie, the other supervisor, and she made clear during the meeting that they expected Epstein to be incarcerated 24 hours a day, seven days a week, during the entirety of his sentence, and they did not "particularly care" whether it was in a state or local facility. Belohlavek explained to OPR that in order for Epstein to serve his time in a county facility, rather than state prison, his sentence on each charge could be no more than 12 months, so that, for example, consecutive terms of 12 months and 6 months—totaling 18 months—could be served in the county jail. Villafaña told OPR:

> Our thing was incarceration 24 hours a day. So during this meeting, I remember [the defense] talking about . . . a one year count followed by a six-month count . . . that [Epstein] could serve them back to back but at the county jail, rather than having to go to a state facility. But then I said, "But if you do that, it's still going to have to be round the clock incarceration." And Barry Krischer said yes. And [he] said that to avoid [Epstein being extorted while incarcerated], he would be kept in solitary confinement.

Villafaña did not recall whether she and Lourie agreed to an 18-month sentence during that meeting, but she told OPR that in her view, allowing Epstein to serve his sentence in the county jail was not a "concession" because he would be incarcerated regardless.

Neither Lourie nor the other USAO supervisor present could recall any substantive details of the September 12, 2007 meeting, and Krischer and Belohlavek told OPR they did not remember the meeting at all. Krischer did, however, recall that he was "not offended at all" when he learned of the proposed federal resolution, requiring Epstein to plead to both the pending state indictment and an additional charge requiring sexual offender registration, explaining to OPR that Epstein "was going to plead guilty to my indictment, we were going to add an additional charge, he was

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[106] Later, the defense would claim that they had mistakenly understood that the selected charge would not involve sexual offender registration.

[107] As noted below, a contemporaneous email indicates that shortly after the meeting, Lourie and Villafaña spoke with Acosta and Sloman, who concurred with the agreement.

going to become a registered sex offender, and he was going to go actually do time—which he hadn't done up to this point." Krischer asked, "Why would I turn that down?" Krischer also noted that at that time, sexual offender registration "was not the norm" in Florida, and he recognized that "it was clearly something that was important to the U.S. Attorney's Office."[108]

Acosta told OPR that he did not recall if he learned what transpired at the September 12 meeting, nor did he recall why the USAO team agreed to permit Epstein to plead guilty to only one charge. Acosta told OPR, however, that he recognized that Villafaña and Lourie needed "some degree of discretion to negotiate"; that "in the give and take" of negotiations, they might propose a concession; and he was comfortable with the concession as long as the charge to which Epstein ultimately pled "captured the conduct" in an "appropriate" way.

Although Epstein's attorneys expressed interest in Epstein serving his time in a county facility (rather than state prison), one of Epstein's attorneys alternatively expressed interest in Epstein serving his time in a federal facility, and along with discussions about the possible state resolution, the USAO and Epstein's counsel also discussed a possible federal plea with a sentence running concurrently to the sentence Epstein would receive on the already indicted state charge. Later that day, Villafaña sent Lefkowitz an email advising that she and Lourie had talked with Acosta and Sloman, and they were "all satisfied in principle with the agreement."[109] The next day, September 13, 2007, Villafaña sent an email to Acosta, Sloman, Lourie, and two other supervisors, identifying potential federal offenses that would yield a two-year sentence. Villafaña also emailed defense counsel, stating that she had been "spending some quality time with Title 18"—referring to the code of federal criminal statutes—to make sure there would be a "factual basis" for any federal plea, and identifying the federal statutes she was considering.

C. The Evidence Does Not Clearly Show Why the Term of Incarceration Was Reduced from 24 Months to 20 Months to 18 Months

OPR reviewed the contemporaneous records and asked Acosta, Villafaña, and Lourie to explain how the jail term Epstein would have to accept came to be reduced from two years to 18 months. Lourie had no recollection of the process through which the term of incarceration was reduced. Villafaña and Acosta offered significantly different explanations.

Villafaña told OPR:

> We had this flip flop between is it going to be a state charge, is it going to be a federal charge, is it going to be [a] state charge, is it going to be a federal charge? And to get to a federal charge, there was no way to do 24 months that made any sense. So somehow it ended up being 20 months and then it got to be 18 months. And these were calls that if I remember correctly, Jay Lefkowitz was

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108 Belohlavek, however, told OPR that sexual offender registration "was a common occurrence" for enumerated state crimes, but the state crime charged in the state indictment against Epstein was not one of them.

109 The email does not indicate what the parties meant by "the agreement."

> having directly with Alex Acosta, and Alex Acosta agreed to 18 months.

Villafaña further explained to OPR:

> Regarding going from 24 months to 20 months, I recall a discussion that 24 months of federal time was really 20 months after gain time, so Epstein should be allowed to plead to 20 months' in the state. Epstein's counsel represented that he wouldn't get gain time like that in the [s]tate, and someone above me agreed. Later, of course, as shown in the agreements, Epstein's counsel (Jay Lefkowitz) got Alex to agree that Epstein should be allowed to earn gain time in the [s]tate, so the 20 months in the state became at least 17 months.
>
> Regarding going from 20 months' to 18 months, . . . this came from a negotiation between Epstein's counsel and Andy or Alex where the federal statutory max could only be 24 or 18, so 18 was agreed to. I also recall that, after Epstein's counsel decided that they wanted to proceed with an NPA and only a state guilty plea, I asked Alex why we didn't return to 20 months because the reason why we went to 18 months was because that was the only way to end up with a federal statutory maximum.[110]

However, a subsequent account of the history of negotiations with Epstein's attorneys, drafted by Villafaña for Acosta several weeks after the September 12, 2007 meeting with the State Attorney's Office, stated that "a significant compromise" reached at the meeting "was a reduction in the amount of jail time – from [the originally proposed] twenty-four months down to eighteen months, which would be served at the Palm Beach County Jail rather than a state prison facility." Acosta also noted to OPR that Villafaña was engaged in a "tough negotiation," and he was willing to allow her the discretion to reduce the amount of incarceration time without him "second-guessing" her. Acosta acknowledged that he "clearly approved it at some point."

Based on this record, OPR could not definitively determine when, how, or by whom the decision was made to reduce the required term of imprisonment from 24 months to 18 months. It is possible that the reduction was connected to Epstein's effort to achieve a result that would allow him to serve his time in a county facility, but it may also have resulted from the parties' attempts to reach agreement on federal charges that would not result in a sentence of incarceration greater than what had been discussed with respect to state charges. In the end, the evidence shows that Acosta approved of a reduced term of incarceration from 24 months to 18 months, and the USAO understood at the time that the state gain time requirement would further reduce the actual amount of time Epstein would spend incarcerated.

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110 By "federal statutory maximum," Villafaña referred to 12-month and 6-month misdemeanors.

D. The Parties Continue to Negotiate but Primarily Focus on a Potential Plea to Federal Charges

During the remainder of September, Villafaña conducted plea negotiations and drafted the final NPA, mainly with Epstein attorney Jay Lefkowitz. In a September 13, 2007 email to CEOS Chief Oosterbaan, Villafaña reported that the plea negotiations were "getting fast and furious." She said that the defense wanted to establish a "victim's fund" through which Epstein could make payments to the victims, rather than having the victims file individual § 2255 court actions for damages, which she speculated was "to keep this stuff out of the public [c]ourt files."

According to the email documentation, by Friday, September 14, 2007, the parties had moved toward a "hybrid" federal plea agreement, incorporating a plea to state charges, which would allow Epstein to serve his sentence for all the charges concurrently in a federal prison. Villafaña informed Acosta, Sloman, Lourie, and other colleagues that negotiations with Lefkowitz had resulted in a tentative agreement for Epstein to plead to two federal charges: harassment to prevent a witness from reporting a crime (18 U.S.C. § 1512(d)(2), which was then a one-year misdemeanor), and simple assault on an airplane (18 U.S.C. § 113(a)(5), a six-month misdemeanor). Villafaña reported that Lefkowitz "put in a pitch for only 12 months, I put in a pitch that [Epstein] plead to 24 with a 20-month recommendation, and we decided that we would be stuck with the 18 months."

Later that day, Villafaña sent to Lefkowitz a draft "hybrid" plea agreement and information mirroring the agreement in principle she had described to her supervisors, but which she noted had "not yet been blessed" by them. The agreement provided that Epstein would plead guilty to the two federal charges for which the parties would jointly recommend that he be sentenced to the statutory maximum penalty of 18 months' imprisonment followed by 2 years of supervised release, and that he would also plead guilty to the state registrable offense of procurement of minors to engage in prostitution, for which Epstein and the State Attorney's Office would make a joint, binding recommendation that he be sentenced to serve at least 20 months in prison followed by 10 months of community control (home confinement). Although not specified in the draft agreement, the negotiations evidently expected the federal and state terms would run concurrently. In addition to payment of restitution, Epstein would not oppose jurisdiction or victim status for any of the victims identified in the federal investigation—at that point specified as numbering 40—who elected to file suit for damages under 18 U.S.C. § 2255. A guardian *ad litem* would be appointed to communicate with the defense on the victims' behalf.

Lourie, however, quickly made clear that he was not in favor of the proposal. In response to Villafaña's email about the potential federal charges, but after Villafaña sent the proposal to Lefkowitz, Lourie told her, "The assault [charge] sounds like a stretch and factually [is] sort of silly."[111] Lourie also told Sloman, Acosta, and another supervisor that he did not "like the assault charge" and believed that it would not "go smooth with every judge." Acosta responded, "If we need[,] let's find a different charge." On Saturday, September 15, 2007, Villafaña emailed Lefkowitz, using her personal email address, reporting that she had "gotten some negative reaction

[111] The charge was to be based on "an incident in which Epstein 'put great pressure' . . . on [one of his female assistants] to call the girls to set up appointments."

to the assault charge" and suggesting a different factual scenario to support a federal charge.[112] At this point, Sloman left on vacation, and he informed Acosta and Villafaña that in his absence Lourie had agreed "to help finalize this." Lourie spent the following work week at his new post at the Department in Washington, D.C., but communicated with his USAO colleagues by phone and email.

In a Sunday, September 16, 2007 email, Villafaña informed Lefkowitz that she had drafted a factual proffer to accompany a revised "hybrid" federal plea proposal. In that email, Villafaña also noted that she was considering filing charges in the federal district court in Miami, "which will hopefully cut the press coverage significantly." This email received considerable attention 12 years later when it was made public during the CVRA litigation and was viewed as evidence of the USAO's efforts to conceal the NPA from the victims. Villafaña, however, explained to OPR that she was concerned that news media coverage would violate the victims' privacy. She told OPR, "[I]f [the victims] wanted to attend [the plea hearing], I wanted them to be able to go into the courthouse without their faces being splashed all over the newspaper," and that such publicity was less likely to happen in Miami, where the press "in general does not care about what happens in Palm Beach."

Lefkowitz responded to Villafaña with a revised version of her latest proposed "hybrid" plea agreement, in a document entitled "Agreement." Significantly, this defense proposal introduced two new provisions. The first related to four female assistants who had allegedly facilitated Epstein in his criminal scheme. The defense sought a government promise not to prosecute them, as well as certain other unnamed Epstein employees, and a promise to forego immigration proceedings against two of the female assistants:

> Epstein's fulfilling the terms and conditions of the Agreement also precludes the initiation of any and all criminal charges which might otherwise in the future be brought against [four named female assistants] or any employee of [a specific Epstein-owned corporate entity] for any criminal charge that arises out of the ongoing federal investigation . . . . Further, no immigration proceeding will be instituted against [two named female assistants] as a result of the ongoing investigation.

The second new provision related to the USAO's efforts to obtain Epstein's computers:

> Epstein's fulfilling the terms and conditions of the Agreement resolves any and all outstanding [legal process] that have requested witness testimony and/or the production of documents and/or computers in relation to the investigation that is the subject of the Agreement. Each [legal process] will be withdrawn upon the execution of the Agreement and will not be re-issued absent reliable

[112] Villafaña told OPR that she sometimes used her home email account because "[n]egotiations were occurring at nights, on weekend[s], and while I was [away from the office for personal reasons], . . . and this occurred during a time when out of office access to email was very limited." Records show her supervisors were aware that at times she used her personal email account in communicating with defense counsel in this case.

> evidence of a violation of the agreement. Epstein and his counsel agree that the computers that are currently under [legal process] will be safeguarded in their current condition by Epstein's counsel or their agents until the terms and conditions of the Agreement are fulfilled.

Later that day, Villafaña sent Lefkowitz a lengthy email to convey two options Lourie had suggested: "the original proposal" for a state plea but with an agreement for an 18-month sentence, or pleas to state charges and two federal obstruction-of-justice charges. Villafaña also told Lefkowitz she was willing to ask Acosta again to approve a federal plea to a five-year conspiracy with a Rule 11(c) binding recommendation for a 20-month sentence. Villafaña explained:

> As to timing, it is my understanding that Mr. Epstein needs to be sentenced in the state after he is sentenced in the federal case, but not that he needs to plead guilty and be sentenced after serving his federal time. Andy recommended that some of the timing issues be addressed only in the state agreement, so that it isn't obvious to the judge that we are trying to create federal jurisdiction for prison purposes.

With regard to prosecution of individuals other than Epstein, Villafaña suggested standard federal plea agreement language regarding the resolution of all criminal liability, "and I will mention 'co-conspirators,' but I would prefer not to highlight for the judge all of the other crimes and all of the other persons that we could charge." Villafaña told OPR that she was willing to include a non-prosecution provision for Epstein's co-conspirators, who at the time she understood to be the four women named in the proposed agreement, because the USAO was not interested in prosecuting those individuals if Epstein entered a plea. Villafaña told OPR, "[W]e considered Epstein to be the top of the food chain, and we wouldn't have been interested in prosecuting anyone else." She did not consider the possibility that Epstein might be trying to protect other, unnamed individuals, and no one, including the FBI case agents, raised that concern. Villafaña also told OPR that her reference to "all of the other crimes and all of the other persons that we could charge" related to her concern that if the plea agreement contained information about uncharged conduct, the court might ask for more information about that conduct and inquire why it had not been charged, and if the government provided such information, Epstein's attorneys might claim the agreement was breached.[113]

With regard to immigration, Villafaña told OPR that the USAO generally did not take any position in plea agreements on immigration issues, and that in this case, there was no evidence that either of the two assistants who were foreign nationals had committed fraud in connection with their immigration paperwork, "and I think that they were both in status. So there wasn't any reason

[113] OPR understood Villafaña's concern to be that if the government were required to respond to a court's inquiry into additional facts, Epstein would object that the government was trying to cast him in a negative light in order to influence the court to impose a sentence greater than the agreed-upon term.

for them to be deported."[114] As to whether the foreign nationals would be removable by virtue of having committed crimes, Villafaña told OPR she did not consider her role as seeking removal apart from actual prosecution.

Villafaña concluded her email to Lefkowitz by expressing disappointment that they were not "closer to resolving this than it appears that we are," and offering to meet the next day to work on the agreement:

> Can I suggest that tomorrow we either meet live or via teleconference, either with your client or having him within a quick phone call, to hash out these items? I was hoping to work only a half day tomorrow to save my voice for Tuesday's hearing . . . , if necessary, but maybe we can set a time to meet. If you want to meet "off campus" somewhere, that is fine. I will make sure that I have all the necessary decision makers present or "on call," as well.[115]

Villafaña told OPR that she offered to meet Lefkowitz away from the USAO because conducting negotiations via email was inefficient, and Villafaña wanted "to have a meeting where we sat down and just finalized things. And what I meant by off campus is, sometimes people feel better if you go to a neutral location" for a face-to-face meeting.

On the morning of Monday, September 17, 2007, the USAO supervisor who was taking over Lourie's duties as manager of the West Palm Beach office asked Villafaña for an update on the plea negotiations, and she forwarded to him the email she had sent to Lefkowitz the previous afternoon. Villafaña told the manager, "As you can see . . . there are a number of things in their last draft that were unacceptable. All of the loopholes that I sewed up they tried to open."

Shortly thereafter, Villafaña alerted the new manager, Acosta, and Lourie that she had just spoken with Lefkowitz, who advised that Epstein was leaning towards a plea to state charges under a non-prosecution agreement, and she would be forwarding to Lefkowitz "our last version of the Non-Prosecution Agreement." Acosta asked that Villafaña "make sure they know it[']s only a draft" and reminded her that "[t]he form and language may need polishing." Villafaña responded, "Absolutely. There were a lot of problems with their last attempt. They tried to re-open all the loopholes that I had sewn shut." Villafaña sent to Lefkowitz the draft NPA that she had provided to Lefcourt on September 11, 2007, noting that it was the "last version" and would "avoid [him] having to reinvent the wheel." She also updated the FBI case agents on the status of negotiations, noting that she had told her "chain of command . . . that we are still on for the [September] 25th [to bring charges] . . . , no matter what."

After receiving the draft NPA, Lefkowitz asked Villafaña to provide for his review a factual proffer for a federal obstruction of justice charge, and, with respect to the NPA option, asked, "[I]f

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[114] According to the case agents, the West Palm Beach FBI office had an ICE agent working with them at the beginning of the federal investigation, and the ICE agent normally would have looked into the immigration status of any foreign national, but neither case agent recalled any immigration issue regarding any of the Epstein employees.

[115] Lefkowitz was based in New York City but traveled to Miami in connection with the case.

we go that route, would you intend to make the deferred [*sic*] prosecution agreement public?" Villafaña replied that while a federal plea agreement would be part of the court file and publicly accessible, the NPA "would not be made public or filed with the Court, but it would remain part of our case file. It probably would be subject to a FOIA [Freedom of Information Act] request, but it is not something that we would distribute without compulsory process."[116] Villafaña told OPR that she believed Epstein did not want the NPA to be made public because he "did not want people to believe him to have committed a variety of crimes." As she explained to OPR, Villafaña believed the NPA did not need to be disclosed in its entirety, but she anticipated notifying the victims about the NPA provisions relating to their ability to recover damages.

E. The Parties Appear to Reach Agreement on a Plea to Federal Charges

Negotiations continued the next day, Tuesday, September 18, 2007. Responding to Villafaña's revised draft of the NPA, Lefkowitz suggested that Epstein plead to one federal charge with a 12-month sentence, followed by one year of supervised release with a requirement for home detention and two years of state probation, with the first six months of the state sentence to be served under community control. Villafaña replied, "I know that the U.S. Attorney will not go below 18 months of prison/jail time (and I would strongly oppose the suggestion)." Shortly thereafter, Villafaña emailed Acosta, Lourie, and the incoming West Palm Beach manager:

> Hi all – I think that we may be near the end of our negotiations with Mr. Epstein, and not because we have reached a resolution. As I mentioned yesterday, I spent about 12 hours over the weekend drafting Informations, changing plea agreements, and writing factual proffers. I was supposed to receive a draft agreement from them yesterday, which never arrived. At that time, they were leaning towards pleading only to state charges and doing all of the time in state custody.
>
> Late last night I talked to Jay Lefkowitz who asked about Epstein pleading to two twelve-month federal charges with half of his jail time being spent in home confinement pursuant to the guidelines. I told him that I had no objection to that approach but, in the interest of full disclosure, I did not believe that Mr. Epstein would be eligible because he will not be in Zone A or B.[117] This morning Jay Lefkowitz called and said that I was correct but, if we could get Mr. Epstein down to 14 months, then he thought he would be eligible.
>
> My response: have him plead to two separate Informations. On the first one he gets 12 months' imprisonment and on the second he gets

[116] FOIA requires disclosure of government records upon request unless an exemption applies permitting the government to withhold the requested records. *See* 5 U.S.C. § 552.

[117] Sentences falling within Zones A or B of the U.S. Sentencing Guidelines permit probation or confinement alternatives to imprisonment.

> twelve months, with six served in home confinement, to run consecutively.
>
> I just received an e-mail asking if Mr. Epstein could just do 12 months imprisonment instead.
>
> As you can see, Mr. Epstein is having second thoughts about doing jail time. I would like to send Jay Lefkowitz an e-mail stating that if we do not have a signed agreement by tomorrow at 5:00, negotiations will end. I have selected tomorrow at 5:00 because it gives them enough time to really negotiate an agreement if they are serious about it, and if not, it gives me one day before the Jewish holiday to get [prepared] for Tuesday . . . [September 25] , when I plan to [file charges], and it gives the office sufficient time to review the indictment package.
>
> Do you concur?

A few minutes later, the incoming West Palm Beach manager emailed Lourie, suggesting that Lourie "talk to Epstein and close the deal."[118]

Within moments, Lourie replied to the manager, with a copy to Villafaña, reporting that he had just spoken with Lefkowitz and agreed "to two fed[eral] obstruction[] charges (24 month cap) with nonbinding recommendation for 18 months. When [Epstein] gets out, he has to plead to state offenses, including against minor, registrable, and then take one year house arrest/community confinement." By reply email, Villafaña asked Lourie to call her, but there is no record of whether they spoke.

F. Defense Counsel Offers New Proposals Substantially Changing the Terms of the Federal Plea Agreement, which the USAO Rejects

Approximately an hour after Lourie's email reporting the deal he had reached with Lefkowitz, Lefkowitz sent Villafaña a revised draft plea agreement. Despite the agreement Lourie believed he and Lefkowitz had reached that morning, Lefkowitz's proposal would have resulted in a 16-month federal sentence followed by 8 months of supervised release served in the form of home detention. Lefkowitz also inserted a statement in his proposal explicitly prohibiting the USAO from requesting, initiating, or encouraging immigration authorities to institute immigration proceedings against two of Epstein's female assistants.

Villafaña circulated the defense's proposed plea agreement to Lourie and two other supervisors, and expressed frustration that the new defense version incorporated terms that were "completely different from what Jay just told Andy they would agree to." Villafaña also pointed out that the defense "wants us to recommend an improper calculation" of the sentencing guidelines

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[118] The manager told OPR that he probably meant this as a joke because in his view the continued back-and-forth communications with defense counsel "was ridiculous," and the only way to "get this deal done" might be to have a direct conversation with Epstein.

and had added language waiving the preparation of a presentence investigation (PSI) "so he can keep all of his information confidential. I have already told Jay that the PSI language . . . was unacceptable to our office." Of even greater significance, in a follow-up email, Villafaña noted that the defense had removed both the requirement that Epstein plead to a registrable offense and the entire provision relating to monetary damages under 18 U.S.C. § 2255.

In the afternoon, Villafaña circulated her own proposed "hybrid" plea agreement, first internally to the management team with a note stating that it "contains the 18/12 split that Jay and Andy agreed to," and then to Lefkowitz. Regarding the prosecution of other individuals, she included the following provision: "This agreement resolves the federal criminal liability of the defendant and any co-conspirators in the Southern District of Florida growing out of any criminal conduct by those persons known to the [USAO] as of the date of this plea agreement," including but not limited to the conspiracy to solicit minors to engage in prostitution.

In her email to Lefkowitz, transmitting the plea agreement, Villafaña wrote:

> Could you share the attached draft with your colleagues. It is in keeping with what Andy communicated to me was the operative "deal." The U.S. Attorney hasn't had a chance to review all of the language, but he agrees with it in principle.
>
> . . . .
>
> [The West Palm Beach manager] and I will both be available at 2:00. . . . One of my suggestions is going to be (again) that we all sit down together in the same room, including Barry [Krischer] and/or Lanna [Belohlavek], so we can hash out the still existing issues and get a signed document.

Villafaña also emailed Acosta directly, telling him she planned to meet with Epstein's attorneys to work on the plea agreement, and asking if Acosta would be available to provide final approval. Acosta replied, "I don't think I should be part of negotiations. I'd rather leave it to you if that's ok." Acosta told OPR that "absent truly exceptional circumstances," he believed it was important for him "to not get involved" in negotiations, and added, "You can meet, like I did in September, [to] reaffirm the position of the office, [and] back your AUSA, but ultimately, I think your trial lawyer needs discretion to do their job." Villafaña told OPR, however, that she did not understand Acosta to be giving her discretion to conduct the negotiations as she saw fit; rather, she believed Acosta did not want to engage in face-to-face negotiations because "he wanted to have an appearance of having sort of an arm's length from the deal."[119] Villafaña replied to Acosta's

[119] As noted throughout the Report, Villafaña's interpretation of her supervisors' motivations for their actions often differed from the supervisors' explanations for their actions. Because it involved subjective interpretations of individuals' motivations, OPR does not reach conclusions regarding the subjects' differing views but includes them as an indication of the communication issues that hindered the prosecution team. *See* Chapter Two, Part Three, Section V.E.

message, "That is fine. [The West Palm Beach manager] and I will nail everything down, we just want to get a final blessing."

Negotiations continued throughout the day on Wednesday, September 19, 2007, with Villafaña and Lefkowitz exchanging emails regarding the factual proffer for a plea and the scheduling of a meeting to finalize the plea agreement's terms. During that exchange, Villafaña made clear to Lefkowitz that the time for negotiating was reaching an end:

> I hate to have to be firm about this, but we need to wrap this up by Monday. I will not miss my [September 25 charging] date when this has dragged on for several weeks already and then, if things fall apart, be left in a less advantageous position than before the negotiations. I have had an 82-page pros memo and 53-page indictment sitting on the shelf since May to engage in these negotiations. There has to be an ending date, and that date is Monday.

Early that afternoon, Lourie—who was participating in the week's negotiations from his new post at the Department in Washington, D.C.—asked Villafaña to furnish him with the last draft of the plea agreement she had sent to defense counsel, and she provided him with the "18/12 split" draft she had sent to Lefkowitz the prior afternoon. After reviewing that draft, Lourie told Villafaña it was a "[g]ood job" but he questioned certain provisions, including whether the USAO's agreement to suspend the investigation and hold all legal process in abeyance should be in the plea agreement. Villafaña told Lourie that she had added that paragraph at the "insistence" of the defense, and opined, "I don't think it hurts us." Villafaña explained to OPR that she held this view because "Alex and people above me had already made the decision that if the case was resolved we weren't going to get the computer equipment."

At 3:44 p.m. that afternoon, Lefkowitz emailed a "redline" version of the federal plea agreement showing his new revisions, and noted that he was "also working on a deferred [*sic*] prosecution agreement because it may well be that we cannot reach agreement here." The defense redline version required Epstein to plead guilty to a federal information charging two misdemeanor counts of attempt to intentionally harass a person to prevent testimony, the pending state indictment charging solicitation of prostitution, and a state information charging one count of coercing a person to become a prostitute, in violation of Florida Statute § 796.04 (without regard to age). Neither of the proposed state offenses required sexual offender registration. Epstein would serve an 18-month sentence and a concurrent 60 months on probation on the state charges. The redline version again deleted the provisions relating to damages under 18 U.S.C. § 2255 and replaced it with the provision requiring creation of a trust administered by the state court. It retained language proposed by Villafaña, providing that the plea agreement "resolves the federal criminal liability of the defendant and any co-conspirators in the Southern District of Florida growing out of any criminal conduct by those persons known to the [USAO] as of the date of this plea agreement," but also re-inserted the provision promising not to prosecute Epstein's assistants and the statement prohibiting the USAO from requesting, initiating, or encouraging immigration proceedings. It also included a provision stating the government's agreement to forgo a presentence investigation and a promise by the government to suspend the investigation and withdraw all pending legal process.

G. Villafaña and Lourie Recommend Ending Negotiations, but Acosta Urges That They "Try to Work It Out"

In the late afternoon of Wednesday, September 19, 2007, Villafaña expressed her increasing frustration to her supervisors. She emailed the defense redline version of the plea agreement to Lourie and the incoming West Palm Beach manager, identifying all of the provisions she had "specifically discussed with [the defense team] and rejected, that they have re-inserted into the agreement." (Emphasis in original). Villafaña opined, "This is NOT good faith negotiations." Lourie responded that he would "reach out to Alex to discuss."

Lourie immediately emailed Acosta the following:

> I looked at the latest draft from Jay [Lefkowitz] and I must agree with Marie. Based on my own conversations with him, his draft is out of left field. He claims to orally agree to our terms and then sends us a document that is the opposite. I suggest we simply tell him that his counter offer is rejected and that we intend to move forward with our case.

Acosta replied:

> Why don't we just call him. Tell him
>
> 1. You agree, and then change things.
>
> 2. That's not acceptable, and is in bad faith. Stop it or we'll indict.
>
> 3. Try to work it out.
>
> It seems that we are close, and it[']s worth trying to overcome what has to be painfully . . . annoying negotiating tactics.

Acosta explained to OPR that he recognized,

> [t]his negotiation was a pain, but if it was the right position, the fact that you've got annoying counsel on the other side doesn't it make it less of a right position. You tell them stop being annoying, you try to work it out, and if not, then you indict.

In response to Acosta's instruction, Lourie responded, "Ok will do." He also forwarded to Acosta the latest version of the USAO draft "hybrid" plea agreement that Villafaña had sent to Lefkowitz the previous day, which Lourie had requested and obtained from Villafaña earlier that afternoon.

Meanwhile, Villafaña sent to Lourie and his successor West Palm Beach manager a draft message she proposed to send to Lefkowitz with her objections to the defense revisions, explaining, "I know that you keep saying he is going to plead, and he will plead if we cave on

everything, but I really do not think that Mr. Epstein is going to engage in serious negotiations until he sees the Indictment and shows up in mag [federal magistrate judge] court." She suggested charging Epstein on a federal conspiracy charge, and if he refused to plead to that offense, superseding with additional charges and going to trial. She complained that after seven weeks of negotiations, "we are just spinning our wheels." Her proposed email to Lefkowitz detailed all of the objectionable provisions in his draft, and concluded, "If you or your client insists on these, there can be no plea agreement."

H. Acosta Edits the Federal Plea Agreement, and Villafaña Sends a Final Version to the Defense

The next day, Thursday, September 20, 2007, Villafaña emailed Assistant State Attorney Belohlavek and informed her:

> Our deadline is Monday evening for a signed agreement and arraignment in the federal system. At this time, things don't look promising anyway, but I will keep you posted. In their latest draft, they changed what they agreed to plead to in the state from solicitation of minors for prostitution (a registrable offense) to forcing adults into prostitution (a non-registrable offense). We will not budge on this issue, so it is looking unlikely that we will reach a mutually acceptable agreement. If that changes, I will let you know.

Acosta sent Lourie "[s]ome thoughts" about the USAO version of the proposed "hybrid" federal plea agreement he had received from Lourie the evening before, commenting that "it seems very straightforward" and "we are not changing our standard charging language" for the defense.[120] Noting that the draft was prepared for his signature, Acosta told Lourie that he did not typically sign plea agreements and "this should not be the first," adding that the USAO "should only go forward if the trial team supports and signs this agreement."[121] Lourie forwarded the email to Villafaña with a transmittal message simply reading, "I think Alex's changes are all good ones. Please try to incorporate his suggestions, change the signature block to your name and send as final to Jay." Lourie also noted to Acosta and Villafaña that he believed the defense would want to go back to the initial offer of a state plea with a non-prosecution agreement. When Villafaña sent the revised plea agreement to Lefkowitz later that afternoon, she advised him that if the defense wanted to return to the original offer of a state plea only, the draft NPA she had sent to him on September 17, 2007, would control.

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[120] The USAO had standard federal plea agreement language, from which this "hybrid" plea agreement had substantially diverged.

[121] The standard procedure was for documents such as plea agreements to be signed by an AUSA under the name of the U.S. Attorney. In his OPR interview, Acosta further explained that wanted to give "the trial team" an opportunity to voice any objections because "if it's something they don't feel comfortable with we . . . shouldn't go forward with it."

I. The Defense Rejects the Federal Plea Agreement, Returns to the NPA "State-Only" Resolution, and Begins Opposing the Sexual Offender Registration Requirement

After having spent days negotiating the federal charges to be included in a plea agreement, by the afternoon of September 20, 2007, the defense rejected the federal plea option, and the parties resumed negotiations over the details of an NPA calling for Epstein to plead to only state charges. Through multiple emails and attempts (some successful) to speak directly with Acosta and other supervisors, defense attorneys vigorously fought the USAO's insistence that Epstein plead to a state charge requiring sexual offender registration.

After receiving the federal plea agreement, Lefkowitz spoke with Villafaña. She reported to Acosta and Lourie that Lefkowitz told her the defense was "back to doing the state-charges-only agreement" and wanted until the middle of the following week to work out the details, but that she had told defense counsel that "we need a signed agreement by tomorrow [Friday] or we are [filing charges] on Tuesday."

Lefkowitz emailed Villafaña about the draft NPA that she had sent to him, pointing out that it called for a 20-month jail sentence followed by 10 months of community control, rather than 18 months in jail and 12 under community control, and to ask if the USAO had "any flexibility" on the § 2255 procedure. Villafaña responded:

> The 18 and 12 has already been agreed to by our office, so that is not a problem. On the issue about 18 [U.S.C. §] 2255, we seem to be miles apart. Your most recent version not only had me binding the girls to a trust fund administered by the state court, but also promising that they will give up their [§] 2255 rights.
>
> I reviewed the e-mail that I sent you on Sunday with the comments on some of your other changes. In the context of a non-prosecution agreement, the office may be more willing to be specific about not pursuing charges against others. However, as I stated on Sunday, the Office cannot and will not bind Immigration.
>
> Also, your timetable will need to move up significantly. As [State Attorney] Barry [Krischer] said in our meeting last week, his office can put together a plea agreement, [and an] information, and get you all before the [state] judge on a change of plea within a day.

Villafaña alerted Krischer that evening that negotiations were "not going very well" and that defense counsel "changed their minds again, and they only want to plead to state charges, not concurrent state and federal." She added, "If we cannot reach . . . an agreement, then I need to [charge] the case on Tuesday [September 25] and I will not budge from that date."

In response to Villafaña's report of her conversation with Lefkowitz about the defense preference for a "state-charges-only agreement," Lourie alerted her that, "He wants to get out of [sexual offender] registration which we should not agree to." Lourie emailed Acosta:

> I think Jay [Lefkowitz] will try to talk you out of a registrable offense. Regardless of the merits of his argument, in order to get us down in time they made us an offer that included pleading to an offense against a minor (encouraging a minor into prostitution) and touted that we should be happy because it was registrable. For that reason alone, I don't think we should consider allowing them to come down from their own offer, either on this issue or on time of incarceration.

Lefkowitz attempted to reach Acosta that night, but Acosta directed Villafaña to return the call, and told Lourie that he did not want to open "a backchannel" with defense counsel. Lourie instructed Villafaña, "U can tell [J]ay that [A]lex will not agree to a nonregistration offense."

On the morning of Friday, September 21, 2007, Villafaña emailed Acosta informing him that "it looks like we will be [filing charges against] Mr. Epstein on Tuesday," reporting that the charging package was being reviewed by the West Palm Beach manager, and asking if anyone in the Miami office needed to review it. Villafaña also alerted Lourie that she had spoken that morning to Lefkowitz, who "was waffling" about Epstein pleading to a state charge that required sexual offender registration, and she noted that she would confer with Krischer and Belohlavek "to make sure the defense doesn't try to do an end run."

That same morning, Epstein attorney Sanchez, who had not been involved in negotiations for several weeks, emailed Sloman, advising, "[I] want to finalize the plea deal and there is only one issue outstanding and [I] do not believe that [A]lex has read all the defense submissions that would assist in his determination on this point . . . [U]pon resolution, we will be prepared to sign as soon as today." From his out-of-town vacation, Sloman forwarded the email to Acosta, who replied, "Enjo[y] vacation. Working with [M]arie on this." Sloman also forwarded Sanchez's email to Lourie and asked, "Do you know what she's talking about?" Lourie responded that Sanchez "has not been in any negotiations. Don't even engage with yet another cook."

J. The USAO Agrees Not to Criminally Charge "Potential Co-Conspirators"

Lefkowitz, in the meantime, sent Villafaña a revised draft NPA that proposed an 18-month sentence in the county jail, followed by 12 months of community control, and restored the provision for a trust fund for disbursement to an agreed-upon list of individuals "who seek reimbursement by filing suit pursuant to 18 U.S.C. § 2255." This defense draft retained the provision promising not to criminally charge Epstein's four female assistants and unnamed employees of the specific Epstein-owned corporate entity, but also extended the provision to "any potential co-conspirators" for any criminal charge arising from the ongoing federal investigation. This language had evolved from similar language that Villafaña had included in the USAO's earlier proposed draft federal plea agreement.[122] Lefkowitz also again included the sentence

[122] The language in the USAO's draft federal plea agreement stated, "This agreement resolves the federal criminal liability of the defendant and any co-conspirators in the Southern District of Florida growing out of any criminal conduct by those persons known to the [USAO] . . . ."

precluding the government from requesting, initiating, or recommending immigration proceedings against the two assistants who were foreign nationals.

At this point, Lefkowitz again sought to speak to Acosta, who replied by email: "I am happy to talk. My caveat is that in the middle of negotiations, u try to avoid[] undermining my staff by allowing 'interlocutor[]y' appeals so to speak so I'd want [M]arie on the call[.] I'll have her set something up."

Villafaña sent to Lefkowitz her own revised NPA, telling him it was her "attempt at combining our thoughts," but it had not "been approved by the office yet." She inserted solicitation of minors to engage in prostitution, a registrable offense, as the charge to which Epstein would plead guilty; proposed a joint recommendation for a 30-month sentence, divided into 18 months in the county jail and 12 months of community control; and amended the § 2255 provision.[123] Villafaña's revision retained the provision suspending the investigation and holding all legal process in abeyance, and she incorporated the non-prosecution provision while slightly altering it to apply to "any potential co-conspirator of Epstein, including" the four named assistants, and deleting mention of the corporate entity employees. Finally, Villafaña deleted mention of immigration proceedings, but advised in her transmittal email that "we have not and don't plan to ask immigration" proceedings to be initiated.[124]

Later that day, Villafaña alerted Lourie (who had arrived in Florida from Washington, D.C. early that afternoon) and the new West Palm Beach manager (copying her first-line supervisor and co-counsel) that she had included language that defense counsel had requested "regarding promises not to prosecute other people," and commented, "I don't think it hurts us." There is no documentation that Lourie, the West Palm Beach manager, or anyone else expressed disagreement with Villafaña's assessment. Rather, within a few minutes, Villafaña re-sent her email, adding that defense counsel was persisting in including an immigration waiver in the agreement, to which Lourie responded, "No way. We don't put that sort of thing in a plea agreement." Villafaña replied to Lourie, indicating she would pass that along to defense counsel and adding, "Any other thoughts?" When Lourie gave no further response, Villafaña informed defense counsel that Lourie had rejected the proposed immigration language.

OPR questioned the subjects about the USAO's agreement not to prosecute "any potential co-conspirators." Lourie did not recall why the USAO agreed to it, but he speculated that he left that provision in the NPA because he believed at the time that it benefited the government in some way. In particular, Lourie conjectured that the promise not to prosecute "any potential co-conspirators" protected victims who had recruited others and thus potentially were co-conspirators in Epstein's scheme. Lourie also told OPR, "I bet the answer was that we weren't going to charge" Epstein's accomplices, because Acosta "didn't really want to charge Epstein" in

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123 Villafaña noted that she had consulted with a USAO employee who was a "former corporate counsel from a hospital" about the § 2255 language, and thought that the revised language "addresses the concern about having an unlimited number of claimed victims, without me trying to bind girls who I do not represent."

124 Villafaña gave OPR an explanation similar to that given by the case agents—that an ICE Special Agent had been involved in the early stages of the federal investigation of Epstein, and Villafaña believed the agent knew two of Epstein's female assistants were foreign nationals and would have acted appropriately on that information. Villafaña also said that the USAO generally did not get involved in immigration issues.

federal court. Sloman similarly said that he had the impression that the non-prosecution provision was meant to protect named co-conspirators who were also victims, "in a sense," of Epstein's conduct. Although later press coverage of the Epstein case focused on Epstein's connection to prominent figures and suggested that the non-prosecution provision protected these individuals, Sloman told OPR that it never occurred to him that the reference to potential co-conspirators was directed toward any of the high-profile individuals who were at the time or subsequently linked with Epstein.[125] Acosta did not recall the provision or any discussions about it. He speculated that if he read the non-prosecution provision, he likely assumed that Villafaña and Lourie had "thought this through" and "addressed it for a reason." The West Palm Beach manager, who had only limited involvement at this stage, told OPR that the provision was "highly unusual," and he had "no clue" why the USAO agreed to it.

Villafaña told OPR that, apart from the women named in the NPA, the investigation had not developed evidence of "any other potential co-conspirators. So, . . . we wouldn't be prosecuting anybody else, so why not include it? . . . I just didn't think that there was anybody that it would cover." She conceded, however, that she "did not catch the fact that it could be read as broadly as people have since read it."

K. The USAO Rejects Defense Efforts to Eliminate the Sexual Offender Registration Requirement

On the afternoon of Friday, September 21, 2007, State Attorney Krischer informed Villafaña that Epstein's counsel had contacted him and Epstein was ready to agree "to all the terms" of the NPA—except for sexual offender registration. According to Krischer, defense counsel had proposed that registration be deferred, and that Epstein register only if state or federal law enforcement felt, at any point during his service of the sentence, that he needed to do so. Krischer noted that he had "reached out" to Acosta about this proposal but had not heard back from him. Villafaña responded, "I think Alex is calling you now." Villafaña told OPR that, to her knowledge, Acosta called Krischer to tell him that registration was not a negotiable term.[126]

Later that afternoon, Villafaña emailed Krischer for information about the amount of "gain time" Epstein would earn in state prison. Villafaña explained in her email that she wanted to include a provision in the NPA specifying that Epstein "will actually be in jail at least a certain number of days to make sure he doesn't try to 'convince' someone with the Florida prison authorities to let him out early." Krischer responded that under the proposal as it then stood, Epstein would serve 15 months. He also told Villafaña that a plea to a registrable offense would not prevent Epstein from serving his time "at the stockade"—the local minimum security detention facility.[127]

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[125] Sloman also pointed out that the NPA was not a "global resolution" and other co-conspirators could have been prosecuted "by any other [U.S. Attorney's] office in the country."

[126] Krischer told OPR that he did not recall meeting or having interactions with Acosta regarding the Epstein case or any other matter.

[127] The State Attorney concluded his email: "Glad we could get this worked out for reasons I won't put in writing. After this is resolved I would love to buy you a cup at Starbucks and have a conversation." Villafaña responded, "Sounds great." When asked about this exchange during her OPR interview, Villafaña said: "Everybody

At some point that day, Acosta spoke with Lefkowitz by phone regarding the need for Epstein to plead to a registrable offense. Throughout the weekend, with Villafaña's Monday deadline looming, defense counsel pressed hard to eliminate the sexual offender requirement. On Saturday, September 22, 2007, Sanchez sent a series of emails to Lourie. In the first, she provided details from a press report about a Florida public official who the previous day had pled guilty to child sex abuse charges and was sentenced to a term of probation. She noted that she "spoke to [M]att [Menchel]" and asked Lourie to call her. Two hours later she sent Lourie a second, lengthy email, strongly objecting to the registration requirement, and outlining "all arguments against registration [as a sexual offender] in this case." In this email, Sanchez claimed that there had been a "miscommunication" during the September 12, 2007 meeting, and that "we only agreed to the solicitation with minors because we believed and [Krischer] and [Belohlavek] confirmed it was NOT registrable." Sanchez complained that lifetime sexual offender registration was a "life sentence" that was "uncalled for," "does not make sense," and was "inappropriate" to impose "simply [because] the FBI wants it, in return for all there [*sic*] efforts." She listed numerous reasons why Epstein should not have to register, including his lack of a prior record or history of sexual offenses; the lack of any danger of recidivism; the ease with which he could be "tracked" without registering; and that it would be "virtually impossible to comply" with four separate state registration requirements. A few minutes later, Sanchez sent Lefcourt's phone number to Lourie "in case you want to speak to him directly."

In another email sent less than two hours later, Sanchez told Lourie she was writing again because "you are a very fair person. This resolution in the Epstein case is not reasonable. [I]t is a result of a misunderstanding at a meeting." She stated that Epstein's attorneys had "consistently emphasized their goal of 18 months in a federal camp" and "[e]veryone knew that a registerable offense precluded" a camp designation. Sanchez added, "Therefore it would have been wholly inconsistent with that primary goal of [Epstein's] safety to lightly concede to registration at that meeting." Sanchez concluded, "[I]mposing a life sentence on him is not something anyone will eventually be proud of. Please reconsider and help me get a fair result."

Lourie responded to none of the Sanchez emails, but he did reach out to Acosta for a phone conversation. By email late that night, at 10:26 p.m., Lefkowitz asked Lourie to phone him.

The next day, Lefkowitz emailed Acosta—with copies to Sloman, Lourie, and Villafaña—to "follow up on our conversation Friday," asking Acosta again to reconsider the requirement that Epstein plead to a registrable offense. Lefkowitz wrote that there had been a "misunderstanding" at the September 12, 2007 meeting:

> Before the meeting, Mr. Krischer and Ms. Belohlavek, a sex prosecutor for 13 years, told us that solicitation of a minor . . . is not a registerable offense. However, as it turned out, [it] is a registerable offense and our discussion at the meeting was based on a mistaken assumption. We suggest that Mr. Epstein enter two pleas—one to the Indictment and a second to a non-registerable charge.

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has offered to buy me a cup of coffee. I have had coffee with no one." Krischer told OPR that the "reasons" to which he referred related to the pressure he had been getting from Chief Reiter about the Epstein case.

Lefkowitz set forth arguments similar to those Sanchez had presented to Lourie, as to why registration "based on the facts alleged in this case . . . simply does not make sense." In the event that Acosta did not agree to their proposed charges, Lefkowitz offered as an alternative "to stipulate that the state offense" would "constitute a prior sexual offense for purposes of enhanced recidivist sentencing" should Epstein ever again commit a federal sex offense against minors. As Lefkowitz further argued, "By accepting this option, you would be substituting the certainty of recidivist sentencing for the humiliation of registration." Emails reflect that, early that afternoon, Acosta, Lourie, and Villafaña discussed the matter in a conference call.

Lefkowitz also sent a revised version of the NPA to Villafaña that omitted identification of the charge to which Epstein would plead guilty. Later that day, Lefkowitz emailed Acosta:

> I got a call from [M]arie who said you had rejected our proposal. Does that mean you are not even prepared to have [Epstein] commit now to plead to the registerable offense near the end of his 18 month sentence and then be sentenced to 12 month[s] community control for that charge? I thought that was exactly what you proposed [F]riday (although you wanted, but were not able, to do it with some kind of federal charge).
>
> But that still gives you a registerable sex offense, 30 months total, and 18 in jail.
>
> How can that not satisfy you—while still ensuring that [E]pstein is not unduly endangered in jail?

Acosta responded, "I do not mean to be difficult, but our negotiations must take place with the AUSAs assigned to the case." Acosta added that he had spoken with Lourie and Villafaña, and they had "discretion to proceed as they believe just and appropriate." Acosta copied Villafaña, and she emailed Acosta to thank him "for the support."

L. The Defense Adds a Confidentiality Clause

Throughout that Sunday evening, Lefkowitz had numerous email exchanges with Villafaña, and apparently a conference call with Lourie (who was returning to Washington, D.C.) and Villafaña. Later that evening, Lefkowitz sent Villafaña a new version of the NPA that, for the first time, included a confidentiality term:

> It is the intention of the parties to this Agreement that it not be disseminated or disclosed except pursuant to court order. In the event the Government must disclose this Agreement in response to a request pursuant to the Freedom of Information Act, the Government agrees to provide Epstein notice before the disclosure of this Agreement.

After making additional revisions, Villafaña sent this NPA to Acosta and Lourie as the "final" version, asking Acosta to let her know what he thought of it. Among her revisions, she changed the confidentiality provision to the following:

> The parties anticipate that this agreement will not be made part of any public record. If the United States receives a Freedom of Information Act request or any compulsory process commanding the disclosure of the agreement, it will provide notice to Epstein before making that disclosure.[128]

VII. SEPTEMBER 24, 2007: ACOSTA MAKES FINAL EDITS, AND THE NPA IS SIGNED

The contemporaneous emails show that Villafaña continued to update Acosta as the parties negotiated the final language and that Acosta reviewed and edited the NPA. Shortly after midnight on Monday, September 24, 2007, Acosta sent Villafaña "[s]mall edits" to the "final" NPA she had sent to him. Among his changes was language modifying provisions that appeared to require the State Attorney's Office or the state court to take specific actions, such as requiring that Epstein enter his guilty plea by a certain date. Acosta explained in his email, "I'm not comfortable with requiring the State Attorney to enter into a [joint sentencing] recommendation" or "requiring a State court to stick with our timeline" for entry of the guilty plea and sentencing. Accordingly, Acosta substituted language that required Epstein alone to make a binding sentencing recommendation to the state court, and required Epstein to use his "best efforts" to enter his guilty plea and be sentenced by the specified dates. Acosta also instructed Villafaña to restore a reference to Epstein's wish "to reach a global resolution of his state and federal criminal liabilities." Lourie, who had returned to the Department in Washington, D.C., had a phone conversation with Lefkowitz and sent additional comments on the final draft to Acosta and Villafaña. Villafaña sent a new revision, incorporating edits from Acosta and Lourie, to Lefkowitz later that morning.

On the afternoon of September 24, 2007, Villafaña circulated the new "final" version of the NPA to Acosta, Sloman, Lourie, and other supervisors, and asked Lefkowitz to send her the signed agreement. After Lefkowitz electronically transmitted to Villafaña a copy of the NPA signed by Epstein, she emailed her immediate supervisor and her co-counsel: "They have scanned and emailed the signed agreement. It is done."

In his transmittal email, Lefkowitz asked Villafaña to "[p]lease do whatever you can to keep this from becoming public." Villafaña responded:

> I have forwarded your message only to Alex, Andy, and [the West Palm Beach manager]. I don't anticipate it going any further than that. When I receive the originals, I will sign and return one copy to you. The other will be placed in the case file, which will be kept confidential since it also contains identifying information about the girls.
>
> When we reach an agreement about the attorney representative for the girls, we can discuss what I can tell him and the girls about the

[128] In commenting on OPR's draft report, Lourie observed that because the NPA contained names of uncharged co-conspirators and other protected information, the USAO would have a duty to redact the information before disclosing the NPA.

> agreement. I know that Andy promised Chief Reiter an update when a resolution was achieved. . . . [The West Palm Beach manager] is calling, but [he] knows not to tell Chief Reiter about the money issue, just about what crimes Mr. Epstein is pleading guilty to and the amount of time that has been agreed to. [He] also is telling Chief Reiter not to disclose the outcome to anyone.

OPR questioned Villafaña about this email. She explained that she generally kept confidential the terms of the resolution of any case. She understood that "the way that the [Epstein] case was resolved" needed to remain confidential, but the victims could be informed about what happened because by the NPA's terms, they needed to know what the agreement was about.

Villafaña emailed the West Palm Beach manager, asking him to tell PBPD Chief Reiter "the good news" but "leave out the part about damages," and explained that she wanted to meet with the victims herself to explain how the damages provision would work. Villafaña also told him that Lourie had asked that Reiter share information about the NPA only with the PBPD Detective who had led the state investigation of Epstein.[129] Villafaña forwarded to Acosta, Lourie, and the West Palm Beach manager Lefkowitz's email asking that the USAO try to keep the NPA from becoming public. Acosta responded that the agreement "already binds us not to make public except as required by law under [the Freedom of Information Act]," and asked, "[W]hat more does he want?" Villafaña replied, "My guess is that if we tell anyone else (like the police chief or FBI or the girls), that we ask them not to disclose." Soon thereafter, Acosta emailed Lourie, Villafaña, and the West Palm Beach manager to set up a call to discuss "who we tell and how much," adding, "Nice job with a difficult negotiation."

The final NPA, as signed by Epstein, his attorneys Lefcourt and Sanchez, and Villafaña, contained the following pertinent provisions:

Charges:	Epstein would plead guilty to the pending Palm Beach County indictment, plus one count of solicitation of minors to engage in prostitution, a registrable offense.
Sentence:	The parties would make a joint, binding recommendation for a 30-month sentence divided as follows: consecutive terms of 12 months and 6 months in the county jail, without opportunity for withholding adjudication or sentencing and without community control or probation, followed by 12 months of community control, consecutive.[130]
Damages:	As long as the identified victims proceeded exclusively under 18 U.S.C. § 2255, Epstein would not contest federal court jurisdiction or the victims' status as victims. The USAO would provide to Epstein a list of individuals

[129] The West Palm Beach manager told OPR that he called Chief Reiter, who was "fine" with the outcome.

[130] Withholding adjudication or sentencing referred to a special sentence in which the judge orders probation but does not formally convict the defendant of a criminal offense. *See* Fla. Stat. § 948.01 (2007).

it had identified as victims.[131] The USAO, with the good faith approval of Epstein's counsel, would select an attorney representative for the victims, whom Epstein would pay.

Timing: Epstein would make his best efforts to enter his guilty plea and be sentenced by October 26, 2007. The USAO had no objection to Epstein self-reporting to begin serving his sentence by January 4, 2008.

Immunity: The USAO would not initiate criminal charges against "any potential co-conspirator of Epstein," including four named personal assistants.

Other: Epstein was obligated to undertake discussions with the State Attorney's Office to ensure compliance with this agreement.

Epstein waived his right to appeal.

Epstein agreed that he would not be afforded any benefits with respect to gain time or other rights, opportunities, and benefits not available to any other inmate.

The federal investigation would be suspended and all pending legal process held in abeyance unless and until Epstein violated any term of the agreement. Evidence "requested by or directly related to" the pending legal process, "including certain computer equipment," would be kept inviolate until all the NPA terms had been satisfied.

Breach: The USAO would be required to notify Epstein of any alleged breach of the agreement within 90 days of the expiration of the term of home confinement, and would be required to initiate prosecution within 60 days thereafter.

Disclosure: The parties "anticipate[d]" that the agreement would not be made part of any public record, and if the USAO received a Freedom of Information Act request or compulsory process commanding disclosure of the agreement, it would provide notice to Epstein before making any disclosure.[132]

That evening, Lefkowitz emailed Lourie to express concern about the notification he understood would be given to Chief Reiter, stating, "I am very concerned about leaks unduly prejudicing Jeffrey [Epstein] in the media."[133] He added, "I have enjoyed working with you on

[131] The USAO had not informed the defense of the victims' identities at this point. The parties anticipated that the USAO would send Epstein's attorneys a list of victims when Epstein fulfilled his obligation under the NPA to enter his state guilty pleas.

[132] The final NPA is attached as Exhibit 3 to this Report.

[133] On October 3, 2007, the Miami FBI media officer notified the USAO that the *New York Post* had reported that federal authorities were not going to pursue federal charges against Epstein. According to the *Post*, Epstein would plead guilty to soliciting underage prostitutes, "in a deal that will send him to prison for about 18 months," followed by "a shorter period of house confinement," and, according to "sources," federal authorities had "agreed to drop their

this matter." Lourie responded with an assurance that the Reiter notification was only "so he does not find out about it in the paper," and he concluded: "I enjoyed it as well. Mr. Epstein was fortunate to have such excellent representation."

VIII. POST-NPA NEGOTIATIONS

Almost immediately after the NPA was signed, conflicts arose about its terms, and the difficult negotiation process began anew. The USAO quickly realized that there were numerous issues concerning the monetary damages provision that were not resolved in the NPA, and the parties differed in their interpretations of the § 2255 provision, in particular the role and duties of the attorney representative for the victims. As negotiations regarding the damages provision continued, the defense was able to delay having Epstein enter his guilty plea in state court.

A. September – October 2007: Sloman's Concerns about Selection of an Attorney Representative Lead to a Proposed NPA Addendum

The first controversy centered on the appointment of an attorney representative for the victims. Initially, Villafaña reached out to a private attorney who was one of several suggested to her for that role. Villafaña notified Lefkowitz that she was recommending the attorney to serve as the victims' representative and suggested a phone conference to discuss what information the USAO could disclose to the attorney about the case. Villafaña told Lefkowitz that she had never met the attorney, but he had been recommended by "a good friend in our appellate section" and by one of the district judges in Miami.[134] Over the next few days, Villafaña exchanged messages with the attorney about the possibility of his serving as the attorney representative. She also exchanged emails with Lefkowitz, passing along procedural questions raised by the attorney.

By this time, Lourie had fully transitioned to his detail at the Department's Criminal Division. Sloman, who had been on vacation during the week the NPA was finalized, returned to the office, reviewed the final agreement, and immediately expressed his disapproval of the provision authorizing the USAO to select an attorney representative for the victims, which he believed might raise the appearance of a conflict of interest. Instead, he proposed that a special master make the selection. Although evidently frustrated by Sloman's belated proposal, Villafaña conveyed to Lefkowitz the suggestion that a special master be appointed to select the attorney representative, rather than having the USAO make the selection.[135] She provided Lefkowitz with

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probe into possible federal criminal violations in exchange for the guilty plea to the new state charge, with the understanding that he will do prison time." Dan Mangan, "'Unhappy Ending' Plea Deal—Moneyman to Get Jail For Teen Sex Massages," *New York Post*, Oct. 1, 2007. *ABC News* later reported that federal charges "could carry more substantial prison time. Now, Epstein's high-powered lawyers, including Kenneth Starr, . . . may try to get him out of registering as a sex offender . . . ." Scott Michels, "Money Manager Said to Plan to Plead Guilty to Prostitution Charges: Jeffrey Epstein may serve about 18 months in prison for soliciting prostitutes," *ABC News*, Oct. 11, 2007.

[134] The "good friend" was an AUSA whom Villafaña was dating. The defense subsequently raised this as a misconduct issue, alleging that Villafaña was "closely associated" with the individual nominated for the victims' representative position.

[135] In a separate email to the proposed attorney representative, Villafaña commented, "[O]f course they tell me this now."

a proposal regarding the special master's responsibilities, along with a draft letter to send to the special master explaining the procedure for selecting an attorney representative.

Lefkowitz objected to this proposal in a letter to Villafaña, pointing out that the NPA did not provide for the appointment of a special master. More importantly, Lefkowitz used the discussion of the special master as an opening to press for other alterations to the language of the NPA or, at least, to its interpretation. Focusing on the attorney representative, Lefkowitz argued that the attorney's role should be viewed as limited to negotiating settlements and that the attorney was precluded from filing lawsuits on behalf of victims who could not reach a negotiated settlement with Epstein. Lefkowitz proposed:

> [T]he selected attorney should evaluate the claims of each identified individual, negotiate a total fund amount with Mr. Epstein, then distribute the monies based on the strength of each case. For those identified individuals who elect not to settle with Mr. Epstein, they may proceed on their own, but by doing so, they would not be suing under § 2255 as contemplated by [the NPA] and therefore may not continue to be represented by the selected attorney.

Lefkowitz also objected to Villafaña's draft letter to the special master, asserting that it was essential for the defense to participate in crafting a "mutually acceptable communication" to the victims. Going further, Lefkowitz claimed that any contact between the USAO and the victims about the § 2255 provision would violate the agreement's confidentiality provision. Lefkowitz admonished the government not to contact the victims "to inform them of the resolution of the case, including [the] appointment of the selected attorney and the settlement process."

Villafaña forwarded Lefkowitz's letter to Sloman, complaining that the defense interpretation of the § 2255 procedure violated the clear language of the NPA and asking, "Can I please just indict him [Epstein]?" Days later, Sanchez emailed Sloman, and then sent a follow-up letter, asking that Sloman "help resolve" the issue regarding the attorney representative's role, and arguing that Epstein had never intended by signing the NPA to promise to pay fees for the victims' civil lawsuits in the event a settlement could not be reached. When Villafaña explained to Sloman her views on Sanchez's arguments, Sloman responded, "I suggest that you communicate your proposal back to [Sanchez]. The more 'voices' they hear the more wedges they try to drive between us." Villafaña agreed, noting that "[t]here are so many of them over there, I am afraid we are getting triple-teamed."[136]

Villafaña sent Sanchez a letter regarding the roles of the special master and attorney representative. The next day, October 10, 2007, Lefkowitz sent a six-page letter to Acosta, as a "follow up to our conversation yesterday," expressing "serious disagreements" with Villafaña's view of the process for victims to claim § 2255 damages under the NPA. Lefkowitz reiterated the defense position that the attorney representative's role was meant to be limited to negotiating settlements for the victims, rather than pursuing litigation. Lefkowitz claimed that a requirement

[136] Villafaña also alerted Sloman that a newspaper was reporting that defense counsel was writing a letter to Acosta asking for reconsideration of the requirement that Epstein register as a sexual offender. Villafaña commented, "It appears they don't understand that a signed contract is binding."

that Epstein pay the victims' legal fees incurred from contested litigation would "trigger profound ethical problems," in that the attorney representative would have an incentive to reject settlement offers in order to incur more fees. In addition, Lefkowitz rejected Villafaña's view that Epstein had waived the right to challenge § 2255 liability as to victims who did not want to settle their claims, and contended that any such victims "will have to prove, among other things, that they are victims under the enumerated statutes." Finally, Lefkowitz again argued that the USAO should not discuss the settlement process with the victims who were to be identified as eligible for settlement under § 2255:

> Ms. Villafaña proposes that either she or federal agents will speak with the [victims] regarding the settlement process. We do not think it is the government's place to be co-counsel to the [victims], nor should the FBI be their personal investigators. Neither federal agents nor anyone from your Office should contact the [victims] to inform them of the resolution of the case, including appointment of the attorney representative and the settlement process. Not only would that violate the confidentiality of the Agreement, but Mr. Epstein also will have no control over what is communicated to the [victims] at this most critical stage. We believe it is essential that we participate in crafting a mutually acceptable communication to the [victims]. We further believe that communications between your Office or your case agents and the [victims] might well violate Rule 6(e)(2)(B) of the Federal Rules of Criminal Procedure. The powers of the federal grand jury should not, even in appearance, be utilized to advance the interests of a party to a civil lawsuit.[137]

Lefkowitz concluded, "I look forward to resolving these open issues with you during our 4:30 call today."[138]

Villafaña was at that time on sick leave, and Sloman and Acosta exchanged emails about crafting an addendum to the NPA to address the method of appointing an attorney representative and to articulate the representative's duties. The next day, October 11, 2007, Sloman exchanged emails with Lefkowitz about the text of a proposed addendum.

B. October 12, 2007: Acosta and Defense Attorney Lefkowitz Meet for Breakfast

On the morning after his scheduled afternoon phone call with Lefkowitz, Acosta exchanged emails with Lefkowitz, arranging to meet for breakfast the following day, on October 12, 2007, at a Marriott hotel in West Palm Beach. Contemporaneous records show that Acosta was previously scheduled to be in West Palm Beach for a press event on October 11 and to speak at the Palm Beach County Bench Bar conference the following midday, and that he stayed overnight at the Marriott.

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137 Federal Rule of Criminal Procedure 6(e)(2)(B) relates to secrecy of federal grand jury matters.

138 OPR did not locate any emails indicating what happened on the call.

However, as with Villafaña's publicly released emails to Lefkowitz, this meeting between Acosta and Lefkowitz drew criticism when the media learned of it during the CVRA litigation. It was seen either as further evidence of the USAO's willingness to meet with Epstein's attorneys while simultaneously ignoring the victims, or as a meeting at which Acosta made secret agreements with the defense.

Two letters written later in 2007 refer to the breakfast meeting. In a December 2007 letter to Sanchez, Acosta stated that he had "*sua sponte* proposed the Addendum to Mr. Lefkowitz at an October meeting in Palm Beach . . . . in an attempt to avoid what I foresaw would likely be a litigious selection process."[139] In an October 23, 2007 letter from Lefkowitz to Acosta, less than two weeks after the breakfast meeting, Lefkowitz represented that during the meeting, Acosta

> assured me that [the USAO] would not intervene with the State Attorney's Office regarding this matter; or contact any of the identified individuals, potential witnesses, or potential civil claimants and their respective counsel in this matter; and that neither [the USAO] nor the [FBI] would intervene regarding the sentence Mr. Epstein receives pursuant to a plea with the State, so long as the sentence does not violate state law.[140]

However, two days after receiving this letter, Acosta revised a response letter drafted by Sloman, adding the term "inaccurate" to describe Lefkowitz's claims that Acosta had promised not to intervene with the State Attorney's Office, contact individual witnesses or claimants, or intervene regarding Epstein's sentence.[141] The draft response stated, "[S]uch a promise equates to the imposition of a gag order. Our Office cannot and will not agree to this."[142]

Acosta told OPR that he did not remember the breakfast meeting, but he speculated that the meeting may have been prompted by defense complaints that Villafaña had recommended "her boyfriend's partner" to serve as attorney representative.[143] Acosta said that "the way this was reported [in the press] was that I negotiated [the NPA] over breakfast," which was inaccurate because the NPA had been signed weeks before the breakfast meeting.[144] When asked about

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[139] In fact, Sloman and Lefkowitz had been working on language for the Addendum before Acosta's breakfast meeting with Lefkowitz. It is possible that Acosta was not aware of Sloman's efforts or had forgotten about them when writing the December 7, 2007 letter.

[140] This letter is discussed further in the following section of this Report.

[141] OPR did not find evidence establishing that the response was ever sent.

[142] Sloman's initial draft response referred to a conversation the previous day in which Acosta had "clarified" Lefkowitz's claims about what Acosta had purportedly said in the October 12, 2007 breakfast meeting.

[143] As noted previously, the attorney whom Villafaña recommended was a friend of another AUSA whom Villafaña was then dating, but had no professional relationship with either Villafaña or the other AUSA.

[144] For example, the *Miami Herald*'s November 2018 investigative report stated that "on the morning of the breakfast meeting, a deal was struck—an extraordinary plea agreement that would conceal the full extent of Epstein's crimes and the number of people involved. . . . [T]he deal—called a non-prosecution agreement—essentially shut down an ongoing FBI probe . . . ." Julie K. Brown, "Perversion of Justice: How a future Trump cabinet member gave a serial sex abuser the deal of a lifetime," *Miami Herald*, Nov. 28, 2018. The NPA, however, was finalized and signed

Lefkowitz's description of their breakfast meeting discussion, Acosta told OPR that there were "several instances" in which Lefkowitz and other defense counsel mischaracterized something he or an AUSA said, in a way that was misleading.

Emails show that, immediately after the breakfast, Acosta phoned Sloman, who then emailed to Lefkowitz a revision to the Addendum language they had been negotiating and who also later reported to Villafaña that Lefkowitz's "suggested revision has been rejected." Other emails show that the parties continued to be at odds about the proposed language for the NPA addendum for several days after the breakfast meeting.

C. Acosta Agrees to the Defense Request to Postpone Epstein's Guilty Plea; the Parties Continue to Negotiate Issues concerning the Attorney Representative and Finally Reach Agreement on the NPA Addendum

A week after his breakfast meeting with Acosta, Lefkowitz—citing a scheduling conflict—sent Acosta an email seeking his agreement to postpone Epstein's entry of his guilty plea in state court from October 26, 2007, the date agreed to in the NPA, to November 20, 2007. In his email, Lefkowitz reported that the State Attorney's Office had agreed to the postponement, and he noted that Acosta had said during the breakfast meeting that he "didn't want to dictate a schedule to the state."[145] Acosta solicited input from Sloman, who later that day emailed Lefkowitz and agreed to the postponement.

With Lourie having departed from the USAO, Sloman became more involved in negotiating the NPA addendum than he had been in the negotiations leading to the NPA, and he quickly came up against the problem Villafaña and Lourie had faced: the defense attorneys continued to negotiate provisions to which they had seemingly already agreed. Between October 12 and 19, 2007, in a series of email exchanges and phone conversations, Acosta, Sloman, Villafaña, and Lefkowitz continued working on language for the NPA addendum addressing the process for selection of the attorney representative and describing which of the representative's activities Epstein would be required to reimburse. Although it appeared that progress was being made towards reaching agreement on the terms of an addendum, on October 19, 2007, Lefkowitz emailed Sloman identifying "areas of concern" with a proposal the USAO had made days before. Sloman forwarded this email to Acosta, noting that it "re-ploughs some of what we accomplished this week," and raised "unnecessary" issues. Sloman reported to Acosta that a victim in New York had filed a civil lawsuit against Epstein, and Villafaña was concerned that "this may be the real reason for the delay in the . . . plea. She thinks that [Epstein] . . . want[s] to knock that lawsuit out before the guilty plea to deter others." Sloman also alerted Acosta that newspaper reports indicated that Epstein had planted false stories in the press in an attempt to discredit the victims.

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almost three weeks before the breakfast meeting occurred. OPR discusses the breakfast meeting further in its analysis at Chapter Two, Part Three, Section IV.E.2.

[145] Assuming Acosta made the remark Lefkowitz attributed to him, it was consistent with the position Acosta had taken before the NPA was signed. As noted previously, during the NPA negotiations, Acosta had instructed Villafaña to omit language requiring the State Attorney's Office to take action by a certain date, because he was "not comfortable with requiring the State" to comply with a specific deadline. During his interview, Acosta told OPR that "we as federal prosecutors are not going to walk in and dictate to the state attorney."

On October 22, 2007, Sloman responded to the issues Lefkowitz had raised, rejecting some defense proposals but agreeing to modify certain language in the proposed addendum to "satisfy your concern."[146] Noting that the addendum and a revised letter to the special master were attached, Sloman ended by stating, "[T]his needs to be concluded. Alex and I believe that this is as far as we can go. Therefore, please advise me whether we have a deal no later than COB tomorrow . . . ."

Nonetheless, the next day, Lefkowitz sent Acosta a three-page letter reiterating the Epstein team's disagreements with the USAO's interpretation of the NPA. Lefkowitz noted, however, that Epstein had "every intention of honoring the terms of [the NPA] in good faith," and that the defense letter was not intended to be "a rescission or withdrawal from the terms of the [NPA]." Lefkowitz added:

> I also want to thank you for the commitment you made to me during our October 12 meeting in which you promised genuine finality with regard to this matter, and assured me that your Office would not intervene with the State Attorney's Office regarding this matter; or contact any of the identified individuals, potential witnesses, or potential civil claimants and their respective counsel in this matter; and that neither your Office nor the [FBI] would intervene regarding the sentence Mr. Epstein receives pursuant to a plea with the State, so long as that sentence does not violate state law. Indeed, so long as Mr. Epstein's sentence does not explicitly violate the terms of the Agreement, he is entitled to any type of sentence available to him, including but not limited to gain time and work release.

Sloman forwarded the letter to Villafaña, commenting, "Wait [until] you see this one." Villafaña replied:

> Welcome to my world. I love the way that they want to interpret this agreement.
>
> . . . .
>
> It also looks like they are planning to ask for and receive a sentence far lower than the one we agreed to. Has anyone talked to Barry [Krischer] about this? Maybe this is the real reason for the delay in entering the guilty plea? We also have to contact the victims to tell [them] about the outcome of the case and to advise them than an attorney will be contacting them regarding possible claims against Mr. Epstein. If we don't do that, it may be a violation of the Florida Bar Rules for the selected attorney to "cold call" the girls.

[146] The defense raised issues concerning the attorney representative, the statutory limit on damages, and inclusion of certain victims.

. . . .

> Why don't we agree to mutual recission [*sic*] and indict him?

Acosta also weighed in, sending both Villafaña and Sloman an email with a subject line that read "This has to stop," in which he stated:

> Just read the letter.
>
> 1. We specifically refused to include the provision saying that we would not communicate. If I recall the conference call, we told him we could not agree to a gag order using those words.
>
> 2. The purpose of the agreement was not an out of court settlement. Seems that they can't take no. Let's talk re how to proceed. I'm not sure we will ever agree on a letter [to the special master about how to select an attorney representative] at this point.

Notwithstanding Acosta's assessment and prediction, after Sloman sent to Lefkowitz a new draft addendum and they spoke by phone, the parties reached agreement on the addendum's terms.[147]

On October 25, 2007, Sloman sent a letter to the person whom the USAO had selected to serve as special master, outlining the special master's duties. A few days later, on October 29, 2007, Epstein and his attorneys Lefcourt and Sanchez signed the NPA addendum.[148] Villafaña's name was printed as the USAO representative, but at Villafaña's request, Sloman signed the addendum for her on behalf of the USAO.

Villafaña later emailed Sloman thanking him for "the advice and the pep talk," which apparently related to the defense attorneys' allegation of impropriety concerning her initial selection of the private attorney to assist the victims. Villafaña explained to Sloman:

> The funny thing is that I had never met (and still haven't met) or spoken to [the private attorney] before I asked him if he would be willing to take on this case. . . . But as soon as you mentioned the appearance problem, I saw where the problem would arise and agreed that the Special Master would be a safer route. I just worry that the defense's attacks on me could harm the victims.

Sloman responded that defense counsel had "put an . . . insidious spin" on Villafaña's role in proposing the private attorney, but Sloman added, "I hope that you understand that these ad hominem attacks against you do not diminish in our eyes what you and the agents have accomplished."

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147 Acosta and Villafaña were copied on this email.

148 The Addendum is attached as Exhibit 4 to this Report.

D. Epstein Further Delays His Guilty Plea

The addendum did not bring the case to conclusion. Instead, the matter entered a new, protracted phase, which involved the upper echelons of the Department of Justice. Despite the fact that Epstein and his attorneys had signed the NPA, they pursued a new strategy of appealing to senior Department managers with the goal of setting aside the NPA entirely. Although ultimately unsuccessful, the strategy delayed the entry of Epstein's guilty plea by months.

On October 29, 2007, Villafaña emailed Sloman, raising several issues that she wanted Sloman to address with Lefkowitz. Among other things, Villafaña pointed out that the NPA required Epstein to use his "best efforts" to comply with the agreement, but he had failed to comply with the timeline established by the NPA when he sought and obtained a plea hearing postponement from October 26 to November 20. Responding to Lefkowitz's attempts to limit the USAO's communications with various entities and individuals, Villafaña noted that the USAO needed to be able to communicate with the State Attorney's Office and the victims' attorney "to [e]nsure that Epstein is abiding by the terms of the agreement."

That same day, Assistant State Attorney Belohlavek informed Sloman that the state judge assigned to the case had scheduled Epstein's plea and sentence in early January 2008. Belohlavek assured Sloman that the "plea and sentence will definitely occur before the January 4th date that was agreed on by all for the sentencing."[149] Nonetheless, emails over the course of the next month show that the USAO, the State Attorney's Office, and defense counsel continued to communicate regarding the date of the guilty plea, with the USAO asserting that a proposed January 7, 2008 date for the entry of Epstein's guilty plea was "unacceptable," while the defense contended that Epstein had not agreed to any date. Finally, after multiple communications referring to various potential dates, on December 7, 2007, Epstein attorney Jack Goldberger issued a Notice of Hearing, setting the case for January 4, 2008.[150]

E. Epstein Seeks Departmental Review of the NPA's § 2255 Provision Relating to Monetary Damages for the Victims

With Epstein's plea hearing delayed, he launched a new effort to undermine the validity of the NPA, this time within the Department. On November 16, 2007, Epstein attorney Kenneth Starr called the office of Assistant Attorney General for the Criminal Division Alice Fisher and left a message that he was calling regarding Epstein.[151] At Fisher's request, Lourie, who in late September 2007 had begun serving his detail as Fisher's Principal Deputy and Chief of Staff, returned the call. Fisher told OPR that she had no recollection of this call, and Lourie also could

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149 The NPA had required Epstein's plea and sentencing to occur by October 26, 2007, but provided that Epstein could report to begin serving his sentence on January 4, 2008.

150 *State v. Epstein*, No. 2006-CF-9454, Notice of Hearing (Fifteenth Judicial Circuit, Dec. 7, 2007).

151 In a meeting with Acosta and Sloman on November 21, 2007, Lefkowitz informed them that Starr had placed a call to Fisher.

not recall for OPR the substance of his conversation with Starr, other than that it was likely about Epstein's wish to have the Department review the case.[152]

On November 28, 2007, Starr requested, by letter, a meeting with Fisher. In his letter, Starr argued that the USAO improperly had compelled Epstein to agree to pay civil damages under 18 U.S.C. § 2255 as part of a state-based resolution of a criminal case. On the same day, Lefkowitz emailed Sloman, complaining about the USAO's plan to notify victims about the § 2255 provision and alerting Sloman that Epstein's counsel were seeking a meeting with the Assistant Attorney General "to address what we believe is the unprecedented nature of the section 2255 component" of the NPA. After Lourie sent to Sloman a copy of the Starr letter, Sloman forwarded it to Villafaña, asking her to prepare a chronology of the plea negotiations and how the § 2255 provision evolved. Villafaña responded that she was "going through all of the ways in which they have tried to breach the agreement to convince you guys to let me indict."

In Washington, D.C., Lourie consulted with CEOS Chief Oosterbaan, asking for his thoughts on defense counsel's arguments. At the same time, at Lourie's request, Villafaña sent the NPA and its addendum to Lourie and Oosterbaan. Oosterbaan responded to Lourie that he was "not thrilled" about the NPA; described Epstein's conduct as unusually "egregious," particularly because of its serial nature; and observed that the NPA was "pretty advantageous for the defendant and not all that helpful to the victims." He opined, however, that the Assistant Attorney General would not and should not consider or address the NPA "other than to say that she agrees with it." During her OPR interview, Fisher did not recall reading Starr's letter or discussing it with Oosterbaan, but believed the comment about her "agree[ing] with it" referred to a federal prosecution of Epstein, which she believed was appropriate. She told OPR, however, that she "played no role in" the NPA and did not review or approve the agreement either before or after it was signed.

As set forth in more detail in Chapter Three of this Report, Villafaña planned to notify the victims about the NPA and its § 2255 provision, as well as about the state plea hearing, and she provided a draft of the notification letter to Lefkowitz for comments. On November 29, 2007, Lefkowitz sent Acosta a letter complaining about the draft notification to the victims. Lefkowitz asked the USAO to refrain from notifying the victims until after defense counsel met with Assistant Attorney General Fisher, which he anticipated would take place the following week. Internal emails indicate that Lourie contacted Oosterbaan about his availability for a meeting with Starr, but both Fisher and Lourie told OPR that such a meeting never took place, and OPR found no evidence that it did.

Acosta promptly responded to Lefkowitz by letter, directing him to raise his concerns about victim notification with Villafaña or Sloman. Acosta also addressed Epstein's evident efforts to stop the NPA from being enforced:

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[152] In a short email to Fisher, the next day, Lourie reported simply: "He was very nice. Kept me on the phone for [a] half hour talking about [P]epperdine," referring to the law school where Starr served as Dean.

> [S]ince the signing of the September 24th agreement, more than two months[] ago, it has become clear that several attorneys on your legal team are dissatisfied with that result.
>
> . . . .
>
> [You], Professor Dershowitz, former Solicitor [General] Starr, former United States Attorney Lewis, Ms. Sanchez and Messrs. Black, Goldberger and Lefcourt previously had the opportunity to review and raise objections to the terms of the Agreement. The defense team, however, after extensive negotiation, chose to adopt the Agreement. Since then counsel have objected to several steps taken by the U.S. Attorney's Office to effectuate the terms of the Agreement, in essence presenting collateral challenges to portions of the Agreement.
>
> It is not the intention of this Office ever to require a defendant to enter a plea against his wishes. Your client has the right to proceed to trial. If your client is dissatisfied with his Agreement, or believes that it is unlawful or unfair, we stand ready to unwind the Agreement.

In a separate, seven-page letter to Starr, with Villafaña's and Sloman's input, Acosta responded to the substance of Starr's November 28 letter to Assistant Attorney General Fisher. Fisher told OPR that she did not recall why Acosta, rather than her office, responded to the letter, but she conjectured that "probably I was trying to make sure that somebody responded since [the Criminal Division wasn't] going to respond."[153]

In his seven-page letter, sent to Starr on December 4, 2007, Acosta wrote:

> The Non-Prosecution Agreement entered into between this Office and Mr. Epstein responds to Mr. Epstein's desire to reach a global resolution of his state and federal criminal liability. Under this Agreement, this District has agreed to defer prosecution for enumerated sections of Title 18 in favor of prosecution by the State of Florida, provided . . . Mr. Epstein satisfies three general federal interests: (1) that Mr. Epstein plead guilty to a "registerable" offense; (2) that this plea include a binding recommendation for a sufficient term of imprisonment; and (3) that the Agreement not harm the interests of his victims.

Acosta explained in the letter that the USAO's intent was "to place the identified victims in the same position as they would have been had Mr. Epstein been convicted at trial. No more; no less." Acosta documented the USAO's understanding of the operation of the NPA's § 2255

[153] The USAO may have been asked to respond because Starr's letter raised issues that had not been previously raised with the USAO, and it would normally fall to the USAO to address them in the first instance.

provision, recounted the history of NPA negotiations, and described the post-signing efforts by Epstein's counsel to challenge portions of the NPA. Acosta's letter concluded:

> Although it happens rarely, I do not mind this Office's decision being appealed to Washington, and have previously directed our prosecutors to delay filings in this case to provide defense counsel with the option of appealing our decisions. Indeed, although I am confident in our prosecutors' evidence and legal analysis, I nonetheless directed them to consult with the subject matter experts in [CEOS] to confirm our interpretation of the law before approving their [charges]. I am thus surprised to read a letter addressed to Department Headquarters that raises issues that either have not been raised with this Office previously or that have been raised, and in fact resolved, in your client's favor.
>
> I am troubled, likewise, by the apparent lack of finality in this Agreement. The AUSAs who have been negotiating with defense counsel have for some time complained to me regarding the tactics used by the defense team. It appears to them that as soon as resolution is reached on one issue, defense counsel finds ways to challenge the resolution collaterally. My response thus far has been that defense counsel is doing its job to vigorously represent the client. That said, there must be closure on this matter. Some in our Office are deeply concerned that defense counsel will continue to mount collateral challenges to provisions of the Agreement, even after Mr. Epstein has entered his guilty plea and thus rendered the agreement difficult, if not impossible, to unwind.
>
> . . . .
>
> I would reiterate that it is not the intention of this Office ever to force the hand of a defendant to enter into an agreement against his wishes. Your client has the right to proceed to trial. Although time is of the essence . . . I am directing our prosecutors not to issue victim notification letters until this Friday . . . to provide you with time to review these options with your client. . . . We expect a written decision by [December 7, 2007] at 5 p.m., indicating whether the defense team wishes to reaffirm, or to unwind, the Agreement.

Acosta explained to OPR that he did not view his letter as "inviting" Departmental review, but he believed the Department had the "right" to address Epstein's concerns. Moreover, the USAO's only option at that time was to declare Epstein in breach of the NPA, which would have prompted litigation as to whether Epstein was, in fact, in breach. Acosta noted that defense counsel repeatedly proclaimed Epstein's intent to abide by the agreement, making any USAO effort to declare him in breach more difficult. In fact, the day after receiving Acosta's letter, Starr and Lefkowitz responded to Acosta (with copies to Sloman and Assitant Attorney General Fisher) that

the defense "[f]irst and foremost" reaffirmed the NPA and that Epstein "has no intention of unwinding the agreement."

On December 7, 2007—the deadline set by Acosta in his December 4, 2007 letter to Starr—the defense transmitted to the USAO a one-sentence "Affirmation" of the NPA and its addendum, signed by Epstein.[154]

F. Despite Affirming the NPA, Defense Counsel Intensify Their Challenges to It and Accuse Villafaña of Improper Conduct

1. December 7 and 11, 2007: Starr and Lefkowitz Send to Acosta Letters and "Ethics Opinions" Complaining about the Federal Investigation and Villafaña

On the same day that the defense team sent Epstein's "Affirmation" to the USAO, Starr and Lefkowitz sent to Acosta two "independent ethics opinions"—one authored by prominent criminal defense attorney and former U.S. Attorney Joe Whitley, which assessed purported improprieties in the federal investigation of Epstein, and the other, by a prominent retired federal judge and former U.S. Attorney, arguing against the NPA's use of the civil damages recovery provision under 18 U.S.C. § 2255 "as a proxy for traditional criminal restitution."

Days later, on December 11, 2007, Starr sent a letter to Acosta transmitting two lengthy submissions authored by Lefkowitz presenting substantive challenges to the NPA and to the "background and conduct of the investigation." These submissions repeated arguments previously raised by the defense but also asserted new issues. In one submission, 20 pages long, Lefkowitz addressed the "improper involvement" of federal authorities in the investigation and criticized Villafaña for a number of alleged improprieties, including having engaged in "unprecedented federal overreaching" by seeking to prosecute Epstein federally, "insist[ing]" that the State Attorney's Office "charge Mr. Epstein with violations of law and recommend a sentence that are significantly harsher than what the State deemed appropriate," and requiring that Epstein plead guilty to a registrable offense, a "harsh" condition that was "unwarranted."[155]

Lefkowitz also argued that the federal investigation relied upon a state investigation that was "tainted" by the lead PBPD Detective's misrepresentation of key facts in affidavits and interview summaries, leading the USAO to make its charging decision based on flawed information that "compromised the federal investigation." Finally, Lefkowitz criticized federal involvement in the state plea process as a violation of "the tenets of the Petite Policy." In a second, 13-page submission, Lefkowitz reiterated Epstein's complaints about the § 2255 component of the NPA, arguing, among other things, that federal prosecutors "should not be in the business of helping alleged victims of state crimes secure civil financial settlements."

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[154] The Affirmation read: "I, Jeffrey E. Epstein do hereby re-affirm the Non-Prosecution Agreement and Addendum to same dated October 30, 2007."

[155] Villafaña sent Lefkowitz a five-page letter responding to the accusations made against her personally.

Notwithstanding these voluminous submissions, Lefkowitz added that Epstein "unconditionally re-asserts his intention to fulfill and not seek to withdraw from or unwind" the NPA.

2. As a Result of the Starr and Lefkowitz Submissions, the New USAO Criminal Chief Begins a Full Review of the Evidence, and Acosta Agrees to Meet Again with Defense Counsel

After reviewing Starr's and Lefkowitz's letters, Sloman notified Villafaña that "in light of the recent Kirkland & Ellis correspondence" he had asked Robert Senior, who had succeeded Menchel as Chief of the USAO's Criminal Division, to review *de novo* the evidence underlying the proposed revised indictment, and Sloman asked Villafaña to provide Senior with all the state and FBI investigative materials.

In the meantime, Acosta agreed to meet with Starr and other Epstein defense attorneys to discuss the defense complaints raised in Lefkowitz's December 11, 2007 submissions.[156] The meeting took place in Miami on December 14, 2007. The defense team included Starr, Dershowitz, Lefcourt, and Boston attorney Martin Weinberg. The USAO side included Acosta, Sloman, Villafaña, and another senior AUSA, with the Miami FBI Special Agent in Charge and Assistant Special Agent in Charge also present. In addition to previously raised arguments, during this meeting, Epstein's attorneys raised a new argument—that the state charge to which Epstein had agreed to plead guilty did not apply to the facts of the case.

3. The Defense Notifies Acosta That It May Pursue a Department Review of the USAO's Actions

Shortly after the December 14, 2007 meeting, Lefkowitz notified Acosta that if the issues raised at the meeting could not be resolved promptly, the defense team may "have no alternative but to seek review in Washington." Acosta notified Assistant Attorney General Fisher that the defense team might make an appeal to her, and he asked her to grant such a request for review and "to in fact review this case in an expedited manner [in order] to preserve the January 4th plea date." Starr and Lefkowitz then sent to Acosta a lengthy letter, with numerous previously submitted defense submissions, reviewing issues discussed at the meeting, and advising that Epstein sought a "prompt, independent, expedited review" of the evidence by "you or someone you trust." The letter reiterated Epstein's position that his conduct did not amount to a registrable offense under state law or a violation of federal law, and with respect to the NPA's § 2255 provision, that it was "improper" to require Epstein to pay damages "to individuals who do nothing but simply assert a claim" under the statute.

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156 As Assistant Attorney General Fisher's Chief of Staff, Lourie had informed Starr that Fisher hoped Starr would speak to Acosta to "resolve the[] fairly narrow issues" raised in Starr's correspondence with Acosta. Acosta had the Starr and Lefkowitz submissions of December 11 forwarded to Fisher.

4. Acosta Attempts to Revise the NPA § 2255 Language concerning Monetary Damages, but the Defense Does Not Accept It

Acosta undertook to respond to defense counsel's continuing concern about the § 2255 provision. He sent to Deputy Assistant Attorney General Sigal Mandelker language that he proposed including in a revision to the NPA's § 2255 implementation section. Mandelker forwarded the language to her counterpart in the Civil Division, who responded to Mandelker and Acosta that he did not have "any insight" to offer. On December 19, 2007, after Acosta and Sloman had a phone conversation with Starr and Lefkowitz, Acosta sent to Sanchez a letter proposing to resolve "our disagreements over interpretation[]" by replacing the existing language of the NPA relating to § 2255 with a provision that would read:

> Any person, who while a minor, was a victim of a violation of an offense enumerated in Title 18, United States Code, Section 2255, will have the same rights to proceed under Section 2255 as she would have had, if Mr. Epstein [had] been tried federally and convicted of an enumerated offense. For purposes of implementing this paragraph, the United States shall provide Mr. Epstein's attorneys with a list of individuals whom it was prepared to name . . . as victims of an enumerated offense by Mr. Epstein. Any judicial authority interpreting this provision, including any authority determining which evidentiary burdens if any a plaintiff must meet, shall consider that it is the intent of the parties to place these identified victims in the same position as they would have been had Mr. Epstein been convicted at trial. No more; no less.

Acosta also noted that he had resisted his prosecutors' urging to declare the NPA breached by the defense delays.[157]

Lefkowitz responded by letter a few days later, suggesting that Acosta's proposal raised "several troubling questions" and that "the problem arises from the incongruity that exists when attempting to fit a federal civil remedies statute into a criminal plea agreement."[158] In a follow-up letter to Acosta, to address the USAO's concern that Epstein was intentionally delaying the entry of his guilty plea, Lefkowitz asserted that "any impediment to the resolution at issue is a direct cause of the disagreements between the parties," and that defense counsel had "at all times made and will continue to make sincere efforts to resolve and finalize issues as expeditiously as possible."

Acosta told OPR that despite this assurance from defense counsel, he was "increasingly frustrated" by Epstein's desire to take an "11th hour appeal" to the Department so soon before the

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[157] As described in detail in Chapter Three, Acosta's December 19, 2007 letter also addressed defense objections to notifying the victims about the NPA and the state plea.

[158] After Starr and Lefkowitz had another conversation with Acosta and Sloman, Lefkowitz sent a second letter to Acosta reiterating concerns with the § 2255 provision and asserting that the provision was "inherently flawed and becoming truly unmanageable." In the end, the defense team rejected Acosta's December 19, 2007 NPA modification letter.

scheduled January 4, 2008 plea hearing. As soon became apparent, Acosta was unable to achieve an expedited review so that Epstein could plead guilty and be sentenced by January 4, 2008, and the plea and sentencing date was rescheduled. On January 2, 2008, Sloman spoke with Assistant State Attorney Belohlavek, who confirmed that the change of plea hearing had been postponed. In an email reporting this to Acosta and Villafaña, Sloman said that Epstein's local defense attorney Goldberger had told Belohlavek the postponement was because the facts "did not fit the proposed state charge," and that Belohlavek told Sloman she agreed with that assessment.[159] The next day, Villafaña sent to Acosta and Sloman a local newspaper article reporting that Epstein's state plea hearing was reset for March and in exchange for it the federal authorities would drop their investigation of him. Acosta also sent to Sloman and Villafaña an email memorializing a statement made to him by Lefkowitz in a phone call that day: "'I [Lefkowitz] may have made a mistake 6 months ago. [Belohlavek] told us solicitation [is] not registrable. It turns out that the actual offense charged is.'"[160]

5. January 7, 2008: Acosta and Sloman Meet with Sanchez, Who Makes Additional Allegations of USAO Misconduct

On January 7, 2008, Acosta and Sloman met with defense attorney Sanchez at her request. According to meeting notes made by Sloman, among other things, Sanchez alleged that the USAO's media spokesperson had improperly disclosed details of the Epstein case to a national news reporter, and Sanchez "suggested that the USAO could avoid any potential ugliness in DC by agreeing to a watered-down resolution for Epstein." After Acosta excused himself to attend another meeting and Sloman refused to speak further with Sanchez "without a witness present," she left. Later that day, Acosta and Sloman spoke by phone with Starr, Lefkowitz, and Sanchez, who expressed concern about the "leak" to the news media, reiterated their objections to the NPA, and pressed for the "watered-down resolution," which they specified would mean allowing Epstein to plead to a charge of coercion instead of procurement, avoid serving time in jail, and not register as a sexual offender. A note in the margin of Sloman's handwritten notes of the conversation reads: "We're back to where we started in September."

That evening, Villafaña expressed concern that the delay in resolving the matter was affecting the USAO's ability to go forward with a prosecution should Epstein renege on his agreement, and she outlined for Acosta and Sloman the steps she proposed to take while Epstein was pursuing Departmental review. Those steps included re-establishing contact with victims, interviewing victims in New York and one victim who lived in a foreign country, making contact with "potential sources of information" in the Virgin Islands, and re-initiating proceedings to obtain Epstein's computers.

In the meantime, USAO Criminal Division Chief Robert Senior performed a "soup to nuts" review of the Epstein investigation, reviewing the indictment package and all of the evidence Villafaña had compiled. He told OPR that he could not recall the reason for his review, but opined

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[159] Belohlavek told OPR that she did not recall this incident, but she noted that the PBPD report did set forth facts supporting the charge of procurement of a minor.

[160] Although the meeting Lefkowitz had with Lourie, Villafaña, Krischer, and Belohlavek to discuss the state resolution was only four months prior, not six, Lefkowitz's reference was likely to the September 12, 2007 meeting.

that it was to establish whether, if the plea fell apart, he, as Chief, would agree "that we can go forward with" the charges. He did recall being concerned, after completing the review, that "we did not have . . . a lot of victims . . . lined up and ready to testify" and that some victims might "not be favorable for us." Nevertheless, he concluded that the proposed charges were sound, and he told Acosta that he would approve proceeding with a federal case.

6. Acosta Asks CEOS to Review the Evidence

Notwithstanding Senior's favorable review, Acosta and Sloman told Starr and Lefkowitz that they "appreciate[d]" that the defense wanted a "fresh face" to conduct a review, and noted that the Criminal Chief had not undertaken the "in-depth work associated with the issues raised by the defense." They told the defense team that Acosta had asked CEOS to "come on board" and that CEOS Chief Oosterbaan would designate an attorney having "a national perspective" to conduct a fresh review in light of the defense submissions. Oosterbaan assigned a CEOS Trial Attorney who Villafaña understood was to review the case and prepare for trial in the event Epstein did not "consummate" the NPA. The CEOS Trial Attorney traveled to Florida to review the case materials, and to meet with Villafaña to discuss the case and interview some of the victims. After one such meeting, Villafaña wrote to Acosta and Sloman:

> We just finished interviewing three of the girls. I wish you could have been there to see how much this has affected them.
>
> One girl broke down sobbing so that we had to stop the interview twice within a 20 minute span. She regained her composure enough to continue a short time, but she said that she was having nightmares about Epstein coming after her and she started to break down again, so we stopped the interview.
>
> The second girl . . . told us that she was very upset about the 18 month deal she had read about in the paper. She said that 18 months was nothing and that she had heard that the girls could get restitution, but she would rather not get any money and have Epstein spend a significant time in jail.
>
> . . . .
>
> These girls deserve so much better than they have received so far, and I hate feeling that there is nothing I can do to help them.[161]

The CEOS Trial Attorney had substantial experience prosecuting child exploitation cases. She told OPR that in her view, the victim witnesses in this case presented a number of challenges for a prosecution: some of the victims did not want to admit they had sexual contact with Epstein; some had recruited other victims to provide Epstein massages, and thus could have been charged as accomplices; some had "drug histories and . . . things like that"; some could appear to have been "complicit"; and there was no evidence of physical violence against the victims. She did not regard

[161] Villafaña added, "We have four more girls coming in tomorrow. Can I persuade you to attend?"

these victim issues as insurmountable but, based on these alone, the CEOS Trial Attorney considered a potential prosecution of Epstein to be a "crap shoot." In addition, she told OPR that there were novel legal issues in the case that also presented difficulties, although she believed these difficulties could be overcome. Shortly after the CEOS Trial Attorney met with the victims, however, "things just stopped" when Oosterbaan instructed her to cease her involvement in the case and CEOS engaged in the Criminal Division review sought by Epstein's defense team.

IX. FEBRUARY – JUNE 2008: THE DEPARTMENT'S REVIEW

Epstein's defense attorneys sought a broad review from the Department, one that would encompass the defense complaints about federal jurisdiction, specific terms in the NPA, and the various allegations of professional misconduct by USAO attorneys and other personnel. The Department, however, only reviewed the issue of federal jurisdiction and never reviewed the NPA or any specific provisions.[162] Nonetheless, the process took several months as the defense appealed first to CEOS and the Department's Criminal Division, and then to the Office of the Deputy Attorney General. The chart set forth on the following page shows the positions and relationships among the individuals in those offices involved in communicating with the USAO or defense beginning in November 2007 or in those offices' reviews, which continued through June 2008.

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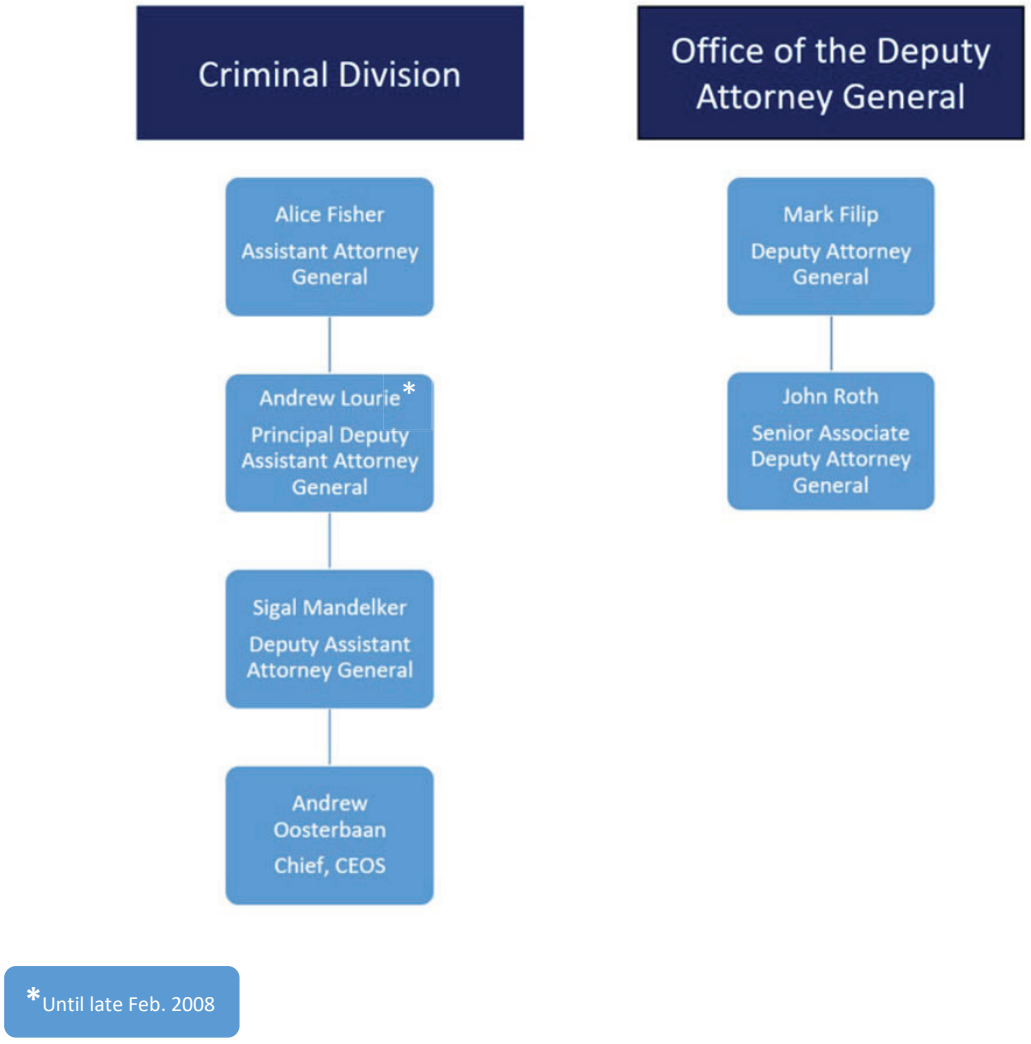
[162] On February 28, 2008, USAO Criminal Division Chief Senior sent to the Civil Rights Division written notification of the USAO's "ongoing investigation of a child exploitation matter" involving Epstein and others "that may result in charges of violations of 18 U.S.C. § 1591." USAM § 8-3.120 required a U.S. Attorney to notify the Civil Rights Division, in writing, "[a]t the outset of a criminal investigation . . . that may implicate federal criminal civil rights statutes, . . . and in no event later than ten days before the commencement of the examination of witnesses before a grand jury." The provision also required notification to CEOS in cases involving sex trafficking of minors. The written notification was to identify the targets of the investigation, the factual allegations to be investigated, the statutes which may have been violated, the U.S. Attorney's assessment of the significance of the case, whether the case was of "national interest," and the U.S. Attorney's proposed staffing of the matter.

Villafaña became aware of this requirement in late February 2008, and she prepared a written notification that was edited by Sloman, who discussed it with Acosta. After briefly summarizing the facts, Senior advised:

> The Office anticipates charges of violations of Title 18, United States Code, Sections 371, 2422, 2423, and 1591. The investigation of the case by the City of Palm Beach Police Department has resulted in press coverage because of the titillating nature of the facts, but we see this case as similar to other "child prostitution" cases charged by our office, and not a matter of "national interest" as defined by the U.S. Attorney's Manual.

In the notification, Senior stated that CEOS "has been involved and is currently reviewing the matter," he anticipated the case would be staffed by USAO and Department personnel, and "[i]f we determine that the case should be [charged], a copy [of the charging document] will be forwarded to you." OPR did not locate a response from the Civil Rights Division to the notification.



A. February – May 15, 2008: Review by CEOS and the Criminal Division

On February 21, 2008, soon after the CEOS Trial Attorney met with victims, Oosterbaan spoke with Lefkowitz about CEOS's role. In a subsequent email to Villafaña, Sloman, and Senior, Oosterbaan explained:

> I told [Lefkowitz] that all I want to do is help the process move forward, and if they think we best help the process by taking a fresh and objective look at the case and their arguments [then] that is what I want to do. I told him that if that's what they want – if that is what will help the process to move forward – then I don't think it's advisable for CEOS to partner with the USAO on the case. He wants to think about that (and probably talk to his co-counsel about

> whether it is better to have us partnered in the case or just serve a review function) and he said he'd get back to me later today.

Oosterbaan told OPR that this email reflects that he likely told Acosta that he intended to limit CEOS's role to review only, and Acosta asked him to "make sure the defense is okay with that," to preempt a possible defense complaint about CEOS's involvement in the review. Oosterbaan explained to OPR that "the defense ke[pt] bringing up new arguments and new problems and [the USAO was saying] look if we're going to do this, if you've got a problem with it, tell us now."

By February 25, 2008, Lefkowitz told Oosterbaan, who informed Sloman, that the CEOS role should be "review only." Lourie had just then left the Department to enter private practice, and Oosterbaan continued to keep his direct supervisor, Deputy Assistant Attorney General Mandelker, informed of the defense team contacts. Sloman emailed Lefkowitz that CEOS was "ready to proceed immediately" with a review of the matter. Sloman advised Lefkowitz that "in the event CEOS decides that a federal prosecution should not be undertaken against Mr. Epstein, this Office will close its investigation," but that, "should CEOS disagree with Mr. Epstein's position, Mr. Epstein shall have one week to abide by [the NPA]." Sloman forwarded this email to Villafaña, who responded, "Why would we possibly let him keep the same deal after all he has put us through? And after we have discovered 6 new girls . . . ."

The defense soon signaled that the CEOS review would not end Epstein's requests for the Department's involvement. On February 29, 2008, Lefkowitz requested a defense meeting with Oosterbaan on March 12, 2008.[163] Starr spoke to Assistant Attorney General Fisher and "made it clear that [the defense team would] want an audience with her if [CEOS] decid[ed] to support the prosecution." On March 6, 2008, Acosta alerted Sloman and Oosterbaan that Starr and Lefkowitz had called him to express "concern" about Oosterbaan's participation in the case, and indicated that "they may ask for more senior involvement." Acosta "informed them that they certainly had the right to ask whomever they wanted for whatever they thought appropriate, and that whatever process would be given them was up to whomever they asked."

The next day, Lefkowitz followed up with Acosta in an email:

> We appreciate that you will afford us as much time as Main Justice determines is appropriate for it to conduct a review of this matter. As you have suggested, we will initiate that review process with Drew Oosterbaan, and engage in a discussion with him about all of the facts and circumstances, as well as the legal and policy issues associated with this case. . . . However, due to our misgivings (engendered because Drew has told us that he sees himself as a prosecutor and has already made clear he would be ready and willing to prosecute this case himself[)] we may well find it necessary to

[163] The defense team meeting with CEOS was originally to be set for late January, but never got scheduled for that time. On February 25, Sloman informed Lefkowitz that the USAO was "very concerned about additional delays" in the Departmental review process, but would agree to a short extension of the March 3 deadline "to provide CEOS time to engage in a thorough review."

> appeal an adverse determination by him within the DOJ. Ken [Starr] and I appreciate that you understand this and have no objection to our seeking appellate review within DOJ.

Starr, Lefkowitz, and Martin Weinberg attended the March 12, 2008 meeting, as well as the former Principal Deputy Chief of CEOS, who had joined the Epstein defense team. Oosterbaan, Mandelker, and a current CEOS Deputy Chief represented the Department. The current CEOS Deputy Chief told OPR that it was primarily a "listening session" with Starr doing most of the presentation. Oosterbaan told OPR that he recalled "some back and forth" because the defense team was saying "some outrageous things." Both Oosterbaan and his Deputy Chief were disturbed that the former CEOS Principal Deputy Chief, who had been an aggressive advocate for child exploitation prosecutions, was supporting the defense position, although according to the CEOS Deputy Chief, the former Principal Deputy Chief gave only a "weak pitch" that was not effective.

After the meeting, Starr and Lefkowitz made multiple written submissions to the Criminal Division. One submission provided a lengthy list of USAO actions that "have caused us serious concern," including the following:

> "Federal involvement in a state criminal prosecution without any communication with state authorities";[164]
>
> the issuance of legal process and document requests for items that "had no connection to the conduct at issue";
>
> the nomination "of an individual closely associated with one of the Assistant United States Attorneys involved in this case" to serve as the victims' attorney representative;
>
> the "insistence" on a victim notification letter inviting the victims to make sworn statements at Epstein's sentencing; and
>
> the purported existence of a "relationship" between Sloman and a law firm representing several of the alleged victims in civil suits against Epstein.[165]

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[164] This complaint appeared to be at odds with Villafaña's understanding that the defense objected to USAO communications with the state authorities. In November 2007, Sloman noted to Lefkowitz, "Your recent correspondence attempting to restrict our Office from communicating with the State Attorney's Office . . . raises concern." In a March 2008 email reporting to CEOS about the state case, Villafaña noted that she did not know whether a state "misdemeanor deal [was] back on the table because the defense demanded that we have no contact with the State Attorney's Office, so I haven't spoken with the [Assistant State Attorney] in over 6 months." Villafaña later reported to Acosta and Sloman that when Krischer complained to her that the USAO had not been communicating with him, she explained to Krischer that "it was the defense who were blocking the channels of communication."

[165] In approximately 2001, Sloman briefly left the USAO and for a few months was in private practice with a Miami attorney, whose practice specialized in plaintiffs' sexual abuse claims. During 2007-2008, the attorney

In another letter, Starr renewed the defense accusation that the USAO improperly disclosed information about the case to the media, and accused Sloman and Villafaña of "encouraging civil litigation" against Epstein. Finally, in a letter to Assistant Attorney General Fisher on May 14, 2008, Starr thanked her for having spoken with him the previous day, reiterated the defense team's various complaints, and asked her to meet with him, Lefkowitz, and Whitley.

Meanwhile, Oosterbaan's Deputy Chief drafted a decision letter to be sent from Oosterbaan to Lefkowitz, and over the course of several weeks, it was reviewed by and received input from Deputy Assistant Attorney General Mandelker and Assistant Attorney General Fisher, as well as the Criminal Division's Appellate Section (regarding certain legal issues) and Office of Enforcement Operations (regarding the Petite policy). Oosterbaan told OPR that, notwithstanding the defense submissions on a wide variety of issues and complaints, CEOS's review was limited to determining whether there was a basis for a federal prosecution of Epstein.

Oosterbaan's letter, sent to Lefkowitz on May 15, 2008, notified the defense team that CEOS had completed its independent evaluation of whether prosecution of Epstein for federal criminal violations "would contradict criminal enforcement policy interests." The letter specified that CEOS's review addressed the "narrow question" of whether a legitimate basis existed for a federal prosecution, and that CEOS did not conduct a *de novo* review of the facts, analyze issues relating to federal statutes that did not pertain to child exploitation, or review the terms of the NPA or the prosecutorial misconduct allegations. The letter stated that based on its examination of the material relevant to its limited review of the matter, CEOS had concluded that "federal prosecution in this case would not be improper or inappropriate" and that Acosta "could properly use his discretion to authorize prosecution in this case."

On May 19, 2008, Lefkowitz reached out to Acosta to request a meeting and specifically asked that Acosta "not shunt me off to one of your staff." Lefkowitz made several points in support of the request for a meeting: (1) CEOS's letter acknowledged that federal prosecution of Epstein would involve a "novel application" of relevant federal statutes;[166] (2) CEOS's conclusion that federal prosecution would not be "an abuse of discretion" was "hardly an endorsement" of the case;[167] (3) CEOS did not address Epstein's prosecutorial misconduct allegations; and (4) "critical new evidence," in the form of recent defense counsel depositions of victims confirmed "that

represented Epstein victims. The Epstein defense team alleged in the letter that Sloman's past association with the attorney caused Sloman to take actions to favor victims' potential civil lawsuits against Epstein.

[166] Oosterbaan's letter stated, "Mr. Acosta can soundly exercise his authority to decide to pursue a prosecution even though it might involve a novel application of a federal statute." This statement referred to a defense argument based on a prior Departmental expression of concern about a Congressional proposal to expand federal law to "adult prostitution where no force, fraud or coercion was used." Oosterbaan stated that "the Department's efforts are properly focused on the commercial sexual exploitation of children"—even if wholly local—and "the exploitation of adults through force, fraud, or coercion." He then observed that the fact "that a prosecution of Mr. Epstein might not look precisely like the cases that came before it is not dispositive."

[167] Oosterbaan began his letter, however, by making it clear that CEOS had considered "the narrow question as to whether there is a legitimate basis for the U.S. Attorney's Office to proceed with a federal prosecution of Mr. Epstein."

federal prosecution is not appropriate in this case."[168] Lefkowitz alluded to the possibility of seeking further review of the matter by the Deputy Attorney General or Attorney General, should the defense be unable to "resolve this matter directly with" Acosta.

Acosta declined the request to respond personally and directed Lefkowitz to communicate with the "trial team." That same day, Sloman sent Lefkowitz a letter asking that all further communication about the case be made to Villafaña or her immediate supervisor, and reiterating that Acosta would not respond personally to counsel's email or calls. Sloman noted that the USAO had "bent over backwards to exhaustively consider and re-consider" Epstein's objections, but "these objections have finally been exhausted." Sloman advised that the USAO would terminate the NPA unless Epstein complied with all of its terms by the close of business on June 2, 2008.

B. May – June 23, 2008: Review by the Office of the Deputy Attorney General

Also on May 19, 2008, Starr and Whitley co-authored a letter to Deputy Attorney General Mark Filip asking for review "of the federal involvement in a quintessentially state matter."[169] In the letter, they acknowledged that CEOS had recently completed "a very limited review" of the Epstein case, but contended that "full review of all the facts is urgently needed at senior levels of the Justice Department." They argued that federal prosecution of Epstein was "unwarranted," and that "the irregularity of conduct by prosecutors and the unorthodox terms of the [NPA] are beyond any reasonable interpretation of the scope of a prosecutor's responsibilities." They followed up with a second letter on May 27, 2008, in which they asserted "the bedrock need for integrity in the enforcement of federal criminal laws" and "the profound questions raised by the unprecedented extension of federal laws . . . to a prominent public figure who has close ties to President Clinton" required Departmental review. On this latter point, they argued that Epstein "entered the public arena only by virtue of his close personal association with former President Bill Clinton," and that there was "little doubt" that the USAO "never would have contemplated a prosecution in this case if Mr. Epstein were just another 'John.'" This was the first defense submission mentioning Epstein's connection to President Clinton and raising the insinuation that the federal involvement in the investigation was due to politics.

In the May 27, 2008 letter to the Deputy Attorney General, Starr and Whitley used the existing June 2, 2008 deadline for the entry of Epstein's guilty plea to argue that it made the need for review of the case "all the more exigent." John Roth, a Senior Associate Deputy Attorney General who was handling the matter, instructed the USAO to rescind the deadline, and on May 28, 2008, Sloman notified Lefkowitz that the USAO had postponed the deadline pending completion of the review by the Deputy Attorney General's office.[170] Meanwhile, the Criminal

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[168] Under Florida Rule of Criminal Procedure 3.220, defendants are permitted to depose victims, and Epstein's counsel utilized that procedure aggressively and expansively to conduct sworn interviews of multiple victims, including victims who were not part of the state prosecution, to learn information about the federal investigation.

[169] In addition to having served as U.S. Attorney in two different districts, Whitley had served as Acting Associate Attorney General, the Department's third-highest position.

[170] On May 28, 2008, Attorney General Mukasey was in Miami for unrelated events and had lunch at the USAO with Acosta and other senior managers. OPR found no indication that the Epstein matter was discussed.

Division forwarded to Roth the prior defense submissions, describing them as "an enormous amount of material" regarding the Epstein matter. On June 3, 2008, Sloman sent to Roth a lengthy letter from Sloman to the Deputy Attorney General, recounting in detail the history of negotiations with Epstein's counsel culminating in the NPA, and addressing Epstein's claims of professional misconduct. Among the documents submitted with the letter were the prosecution memorandum, one of the proposed charging documents, and the NPA with its addendum and Acosta's December 19, 2007 letter to Sanchez.

As the review was ongoing in the Office of the Deputy Attorney General, State Attorney Krischer mentioned to the USAO's West Palm Beach manager that Krischer and Epstein's local defense attorney Jack Goldberger had arrived at a resolution of Epstein's case that would involve a 90-day jail term, but Krischer provided no further information. Upon learning of this, Villafaña wrote to her immediate supervisor: "Please tell me that you are joking. Maybe we should throw him [Epstein] a party and tell him we are sorry to have bothered him." Villafaña and her immediate supervisor later had phone and email exchanges with Krischer and with Epstein's local counsel to insist that the state plea comply with the terms of the NPA, or "we will consider it a breach of the agreement and proceed accordingly."[171]

Deputy Attorney General Filip told OPR he had never heard of Epstein before receiving Starr's letter. Following the office's standard protocol, Starr's letter was handled by John Roth, an experienced senior federal prosecutor who had served some years before as an AUSA in the USAO. Roth also told OPR that he had never before heard of Epstein. Roth explained to OPR that he did not conduct an independent investigation, interview witnesses, or meet with Epstein's counsel, and instead limited his review to written materials submitted by Epstein's attorneys and by Sloman to the Deputy Attorney General's office, as well as materials that the defense team and the USAO had previously provided to CEOS and the Criminal Division front office, and that CEOS furnished to him. Roth discussed the matter with two senior staff colleagues, as well as with the Deputy Attorney General, who also reviewed the submissions.

Roth told OPR that it was his understanding that Epstein had reneged on the NPA, and because he believed the NPA was a "dead letter," he did not review the terms of the agreement or ratify it *post hoc*. On the other hand, Deputy Attorney General Filip told OPR he understood that the NPA was still in effect and that Epstein was trying to undermine the federal jurisdictional basis for the agreement. Apart from addressing Epstein's federalism arguments, however, Deputy Attorney General Filip did not believe it was the "mission" of the Office of the Deputy Attorney General to review the Epstein case *de novo* or to examine the NPA's terms or determine whether the NPA reached the "right balance" between state and federal punishment. He told OPR, "[W]e heard an appeal. . . . [Epstein] wanted a meeting to argue for relief. We didn't give him a meeting and we didn't give him [any] relief." Deputy Attorney General Filip told OPR that no one in his office who looked at Epstein's arguments "felt that it was a sympathetic appeal." In particular, he told OPR that defense counsel's argument that there was no basis for a federal prosecution was "ludicrous," and the assertion that the USAO's investigation of Epstein was politically motivated "just seemed unserious."

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171 Villafaña urged Sloman, "Someone really needs to talk to Barry."

On Monday, June 23, 2008, Roth sent a brief letter to Starr and Lefkowitz informing them that the office had "completed a thorough review" of the USAO's handling of the Epstein matter and did not believe intervention by the Deputy Attorney General was warranted in view of the "considerable discretion" vested by the Department in U.S. Attorneys. He added, "Even if we were to substitute our judgment for that of the U.S. Attorney, we believe that federal prosecution of this case is appropriate."

Immediately after receiving a copy of Roth's letter, Villafaña notified defense counsel that Epstein would have until close of business on Monday, June 30, 2008, to comply with the NPA by entering his guilty plea, being sentenced, and surrendering to begin serving his sentence. On June 26, 2008, Roth alerted the Office of the Attorney General that Epstein's counsel might try to contact the Attorney General to request additional review and urged the Attorney General not to take defense counsel's calls. Roth told OPR that he was concerned that Epstein's team would try to take a further appeal in order to delay resolution of the case.

Meanwhile, Starr sent a concluding email to Acosta, acknowledging they had reached "the end of a long and arduous road" and adding, "While I am obviously very unhappy at what I believe is the government's treatment of my client, a man whom I have come to deeply admire, I recognize that we have filed and argued our 'appellate motions' and lost. . . . I would like to have . . . some closure with you on this matter so that in the years to come, neither of us will harbor any ill will over the matter."

X. JUNE 2008 – JUNE 2009: EPSTEIN ENTERS HIS PLEAS AND SERVES HIS CUSTODIAL SENTENCE

On Friday, June 27, 2008, Villafaña renewed her requests to Epstein's local attorneys Goldberger and Black for a copy of the state plea agreement reached with the State Attorney's Office, noting that their failure to provide it was a material breach of the NPA. After receiving and reviewing the plea agreement form, which was not yet signed, Villafaña sent another letter to Goldberger and Black, informing them that the proposed sentencing provision did not comply with the requirements of the NPA. Specifically, as written, the plea agreement called for a sentence of 12 months in "the Palm Beach County Detention Facility," followed consecutively by "18 months Community Control" with a special condition that the defendant serve "the first 6 months [of community control] in the Palm Beach County Detention Facility." Villafaña objected to the community control provision, reminding Goldberger and Black that the NPA required Epstein to "make a binding recommendation of eighteen months *imprisonment*, which means confinement twenty-four hours a day at the County Jail." In a subsequent email to Sloman, Villafaña recounted that she had spoken about the issue with Goldberger, who "'swore' that Epstein would be in custody 24-hours-a-day during the community confinement portion of his sentence." Villafaña added that Goldberger "let it slip that Epstein would not be at the jail, he would be at the stockade . . . . Since we specifically discussed this at the meeting with [the State Attorney] months ago that Epstein would be at [the jail], this certainly violates the spirit of the [NPA] agreement."[172] Villafaña told Sloman, "[S]omething smells very bad."

[172] The Main Detention Center for Palm Beach County is a facility housing maximum, medium, and minimum custody adult males, as well as juvenile and special population male and female inmates. *See*

The next day, Villafaña asked Goldberger to change the plea agreement by inserting the word "imprisoned" after "6 months," and Goldberger agreed to do so. Villafaña, however, did not ask that the agreement be amended to clarify that the reference to "the Palm Beach County Detention Facility" meant the jail, rather than the Stockade. The final signed plea agreement form further clarified the sentence, providing that after serving 12 months in the Palm Beach County Detention Facility, Epstein would be "sentenced to 6 months in the Palm Beach County Detention Facility . . . to be served consecutive to the 12 month sentence," followed by "12 months Community Control." The word "imprisoned" was hand written after "6 months" but then crossed out and replaced by "jail sentence."[173]

A. June 30, 2008: Epstein Enters His Guilty Pleas in State Court

Epstein, with his attorney Jack Goldberger, appeared in Palm Beach County court on June 30, 2008, and entered guilty pleas to the indictment charging him with one felony count of solicitation of prostitution and to a criminal information charging him with one felony count of procurement of a minor to engage in prostitution.[174] At the plea hearing, which Villafaña and the FBI case agent attended as spectators, Assistant State Attorney Belohlavek did not proffer the facts of the case; instead she only recited the charging language in the indictment and the criminal information:

> [B]etween August 1, 2004 and October 31, 2005, the defendant in Palm Beach County did solicit or procure someone to commit [prostitution] on three or more occasions. And . . . between August 1, 2004 and October 9, 2005, the defendant did procure a minor under the age of 18 to commit prostitution in Palm Beach County also.[175]

The court found this to be "a sufficient factual basis to support the pleas," and engaged in a colloquy with Belohlavek regarding Epstein's victims:

> The Court: Are there more than one victim?
>
> Ms. Belohlavek: There's several.
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> . . . .

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http://www.pbso.org/inside-pbso/corrections/general/. The "Stockade" was a "lower security 'camp-style' facility" co-located with the Palm Beach County Sheriff's Office. Both were administered by the Sheriff's Office.

[173] Plea in the Circuit Court, signed June 30, 2008, and filed in court. Villafaña complained to Goldberger when she learned later about the change from "imprisoned" to "jail sentence."

[174] The Information is attached as Exhibit 5.

[175] *State v. Epstein*, case nos. 06-CF-9454 and 08-CF-9381, Transcript of Plea Conference at 41-42 (Fifteenth Judicial Circuit, June 30, 2008) (Plea Hearing Transcript). Belohlavek told OPR that reciting the statutory language of the charge as the factual basis for the plea was the typical practice for a state court plea.

The Court:	Are all the victims in both these cases in agreement with the terms of the plea?
Ms. Belohlavek:	I have spoken to several myself and I have spoken to counsel, through counsel as to the other victim, and I believe, yes.
The Court:	And with regard to the victims under age eighteen, is that victim's parents or guardian in agreement with the plea?
Ms. Belohlavek:	That victim is not under age 18 any more and that's why we spoke with her counsel.
The Court:	And she is in agreement with the plea?
Ms. Belohlavek:	Yes.[176]

When the court asked if the plea was "in any way tied to any promises or representations by any civil attorneys or other jurisdictions," Goldberger and Belohlavek, with Epstein present, spoke with the judge at sidebar and disclosed the existence of the "confidential" non-prosecution agreement with the USAO, and the court ordered that a copy of it be filed under seal with the court.

After the court accepted Epstein's guilty pleas, and imposed sentence on him pursuant to the plea agreement, Epstein was taken into custody to begin serving his sentence immediately.

In the aftermath of the plea, numerous individuals familiar with the investigation expressed positive reactions to the outcome, and Villafaña received several congratulatory messages. Oosterbaan wrote, "Congratulations, Marie—at long last! Your work on this matter was truly exceptional, and you obtained a very significant result that will serve the victims well." One senior colleague who was familiar with the case noted, "This case only resolved with the filthy rich bad guy going to jail because of your dedication and determination." Another wrote, "If it had not been for you, he would have gotten away with it." The CEOS Trial Attorney who had worked briefly with Villafaña told her, "But for your tenacity, he'd be somewhere ruining another child's life." One victim's attorney stated, "[G]reat job of not letting this guy off." But Villafaña was not satisfied with the outcome, responding to one colleague, "After all the hell they put me through, I don't feel like celebrating 18 months. He should be spending 18 years in jail."

Acosta later publicly stated that the FBI Special Agent in Charge called him "to offer congratulations" and "to praise our prosecutors for holding firm against the likes of Messrs. Black,

[176] Plea Hearing Transcript at 20, 42. OPR was unable to determine to which victims Belohlavek was referring, and Belohlovek did not recall during her OPR interview, but it is possible that she was referring only to the victims of the charged crimes rather than to all of the victims identified in either the state or federal investigations. Belohlavek told OPR that because of the nature of the charges (that is, involving prostitution), she did not know whether "technically under the law" the girls were "victims" whom she was required to notify of the plea hearing.

Dershowitz, Lefkowitz and Starr."[177] In that same later public statement, Acosta noted that he received communications from Dershowitz, Starr, and Lefkowitz, who "all sought to make peace" with him; Acosta referred to it as "a proud moment."

On July 7, 2008, an Epstein victim filed an emergency petition against the Department, in federal court in Miami, alleging violation of her rights under the CVRA; a second victim joined the petition soon thereafter. The history of the litigation and issues relating to it are discussed in Chapter Three of this Report.

B. Epstein Is Placed on Work Release

A few days after Epstein's guilty plea, Villafaña reported to Sloman that Epstein was incarcerated at the low-security Stockade, rather than the Main Detention Center where county prisoners were usually housed. She also told Sloman that according to the Sheriff's Office, Epstein was eligible for work release. Although the USAO had made clear that it expected Epstein to be incarcerated 24 hours a day, every day, the subject of work release had not been addressed explicitly during the NPA negotiations, and the NPA itself was silent on the issue. Epstein's acceptance into the work release program as a convicted sexual offender was seen by many as another special benefit given to Epstein. Because the decision to allow Epstein into the work release program was made by the Palm Beach Sheriff's Office, OPR did not investigate whether any state, county, or Sheriff's Office rules were violated. OPR did examine the USAO's consideration of work release prior to signing the NPA and its subsequent unsuccessful efforts to ensure that Epstein remained incarcerated 24 hours a day.

The first specific reference to work release was made weeks after the NPA was signed, when Lefkowitz asserted, in his October 23, 2007 letter to Acosta, that, "so long as Mr. Epstein's sentence does not explicitly violate the terms of the [NPA] he is entitled to any type of sentence available to him, including but not limited to gain time and work release."

In November 2007, Sloman had an exchange of letters with Lefkowitz about the USAO's understanding that Epstein had agreed to serve his full jail term in "continuous confinement," pointing out that the NPA "clearly indicates that Mr. Epstein is to be incarcerated." Sloman noted that Florida's Department of Corrections's rules did not allow individuals registered as sexual offenders to participate in work release, and thus Epstein would not be eligible for a work release program. Sloman concluded that the USAO "is putting you on notice that it intends to make certain that Mr. Epstein is 'treated no better and no worse than anyone else' convicted of the same offense," and that if Epstein were to be granted work release, the USAO would "investigate the reasons why an exception was granted in Mr. Epstein's case."[178]

However, also in November, State Attorney Krischer told Sloman that Epstein was, in fact, eligible to petition for work release because his sexual offender registration would not take place

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[177] Letter from R. Alexander Acosta "To whom it may concern" (Mar. 20, 2011), published online in *The Daily Beast*. The FBI Special Agent in Charge told OPR that he had no recollection of such a call, but acknowledged that it could have occurred.

[178] Sloman provided a draft of this letter to Acosta for his approval before the letter was sent to Lefkowitz.

until after Epstein completed his sentence, but that Krischer would oppose such a petition "if it is in the agreement."[179] On November 16, 2007, the case agents met with Belohlavek and asked if the State Attorney's Office would oppose a request that Epstein be granted work release. Belohlavek was noncommittal, and when the agents asked that she include language in the state's plea agreement prohibiting Epstein from participating in work release, she responded that she would have to discuss the issue with the State Attorney.[180] Krischer later told OPR that work release was "within the control of the Sheriff's Office, not my office." The state's plea agreement with Epstein did not address the issue of work release.

The day after Epstein entered his June 30, 2008 plea, Villafaña and her immediate supervisor met with a Palm Beach Sheriff's Office official to discuss work release. According to Villafaña, the official told them, "Epstein would be eligible for work release and will be placed on work release," a statement that contradicted the information the case agents had been given by a jail supervisor the previous November, as well as statements made by defense attorney Jack Goldberger to Villafaña just days before the plea was entered, when he "*specifically* told [Villafaña] that [Epstein] would *not* get work release." Villafaña alerted the Sheriff's Office official that although Epstein told the court during his plea proceeding that he had worked "every day" for a "couple of years" at the "Florida Science Foundation," that entity did not even exist until November 2007.[181] Moreover, the address Epstein provided to the court for the "Florida Science Foundation" was the office of Epstein's attorney Jack Goldberger. Villafaña and her supervisor asked that the Sheriff's Office notify the USAO if Epstein applied for work release.

Acosta told OPR that he was aware Villafaña was trying to ensure that Epstein did not get work release, and he would not have contradicted her efforts. Acosta explained that the USAO expected Epstein would be "treated just like everyone else," but that, as shown by "our subsequent communications with the [S]tate [A]ttorney's [O]ffice," having Epstein on work release "was not what our office envisioned."

In August 2008, Villafaña spoke with defense attorney Black about ensuring Epstein's compliance with the NPA, and raised the issue of work release. Villafaña later reported to Acosta and Sloman that Black assured her he had "reminded the team that . . . 18 months IN JAIL is a material term of the agreement."

The USAO never received notice of Epstein's work release application. On October 10, 2008, less than three-and-a-half months after Epstein entered his guilty plea, the Palm Beach Sheriff's Office placed him into the work release program, permitting him to leave the Stockade

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179 According to Sloman, Krischer explained that even without registration Epstein would be "treated" as a "sex offender" and that "just like any other sex offender, he can petition the court for work release."

180 In the November 16, 2007 email, on which she copied Acosta, Villafaña also indicated that she was "reviewing all of the statutes" to determine whether there was any impediment to a state judge granting Epstein work release. In a subsequent email, the FBI case agents informed Villafaña that they had also spoken with a "jail supervisor," who advised them that although Epstein, as a sexual offender, would not qualify for work release, the judge could nevertheless order him placed on work release if he was sentenced to a year or less of incarceration.

181 During the plea hearing, Epstein told the court he was "President" of the Florida Science Foundation, it had been in existence for 15 years, and he worked there "every day." Plea Hearing Transcript at 27-29.

for up to 12 hours per day, six days per week, to work at the "Florida Science Foundation" office in West Palm Beach.[182] In mid-November 2008, Villafaña learned that Epstein was on work release. She notified Acosta, Sloman, and the USAO Criminal Division Chief of this development in an email, and asked, "Can I indict him now?"

On November 24, 2008, Villafaña sent defense attorney Black a letter, notifying him that the USAO believed Epstein's application to and participation in the work release program constituted a material breach of the NPA. Villafaña reminded Black that she had "more than a dozen e-mails" expressing the USAO's "insistence" that Epstein be incarcerated for 18 months, and that her June 27, 2008 letter to counsel made clear that this meant "confinement for twenty-four hours a day." Villafaña noted that Goldberger had not inserted the word "imprisoned" into the plea agreement, as he had agreed to do, but instead inserted the term "jail sentence." Villafaña told counsel:

> The [USAO's] Agreement not to prosecute Mr. Epstein was based upon its determination that eighteen months' incarceration (i.e., confinement twenty-four hours a day) was sufficient to satisfy the federal interest in Mr. Epstein's crimes. Accordingly, the U.S. Attorney's Office hereby gives notice that Mr. Epstein has violated the [NPA] by failing to remain incarcerated twenty-four hours a day for the eighteen-month term of imprisonment. The United States will exercise any and all rights it has under the [NPA] unless Mr. Epstein immediately ceases and desists from his breach of this agreement.

According to Villafaña, the FBI case agent spoke with the Stockade's work release coordinator and reported back that that the work release coordinator told her he had been led to believe the government knew Epstein had applied for the program, and that he had been threatened with legal action if he did not allow Epstein to participate in work release.

On November 26, 2008, the USAO advised the Department that Acosta was recused from all matters involving the law firm of Kirkland & Ellis, which was still heavily involved in the Epstein case, because Acosta was discussing with the firm the possibility of employment.[183] As a result, Sloman became the senior USAO official responsible for making final decisions related to Epstein.

Also on November 26, 2008, Black responded to Villafaña's letter, acknowledging that Epstein was serving his sentence in the Palm Beach County Work Release Program, but denying that Epstein was in breach of the NPA.[184] Black noted that the NPA did not prohibit work release; the NPA expressly provided that Epstein was to be afforded the same benefits as any other inmate;

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182 Michele Dargan and David Rogers, "Palm Beach sex offender Jeffrey Epstein 'treated differently,'" *Palm Beach Daily News*, Dec. 13, 2008.

183 The recusal was formally approved by the Department on December 8, 2008.

184 Black forwarded the email to Sloman, noting that Villafaña "is very concerned about anything Epstein does" and that the defense team would "abide by" Sloman's decision on the issue.

Florida law treated work release as part of confinement; and the Palm Beach County Sheriff's Office had discretion to grant work release to any inmate. Black also claimed that Acosta "recognized that Mr. Epstein might serve a portion of his sentence through the Work Release Program" and pointed out that the December 6, 2007 draft victim notification letter sent to Lefkowitz for review specifically referred to the victim's right to be notified "if [Epstein] is allowed to participate in a work release program."

On December 3, 2008, in advance of a scheduled meeting with Black, Villafaña sent Sloman and Criminal Division Chief Senior an email about Epstein's participation in the work release program:

> It appears that, since Day 1, Goldberger and Krisher [*sic*] . . . have been scheming to get Epstein out on work release. For example, the indictment incorrectly charges Epstein for an offense that would have made him ineligible for work release if it had been charged correctly. (Remember that Krisher [*sic*] also went along with letting us believe that Epstein was pleading to a registrable offense when Epstein's folks and Krisher [*sic*] believed that . . . the offense was not registrable.) Krisher [*sic*] and Goldberger also told us that Epstein would be housed at the Palm [Beach County] Jail, not the Stockade, but he would not have been eligible for work release if at the jail. . . .
>
> As part of his work release, Epstein has hired off-duty Sheriff's deputies to provide him with "protection." It appears that he is paying between $3000 and $4100 per week for this service, despite the work release rules barring anyone from the Sheriff's Office (and the Sheriff's Office itself) from having "any business transactions with inmates . . . while they are in the custody or supervision of the Sheriff . . . ."

Villafaña added that she and her immediate supervisor believed that the USAO "should not budge on the 24-hour-a-day incarceration" requirement. Referring to the CVRA litigation, Villafaña also pointed out that two victims had brought suit against the USAO "for failing to keep them informed about the investigation," and the office had "an obligation to inform all of the victims upon Epstein's release."

On December 11, 2008, Villafaña wrote to the Corrections Division of the Palm Beach County Sheriff's Office to express the USAO's view that Epstein was not eligible for work release and to alert the Sheriff's Office that Epstein's work release application contained several inaccuracies and omitted relevant information. Villafaña pointed out that Epstein's application identified his place of employment as the "Florida Science Foundation," and the telephone number listed in the application for the "Florida Science Foundation" was the telephone number to the law firm of Epstein's attorney Jack Goldberger. Villafaña also noted that the individual identified in the work release file as Epstein's "supervisor" at the "Florida Science Foundation" had submitted publicly available sworn filings to the Internal Revenue Service indicating that Epstein worked only one hour per week and earned no compensation, but that same individual had represented to

the Sheriff's Office that Epstein's duties required him to work six days a week for 12 hours per day. Finally, Villafaña pointed out that Epstein's purported "supervisor"—who as the Foundation's vice president was subordinate to Epstein, the Foundation's president—had promised to alert the Sheriff's Office if Epstein failed to comply with his work schedule, but the "supervisor" lived and worked in the New York metropolitan area and was unable to monitor Epstein's activities on a day-to-day basis. The Sheriff's Office neither acknowledged nor responded to Villafaña's letter.

In March 2009, Sloman met in Miami with Dershowitz for, as Dershowitz characterized it in a subsequent email, "a relaxed drink and conversation," which included a discussion of the Epstein case. After that encounter, Dershowitz emailed Sloman, expressing appreciation for Sloman's "assurance that the feds will not interfere with how the Palm Beach sheriff administers" Epstein's sentence "as long as he is treated like any similarly situated inmate." Sloman responded:

> Regarding Mr. Epstein, the United States Attorney's Office will not interfere with how the Palm Beach Sheriff's Office administers the sentence imposed by the Court. That being said, this does not mean that the USAO condones or encourages the PBSO to mitigate the terms and conditions of his sentence. Furthermore, it does not mean that, if contacted for our position concerning alternative custody or in-home detention, we would not object. To be clear, if contacted we will object. Naturally, I also expect that no one on behalf of Mr. Epstein will use my assurance to you to affirmatively represent to PBSO that the USAO does not object to an alternative custody or home detention.

A week later, Dershowitz emailed Sloman again, this time expressing appreciation for Sloman's "willingness to call the sheriff and advise him that your office would take no position on how he handled Epstein's sentence," as long as Epstein did not receive special treatment, but adding, "[L]et's put any call off for a while."

Epstein's sentence required that he be confined to his home for a 12-month period following his release from prison. On July 22, 2009, almost 13 months after he began serving his sentence, Epstein was released from the Stockade and placed on home confinement.[185] At this time, he registered as a sexual offender.

XI. POST-RELEASE DEVELOPMENTS

In the summer of 2009, allegations surfaced that Epstein had cooperated with the U.S. Attorney's Office for the Eastern District of New York's investigation of investment bank Bear Stearns, and that he had been released early from his 18-month imprisonment term because of that

[185] In Florida, what is commonly referred to as house arrest is actually the Community Control supervision program. Florida Statute § 948.001(3) defines the program as "a form of intensive, supervised custody in the community."

cooperation.[186] When Villafaña spoke with attorneys in the Eastern District of New York, however, an AUSA there told Villafaña that "[t]hey had never heard of" Epstein, and he had not cooperated with the Bear Stearns case.[187] During her OPR interview, Villafaña told OPR that to her knowledge, the rumor of Epstein's cooperation was "completely false."

Villafaña and the USAO continued to monitor Epstein's compliance with the terms of the NPA. In August 2009, Villafaña alerted her supervisors that Epstein was in apparent violation of his home detention—he had been spotted walking on the beach, and when stopped by the police, he claimed that he was walking "to work" at an office nearly eight miles from his home. Villafaña passed this information along to the Palm Beach County probation office.[188] By letter dated September 1, 2009, Black wrote to Sloman seeking the USAO's agreement to transfer supervision of the community control phase of Epstein's sentence to the U.S. Virgin Islands, where Epstein maintained his "primary residence." In response, Villafaña notified Black that the USAO opposed such a request and would view it as a violation of the NPA. Three months later, Sloman met with Dershowitz and, among other issues, informed him that the USAO opposed early termination of Epstein's community control supervision and would object to a request to transfer Epstein's supervision to the U.S. Virgin Islands.

After serving his year on home detention in Florida, Epstein completed his sentence on July 21, 2010.

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186 *See* "Out of Prison," *New York Post*, July 23, 2009.

187 The New York AUSA had emailed Villafaña, "We're the prosecutors in [the Bear Stearns case] . . . . We saw the below article from the New York Post and wanted to ask you about this defendant, Epstein, who we had never heard of until this morning. We've since learned that he is pretty unsavory." Villafaña reported to Sloman and other supervisors that she "just got off the phone with the prosecutors from the Bear Stearns case in [the Eastern District of] New York. They had seen the NY Post article that claimed that Epstein got such a low sentence because he was cooperating with the feds on the Bear Stearns prosecution. They had never heard of him." In a second email, she confirmed, "There has been absolutely no cooperation here or in New York, from what they told me."

188 Black later wrote a letter to Villafaña claiming that Epstein had "specific authorization to walk to work," the distance between his home and office was "less than three miles," and when the matter was "fully investigated," Epstein was found to be in "total compliance" with the requirements of his sentence.

CHAPTER TWO

PART TWO: APPLICABLE STANDARDS

I. OPR'S ANALYTICAL FRAMEWORK

OPR finds professional misconduct when an attorney intentionally violates or acts in reckless disregard of a known, unambiguous obligation imposed by law, rule of professional conduct, or Department regulation or policy. In determining whether an attorney has engaged in professional misconduct, OPR uses the preponderance of the evidence standard to make factual findings.

An attorney intentionally violates an obligation or standard when the attorney (1) engages in conduct with the purpose of obtaining a result that the obligation or standard unambiguously prohibits; or (2) engages in conduct knowing its natural or probable consequence, and that consequence is a result that the obligation or standard unambiguously prohibits. An attorney acts in reckless disregard of an obligation or standard when (1) the attorney knows or should know, based on his or her experience and the unambiguous nature of the obligation or standard, of an obligation or standard; (2) the attorney knows or should know, based on his or her experience and the unambiguous applicability of the obligation or standard, that the attorney's conduct involves a substantial likelihood that he or she will violate, or cause a violation of, the obligation or standard; and (3) the attorney nonetheless engages in the conduct, which is objectively unreasonable under all the circumstances. Thus, an attorney's disregard of an obligation is reckless when it represents a gross deviation from the standard of conduct that an objectively reasonable attorney would observe in the same situation.

If OPR determines that an attorney did not engage in professional misconduct, OPR determines whether the attorney exercised poor judgment, engaged in other inappropriate conduct, made a mistake, or acted appropriately under all the circumstances. An attorney exercises poor judgment when, faced with alternative courses of action, he or she chooses a course of action that is in marked contrast to the action that the Department may reasonably expect an attorney exercising good judgment to take. Poor judgment differs from professional misconduct in that an attorney may act inappropriately and thus exhibit poor judgment even though he or she may not have violated or acted in reckless disregard of a clear obligation or standard. In addition, an attorney may exhibit poor judgment even though an obligation or standard at issue is not sufficiently clear and unambiguous to support a professional misconduct finding. A mistake, on the other hand, results from an excusable human error despite an attorney's exercise of reasonable care under the circumstances.

An attorney who makes a good faith attempt to ascertain the obligations and standards imposed on the attorney and to comply with them in a given situation does not commit professional misconduct. Evidence that an attorney made a good faith attempt to ascertain and comply with the obligations and standards imposed can include, but is not limited to, the fact that the attorney reviewed materials that define or discuss one or more potentially applicable obligations and standards, consulted with a supervisor or ethics advisor, notified the tribunal or the attorney representing a party or person with adverse interests of an intended course of conduct, or took

affirmative steps the attorney reasonably believed were required to comply with an obligation or standard.

II. APPLICABLE STANDARDS OF CONDUCT

A. The United States Attorneys' Manual

Among its many provisions, the United States Attorneys' Manual (USAM) includes general statements of principles that summarize appropriate considerations to be weighed, and desirable practices to be followed, by federal prosecutors when discharging their prosecutorial responsibilities.[189] The goal of the USAM is to promote "the reasoned exercise of prosecutorial authority and contribute to the fair, evenhanded administration of the Federal criminal laws," and to promote public confidence that important prosecutorial decisions will be made "rationally and objectively on the merits of each case." USAM § 9-27.001.

Because the USAM is designed to assist in structuring the decision-making process of government attorneys, many of its principles are cast in general terms, with a view to providing guidance rather than mandating results. *Id.*; *see also* USAM § 9-27.120, comment ("It is expected that each Federal prosecutor will be guided by these principles in carrying out his/her criminal law enforcement responsibilities . . . . However, it is not intended that reference to these principles will require a particular prosecutorial decision in any given case."); USAM § 9-27.110, comment ("Under the Federal criminal justice system, the prosecutor has wide latitude in determining when, whom, how, and even whether to prosecute for apparent violations of Federal criminal law."). However, USAM § 9-27.130 provides that AUSAs who depart from the principles of federal prosecution articulated in the USAM may be subject to internal discipline. In particular, USAM § 9-27.130 states that each U.S. Attorney should establish internal office procedures to ensure that prosecutorial decisions are made at an appropriate level of responsibility and are consistent with the principles set forth in the USAM, and that serious, unjustified departures from the principles set forth in the USAM are followed by remedial action, including the imposition of disciplinary sanctions when warranted and deemed appropriate.

U.S. Attorneys have "plenary authority with regard to federal criminal matters" and may modify or depart from the principles set forth in the USAM as deemed necessary in the interest of fair and effective law enforcement within their individual judicial districts. USAM §§ 9-2.001, 9.27-140. The USAM provisions are supplemented by the Department's Criminal Resource Manual, which provides additional guidance relating to the conduct of federal criminal prosecutions.

1. USAM Provisions Relating to the Initiation and Declination of a Federal Prosecution

Federal prosecutors do not open a case on every matter referred to them. USAM § 9-2.020 explicitly authorizes a U.S. Attorney "to decline prosecution in any case referred directly to

[189] In 2018, the USAM was revised and reissued as the Justice Manual. In assessing the subjects' conduct, OPR relies upon the standards of conduct in effect at the time of the events in issue. Accordingly, unless otherwise noted, citations in this Report are to the 1997 edition of the USAM, as revised through January 2007.

him/her by an agency unless a statute provides otherwise." Whenever a U.S. Attorney closes a case without prosecution, the file should reflect the action taken and the reason for it. USAM § 9-27.220 sets forth the grounds to be considered in making the decision whether to commence or decline federal prosecution. A federal prosecutor should commence or recommend prosecution if he or she believes that admissible evidence will probably be sufficient to obtain and sustain a conviction of a federal offense, unless (1) the prosecution would serve no federal interest; (2) the person is subject to effective prosecution in another jurisdiction; or (3) there exists an adequate alternative to prosecution. A comment to this provision indicates that it is the prosecutor's task to determine whether these circumstances exist, and in making that determination, the prosecutor "should" consult USAM §§ 9-27.230, 9-27.240, or 9-27.250, as appropriate.

USAM § 9-27.230 sets forth a non-exhaustive list of considerations that a federal prosecutor should weigh in determining whether a substantial federal interest would be served by initiating prosecution against a person:

1. Federal law enforcement priorities;[190]
2. The nature and seriousness of the offense;[191]
3. The deterrent effect of prosecution;
4. The person's culpability in connection with the offense;
5. The person's history with respect to criminal activity;
6. The person's willingness to cooperate in the investigation or prosecution of others; and
7. The probable sentence or other consequences if the person is convicted.

The USAM contemplates that, on occasion, a federal prosecutor will decline to open a case in deference to prosecution by the state in which the crime occurred. USAM § 9-27.240 directs that in evaluating the effectiveness of prosecution in another jurisdiction, the federal prosecutor should weigh "all relevant considerations," including the strength of the other jurisdiction's interest in prosecution, the other jurisdiction's ability and willingness to prosecute effectively, and the probable sentence or other consequences the person will be subject to if convicted in the other jurisdiction. A comment to this provision explains:

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[190] A comment to this provision directs the prosecutor to consider carefully the extent to which a federal prosecution would be consistent with established federal prosecutorial priorities.

[191] A comment to this provision explains that an assessment of the nature and seriousness of the offense must also include consideration of the impact on the victim. The comment further cautions that when restitution is at issue, "care should be taken . . . to ensure against contributing to an impression that an offender can escape prosecution merely by returning the spoils of his/her crime."

> Some offenses, even though in violation of Federal law, are of particularly strong interest to the authorities of the state or local jurisdiction in which they occur, either because of the nature of the offense, the identity of the offender or victim, the fact that the investigation was conducted primarily by state or local investigators, or some other circumstance. Whatever the reason, when it appears that the Federal interest in prosecution is less substantial than the interest of state or local authorities, consideration should be given to referring the case to those authorities rather than commencing or recommending a Federal prosecution.

Another comment cautions that in assessing whether to defer to state or local authorities, "the Federal prosecutor should be alert to any local conditions, attitudes, relationships or other circumstances that might cast doubt on the likelihood of the state or local authorities conducting a thorough and successful prosecution."

USAM § 9-27.260 identifies impermissible considerations relating to the decision whether to initiate or decline a federal prosecution. Specifically, the decision may not be based on consideration of the person's race, religion, sex, national origin, or political association, activities, or beliefs; the prosecutor's "own personal feelings" about the person or the victim; or the possible effect of the decision on the prosecutor's own professional or personal circumstances. When opting to decline federal prosecution, the prosecutor should ensure that the reasons for that decision are communicated to the investigating agency and reflected in the office files. USAM § 9-27.270.

2. USAM § 9-2.031: The Petite Policy

Although the Constitution does not prohibit prosecutions of a defendant by both state and federal authorities, even when the conduct charged is identical in both charging jurisdictions, the Department has a long-standing policy, known as the Petite policy, governing federal prosecutions charged after the initiation of a prosecution in another jurisdiction based on the same or similar conduct.[192] The general principles applicable to the prosecution or declination decision are set forth in USAM § 9-2.031, "Dual and Successive Prosecution Policy ('Petite Policy')," which contains guidelines for a federal prosecutor's exercise of discretion in determining whether to bring a federal prosecution based on the substantially same act or transaction involved in a prior state or federal proceeding. The policy applies "whenever there has been a prior state or federal prosecution resulting in an acquittal, a conviction, including one resulting from a plea agreement, or a dismissal or other termination on the merits after jeopardy has attached."

In circumstances in which the policy applies, a prosecutor nonetheless can initiate a new federal prosecution when three substantive prerequisites exist. The prerequisites are as follows:

(1) The matter must involve a substantial federal interest. The determination whether a substantial federal interest is involved is made on a case-by-case basis. Matters

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192 *See Rinaldi v. United States*, 434 U.S. 22, 27-29 (1977); *Petite v. United States*, 361 U.S. 529 (1960).

that come within the national investigation and prosecution priorities established by the Department are more likely to satisfy this requirement than other matters.

(2) The prior prosecution must have left the substantial federal interest "demonstrably unvindicated." In general, the Department presumes that a prior prosecution has vindicated federal interests, but that presumption may be overcome in certain circumstances. As relevant here, the presumption may be overcome when the choice of charges in the prior prosecution was based on factors such as incompetence, corruption, intimidation, or undue influence. The presumption may be overcome even when the prior prosecution resulted in a conviction, if the prior sentence was "manifestly inadequate in light of the federal interest involved and a substantially enhanced sentence—including forfeiture and restitution as well as imprisonment and fines—is available through the contemplated federal prosecution."

(3) The government must believe that the defendant's conduct constitutes a federal offense, and that the admissible evidence probably will be sufficient to obtain and sustain a conviction.

However, the satisfaction of the prerequisites does not require a prosecutor to proceed with a federal investigation or charges nor is the Department required to approve the proposed prosecution.

The Petite policy cautions that whenever a matter involves overlapping federal and state jurisdiction, federal prosecutors should consult with their state counterparts "to determine the most appropriate single forum in which to proceed to satisfy the substantial federal and state interests involved." If a substantial question arises as to whether the Petite policy applies to a particular prosecution, the prosecutor should submit the matter to the appropriate Assistant Attorney General for resolution. Prior approval from the appropriate Assistant Attorney General must be obtained before bringing a prosecution governed by this policy.

3. USAM Provisions Relating to Plea Agreements

Federal prosecutors have discretion to resolve an investigation or pending case through a plea agreement. USAM §§ 9-27.330; 9-27.400. Negotiated pleas are also explicitly sanctioned by Federal Rule of Criminal Procedure 11(c)(1).[193] Regardless of whether the plea agreement is offered pre-charge or post-charge, the prosecutor's plea bargaining "must honestly reflect the totality and seriousness of the defendant's conduct." USAM § 9-27.400, comment.[194] The importance of selecting a charge that reflects the seriousness of the conduct is echoed in USAM § 9-27.430, which directs the prosecutor to require a defendant to plead to an offense that represents the most serious readily provable charge consistent with the nature and extent of the

[193] As previously noted, Rule 11(c)(1)(C) permits the parties to agree to resolve the case in exchange for a specific sentence, subject to the court's acceptance of the agreement.

[194] *See also* USAM § 9-27.300 ("Once the decision to prosecute has been made, the attorney for the government should charge . . . the most serious offense that is consistent with the nature of the defendant's conduct, and that is likely to result in a sustainable conviction.").

defendant's criminal conduct, has an adequate factual basis, makes likely the imposition of an appropriate sentence and order of restitution, and does not adversely affect the investigation or prosecution of others. USAM § 9-27.420 specifies:

> In determining whether it would be appropriate to enter into a plea agreement, the attorney for the government should weigh all relevant considerations, including:
>
> 1. The defendant's willingness to cooperate in the investigation or prosecution of others;
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> 2. The defendant's history with respect to criminal activity;
>
> 3. The nature and seriousness of the offense or offenses charged;
>
> 4. The defendant's remorse or contrition and his/her willingness to assume responsibility for his/her conduct;
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> 5. The desirability of prompt and certain disposition of the case;
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> 6. The likelihood of obtaining a conviction at trial;
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> 7. The probable effect on witnesses;
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> 8. The probable sentence or other consequences if the defendant is convicted;
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> 9. The public interest in having the case tried rather than disposed of by a guilty plea;
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> 10. The expense of trial and appeal;
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> 11. The need to avoid delay in the disposition of other pending cases; and
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> 12. The effect upon the victim's right to restitution.

4. USAM Provisions Relating to Non-Prosecution Agreements

USAM § 9-27.600 authorizes government attorneys to enter into a non-prosecution agreement in exchange for a person's cooperation. The provision explains that a non-prosecution agreement is appropriate for this purpose when, in the prosecutor's judgment, the person's timely cooperation "appears to be necessary to the public interest and other means of obtaining the desired cooperation are unavailable or would not be effective." A comment to this provision explains that such "other means" include seeking cooperation after trial and conviction, bargaining for

cooperation as part of a plea agreement, or compelling cooperation under a "use immunity" order. The comment observes that these alternative means "are clearly preferable to permitting an offender to avoid any liability for his/her conduct" and "should be given serious consideration in the first instance." USAM §§ 9-27.620 and 9-27.630 set forth considerations a prosecutor should take into account when entering into a non-prosecution agreement. Generally, the U.S. Attorney has authority to approve a non-prosecution agreement. USAM § 9-27.600 comment. However, USAM § 9-27.640 directs that a government attorney should not enter into a non-prosecution agreement in exchange for a person's cooperation without first obtaining the approval of the appropriate Assistant Attorney General, or his or her designee, when the person is someone who "is likely to become of major public interest."

These USAM provisions do not address the uses of non-prosecution agreements in circumstances other than when needed to obtain cooperation.

5. USAM Provisions Relating to Grants of Immunity

Nothing in the USAM directly prohibits the government from using the criminal exposure of third parties in negotiating with a criminal defendant. Instead, the provision that addresses immunity relates only to the exchange of limited immunity for the testimony of a witness who has asserted a Fifth Amendment privilege against self-incrimination. *See* USAM §§ 9-23.100 *et seq.*

6. USAM/C.F.R. Provisions Relating to Financial Conflicts of Interest

Department employees are expected to be aware of, and to comply with, all ethics-related laws, rules, regulations, and policies. *See, generally,* USAM § 1-4.000 *et seq*. Specifically, a government attorney is prohibited by criminal statute from participating personally and substantially in any particular matter in which he has a financial interest or in which such an interest can be imputed to him. *See* 18 U.S.C. § 208 and 5 C.F.R. §§ 2635.401-402. In addition, a Department employee should seek advice from an ethics official before participating in any matter in which his impartiality could be questioned. If a conflict of interest exists, in order for the employee to participate in the matter, the head of the employee's component, with the concurrence of an ethics official, must make a determination that the interest of the government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the Department's programs and operations. The determination must be made in writing. *See* 5 C.F.R. §§ 2635.501-502.

B. Other Department Policies

1. Department Policies Relating to the Disposition of Charges

The Attorney General has the responsibility for establishing prosecutorial priorities for the Department. Over the span of several decades, each successive Attorney General has articulated those priorities in policy memoranda issued to all federal prosecutors. As applicable here, on September 22, 2003, Attorney General John Ashcroft issued a memorandum regarding "Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing" (Ashcroft Memo). The Ashcroft Memo, which explicitly superseded all previous Departmental guidance on the subject, set forth policies "designed to ensure that all federal

prosecutors adhere to the principles and objectives" of the Sentencing Reform Act of 1984, the Sentencing Guidelines, and the PROTECT Act "in their charging, case disposition, and sentencing practices."[195]

The Ashcroft Memo directed that, "in all federal cases, federal prosecutors must charge and pursue the most serious, readily provable offense or offenses that are supported by the facts of the case," except as authorized by an Assistant Attorney General, U.S. Attorney, or designated supervisory authority in certain articulated limited circumstances. The Ashcroft Memo cautioned that a charge is not "readily provable" if the prosecutor harbors a good faith doubt, based on either the law or the evidence, as to the government's ability to prove the charge at trial. The Ashcroft Memo explains that the "basic policy" "requires federal prosecutors to charge and pursue all charges that are determined to be readily provable" and would yield the most substantial sentence under the Sentencing Guidelines.

The policy set forth six exceptions, including a catch-all exception that permits a prosecutor to decline to pursue readily provable charges "in other exceptional circumstances" with the written or otherwise documented approval of an Assistant Attorney General, U.S. Attorney, or "designated supervisory attorney." As examples of circumstances in which such declination would be appropriate, the Ashcroft Memo cites to situations in which a U.S. Attorney's Office is "particularly over-burdened," the trial is expected to be of exceptionally long duration, and proceeding to trial would significantly reduce the total number of cases the office could resolve. The Ashcroft Memo specifically notes that "[c]harges may be declined . . . pursuant to a plea agreement only to the extent consistent" with the policies established by the Memo.

On January 28, 2005, Deputy Attorney General James Comey issued a memorandum entitled "Department Policies and Procedures Concerning Sentencing." That memorandum reiterated that federal prosecutors "must continue to charge and pursue the most serious readily provable offenses," and defined that term as the offenses that would "generate the most substantial sentence" under the Sentencing Guidelines, any applicable mandatory minimum, and any statutorily required consecutive sentence.

Importantly, although the Ashcroft and Comey memoranda limit an individual line prosecutor's ability to decline "readily provable" charges in their entirety, no such restriction is placed upon the U.S. Attorneys, who retained authority to approve exceptions to the policy. In addition, the policy applies to "readily provable" charges, thus inherently allowing a prosecutor

[195] The Ashcroft Memo was issued before the Supreme Court decided *United States v. Booker*, 543 U.S. 220 (2005), which struck down the provision of the federal sentencing statute that required federal district judges to impose a sentence within the applicable Federal Sentencing Guidelines range. Those Guidelines were the product of the United States Sentencing Commission, which was created by the Sentencing Reform Act of 1984. The Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, Pub. L. 108–21, 117 Stat. 650, was directed at preventing child abuse. It included a variety of provisions designed to improve the investigation and prosecution of violent crimes against children. Among other things, the PROTECT Act provided for specific sentencing considerations for certain sex-related offenses, such as those involving multiple occasions of prohibited sexual conduct or those involving material with depictions of violence or with specified numbers of images.

flexibility to decline to bring a particular charge based on a "good faith doubt" that the law or evidence supports the charge.

2. Department Policy Relating to Deportation of Criminal Aliens

On April 28, 1995, the Attorney General issued a memorandum to all federal prosecutors entitled "Deportation of Criminal Aliens," directing federal prosecutors to actively and directly become involved in the process of removing criminal aliens from the United States. In pertinent part, this memorandum notes that prosecutors can make a major contribution to the expeditious deportation of criminal aliens by effectively using available prosecution tools for dealing with alien defendants. These tools include (1) stipulated administrative deportation orders in connection with plea agreements; (2) deportation as a condition of supervised release under 18 U.S.C. § 3853(d); and (3) judicial deportation orders pursuant to 8 U.S.C. § 1252a(d). The memorandum further directs:

> All deportable criminal aliens should be deported unless extraordinary circumstances exist. Accordingly, absent such circumstances, Federal prosecutors should seek the deportation of deportable alien defendants in whatever manner is deemed most appropriate in a particular case. Exceptions to this policy must have the written approval of the United States Attorney.

See also USAM § 9-73.520. A "criminal alien" is a foreign national who has been convicted of a crime.[196]

Stipulated administrative deportation orders can be based "on the conviction for an offense to which the alien will plead guilty," provided that the offense is one of those enumerated in 8 U.S.C. § 1251 as an offense that causes an alien to be deported. Under 8 U.S.C. § 1251(a)(2)(A)(i), any alien who is convicted of a crime of "moral turpitude" within five years after the date of entry (or 10 years in the case of an alien provided lawful permanent resident status), and is either sentenced to confinement or confined to prison for one year or longer, is deportable.

C. Case Law

1. Prosecutorial Discretion

On many occasions, the Supreme Court has discussed the breadth of the prosecutor's discretion in deciding whether and whom to prosecute. In *Bordenkircher v. Hayes*, 434 U.S. 357 (1978), the Court considered the propriety of a prosecutor's threat during plea negotiations to seek more serious charges against the accused if the accused did not plead guilty to the offense originally charged. The defendant, Hayes, opted not to plead guilty to the original offense, and

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196 According to the U.S. Customs and Border Protection, "The term 'criminal alien' refers to aliens who have been convicted of one or more crimes, whether in the United States or abroad, prior to interdiction by the U.S. Border Patrol." *See* U.S. Dept. of Homeland Security, U.S. Customs and Border Protection, CBP Enforcement Statistics, Criminal Alien Statistics Fiscal Year 2020, available at https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/criminal-alien-statistics.

the prosecutor indicted him on more serious charges. Hayes was thereafter convicted and sentenced under the new indictment. The state court of appeals rejected Hayes's challenge to his conviction, concluding that the prosecutor's decision to indict on more serious charges was a legitimate use of available leverage in the plea-bargaining process. Hayes filed for review of his conviction and sentence in federal court, and although Hayes lost at the district court level, the U.S. Court of Appeals for the Sixth Circuit concluded that the prosecutor's conduct constituted impermissible vindictive prosecution.

The Supreme Court reversed the Sixth Circuit's ruling. The Court opined that "acceptance of the basic legitimacy of plea bargaining necessarily implies rejection of any notion that a guilty plea is involuntary in a constitutional sense simply because it is the end result of the bargaining process." *Id.* at 363. A long as the prosecutor has probable cause to believe a crime has been committed, "the decision whether or not to prosecute, and what charge to file or bring before a grand jury, *rests entirely in his discretion*." *Id.* at 364 (emphasis added). The Court explained that selectivity in enforcement of the criminal law is not improper unless based upon an unjustifiable standard such as race, religion, or other arbitrary classification. *Id.*

These principles were reiterated in *Wayte v. United States*, 470 U.S. 598 (1985), a case involving the government's policy of prosecuting only those individuals who reported themselves as having failed to register with the Selective Service system. The petitioner in *Wayte* claimed that the self-reported non-registrants were "vocal" opponents of the registration program who were being punished for the exercise of their First Amendment rights. The Supreme Court rejected this argument, stating that the government has "broad discretion" in deciding whom to prosecute, and that the limits of that discretion are reached only when the prosecutor's decision is based on an unjustifiable standard. *Id.* at 607-08. Because the passive enforcement policy was not intended to have a discriminatory effect, the claim of selective prosecution failed.

In *Imbler v. Pachtman*, 424 U.S. 409 (1976), the Supreme Court considered whether a state prosecutor acting within the scope of his duties could be sued under 42 U.S.C. § 1983 for violation of the defendant's constitutional rights when the defendant alleged that the prosecutor and others had unlawfully conspired to charge and convict him. The Court held that "in initiating a prosecution and in presenting the State's case," conduct that is "intimately associated with the judicial phase of the criminal process," the prosecutor enjoyed absolute immunity from a civil suit for damages. *Id.* at 430-31. In *Harrington v. Almy*, 977 F.2d 37 (1st Cir. 1992), the court applied *Imbler* to a challenge to a prosecutor's decision not to prosecute. The court noted that "given the availability of immunity for the decision *to* charge, it becomes even more important that symmetrical protection be available for the decision *not to* charge." *Id.* at 41 (emphasis in original).

Finally, in an analogous area of the law, in *Heckler v. Chaney,* 470 U.S. 821 (1985), the Supreme Court concluded that an agency's decision not to undertake an enforcement action is not reviewable under the federal Administrative Procedure Act, 5 U.S.C. §§ 500-706.

2. Plea Agreement Promises of Leniency towards a Third Party

Case law regarding promises made during plea negotiations not to prosecute a third-party arises in two contexts. First, defendants have challenged the voluntariness of the resulting plea

when prosecutors have used third parties as leverage in plea negotiations. Numerous courts have made clear, however, that a plea is not invalid when entered under an agreement that includes a promise of leniency towards a third party or in response to a prosecutor's threat to prosecute a third party if a plea is not entered. *See, e.g., United States v. Marquez*, 909 F.2d 738, 741-42 (2d Cir. 1990) (rejecting claim that plea was involuntary because of pressure placed upon a defendant by the government's insistence that a defendant's wife would not be offered a plea bargain unless he pled guilty); *Martin v. Kemp*, 760 F.2d 1244, 1248 (11th Cir. 1985) (in order to satisfy "heavy burden" of establishing that the government had not acted "in good faith," a defendant challenging voluntariness of his plea on grounds that the prosecutor had threatened to bring charges against the defendant's pregnant wife had to establish that government lacked probable cause to believe the defendant's wife had committed a crime at the time it threatened to charge her); *Stinson v. State*, 839 So. 2d 906, 909 (Fla. App. 2003) ("In cases involving . . . a promise not to prosecute a third party, the government must act in good faith . . . [and] must have probable cause to charge the third party.").

The second context concerns situations in which courts have enforced prosecutors' promises of leniency to third parties. For example, in *State v. Frazier*, 697 So. 2d 944 (Fla. App. 1997), as consideration for the defendant's guilty plea, the prosecutor agreed and announced in open court that the government would dismiss charges against the defendant's niece and nephew, who had all been charged as a result of the same incident. When the state reneged and attempted to prosecute the niece and nephew, the trial court dismissed the charges against them, and the state appealed. The appellate court affirmed the dismissal, concluding that under contract law principles, the niece and nephew were third-party beneficiaries of the plea agreement and were therefore entitled to enforce it.

Apart from voluntariness or enforceability concerns, courts have not suggested that a prosecutor's promise not to prosecute a third party amounts to an inappropriate exercise of prosecutorial discretion.

D. State Bar Rules

During the period relevant to this Report, the five subject attorneys were members of the bar in several different states and were subject to the rules of professional conduct in each state in which they held membership.[197] In determining which rules apply, OPR applied the local rules of the U.S. District Court for the Southern District of Florida (Local Rules) and the choice-of-law provisions of each applicable bar. Local Rule 11.1(f) incorporates rules governing the admission, practice, peer review, and discipline of attorneys (Attorney Admission Rules).[198] Attorney Admission Rule 4(d) provides that any U.S. Attorney or AUSA employed full-time by the government may appear and participate in particular actions or proceedings on behalf of the United States in the attorney's official capacity without petition for admission. Any attorney so appearing

[197] The subjects' membership in state bars other than Florida would not affect OPR's conclusions in this case.

[198] These rules have been in effect since December 1994.

is subject to all rules of the court.[199] Attorney Admission Rule 6(b)(2)(A) makes clear that attorneys practicing before the court are subject to the Florida Bar's Rules of Professional Conduct (FRPC). Moreover, the choice-of-law provisions contained within the relevant state's rules of professional conduct make the FRPC applicable to their conduct.

1. FRPC 4-1.1 – Competence

FRPC 4-1.1 requires that a lawyer provide competent representation to a client.[200] Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. A comment to the rule clarifies that the factors relevant to determining a lawyer's competence to handle a particular matter include "the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter, and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field." The comment further notes that "[i]n many instances the required proficiency is that of a general practitioner." With respect to particular matters, competence requires inquiry into and analysis of the factual and legal elements of the problem. The comment to Rule 4-1.1 explains that "[t]he required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence."

2. FRPC 4-1.3 – Diligence

FRPC 4-1.3 specifies that a lawyer should act with reasonable diligence and promptness in representing a client. A comment to this rule explains, "A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor." A lawyer must exercise "zeal" in advocating for the client, but is not required "to press for every advantage that might be realized for a client."

3. FRPC 4-4.1 – Candor in Dealing with Others

FRPC 4-4.1 prohibits a lawyer from knowingly making a false statement of material fact or law to a third person during the course of representation of a client. A comment to this rule explains that "[m]isrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements," and "[w]hether a particular statement should be regarded as one of fact can depend on the circumstances."

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199 *See also* 28 U.S.C. § 530B(a), providing that government attorneys are subject to state laws and state and local federal court rules governing attorneys in each state where the government attorney engages in his duties.

200 The federal prosecutor does not have an individual "client," but rather represents the people of the United States. *See generally* 28 U.S.C. § 547 (duties of U.S. Attorney); 28 C.F.R. § 0.5(b) (the Attorney General represents the United States in legal matters).

4. FRPC 4-8.4 – Conduct Prejudicial to the Administration of Justice

FRPC 4-8.4(c) states that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

FRPC 4-8.4(d) prohibits a lawyer from engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice.

In *Florida Bar v. Frederick*, 756 So. 2d 79, 87 (Fla. 2000), the court noted that FRPC 4-8.4(d) is not limited to conduct that occurs in a judicial proceeding, but can be applied to "conduct in connection with the practice of law." In *Florida Bar v. Shankman*, 41 So. 3d 166, 172 (Fla. 2010), for example, an attorney's continuous hiring and firing of firms to assist in the client's matter resulted in delayed resolution of the case and constituted a violation of FRPC 4-8.4(d) due to the delay in the administration of justice and the increased costs to the client.[201]

[201] OPR also examined FRPC 4-3.8, Special Responsibilities of a Prosecutor. Nothing in the text of that rule, however, was relevant to the issues addressed in this Report. A comment to FRPC Rule 4-3.8 notes that Florida has adopted the American Bar Association (ABA) Standards of Criminal Justice Relating to the Prosecution Function. These "standards," however, are not binding rules of conduct but rather provide guidance to prosecutors. Indeed, the ABA has expressly stated that these standards "are not intended to serve as the basis for the imposition of professional discipline, to create substantive or procedural rights for accused or convicted persons, to create a standard of care for civil liability, or to serve as a predicate for a motion to suppress evidence or dismiss a charge." OPR does not consider the ABA standards as binding on the conduct of Department prosecutors.

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CHAPTER TWO

PART THREE: ANALYSIS

I. OVERVIEW

Following the *Miami Herald* report in November 2018, media scrutiny of and public attention to the USAO's handling of its Epstein investigation has continued unabated. At the heart of the public's concern is the perception that Epstein's 18-month sentence, which resulted in a 13-month term of actual incarceration, was too lenient and inadequately punished Epstein's criminal conduct. Although many records have been released as part of civil litigation stemming from Epstein's conduct, the public has received only limited information regarding the decision-making process leading to the signed NPA. As a result, questions have arisen about Acosta and his staff's motivations for entering into the NPA. Publicly released communications between prosecutors and defense counsel, the leniency of the sentence, and an unusual non-prosecution provision in the NPA have led to allegations that Acosta and the USAO gave Epstein a "sweetheart deal" because they were motivated by improper influences, such as their preexisting and personal relationships with his attorneys, or even corrupt influences, such as the receipt of personal benefits from Epstein.

Through its investigation, OPR has sought to answer the following core questions: (1) who was responsible for the decision to resolve the federal investigation through the NPA and for its specific terms; (2) did the NPA or any of its provisions violate Department policies or other rules or regulations; and (3) were any of the subjects motivated to resolve the federal investigation by improper factors, such as corruption or favoritism. To the extent that available records and witness interviews shed light on these questions, OPR shows in detail the process that led to the NPA, from the initial complaint to the USAO through the intense and often confusing negotiation process. After a thorough and detailed examination of thousands of contemporaneous records and extensive interviews of subjects and witnesses, OPR is able to answer most of the significant questions concerning the NPA's origins and development. Although some questions remain, OPR sets forth its conclusions and the bases for them in this Part.

II. ACOSTA REVIEWED AND APPROVED THE TERMS OF THE NPA AND IS ACCOUNTABLE FOR IT

Although Acosta did not sign the NPA, he approved it, with knowledge of its terms. He revised drafts of the NPA and added language that he thought appropriate. Acosta told OPR that he either was informed of, or had access to information concerning, the underlying facts of the case against Epstein. OPR did not find any evidence suggesting that any of his subordinates misled him about the facts or withheld information that would have influenced his decision, and Acosta did not make such a claim to OPR. As Acosta affirmed in his OPR interview, the "three pronged resolution, two years . . . , registration and restitution, . . . ultimately that was approved on my authority. . . . [U]ltimately, I approved it, and so, I . . . accept that. I'm not . . . pushing away responsibility for it."

In making its misconduct assessments, OPR considers the conduct of subjects individually. Menchel, Sloman, Lourie, and Villafaña were involved in the matter to varying degrees, at

different points in time, and regarding different decisions. Menchel, for example, participated in formulating the USAO's initial written offer to the defense, but he had no involvement with actions or decisions made after August 3, 2007. Sloman was absent during part of the most intense negotiations in September 2007 and did not see the final, signed version of the NPA until he returned. Villafaña and Lourie participated in the negotiations, and Lourie either made decisions during the September 12, 2007 meeting with the defense and State Attorney's Office, or at least indicated agreement pending Acosta's approval. In any event, whatever the level of Sloman's, Menchel's, Lourie's, and Villafaña's involvement, they acted with the knowledge and approval of Acosta.

Under OPR's analytical framework, an attorney who makes a good faith attempt to ascertain the obligations and standards imposed on the attorney and to comply with them in a given situation does not commit professional misconduct. Evidence that an attorney made a good faith attempt to ascertain and comply with the obligations and standards imposed can include, but is not limited to, the fact that the attorney consulted with a supervisor.[202] In this regard, OPR's framework is similar to a standard provision of the professional conduct rules of most state bars, which specify that a subordinate lawyer does not engage in misconduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty. *See, e.g.*, FRPC 4-5.2(b). Therefore, in addition to the fact that OPR did not find a violation of a clear and unambiguous standard as discussed below, OPR concludes that Menchel, Sloman, Lourie, and Villafaña did not commit professional misconduct with respect to any aspect of the NPA because they acted under Acosta's direction and with his approval.

III. OPR FOUND THAT NONE OF THE SUBJECTS VIOLATED A CLEAR AND UNAMBIGUOUS STATUTE, PROFESSIONAL RESPONSIBILITY RULE OR STANDARD, OR DEPARTMENT REGULATION OR POLICY, IN NEGOTIATING, APPROVING, OR ENTERING INTO THE NPA

A central issue OPR addressed in its investigation relating to the NPA was whether any of the subjects, in developing, negotiating, or entering into the NPA, violated any clear and unambiguous standard established by rule, regulation, or policy. OPR does not find professional misconduct unless a subject attorney intentionally or recklessly violated a clear and unambiguous standard. OPR considered three specific areas: (1) standards implicated by the decision to decline a federal court prosecution; (2) standards implicated by the decision to resolve the federal investigation through a non-prosecution agreement; and (3) standards implicated by any of the NPA's provisions, including the promise not to prosecute unidentified third parties. As discussed below, OPR concludes that in each area, and in the absence of evidence establishing that his decisions were based on corrupt or improper influences, the U.S. Attorney possessed broad discretionary authority to proceed as he saw fit, authority that he could delegate to subordinates, and that Acosta's exercise of his discretionary authority did not breach any clear and unambiguous standard. As a result, OPR concludes that none of the subject attorneys violated a clear and

[202] The failure to fully advise a supervisor of relevant and material facts can warrant a finding that the subordinate attorney has not acted in "good faith." OPR did not find evidence supporting such a conclusion here, and Acosta did not claim that he was unaware of material facts needed to make his decision.

unambiguous standard or engaged in professional misconduct in developing, negotiating, or entering into the NPA, including its addendum.

A. U.S. Attorneys Have Broad Discretion to Resolve Investigations or Cases as They Deem Appropriate, and Acosta's Decision to Decline to Prosecute Epstein Federally Does Not Constitute Professional Misconduct

The U.S. Attorneys exercise broad discretion in enforcing the nation's criminal laws.[203] As a general matter, federal prosecutors "are designated by statute as the President's delegates to help him discharge his constitutional responsibility to 'take Care that the Laws be faithfully executed.'" *United States v. Armstrong,* 517 U.S. 456, 464 (1996) (quoting U.S. Const. art. II, § 3). Unless based on an impermissible standard such as race, religion, or other arbitrary classification, a prosecutor's charging decisions—including declinations—are not dictated by law or statute and are not subject to judicial review. *See United States v. LaBonte,* 520 U.S. 751, 762 (1997) ("Such discretion is an integral feature of the criminal justice system, and is appropriate, so long as it is not based upon improper factors.").

Department policy guidance in effect at the time the USAO was handling the Epstein case helped ensure "the reasoned exercise of prosecutorial authority," but did not require "a particular prosecutorial decision in any given case." USAM §§ 9-27.001, 9-27.120 (comment). Rather than mandating specific actions, the USAM identified considerations that should factor into a prosecutor's charging decisions, including that the defendant was "subject to effective prosecution in another jurisdiction." USAM § 9-27.220. Importantly, U.S. Attorneys had "plenary authority with regard to federal criminal matters" and could modify or depart from the principles set forth in the USAM as deemed necessary in the interest of fair and effective law enforcement within their individual judicial districts. USAM §§ 9-2.001, 9-27.140. As stated in the USAM, "[t]he United States Attorney is invested by statute and delegation from the Attorney General with the broadest discretion in the exercise of such [prosecutive] authority," which includes the authority to decline prosecution. USAM § 9-2.001.

In addition, the USAM contemplated that federal prosecutors would sometimes decline federal prosecution in deference to a state prosecution of the same conduct and provided guidance in the form of factors to be considered in making the decision, including the strength of the other jurisdiction's interest in prosecution, the other jurisdiction's ability and willingness to prosecute effectively, and the probable sentence or other consequences if the person is convicted in the other jurisdiction. USAM § 9-27.240.[204] A comment to this provision stated that the factors are "illustrative only, and the attorney for the government should also consider any others that appear relevant to hi[m]/her in a particular case."

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[203] *See, e.g.*, *Wayte,* 470 U.S. at 607; *United States v. Goodwin,* 457 U.S. 368, 380 n.11 (1982); *Bordenkircher,* 434 U.S. at 364; *Imbler*, 424 U.S. 409.

[204] The discretionary authority under USAM § 9-27.240 to defer prosecution in favor of another jurisdiction is distinct from the Petite policy, which establishes guidelines for the exercise of discretion in determining whether to bring a federal prosecution based on conduct substantially the same as that involved in a prior state or federal proceeding. *See* USAM § 9-2.031.

As the U.S. Attorney, and in the absence of evidence establishing that his decision was motivated by improper factors, Acosta had the "plenary authority" under federal law and under the USAM to resolve the case as he deemed necessary and appropriate. As discussed in detail below, OPR did not find evidence establishing that Acosta, or the other subjects, were motivated or influenced by improper considerations. Because no clear and unambiguous standard required Acosta to indict Epstein on federal charges or prohibited his decision to defer prosecution to the state, OPR does not find misconduct based on Acosta's decision to decline to initiate a federal prosecution of Epstein.

B. No Clear and Unambiguous Standard Precluded Acosta's Use of a Non-Prosecution Agreement to Resolve the Federal Investigation of Epstein

OPR found no statute or Department policy that was violated by Acosta's decision to resolve the federal investigation of Epstein through a non-prosecution agreement.

The prosecutor's broad charging discretion includes the option of resolving a case through a non-prosecution agreement or a related and similar mechanism, a deferred prosecution agreement. *United States v. Fokker Servs. B.V.*, 818 F.3d 733 (D.C. Cir. 2016). These agreements "afford a middle-ground option to the prosecution when, for example, it believes that a criminal conviction may be difficult to obtain or may result in unwanted collateral consequences for a defendant or third parties, but also believes that the defendant should not evade accountability altogether." *Id.* at 738. As with all prosecutorial charging decisions, the choice to resolve a case through a non-prosecution agreement or a deferred prosecution agreement "resides fundamentally with the Executive" branch. *Id.* at 741.

OPR found no clear and unambiguous standard in the USAM prohibiting the use of a non-prosecution agreement in the circumstances presented in Epstein's case. The USAM specifically authorized and provided guidance regarding non-prosecution agreements or deferred prosecution agreements made in exchange for a person's timely cooperation when such cooperation would put the person in potential criminal jeopardy and when alternatives to full immunity (such as testimonial immunity) were "impossible or impracticable." USAM § 9-27.600 (comment).[205] The "cooperation" contemplated was cooperation in the criminal investigation or prosecution of another person. In certain circumstances, government attorneys were required to obtain approval from the appropriate Assistant Attorney General before entering into a non-prosecution agreement in exchange for cooperation.

Epstein, however, was not providing "cooperation" as contemplated by the USAM, and the USAM was silent as to whether a prosecutor could use a non-prosecution agreement in circumstances other than in exchange for cooperation in the investigation or prosecution of another. Notably, although the USAM provided guidance and approval requirements in cases involving cooperation, the USAM did not prohibit the use of a non-prosecution agreement in other situations. Accordingly, OPR concludes that the USAM did not establish a clear and unambiguous obligation prohibiting Acosta from ending the federal investigation through a non-prosecution

[205] USAM § 9-27.650 required that non-prosecution agreements in exchange for cooperation be fully memorialized in writing. Although this requirement was not applicable for the reasons given above, the NPA complied by fully memorializing the terms of the agreement.

agreement that did not require Epstein's cooperation nor did the USAM require Acosta to obtain Departmental approval before doing so.

C. The NPA's Individual Provisions Did Not Violate Any Clear and Unambiguous Standards

Although Acosta, as U.S. Attorney, had discretion generally to resolve the case through a non-prosecution agreement that deferred prosecution to the state, OPR also considered whether a clear and unambiguous standard governed any of the individual provisions of the NPA. Specifically, OPR examined Acosta's decision to permit Epstein to resolve the federal investigation by pleading guilty to state charges of solicitation of minors to engage in prostitution and solicitation to prostitution, with a joint, binding recommendation for an 18-month sentence of incarceration. Because, as noted above, OPR found no clear guidance applicable to non-prosecution agreements not involving cooperation, OPR examined Departmental policies relating to plea offers to assess the propriety of the NPA's charge and sentence requirements. OPR also examined the provision declining to prosecute Epstein's unidentified "potential co-conspirators," to determine whether that provision violated Departmental policy regarding grants of immunity. Finally, OPR considered whether there was a clear and unambiguous obligation under the Department's policy regarding the deportation of criminal aliens, which would have required further action to be taken against the two Epstein assistants who were foreign nationals.

After considering the applicable rules and policies, OPR finds that Acosta's decision to resolve the federal investigation through the NPA did not violate any clear and unambiguous standards and that Acosta had the authority to resolve the federal investigation through a state plea and through the terms that he chose. Accordingly, OPR concludes that Acosta did not commit professional misconduct in developing, negotiating, or approving the NPA, nor did the other subjects who implemented his decisions with respect to the resolution.[206]

1. Acosta Had Authority to Approve an Agreement That Required Epstein to Plead to Offenses Resulting in an 18-Month Term of Incarceration

Federal prosecutors have discretion to resolve a pending case or investigation through a plea agreement, including a plea that calls for the imposition of a specific, predetermined sentence. USAM §§ 9-27.330, 9-27.400; *see also* Federal Rule of Criminal Procedure 11(c)(1).

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[206] OPR also considered whether Acosta, Sloman, Menchel, Lourie, or Villafaña failed to comply with professional ethics standards requiring that attorneys exercise competence and diligence in their representation of a client. Attorneys have a duty to provide competent, diligent representation to their clients, which generally requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. *See, e.g.*, FRPC 4-1.1, 4-1.3. The requirement of diligence obligates an attorney to exercise "zeal" in advocating for the client, but does not require the attorney "to press for every advantage that might be realized for a client." *See* FRPC 4-1.3 (comment). Although OPR criticizes certain decisions made during the USAO's investigation of Epstein, those decisions, even if flawed, did not violate the standard requiring the exercise of competence or diligence. The subjects exhibited sufficient knowledge, skill, preparation, thoroughness, and zeal during the federal investigation and the NPA negotiations to satisfy the general standards established by the professional responsibility rules. An attorney may attain a flawed result but still exercise sufficient competence and diligence throughout the representation to meet the requirements of the standard.

Longstanding Department policy directs prosecutors to require the defendant to plead to the most serious readily provable charge consistent with the nature and extent of the defendant's criminal conduct, that has an adequate factual basis, is likely to result in a sustainable conviction, makes likely the imposition of an appropriate sentence and restitution order, and does not adversely affect the investigation or prosecution of others. *See* USAM §§ 9-27.430, 9-27-300, 9-27.400 (comment). The genesis of this policy, the Ashcroft Memo, specifically requires federal prosecutors to charge and pursue all readily provable charges that would yield the most substantial sentence under the Sentencing Guidelines. However, the Ashcroft Memo articulates an important exception: a U.S. Attorney or a "designated supervisory attorney" may authorize a plea that does not comport with this policy.[207] Moreover, the Ashcroft Memo explains that a charge is not "readily provable" if the prosecutor harbors "a good faith doubt," based on either the law or the evidence, as to the government's ability to prove the charge at trial.

By its plain terms, the NPA arguably does not appear to satisfy the "most serious readily provable charge" requirement. The draft indictment prepared by Villafaña proposed charging Epstein with a variety of federal crimes relating to sexual conduct with and trafficking of minors, and Epstein's sentencing exposure under the federal guidelines was in the range of 168 to 210 months' imprisonment. The original "term sheet" presented to the defense proposed a "non-negotiable" requirement that Epstein plead guilty to three state offenses, in addition to the original state indictment, with a joint, binding recommendation for a two-year term of incarceration. Instead, Epstein was permitted to resolve his federal criminal exposure with a plea to the state indictment and only one additional state offense, and an 18-month sentence.

As discussed more fully later in this Report, Acosta, Sloman, Menchel, and Lourie perceived risks to going forward to trial on the federal charges Villafaña outlined in the prosecution memorandum and identified for OPR concerns with both the evidence and legal theories on which a federal prosecution would be premised. On the other hand, Villafaña felt strongly that federal charges should be brought, and the CEOS Chief reviewed the prosecution memorandum and twice opined that the charges were appropriate. OPR found it unnecessary to resolve the question whether federal charges against Epstein were readily provable, however, because Acosta had

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[207] In addition to specified "Limited Exceptions," this authorization is available in "Other Exceptional Circumstances," as follows:

> Prosecutors may decline to pursue or may dismiss readily provable charges in other exceptional circumstances with the written or otherwise documented approval of an Assistant Attorney General, United States Attorney, or designated supervisory attorney. This exception recognizes that the aims of the Sentencing Reform Act must be sought without ignoring the practical limitations of the federal criminal justice system. For example, a case-specific approval to dismiss charges in a particular case might be given because the United States Attorney's Office is particularly over-burdened, the duration of the trial would be exceptionally long, and proceeding to trial would significantly reduce the total number of cases disposed of by the office. However, such case-by-case exceptions should be rare; otherwise the goals of fairness and equity will be jeopardized.

Ashcroft Memo at § I.B.6. *See also* USAM §§ 9-2.001 and 27.140 (U.S. Attorneys' authority to depart from the USAM).

authority to deviate from the Ashcroft Memo's "most serious readily provable offense" requirement.

Although Acosta could not recall specifically how or by whom the decision was made to allow Epstein to plead to only one of the three charges identified on the original term sheet, or how or by whom the decision was made to reduce the sentencing requirement from two years to 18 months, Acosta was aware of these changes. He reviewed and approved the final NPA before it was signed. Department policy gave him the discretion to approve the agreement, notwithstanding any arguable failure to comply with the "most serious readily provable offense" requirement. Furthermore, the Ashcroft Memo does not appear to preclude a U.S. Attorney from deferring to a state prosecution, so it is not clear that the Memo's terms apply to a situation involving state charges. Accordingly, OPR concludes that the negotiation of an agreement that allowed Epstein to resolve the federal investigation in return for the imposition of an 18-month state sentence did not violate a clear and unambiguous standard and therefore does not constitute professional misconduct.

2. The USAO's Agreement Not to Prosecute Unidentified "Potential Co-Conspirators" Did Not Violate a Clear and Unambiguous Department Policy

Several witnesses told OPR that they believed the government's agreement not to prosecute unidentified "potential co-conspirators" amounted to "transactional immunity," which the witnesses asserted is prohibited by Department policy. Although "use immunity" protects a witness only against the government's use of his or her immunized testimony in a prosecution of the witness, and is frequently used by prosecutors, transactional immunity protects a witness from prosecution altogether and is relatively rare.

OPR found no policy prohibiting a U.S. Attorney from declining to prosecute third parties or providing transactional immunity. One section of the USAM related to immunity but applied only to the exchange of "use immunity" for the testimony of a witness who has asserted a Fifth Amendment privilege. *See* USAM § 9-23.100 *et seq.* Statutory provisions relating to immunity also address the same context. *See* 18 U.S.C. § 6002; 21 U.S.C. § 884. Moreover, apart from voluntariness or enforceability concerns, courts have not suggested that a prosecutor's promise not to prosecute a third party amounts to an inappropriate exercise of prosecutorial discretion. *See, e.g., Marquez*, 909 F.2d at 741-43; *Kemp*, 760 F.2d at 1248; *Stinson*, 839 So. 2d at 909; *Frazier*, 697 So. 2d 945. OPR found no clear and unambiguous standard that was violated by the USAO's agreement not to prosecute "potential co-conspirators," and therefore cannot conclude that negotiating or approving this provision violated a clear and unambiguous standard or constituted professional misconduct.

Notwithstanding this finding, in Section IV of this Part, OPR includes in its criticism of Acosta's decision to approve the NPA his approval of this provision without considering its potential consequences, including to whom it would apply.

3. The NPA Did Not Violate Department Policy Relating to Deportation of Criminal Aliens

During the negotiations, the USAO rejected a defense-offered provision prohibiting the USAO from "request[ing], initiat[ing], or in any way encourag[ing] immigration authorities to institute immigration proceedings" against two female assistants. However, OPR considered whether the April 28, 1995 memorandum imposed any obligation on the USAO to prosecute Epstein's two female assistants who were known to be foreign nationals—as Villafaña urged in her prosecution memorandum—and thus trigger their removal, or conversely, whether it precluded the USAO from agreeing not to prosecute them as part of a negotiated resolution. OPR found nothing in the policy that created a clear and unambiguous standard in either regard.

The Attorney General's April 28, 1995 memorandum regarding "Deportation of Criminal Aliens" directed federal prosecutors to become involved actively and directly in the process of removing criminal aliens from the United States, and, along with USAM § 9-73.520, provided that "[a]ll deportable criminal aliens should be deported unless extraordinary circumstances exist." However, Epstein's two assistants were not "deportable" unless and until convicted of a crime that would have triggered their removal. But neither the policy memorandum nor the USAM imposed an obligation on the USAO to prosecute or secure a conviction against a foreign national nor did either provision preclude the USAO from declining to prosecute an alien using the same broad discretion that otherwise applies to charging decisions.

The policy guidance also requires "prompt and close coordination" with immigration officials in cases involving alien defendants and specifies that prosecutors must notify immigration authorities before engaging in plea negotiations with alien defendants. OPR learned during its investigation that an ICE agent participated in the Epstein investigation in its early stages. Moreover, because the USAO never engaged in plea negotiations with the two female assistants, who, in any event, had not been charged and were therefore not "defendants," no further notification was required.

IV. THE EVIDENCE DOES NOT ESTABLISH THAT THE SUBJECTS WERE INFLUENCED BY IMPROPER MOTIVES TO INCLUDE IN THE NPA TERMS FAVORABLE TO EPSTEIN OR TO OTHERWISE EXTEND BENEFITS TO EPSTEIN

OPR investigated whether any of the subjects—Acosta, Sloman, Menchel, Lourie, or Villafaña—was influenced by corruption, bias, or other improper motive, such as Epstein's wealth, status, or political associations, to include terms in the NPA that were favorable to Epstein, or whether such motives otherwise affected the outcome of the federal investigation. OPR considered the case-specific reasons the subjects identified as the motivation for the USAO's July 31, 2007 "term sheet" and Acosta's approval of the NPA in September 2007. OPR also thoroughly examined various factors forming the basis for allegations that the subjects were motivated by improper influences, including the subjects' preexisting relationships with defense counsel; the subjects' numerous meetings with Epstein's team of nationally known attorneys; emails between the subjects—particularly Villafaña—and defense counsel that appeared friendly, casual, and deferential to defense counsel; and inclusion in the NPA of a broad provision declining

to prosecute all of Epstein's co-conspirators. These factors are analyzed in the following discussions throughout this Section of the Report.

As a threshold matter, OPR's investigation of the subjects' decisions and actions in the Epstein matter uncovered no evidence of corruption such as bribery, gratuity, or illegal political or personal consideration. In addition, OPR examined the extensive contemporaneous documentary record, interviewed witnesses, and questioned the subject attorneys. The evidence shows three sets of issues influenced Acosta's decision to resolve the case through the NPA. The first—of main concern to Acosta—involved considerations of federalism and deference to state authority. The second arose from an assessment by Acosta's senior advisers—Sloman, Menchel, and Lourie—that the case carried substantial litigation risks, including both witness issues and what some viewed as a novel application of certain federal statutes to the facts of the Epstein case.[208] The third was Acosta's aim of obtaining a greater measure of justice for victims of Epstein's conduct and for the community than that proposed by the state.

Although the NPA and the process for reaching it can be criticized, as OPR does, OPR did not find evidence supporting a conclusion that the subjects were motivated by a desire to benefit Epstein for personal gain or because of other improper considerations, such as Epstein's wealth, status, or associations. That is not to say that Epstein received no benefit from his enormous wealth. He was able to hire nationally known attorneys who had prestige, skill, and extensive experience in federal and state criminal law and in conducting negotiations. He had the resources to finance an aggressive approach to the case that included the preparation of multiple written submissions reflecting extensive research and analysis, as well as multiple in-person meetings involving several of his attorneys and USAO personnel. He assembled a defense team well versed in the USAO and the Department, with the knowledge to maneuver through the Department's various levels and offices, a process unknown to many criminal defense attorneys and infrequently used even by those familiar with the Department's hierarchy. Access to highly skilled and prominent attorneys is not unusual in criminal cases involving corporations and their officers or certain other white collar defendants, but it is not so typical for defendants charged with sex crimes or violent offenses. Nonetheless, while recognizing that Epstein's wealth played a role in the outcome because he was able to hire skilled and assertive attorneys, OPR concludes that the subjects were not motivated to resolve the federal investigation to Epstein's benefit by improper factors.

A. OPR Found No Evidence of Criminal Corruption, Such as Bribery, Gratuity, or Illegal Political or Personal Consideration

Some public criticism of the USAO's handling of the Epstein matter implied that the subjects' decisions or actions may have been motivated by criminal corruption, although no specific information substantiating such implications was identified. Throughout its investigation,

[208] Sloman asserted throughout his OPR interview that he did not participate in substantive discussions about the Epstein investigation before the NPA was signed, and his attorney argued in his comments on OPR's draft report that OPR should not attribute to Sloman any input in Acosta's decisions about how to resolve the case. However, Sloman was included in numerous emails discussing the merits of and issues relating to the investigation, participated in meetings with the defense team, and, according to Acosta, was one of the senior managers whom Acosta consulted in determining how to resolve the Epstein investigation.

OPR was attentive to any evidence that any of the subjects was motivated by bribes, gratuities, or other illegal political or personal considerations, and found no such indication.[209] Witnesses, including law enforcement officials, were specifically asked whether they had any information indicating such corruption, and all—notwithstanding the harsh criticism by some of those same witnesses of the Epstein matter's outcome—stated that they did not. Specifically, the FBI case agent told OPR that she did not believe there had been any illegal influence, and that if she had perceived any, she "would have gone screaming" to the FBI's public corruption unit. The co-case agent and the FBI supervisors up through the Special Agent in Charge likewise told OPR that they were unaware of any indication that a prosecutor acted in the matter because of illegal factors such as a gratuity or bribe or other corrupt influence, and that any such indication would immediately have been referred for criminal investigation by the FBI.

B. Contemporaneous Written Records and Witness and Subject Interviews Did Not Reveal Evidence Establishing That the Subjects Were Improperly Influenced by Epstein's Status, Wealth, or Associations

Although Epstein's name is now nationally recognized, in 2006 and 2007, he was not a familiar national figure or even particularly well known in Florida. All five subjects told OPR that when they first learned of the investigation, they had not heard of Epstein. Similarly, the FBI case agent told OPR that when the investigation began, no one in the FBI appeared to have heard of Epstein, and other witnesses also told OPR that they were initially unfamiliar with Epstein. However, news reports about Epstein's July 2006 arrest on the state indictment, which were contemporaneous with the beginning of the federal investigation, identified him as a wealthy Palm Beach resident with influential contacts, including William Clinton, Donald Trump, Kevin Spacey, and Alan Dershowitz, and other "prominent businessmen, academics and scientists."[210] Villafaña, Lourie, Sloman, and Acosta learned of this press coverage early in the investigation, and thus understood that Epstein was wealthy and associated with notable public figures.[211] The FBI case agent also told OPR that "we knew who had been on his plane, we knew . . . some of his connections."

1. The Contemporaneous Records Did Not Reveal Evidence Establishing That the NPA Resulted from Improper Factors

OPR found no evidence in the extensive contemporaneous documentary record that the terms of the NPA resulted from improper factors, such as Epstein's wealth or influential connections. Epstein's legal team overtly raised Epstein's financial status in arguing for a sentence that did not include a term of imprisonment on the ground that Epstein would be extorted in prison, but the USAO insisted that Epstein serve a term of incarceration. Defense counsel mentioned former President Clinton in one pre-NPA letter, but that reference was made in the context of a

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[209] OPR's jurisdiction does not extend to the investigation of allegations of criminal activity. If OPR had found indication of criminal activity, it would have referred the matter to the appropriate Department investigative agencies.

[210] Larry Keller, "Billionaire solicited prostitutes three times, indictment says," *Palm Beach Post*, July 24, 2006; Nicole Janok, "Consultant to the rich indicted, jailed," *Palm Beach Post*, July 24, 2006.

[211] Lourie later made Menchel aware of Epstein's prominence in the course of forwarding to Menchel the initial prosecution memorandum.

narrative of Epstein's philanthropic activities, rather than presented as a suggestion that Epstein's association to the former President warranted leniency and, in any case, the USAO rejected the defense argument that the matter should be left entirely to the state's discretion.[212] The defense submission to the Deputy Attorney General contained a direct reference to Epstein's connection to former President Clinton, but that submission was made well after the NPA was negotiated and signed, and in it, counsel contended that the USAO had treated Epstein too harshly because of his association with the former President.[213]

2. The Subjects Asserted That They Were Motivated by Reasonable Strategic and Policy Considerations, Not Improper Influences

In addition to reviewing the documentary evidence, OPR questioned the five subject attorneys, all of whom denied being personally influenced by Epstein's wealth or status in making decisions regarding the investigation, in the decision to resolve the case through an NPA, or in negotiating the NPA. Villafaña, in particular, was concerned from the outset of the federal investigation that Epstein might try to employ against the USAO the same pressure that she understood had been used with the State Attorney's Office, and she proactively took steps to counter Epstein's possible influence by meeting with Acosta and Sloman to sensitize them to Epstein's tactics. Both Acosta and Sloman told OPR that the USAO had handled cases involving wealthy, high-profile defendants before, including the Abramoff case. Acosta told OPR, "[W]e tried to treat [the case] fairly, not looking at . . . how wealthy is he, but also not saying we need to do this because he is so wealthy." Menchel expressed a similar view, telling OPR that he did not believe "it's appropriate to go after somebody because of their status one way or the other." Lourie told OPR that Epstein's status may have generated more "front office" involvement in the case, but it did not affect the outcome, and Sloman "emphatically disagree[d]" with the suggestion that the USAO's handling of the case had been affected by Epstein's wealth or influential connections. Other witnesses corroborated the subjects' testimony on this point, including the FBI case agents, who told OPR that no one ever communicated to them that they should treat Epstein differently because of his wealth. The CEOS Chief told OPR that he did not recall anyone at the USAO expressing either qualms or enthusiasm about proceeding against Epstein because of his wealth and influence.

OPR takes note of but does not consider dispositive the absence of any affirmative evidence that the subjects were acting from improper motivations or their denial of such motivations. Of more significance, and as discussed more fully below, was the fact that contemporaneous records support the subjects' assertions that the decision to pursue a pre-charge resolution was based on various case-specific legal and factual considerations.[214] OPR also

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[212] In the pre-NPA letter to the USAO, counsel recited a litany of Epstein's purported good deeds and charitable works, including a trip Epstein took to Africa with former President Clinton to raise awareness of AIDS, and counsel also noted that the former President had been quoted by *New York Magazine* describing Epstein as "a committed philanthropist."

[213] In the letter to the Deputy Attorney General, counsel suggested that the prosecution may have been "politically motivated" due to Epstein's "close personal association with former President Bill Clinton."

[214] OPR also considered that all five subjects provided generally consistent explanations regarding the factors that influenced Acosta's decision to resolve the federal investigation through the NPA. Sloman, Menchel, Lourie, and Villafaña all had long careers with the Department, and OPR considers it unlikely that they would all have joined with

considered that the USAO's most pivotal decisions—to resolve the case through an NPA requiring Epstein to serve time in jail, register as a sexual offender, and provide monetary damages to victims—had been made by July 31, 2007, when the USAO presented its "term sheet" to the defense. This was before Acosta had ever met with defense counsel and when he had not indicated any plans to do so. It also was well before Acosta's October 12, 2007 breakfast meeting with defense counsel Lefkowitz, which received strong public and media criticism. OPR also considered significant the fact that although the USAO made numerous concessions in the course of negotiating the final NPA, the USAO did not accede to the defense request that the USAO end federal involvement altogether and return the matter to the state authorities to handle as they saw fit, and the USAO refused to eliminate its requirement that Epstein register as a sexual offender, despite a strong push by the defense that it do so.

3. Subject and Witness Interviews and Contemporaneous Records Identified Case-Specific Considerations Relating to Evidence, Legal Theories, Litigation Risk, and a Trial's Potential Impact on Victims

Acosta, Sloman, Menchel, and Lourie told OPR that they did not recall the specific content of discussions about the challenges presented by a potential federal prosecution or reasons for Acosta's decision to resolve the federal investigation through the NPA, but they and Villafaña identified for OPR several case-specific factors, unrelated to Epstein's wealth or associations, that either did or likely would have been included in those discussions and that OPR concludes likely influenced Acosta's decision-making. These considerations included assessment of the evidentiary risks and the potential impact of a trial on the victims. For the most part, however, these factors appear more aptly to pertain to the decision to resolve the case through a pre-charge disposition, but do not directly explain why Acosta chose to resolve the federal investigation through a guilty plea in state court. That decision appears to have stemmed from Acosta's concerns about intruding into an area he believed was traditionally handled by state law enforcement authorities.

In a declaration submitted to the district court in 2017 in connection with the CVRA litigation, Villafaña explained the USAO's rationale for terminating the federal investigation through the NPA:

> Prior to the Office making its decision to direct me to engage in negotiations with Epstein's counsel, I discussed the strengths and weaknesses of the case with members of the Office's management, and informed them that most of the victims had expressed significant concerns about having their identities disclosed. . . . It is my understanding from these and other discussions that these factors, that is, the various strengths and weaknesses of the case and the various competing interests of the many different victims (including the privacy concerns expressed by many), together with the Office's desire to obtain a guaranteed sentence of incarceration for Epstein, the equivalent of uncontested restitution for the victims,

Acosta to improperly benefit Epstein or would have remained silent if they suspected that Acosta, or any of their colleagues, was motivated by improper influences.

> and guaranteed sexual offender registration by Epstein . . . were among the factors [that led to the NPA].[215]

During her OPR interview, Villafaña similarly described the victims' general reluctance to go forward with a trial:

> [W]hen we would meet with victims, we would ask them how they wanted the case to be resolved. And most of them wanted the case to be resolved via a plea. Some of them wanted him not to be prosecuted at all. Most of them did not want to have to come to court and testify. They were very worried about their privacy rights.[216]

In his written response to OPR, Lourie stated that although he did not specifically recall the issues Villafaña set forth in her declaration, he believed they would have been important to the USAO in 2007. Lourie also told OPR that he generally recalled concerns within the USAO about the charges and a potential trial:

> [M]y vague recollection is that I and others had concerns that there was a substantial chance we would not prevail at both trial and on appeal after a conviction, resulting in no jail time, no criminal

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[215] *Doe v. United States*, No. 9:08-cv-80736 (S.D. Fla.), Declaration of A. Marie Villafaña in Support of Government's Response and Opposition to Petitioners' Motion for Partial Summary Judgment and Cross-Motion for Summary Judgment at 8-9 (June 2, 2017).

[216] These concerns are also reflected in a 2017 declaration filed by the FBI case agent in the CVRA litigation, in which she stated, "During interviews conducted from 2006 to 2008, no victims expressed a strong opinion that Epstein be prosecuted." She further described the concerns of some of the victims:

> Throughout the investigation, we interviewed many [of Epstein's] victims . . . . A majority of the victims expressed concern about the possible disclosure of their identities to the public. A number of the victims raised concerns about having to testify and/or their parents finding out about their involvement with Mr. Epstein. Additionally, for some victims, learning of the Epstein investigation and possible exposure of their identities caused them emotional distress. Overall, many of the victims were troubled about the existence of the investigation. They displayed feelings of embarrassment and humiliation and were reluctant to talk to investigators. Some victims who were identified through the investigation refused even to speak to us. Our concerns about the victims' well-being and getting to the truth were always at the forefront of our handling of the investigation.

In addition, during the CVRA litigation, an attorney representing several victims filed a pleading to protect the anonymity of his clients by preventing disclosure of their identities to the CVRA petitioners. *See* Response to Court Order of July 6, 2015 and United States' Notice of Partial Compliance (July 24, 2015). It is noteworthy that in 2020, when OPR attempted to contact victims, through their counsel, for interviews or responses to written questions regarding contacts with the USAO, OPR was informed that most of the victims were still deeply concerned about remaining anonymous. One victim described to OPR how she became distraught when, during the USAO's investigation, the FBI left a business card at her parents' home and, as a result, her parents learned that she was a victim of Epstein. At the time, the victim was a teenager; was "nervous, scared, and ashamed"; and did not want her parents to know about the case.

> record, no restitution, no sex offender status, publication at a trial of the names of certain victims that didn't want their names revealed and the general difficulties of a trial for the victims and their families.

Although his emails showed that, at the time, he advocated for prosecution of Epstein, Lourie told OPR it was also his general recollection that "everybody at the USAO working on the matter had expressed concerns at various times about the long-term viability of a federal prosecution of Epstein due to certain factual and legal hurdles, as well as issues with the cooperation and desires of the victims."

Similarly, Menchel—who had experience prosecuting sexual assault crimes—recalled understanding that many of the victims were unwilling to go forward and would have experienced additional trauma as a result of a trial, and some had made statements exonerating Epstein. Menchel told OPR he believed that if the USAO had filed the proposed charges against Epstein, Epstein would have elected to go to trial. In Menchel's view, the USAO therefore had to weigh the risk of losing at trial, and thereby re-traumatizing the victims, against the benefits gained through a negotiated result, which ensured that Epstein served time in jail, registered as a sexual offender, and made restitution to his victims.

Sloman also recalled witness challenges and concerns about the viability of the government's legal theories. He told OPR:

> [I]t seemed to me you had a tranche of witnesses who were not going to be reliable. You had a tranche [of] witnesses who were going to be severely impeached. People who loved Jeffrey Epstein who thought he was a Svengali . . . who were going to say I told him I was 18 years old.
>
> You had witnesses who were scared to death of the public light being shown on them because their parents didn't even know -- had very vulnerable victims. You had all of these concerns.

Acosta told OPR that he recalled discussions with his senior managers about the victims' general credibility and reluctance to testify and the evidentiary strength of the case, all of which factored into the resolution. He acknowledged that his understanding of the facts was not "granular" and did not encompass a detailed understanding of each victim's expected testimony, but he trusted that his "team" had already "done the diligence necessary" to make recommendations about the evidentiary strength of the case. Acosta recalled discussing the facts with Sloman and Menchel, and possibly Lourie, none of whom had as detailed an understanding of the facts as Villafaña. Nevertheless, OPR credits Acosta's statement that he reasonably believed, based on his conversations with others who expressed this view, that a trial would pose significant evidentiary challenges.

Other witnesses corroborated the subjects' testimony regarding witness challenges, including the FBI co-case agent, who recalled during his OPR interview that some of the victims had expressed concern for their safety and "a lot of them d[id]n't want to take the stand, and

d[id]n't want to have to relive what happened to them."[217] The co-case agent told OPR that one of the "strategies" for dealing with the victims' fear was "to keep them off the stand," and he generally remembered discussions about resolving the Epstein case in a way that protected the victims' identities. In addition, the CEOS Trial Attorney who briefly worked with Villafaña on the case after the NPA was signed told OPR that in her meetings with some of the victims, she formed the impression that they were not interested in the prosecution going forward. The CEOS Trial Attorney told OPR that "[the victims] would have testified," but would have required an extensive amount of "victim management" because they were "deeply embarrassed" about potentially being labeled as prostitutes. The CEOS Trial Attorney also told OPR that "there were obvious weaknesses in the case," from an evidentiary perspective.[218]

The contemporaneous records also reflect discussions of, or references to, various legal and factual issues or other concerns about the case. For example, in an early email to Menchel, Lourie noted that two key issues raised by Villafaña's proposed charges were whether the USAO could prove that Epstein traveled for the purpose of engaging in sex acts, and the fact that some minor victims had told Epstein they were 18. He later opined to Acosta and Menchel that "there is some risk on some of the statutes [proposed in Villafaña's prosecution memorandum] as this is uncharted territory to some degree." In his July 5, 2007 email to Villafaña, Menchel cited Acosta's and Sloman's "concerns about taking this case because of [the P]etit policy and a number of legal issues" and Acosta's concerns about "hurting Project Safe Childhood." Defense counsel raised myriad legal and factual challenges in their voluminous letters to the USAO. Defense submissions attacked the legal theories for a federal prosecution and detailed factors that could have undermined victims' credibility, including victim statements favorable to Epstein and evidence of victim drug and alcohol use, as well as the fact that some victims recruited other victims and purportedly lied to Epstein about their ages.

Acosta also recalled that although his "team" had expressed concern about the "trial issues," his own focus had been on "the legal side of things." Notably, during his prior tenure as the Assistant Attorney General in charge of the Department's Civil Rights Division, Acosta had been involved in efforts to address sex trafficking. He told OPR that one of the "background issues" that the Civil Rights Division addressed under his leadership, and which influenced his view of the Epstein case, was the distinction between sex trafficking and solicitation of prostitution. Specifically, he was concerned about avoiding the creation of potentially unfavorable federal precedent on the point of delineation between prostitution, which was traditionally a matter of state concern, and sex trafficking, which remained a developing area of federal interest in 2007.[219]

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[217] In an affidavit filed in the CVRA litigation, the co-case agent noted that in early 2007, when he located a victim living outside of the United States, she claimed only to "know Jeffrey Epstein," and stated that she "moved away to distance herself from this situation," and "asked that [the agent] not bother her with this again."

[218] In April 2007, a victim who was represented by an attorney paid by Epstein participated in a video-recorded interview with the FBI, with her attorney and his investigator present. This victim denied being involved in, or being a victim of, criminal activity. Later, the victim obtained new counsel and joined the CVRA litigation as "Jane Doe #2."

[219] In his March 20, 2011 letter, addressed "To whom it may concern," and published online in *The Daily Beast*, Acosta described "a year-long assault on the prosecution and the prosecutors" by "an army of legal superstars." Most of the allegations made against the prosecutors occurred after the NPA was signed and certainly after Acosta approved

The USAO might have been able to surmount the evidentiary, legal, and policy issues presented by a federal prosecution of Epstein. Villafaña, in particular, believed she could have prevailed had she taken the case to trial, and even after the NPA was negotiated, she repeatedly recommended declaring Epstein in breach and proceeding with an indictment, because she continued to have confidence in the case.[220] Oosterbaan and others also believed that the government would succeed at trial. Furthermore, the victims were not a uniform group. Some of them were afraid of testifying or having their identities made public; others wanted Epstein prosecuted, but even among those, it is not clear how many expressed a willingness to testify at a trial; and still others provided information favorable to Epstein. In the end, Acosta assumed responsibility for deciding how to resolve the Epstein investigation and weighing the risks and benefits of a trial versus those of a pre-charge disposition. His determination that a pre-charge disposition was appropriate was not unreasonable under the circumstances.

Although evidentiary and witness issues explain the subject supervisors' concerns about winning a potential trial and why the USAO would have sought some sort of pre-charge disposition, they do not fully explain why Acosta decided to pursue a state-based resolution as opposed to a traditional federal plea agreement. OPR did not find in the contemporaneous records a memorandum or other memorialization of the reasoning underlying Acosta's decision to offer a state-based resolution or the terms offered to the defense on July 31, 2007.

According to Acosta, "In 2006, it would have been extremely unusual for any United States Attorney's Office to become involved in a state solicitation case, even one involving underage teens," because solicitation was "the province of state prosecutors." Acosta told OPR that he developed "a preference for deferring to the state" to "make it clear that [the USAO was] not stepping on something that is a purely local matter, because we [didn't] want bad precedent for the sake of the larger human trafficking issue." Acosta also told OPR that it was his understanding that the PBPD would not have brought the case to federal investigators if the State Attorney's Office had pursued a sanction against Epstein that included jail time and sexual offender registration. Acosta viewed the USAO's role in the case as limited to preventing the "manifest injustice" that, in Acosta's view, would have resulted from the state's original plea proposal. Acosta acknowledged that if the investigation had begun in the federal system, he would not have viewed the terms set out in the NPA as a satisfactory result, but it was adequate to serve as a "backstop" to the state's prosecution, which he described as "a polite way of saying[, ']encouraging the state to do a little bit more.[']" In sum, Acosta told OPR that the Epstein case lay in "uncharted territory," there was no certainty that the USAO would prevail if it went to trial, and a potentially unfavorable outcome had to be "weighed against a certain plea with registration that would make sure that the public knew that this person was a sex offender."

Acosta told OPR that he discussed the case primarily with Sloman and Menchel, and both told OPR that while they did not share Acosta's federalism concerns, they recalled that Acosta had

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the terms offered to the defense on July 31, 2007. Therefore, any allegations against the prosecutors could not have played a significant role in Acosta's decisions as reflected in the term sheet.

220 Sloman told OPR that Villafaña "always believed in the case."

been concerned about policy and federalism issues.[221] Sloman told OPR that although he did not remember specific conversations, he generally recalled that Acosta had been "sensitive to" Petite policy and federalism concerns, which Sloman described as whether the USAO was "overstepping our bounds by taking what is a traditional state case that was in the State Attorney's Office that was resolved by the State Attorney's Office at some level." During his OPR interview, Menchel remembered that Acosta approached the case from "a broader policy perspective" and was worried about "the impact that taking the case in federally may have on . . . other programs," although Menchel did not recall specifically what those programs were.

C. Other Significant Factors Are Inconsistent with a Conclusion That the Subjects' Actions Were Motivated by Improper Influences

OPR considered additional aspects of the Epstein case that were inconsistent with a suggestion that Acosta's decision to offer the July 31, 2007 terms was driven by corruption, a desire to provide an improper benefit to Epstein, or other improper influences.

First, OPR considered highly significant the fact that if Acosta's primary motivation was to benefit Epstein, he had an option even more favorable to Epstein available to him. The NPA required Epstein to serve time in jail and register as a sexual offender, and provided a mechanism for the victims to seek monetary damages—outcomes unlikely if the matter had been abandoned and sent back to the state for whatever result state authorities deemed appropriate. Epstein's attorneys had vehemently argued to the USAO that there was no federal interest in the investigation and that his conduct was exclusively a matter of state concern. If the USAO had declined to intervene in the case, as Epstein's counsel repeatedly and strongly argued it should, the state would have meted out the sole punishment for his behavior. Under the state's original plan, Epstein likely would have received a sentence of probation. Menchel described such a result as a mere "slap on the wrist," with "no jail time, no felony sex offense, no sexual offender registration, [and] no restitution for the victims." Instead of acceding to Epstein's proposal, however, the USAO devised a resolution of the federal investigation that, although widely criticized as inadequate to address the seriousness of Epstein's conduct, nevertheless penalized Epstein more than a guilty plea to the state's original charge, standing alone, would have done. Acosta's affirmative decision to intervene and to compel a more stringent and just resolution than the state had proposed, rather than exercising his discretion to quietly decline prosecution, is strong circumstantial evidence that he was not acting for the purpose of benefiting Epstein.[222] Similarly, despite defense counsel's repeated requests to eliminate the sexual offender registration requirement, Acosta refused to

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[221] Sloman stated that although Acosta "was sensitive to [P]etite policy concerns, federalism concerns, . . . I was not." Menchel commented, "I don't think it would have been a concern of mine."

[222] Menchel also pointed out during his OPR interview that Acosta was Republican and "had nothing to gain" by showing favoritism to Epstein, who had been portrayed in the media as "this big Democratic donor." Villafaña recounted for OPR an exchange between the USAO team and a defense attorney who argued in one meeting that—

> we were prosecuting [Epstein] because he was Jewish. We then pointed out that a number of members of [the USAO] chain of command were Jewish. Then he said, well we're prosecuting him because he was a Democrat. And again, we pointed out that a number of us were Democrats. So then it went to, we were prosecuting him because he was wealthy. . . . That one didn't work so well.

reconsider the provision. Acosta could certainly have modified or eliminated the provision entirely if his motivation was to benefit Epstein or Epstein's attorneys.

Second, Epstein himself was not satisfied with the NPA. Immediately after signing the agreement, he sought to have the Department nullify it by declaring federal involvement in the investigation inappropriate. In addition to repeatedly attacking the NPA in his submissions to the Department, Epstein added to his evidentiary challenges and federalism claims allegations of misconduct and improper bias on the part of specific USAO personnel. Epstein's dissatisfaction with the NPA, and his personal attacks on individual prosecutors involved in negotiating the agreement, appear inconsistent with a conclusion that the subjects designed the NPA for Epstein's benefit.

D. OPR Does Not Find That the Subjects' Preexisting Relationships with Defense Counsel, Decisions to Meet with Defense Counsel, and Other Factors Established That the Subjects Acted from Improper Influences or Provided Improper Benefits to Epstein

In evaluating the subjects' conduct, OPR considered various other factors featured in media accounts to show that the subjects provided improper benefits to Epstein or which purportedly suggested that the subjects acted from improper influences. OPR examined these factors but did not find that they supported a finding that the subjects were influenced by favoritism, bias, or other improper motivation.

1. The Evidence Does Not Establish That the Subjects Extended Any Improper Benefit to Epstein because of Their Preexisting Relationships with His Attorneys

Epstein's wealth enabled him to hire multiple attorneys who had preexisting personal connections to some of the government attorneys involved in his case, in the State Attorney's Office, in the USAO, and elsewhere in the Department. Based on the attorneys Epstein selected to represent him, a reasonable inference can be drawn that Epstein believed that hiring attorneys with relationships to the prosecutors would be beneficial to him. One of the first attorneys who contacted the USAO on Epstein's behalf was Guy Lewis, a former AUSA in and U.S. Attorney for the Southern District of Florida. Villafaña and Lourie had worked for Lewis, and Lourie was close friends with one of Lewis's law partners. Epstein also retained Lilly Ann Sanchez, a former AUSA who had been Menchel's deputy and with whom he had socialized. Later, when Epstein was seeking Acosta's personal involvement in the case, Epstein hired Kenneth Starr and Jay Lefkowitz, prominent attorneys from Kirkland & Ellis with whom Acosta was acquainted from his previous employment with that firm.

Villafaña told OPR that she believed Acosta "was influenced by the stature of Epstein's attorneys." Critically, however, other than the information regarding Menchel that is discussed in the following subsection, neither Villafaña nor any of the other individuals OPR interviewed identified any specific evidence suggesting that Acosta, or any of the other subjects, extended an improper favor or benefit to Epstein because of a personal relationship with defense counsel (or for any other improper reason). Villafaña explained how, in her view, the "legal prowess" of Epstein's attorneys had an impact on the case:

> [O]ne of the issues in the case was the . . . defense's ability to describe the case or characterize the case as being legally complex. It was not as legally complex as they made it out to be. But because they were able to convince members of our office that it was somehow extremely novel and legally complex, the issue became who was likely to succeed in arguing these legal issues. And because of that, the legal prowess, if you will, of the attorneys [ ] [became] something to consider.
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> . . . .
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> I think that the ability of Alan Dershowitz and Ken Starr and Jay Lefkowitz to convince Alex Acosta that I didn't know what I was talking [about] also, all came into play. So I think there were a number of factors and it all came together.

Although Villafaña was critical of Acosta's consideration of the defense arguments, she conceded that the defense team's tactics demonstrated effective advocacy. Certainly, throughout the case, Epstein's attorneys prepared lengthy memoranda analyzing the evidence and arguing nuanced legal points concerning federalism, the elements of numerous federal criminal statutes, and the evidence relevant to those statutes, but it is not unusual or unreasonable for prosecutors to carefully consider well-crafted legal arguments from defense counsel.

There is little question that Epstein's extensive team of attorneys was able to obtain negotiated benefits for Epstein—although the USAO never wavered from its three core requirements, it did agree to a reduction in prison time from its original offer, and it granted Epstein certain other concessions during the negotiations. Epstein's wealth provided him with skilled, experienced negotiators who continually sought various incremental concessions, and with attorneys who knew how to obtain Department review of a USAO matter, thereby delaying undesired outcomes for as long as possible.[223] Despite Epstein's evident intentions, however, OPR did not find evidence warranting a conclusion that the NPA or its terms resulted from the subjects' relationships with the attorneys he had selected to represent him.

2. The Subjects Asserted That Their Relationships with Defense Counsel Did Not Influence Their Actions

Acosta, Menchel, Sloman, and Lourie each asserted that Epstein's choice of counsel did not affect his handling of the case. Menchel told OPR that once in private practice, former colleagues often became adversaries. In Menchel's view, such preexisting relationships were useful because they afforded a defense attorney initial credibility and an insight into the issues a prosecutor would likely view as areas of concern, which enabled the defense attorney to "tailor" arguments in a way that would maximize their persuasive impact on the USAO. Menchel told OPR, however, that these advantages did not "move the needle in any major way," and he "reject[ed] the notion" that anyone in the USAO had been "swayed" because of preexisting

[223] As Chief Reiter later observed in his deposition testimony, "[T]he Epstein case was an instance of a many million dollars defense and what it can accomplish."

friendships or associations with any of Epstein's attorneys. In fact, Menchel told OPR that he and his USAO colleagues viewed Epstein's attempt to exert influence through his choice of counsel as "ham-fisted" and "clumsy."

Sloman told OPR that although he became aware that Lourie was friends with Guy Lewis and Lewis's law partner, he was unaware of personal relationships between any of his other colleagues and any of Epstein's attorneys, but that in any event his attitude regarding cases involving former colleagues "was that we would give them process, but we didn't pull any punches with them." In Sloman's view, preexisting relationships with defense counsel did not "change the equation" because as AUSAs, he and his colleagues were motivated by what they perceived to be best for the case.

Lourie told OPR that his preexisting associations with Epstein's attorneys "didn't influence anything." Notably, at the outset of the Epstein case, Lourie sought guidance from the USAO's Professional Responsibility Officer about the propriety of his role as a supervisor in the investigation, because of his acquaintance with Lewis and long-time friendship with Lewis's law partner. OPR considered Lourie's caution in seeking and obtaining the Professional Responsibility Officer's advice as an indication that he was alert to his ethical responsibilities regarding relationships with defense counsel, including avoiding the appearance of a conflict of interest.

Acosta said during his OPR interview that he "developed" the three criteria reflected on the term sheet—a sentence of incarceration, sexual offender registration, and monetary damages for the victims—before he engaged directly with any of Epstein's attorneys and before Epstein added Starr and Lefkowitz, the Kirkland & Ellis attorneys, to his team. Acosta pointed out that the USAO continued to insist on a resolution that satisfied all three of those criteria even after Kirkland & Ellis became involved in the case.

Acosta took other actions that appear inconsistent with an intent to benefit Starr and Lefkowitz. On several occasions, when directly appealed to by Lefkowitz or Starr, he directed them to address their communications to Villafaña, Sloman, and other subordinates. After his October 12, 2007 breakfast meeting with Lefkowitz, Acosta immediately communicated with Sloman about their conversation. In late 2008, when Acosta anticipated leaving the USAO and was considering pursuing employment with Kirkland & Ellis, he recognized the conflict of interest and instructed Sloman to stop copying him on emails relating to the Epstein matter. On Acosta's behalf, the USAO's Professional Responsibility Officer sought and obtained formal Department approval of Acosta's recusal from the case based on the fact that he had "begun to discuss possible employment" with Kirkland & Ellis. These actions support Acosta's assertion that he was cognizant of his ethical responsibilities concerning relationships with defense counsel.[224]

[224] In addition, in May 2008, the USAO's Professional Responsibility Officer consulted with the Department's Professional Responsibility Officer about whether Acosta should recuse from the Epstein matter because he was considering seeking a visiting professorship at Harvard Law School in 2009, and Dershowitz—a Harvard Law School professor—was representing Epstein "as a private, paying client, and not as any part of a Harvard Law School clinic or law school teaching program" and "should have no role in deciding whether Mr. Acosta is offered any position as a visiting professor." The Department advised that these facts provided no basis for recusal.

In its review of the documentary record, OPR examined an email written by Villafaña in 2018, more than a decade after the NPA was negotiated, in which she suggested that the two-year sentence requirement in the initial "term sheet" provided to the defense was developed by Menchel as a favor to defense attorney Sanchez. OPR examined the facts surrounding this allegation and determined that there was no merit to it. Specifically, in December 2018, after the *Miami Herald* investigative report renewed public attention to the case, Villafaña recounted in an email to a supervisory AUSA, a conversation she recalled having had with Sloman about the case.[225] In the email, Villafaña stated that she had not been a participant in discussions that led to Acosta's decision to offer a two-year plea deal, but she added the following: "Months (or possibly years) later, I asked former First Assistant Jeff Sloman where the two-year figure came from. He said that Lily [*sic*] Ann Sanchez (attorney for Epstein) asked Mr. Menchel to 'do her a solid' and convince Mr. Acosta to offer two years."

OPR questioned both Villafaña and Sloman about the purported "do her a solid" remark. Villafaña told OPR that she had been aware that Menchel and Sanchez were friends. During her OPR interview, Villafaña explained:

> [A] lot later, I asked Jeff. I said, you know, "Jeff, where did this two years come from?" And he said, "Well, I always figured that . . . Lilly asked Matt to do her a solid," which I thought was such a strange term, . . . "and to get her a good deal so that she would be in Epstein's good graces" and that that's where the two years came from. Although strangely enough, then several years after that, Jeff Sloman asked me where the two years came from, and I had to remind him of that conversation. So Jeff doesn't know where the two years came from.

Because the email had been expressed in more definitive terms, OPR asked Villafaña whether Sloman had affirmatively asserted that the two-year deal was a favor from Menchel to defense counsel, or whether he had stated that he merely "figured" that was the case, but Villafaña could not recall precisely what Sloman had said. At a follow-up interview, Villafaña again said that she was unable to recall whether Sloman's specific statement was "Lilly asked Matt to do her a solid, and he did it," or "I always figured Matt just wanted . . . to do her a solid." Villafaña stated that she was unaware of any information that "expressly [indicated] that there was any sort of exchange of . . . a favor in either direction."

During his OPR interview, Sloman did not recall making such a remark, although he could not rule out the possibility that Villafaña, for whom he repeatedly expressed great respect, "heard that in some fashion." He told OPR that if he did say something to Villafaña about Menchel having done "a solid" for Epstein's counsel, he could not have meant it seriously, and he explained, "[I]t's not something that I would have believed. Him doing her a solid. I mean that's the furthest thing from my recollection or impression even after years later."

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[225] Villafaña's email stemmed from a congressional inquiry received by the Department concerning the Epstein investigation and the NPA, to which the USAO had been asked to assist in responding. In her email, Villafaña addressed several issues that she perceived to be the "three main questions" raised by the press coverage.

Menchel told OPR that when he and Sanchez were in the USAO, they had a social relationship, which included, in 2003, "a handful of dates over a period of two to three weeks. We decided that . . . this was probably best not to pursue, and we mutually agreed to not do that."[226] Apart from that, he stated they were "close" and "hung out," and he asserted that this was known in the office at the time. Menchel said that his relationship with Sanchez "changed dramatically" when she left the office for private practice, and that by the time he became involved in the Epstein investigation, he had dated and married his wife, and his contact with Sanchez would "most likely" have been at office events and when she attended his wedding.[227] Menchel added, "[T]hat was three and a half years [prior] for a very brief period of time, and I don't think I gave it a moment's thought."

When asked by OPR about the basis for the decision to make an offer of a two-year term of incarceration, Menchel said that he did not recall discussions about the two-year offer and did not recall how the office arrived at that figure. In response to OPR's question, Menchel stated that his relationship with Sanchez did "[n]ot at all" affect his handling of the Epstein case. Moreover, Menchel asserted that the contemporaneous documentary record supports a conclusion that it was Acosta, not Menchel, who made the decision to resolve the case with the two-year term.

OPR carefully considered the documentary record on this point, as well as the statements to OPR from Menchel, Villafaña, Sloman, and Acosta, and concludes that there is no evidence supporting the suggestion that the plea was instigated by Menchel as a favor to defense counsel. The USAO's first plea overture to defense counsel, which took place sometime before June 26, 2007, occurred when Menchel spoke with Sanchez about the possibility of resolving the federal case with a state plea that required jail time and sexual offender registration. According to the email, "[i]t was a non-starter" for the defense. In the lengthy email exchange with Villafaña in early July 2007, Menchel told her that his discussion with Sanchez about a state-based resolution was made with Acosta's "full knowledge." Acosta corroborated this statement, telling OPR that although he did not remember a specific conversation with Menchel concerning a state-based resolution, he was certain Menchel would not have discussed this potential resolution with defense counsel "without having discussed it with me."[228] Moreover, the defense did not immediately

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[226] Acosta, Sloman, and Lourie each told OPR that in 2007, he was not aware that Menchel had previously dated Sanchez. OPR questioned the USAO's Professional Responsibility Officer regarding whether Menchel had an obligation to inform his supervisors of his dating relationship. The Professional Responsibility Officer said that it would depend on "how long the relationship was and how compromised the individual felt he might appear to be," but he would have expected Menchel to raise the issue with Acosta. The Professional Responsibility Officer told OPR that if he had been approached for advice at the time, he would have asked for more facts, but "[g]iven the sensitivity of the [Epstein] matter, [my advice] would probably have been to tell him to step back and let somebody else take it over." Menchel told OPR that if his relationship with Sanchez had turned into something more than a handful of dates, he would have advised his supervisors. Although OPR does not conclude Menchel's prior relationship with Sanchez influenced the Epstein investigation, OPR assesses that it would have been prudent for Menchel to have informed his supervisors so they could make an independent assessment as to whether his continued involvement in the Epstein investigation might create the appearance of a loss of impartiality.

[227] Menchel's Outlook records also indicate he scheduled lunch with Sanchez on at least one occasion, in early 2006, after she left the USAO.

[228] In addition, Villafaña recalled Menchel stating at the July 26, 2007 meeting that "Alex has decided to offer a two year state deal."

accept the two-year proposal when it was made, but instead continued to press for a sentence of home confinement, suggesting that the defense had not requested the two-year term as a favor and did not view it as such. The defense had previously rejected the state's offer of a sentence of probation, and there is no indication in the contemporaneous records that Epstein viewed any jail sentence favorably and certainly that did not appear to be the view of the defense team in the early stages of the negotiations.

As discussed below, after extensive questioning of the subjects about the basis for the two-year offer, and a thorough review of the documentary record, OPR was unable to determine the reasoning underlying the decision to offer two years as the term of incarceration, as opposed to any other term of years. Nonetheless, OPR concludes from the evidence that Acosta was aware of and approved the initial offer to the defense, which included the two-year term of incarceration. The only evidence suggesting that the offer of two years stemmed from an improper motivation of Menchel's was a single second-hand statement in an email drafted many years later. Sloman, the purported declarant, told OPR that he could not recall whether he made the statement, but he firmly disputed that the email accurately reflected either the reason for the two-year proposal or his understanding of that reason. Villafaña herself could remember little about the critical conversation with Sloman, including whether she had recorded accurately what Sloman had said. Given the lack of any corroborating evidence, and the evidence showing Epstein's vigorous resistance to the proposal, OPR concludes that there is no evidence to support the statement in Villafaña's 2018 email that Menchel had extended a two-year plea deal as a favor to one of Epstein's attorneys.

E. The Evidence Does Not Establish That the Subjects' Meetings with Defense Counsel Were Improper Benefits to Epstein

OPR considered whether decisions by Acosta, Sloman, Menchel, and Lourie to meet with defense counsel while possible charges were under consideration or during the period after the NPA was signed and before Epstein entered his state guilty pleas evidenced improper favoritism toward or the provision of an improper benefit to the Epstein defense team.

1. The Evidence Shows That the Subjects' Decisions to Meet with Epstein's Legal Team Were Warranted by Strategic Considerations

Although pre-indictment negotiations are typical in white-collar criminal cases involving financial crimes, witnesses told OPR that pre-charge meetings with defense counsel are infrequent in sex offense cases. As the lead prosecutor, Villafaña vehemently opposed meeting with Epstein's attorneys and voiced her concerns to her supervisors, but was overruled by them. In Villafaña's view, the significance of the early meetings granted to the defense team was that, but for those meetings, the USAO would not have offered the disposition set forth in the July 31, 2007 "term sheet" and, moreover, "that term sheet would never have been offered to anyone else."

OPR's investigation established that while the defense attorneys persistently contacted the subjects through emails, correspondence, and phone calls, relatively few in-person meetings actually occurred with the USAO personnel involved in the matter. As shown in the chart on the following page, while the case was under federal investigation and before the NPA was signed, the subject supervisors and defense counsel had five substantive meetings about the case—

including one called by the USAO to offer the NPA term sheet resolution—and a sixth meeting together with the State Attorney and the lead state prosecutor to discuss the state plea. Acosta attended only one pre-NPA meeting. After the NPA was signed and before Epstein entered his state guilty pleas, the subject supervisors and the defense team had one substantive meeting, one unscheduled meeting on a procedural matter, and a meeting with one defense attorney in preparation for a conference call; in addition, Acosta had the breakfast meeting with Lefkowitz.[229]

Date	USAO Participants	Defense Participants	Topic/Purpose
Pre-NPA			
Feb. 1, 2007	Lourie / Villafaña	Lefcourt / Sanchez	Defense presents investigation improprieties and federal jurisdiction issues
Feb. 20, 2007	Lourie / Villafaña	Lefcourt / Sanchez	Defense presents witness issues
June 26, 2007	Sloman / Menchel / Lourie / Villafaña	Dershowitz / Black / Lefcourt / Sanchez	Defense presents legal issues, investigation improprieties, and federal jurisdiction issues
July 31, 2007	Sloman / Menchel / Lourie / Villafaña	Black / Lefcourt / Sanchez	USAO presents NPA term sheet
Sept. 7, 2007	Acosta / Oosterbaan / Sloman / Villafaña / Villafaña's co-counsel	Starr / Lefkowitz / Sanchez	Defense presents counteroffer
Sept. 12, 2007	Lourie / Lourie successor / Villafaña	Lefkowitz/ Lefcourt / Goldberger	Joint meeting with Krischer / Belohlavek re state plea provision of NPA
Post-NPA			
Oct. 12, 2007	Acosta	Lefkowitz	Defense discussion of NPA terms and likely appeal to Department
Nov. 21, 2007 (unscheduled)	Sloman (possibly Acosta)	Lefkowitz (possibly Dershowitz)	Defense discussion of victims' attorney representative procedure
Dec. 14, 2007	Acosta / Sloman / Villafaña / another senior AUSA	Starr / Weinberg / Dershowitz / Lefcourt	Defense presents federal jurisdiction issues, legal issues, and request for *de novo* review
Jan. 7, 2008	(1) Acosta / Sloman (2) Acosta / Sloman (conference call)	(1) Sanchez (2) Starr / Lefkowitz/ Sanchez	Defense presents USAO improprieties and "watered-down" resolution

[229] In addition, all of the subjects took phone calls from various defense attorneys, and although numerous documentary records refer to such calls, there may have been others for which OPR located no record.

OPR explored the subject supervisors' reasoning for accommodating the defense requests for in-person meetings and whether such accommodation was unusual. OPR questioned each of the four supervisory subject attorneys about his rationale for engaging in multiple meetings with the defense.

Lourie could not recall his reasoning for meeting with Epstein's defense counsel, but he told OPR that his general practice was to meet with defense counsel when asked to do so. Lourie recognized that some prosecutors—like Villafaña—viewed meeting with the defense as a sign of "weakness," but in Lourie's view, "information is power," and as long as the USAO did not share information with the defense but rather listened to their arguments, meetings were "all power to us." Lourie explained that by meeting with the defense, "[Y]ou're getting the information that they think is important; that they're going to focus on. The witnesses that they think are liars . . . . And so you can form all of that into your strategy." Lourie also told OPR that giving defense counsel the opportunity to argue the defense position is an important "part of the process" that helped ensure procedural fairness, allowing them to "believe that they are getting heard." When asked whether he afforded the same access to all defendants, Lourie responded, "I don't recall ever getting . . . so many requests for meetings . . . and so many appeals and so many audiences that [Epstein's attorneys] got. But this was I think the first time that that's really happened."

Menchel, too, told OPR that his general view was that "ethically it's appropriate" to give a defense attorney "an audience," and there was no real "downside" to doing so. Menchel added, "[W]hat happens a lot of times is the government will carve around those points that are being raised by the defense, and it's good to know" what the defense will be.

During his OPR interview, Acosta rejected the notion that his meeting with defense counsel was unusual or outside the norm. He told OPR that his initial meeting with the defense team, before the NPA was signed, was "not the first and only time that I granted a meeting . . . to defense attorneys" who requested one. Acosta did not believe it was "atypical" for a U.S. Attorney to meet with opposing counsel, particularly as a case was coming to resolution. Sloman corroborated Acosta on this point, telling OPR that Acosta typically met with defense attorneys, and that the USAO handled requests for meetings from Epstein's counsel "in the normal course." Furthermore, Acosta said that notwithstanding that meeting and all the other "process" granted to the defense by the USAO and the Department, "we successfully held firm in our positions" on the key elements of the resolution—that is, the requirements that Epstein be incarcerated, register as a sexual offender, and provide monetary damages to the victims.

OPR examined the circumstances surrounding each subject's decisions to have the individual meetings with defense counsel to determine if those meetings had a neutral, strategic purpose. The first meeting, on February 1, 2007, followed a phone call between Lourie and one of Epstein's attorneys, in which the attorney asked for a chance to "make a pitch" about the victims' lack of credibility and suggested that Epstein might agree to an interview following that pitch. Villafaña objected to meeting with the defense, but she recalled that Lourie told her she was not being a "strategic thinker," and that he believed the meeting could lead to a debriefing of Epstein. The meeting did not result in a debriefing of Epstein, but in advance of the follow-up meeting on February 20, 2007, defense counsel gave the USAO audio recordings of the state's witness interviews. Contemporaneous documents indicate that Lourie was unpersuaded by the defense arguments. After Villafaña circulated the prosecution memorandum, Lourie suggested

preparing a "short" charging document "with only 'clean' victims that they have not dirtied up already."[230] The fact that Lourie apparently used information gleaned from the defense about the victims' credibility to formulate his charging recommendation supported his statements to OPR that such meetings were, in his experience, a useful source of information that could be factored into the government's charging strategy.

The two February 2007 Villafaña/Lourie-level meetings focused on witness issues and claims of misconduct by state investigators, but in late May 2007, defense attorneys requested another meeting—this time with higher-level supervisors Menchel and Sloman—to make a presentation concerning legal deficiencies in a potential federal prosecution. The request was granted after Lourie recommended to Menchel and Sloman that "[i]t would probably be helpful to us . . . to hear their legal arguments in case we have missed something." The requested meeting took place on June 26, 2007. Before the meeting, at Menchel's direction, Villafaña provided to the defense a list of statutes the USAO was considering as the basis for federal charges. Defense counsel used that information to prepare a 19-page letter, submitted to the USAO the day before the June 26 meeting, as "an overview" of the defense position. In an email to his colleagues, Lourie evaluated the defense submission, noting its weaker and stronger arguments. A contemporaneous email indicates that Menchel, Lourie, and Villafaña viewed the meeting itself as primarily a "listening session."[231] After the meeting, Epstein's team submitted a second lengthy letter to the USAO detailing Epstein's "federalism" arguments that the USAO should let the state handle the matter.

Menchel apparently scheduled the next meeting with defense counsel, on July 31, 2007, to facilitate the USAO's presentation to the defense team of the "term sheet" describing the proposed terms of a non-prosecution agreement.

By early August, after the Kirkland & Ellis attorneys—Starr and Lefkowitz—joined the defense team, Acosta believed they would likely "go to DC on the case, on the grounds . . . that I have not met with them." A meeting with the defense team was eventually scheduled for September 7, 2007, when Acosta, Sloman, Villafaña, and Oosterbaan met with Starr, Lefkowitz, and Sanchez. In an email to Sloman, Acosta explained that he intended to meet with the defense, with Oosterbaan participating, "to discuss general legal policy only." In another email to Sloman and Lourie, Acosta explained, "This will end up [in the Department] anyhow, if we don't meet with them. I'd rather keep it here. Bringing [the CEOS Chief] in visibly does so. If our deadline has to slip a bit to do that, it's worth it." Acosta told OPR that the meeting "was not a negotiation," but a chance for the defense to present their federalism arguments. Acosta said that he had already decided how he wanted to resolve the case, and "[t]he September meeting did not alter or shift our position."

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230 Lourie also recommended that the initial charging document "should contain only the victims they have nothing on at all."

231 During her OPR interview, the FBI case agent recalled that defense counsel asked questions about the government's case, including the number of victims and the type of sexual contact involved, and that during a break in the meeting, she engaged in a "discussion" with Menchel about providing this information to the defense. She did not recall specifics of the discussion, however.

The meeting of USAO representatives and Epstein's defense attorneys, together with the State Attorney and the lead state prosecutor on September 12, 2007, was a necessary part of the NPA negotiation process.

Even after the NPA was signed, the defense continued to request meetings and reviews of the case, both within the USAO and by the Department's Criminal Division and the Deputy Attorney General. Although limited reviews were granted, during this period there was only one substantive meeting with Acosta, on December 14, 2007.[232] This meeting occurred in lieu of the meeting Starr had requested of Assistant Attorney General Fisher, most likely because the defense submissions to the Department's Criminal Division had raised issues not previously raised with the USAO and the Department determined that Acosta should address those in the first instance.[233] Acosta told OPR that he did not ask for the Department review, but he also did not want to appear as if he "fear[ed]" that review. Acosta's nuanced position, however, was not clear to the Department attorneys who responded to Epstein's appeals and who perceived Acosta to be in favor of a Department review, rather than merely tolerant of it. Notably, though, none of those meetings or reviews resulted in the USAO abandoning the NPA, and Epstein gained no substantial advantage from his continued entreaties.

In sum, in evaluating the subjects' conduct, OPR considered the number of meetings, their purpose, the content of the discussions, and decisions made afterwards. OPR cannot say that the number of meetings, particularly those occurring before the NPA was signed, was so far outside the norm—for a high profile case with skilled defense attorneys—that the quantity of meetings alone shows that the subjects were motivated by improper favoritism. In evaluating the subjects' conduct, OPR considered that the meetings were held with different levels of USAO managers and that the explanations for the decisions to participate in the meetings reflected reasonable strategic goals. Although OPR cannot rule out the possibility that because Acosta, Menchel, Lourie, or Sloman knew or knew of the defense attorneys, they may have been willing to meet with them, it is also true that prosecutors routinely meet with defense attorneys, including those who are known to them and those who are not. Furthermore, meetings are more likely to occur in high profile cases involving defendants with the financial resources to hire skilled defense counsel who request meetings at the highest levels of the USAO and the Department. Most significantly, OPR did not find evidence supporting a conclusion that the meetings themselves resulted in any substantial benefit to the defense. At each meeting, defense counsel strongly pressed the USAO—on factual, legal, and policy grounds—to forgo its federal investigation and to return the matter to the state to proceed as it saw fit. The USAO never yielded on that point. Accordingly, OPR did not find evidence supporting a conclusion that Acosta, Sloman, Menchel, Lourie, or Villafaña met with defense counsel for the purpose of benefiting Epstein or that the meetings themselves caused Acosta or the other subjects to provide improper benefits to Epstein.

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[232] Acosta's October 12, 2007 breakfast meeting with Lefkowitz is discussed separately in the following section.

[233] Starr and other defense attorneys only obtained one meeting at the Department level, with Deputy Assistant Attorney General Mandelker and CEOS Chief Oosterbaan in March 2008. Although Starr requested a meeting with Assistant Attorney General Fisher and another with Deputy Attorney General Filip, those requests were not granted.

2. The Evidence Does Not Establish That Acosta Negotiated a Deal Favorable to Epstein over Breakfast with Defense Counsel

OPR separately considered the circumstances of one specific meeting that has been the subject of media attention and public criticism. The *Miami Herald*'s November 2018 reporting on the Epstein investigation opened with an account of the October 12, 2007 breakfast meeting that defense counsel Jay Lefkowitz arranged to have with Acosta at the West Palm Beach Marriott hotel. According to the *Miami Herald* article, "a deal was struck" at the meeting to allow Epstein to serve "just 13 months" in the county jail in exchange for the shuttering of the federal investigation, and Acosta also agreed to "conceal" the full extent of Epstein's crimes from the victims and the public.[234] Although public criticism of the meeting has focused on the fact that the meeting occurred in a hotel far from Acosta's Miami office, the evidence shows that Acosta traveled to West Palm Beach on October 11 for a press event and stayed overnight at the hotel, near the USAO's West Palm Beach office, because at midday on October 12 he was to speak at the Palm Beach County Bench Bar Conference. After carefully considering the evidence surrounding the breakfast meeting, including contemporaneous email communications and witness accounts, OPR concludes that Acosta did not negotiate the NPA, or make any significant concessions relating to it, during or as a result of the October breakfast meeting.

Epstein and his attorneys signed the NPA on September 24, 2007—more than two weeks before the October 12 breakfast meeting. The signed NPA contained all of the key provisions resulting from the preceding weeks of negotiations between the parties, and despite a later addendum and ongoing disputes about interpreting the damages provision of the agreement, those key provisions remained in place thereafter. Acosta told OPR that throughout the negotiations with the defense, he sought three goals: (1) Epstein's guilty plea in state court to an offense requiring registration as a sexual offender; (2) a sentence of imprisonment; and 3) a mechanism through which victims could obtain monetary damages from Epstein. As noted previously, the USAO's original plea offer in Menchel's August 3, 2007 letter expressed a "non-negotiable" demand that Epstein agree to a two-year term of imprisonment, and the final NPA required only an 18-month sentence, but the decision to reduce the required term of imprisonment from 24 to 18 months was made well before Acosta's breakfast meeting with counsel. The NPA signed on September 24, 2007, required 18 months' incarceration, sexual offender registration, and a mechanism for the victims to obtain monetary damages from Epstein, and OPR found that these terms were not abandoned or materially altered after the breakfast meeting.

At the time of Acosta's October breakfast meeting with Lefkowitz, two issues involving the NPA were in dispute. Neither of those issues was ultimately resolved in a way that materially changed the key provisions of the NPA. First, at Sloman's instigation, the USAO sought to change the mechanism for appointing an attorney representative for the victims. This USAO-initiated request had prompted discussions about an "addendum" to the NPA. Sloman sent the text of a proposed NPA addendum to Lefkowitz on October 11, 2007.[235] Although OPR found no decisive

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234 Julie K. Brown, "Perversion of Justice: How a future Trump Cabinet member gave a serial sex abuser the deal of a lifetime," *Miami Herald*, Nov. 28, 2018.

235 In his December 19, 2007, letter to defense attorney Sanchez, Acosta represented that he had proposed the addendum at the breakfast meeting, but it is clear the addendum was being developed before then.

proof that this led to the breakfast meeting, email exchanges between Lefkowitz and Acosta show that it was under discussion at the time they were scheduling the meeting. Shortly after the breakfast meeting, Sloman, in Miami, sent an email to Lefkowitz (copying Acosta and Villafaña), noting that he "just got off the phone with Alex" and offering a slightly revised portion of the addendum relating to the mechanism for selection of the attorney representative. Sloman later clarified for Villafaña that "Jay's suggested revision has been rejected."

A second area of continuing negotiation arose from the defense claim that Epstein's obligation under the NPA to pay the attorney representative's fees did not obligate him to pay the fees and costs of contested litigation filed against him. Although this was at odds with the USAO's interpretation of the provision, the USAO and defense counsel reached agreement and clarified the provision in the NPA addendum that was finalized several weeks after the October breakfast meeting. Although the revised provision was to Epstein's advantage, the revision concerned attorney's fees and did not materially impede the victims' ability to seek damages from Epstein under § 2255. The fact that the negotiations continued after the breakfast meeting indicates that Acosta did not make promises at the meeting that resolved the issue.

OPR found limited contemporaneous evidence concerning the discussion between Acosta and Lefkowitz. In a letter sent to Acosta on October 23, 2007, two weeks after the breakfast meeting, Lefkowitz represented that Acosta made three significant concessions during the meeting. Specifically, Lefkowitz claimed that Acosta had agreed (1) not to intervene with the State Attorney's Office's handling of the case, (2) not to contact any of the victim-witnesses or their counsel, and (3) not to intervene regarding the sentence Epstein received. Acosta told OPR that he did not remember the breakfast meeting and did not recall making the commitments defense counsel attributed to him. Acosta also told OPR that Lefkowitz was not a reliable narrator of events, and on several occasions in written communications had inaccurately and misleadingly characterized conversations he had with Acosta.

Of more significance for OPR's evaluation was a contemporaneous document—an October 25, 2007 draft response to Lefkowitz's letter, which Sloman drafted, and Acosta reviewed and edited for signature by Sloman—that disputed Lefkowitz's claims. The draft letter stated:

> I specifically want to clarify one of the items that I believe was inaccurate in that October 23rd letter. Your letter claimed that this Office
>
> > would not intervene with the State Attorney's Office regarding this matter; or contact any of the identified individuals, potential witnesses, or potential civil claimants and their respective counsel in this matter; and neither your Office nor the [FBI] would intervene regarding the sentence Mr. Epstein receives pursuant to a plea with the State, so long as that sentence does not violate state law.
>
> As we discussed and, hopefully, clarified, and as the United States Attorney previously explained in an earlier conference call, such a

> promise equates to the imposition of a gag order. Our Office cannot and will not agree to this.
>
> It is the intent of this Office to treat this matter like any other case.

Acosta told OPR that this was a polite way of chastising Lefkowitz for mischaracterizing what Acosta said during the breakfast meeting. Although OPR could not find evidence that the letter was sent to Lefkowitz, OPR nonetheless considers it persuasive evidence that Acosta, shortly after the breakfast meeting, disagreed with Lefkowitz's description of their discussions and had discussed those disagreements with Sloman.

Nevertheless, OPR examined the three specific concessions that Lefkowitz described in the October 23 letter, to determine whether evidence reflected that Acosta had made them during the breakfast meeting. First, Lefkowitz claimed that Acosta agreed during the breakfast meeting that he did not intend to interfere with the state's handling of the case. Contemporaneous documents show that well before the breakfast meeting, Acosta had expressed the view that he did not want to "dictate" actions to the State Attorney or the state court. For example, during the NPA negotiations, Acosta asked Villafaña to "soften" certain language that appeared to require the State Attorney's Office or the state court to take specific actions, such as requiring that Epstein enter his guilty plea or report to begin serving his sentence by a certain date. Although Acosta may have made a statement during the breakfast meeting expressing his disinclination to interfere with the state's proceedings, such a statement would have been a reiteration of his prior position on the subject, rather than any new concession.

Lefkowitz also claimed in his October 23, 2007 letter that Acosta agreed not to contact any of the victims or potential witnesses or their counsel. For the reasons discussed more fully in Chapter Three, OPR concludes that the decision not to notify the victims about the NPA did not stem from the breakfast meeting, but rather reflected an assessment of multiple issues and considerations discussed internally by the subjects who participated in that decision: Acosta, Sloman, and Villafaña.

Finally, Lefkowitz's October 23 letter suggested that Acosta had agreed not to intervene regarding the sentence Epstein received from the state court, and it asserted that Epstein was "entitled to any type of sentence available to him, including but not limited to gain time and work release." Later communications between the USAO and defense counsel, however, show clearly that Acosta did not abandon the NPA's explicit sentencing provision. The NPA required Epstein to make a joint recommendation with the State Attorney's Office for an 18-month jail sentence, although the parties understood that he would receive the same "gain time" benefits available to all state inmates. After the October breakfast meeting, Sloman and Villafaña, on behalf of the USAO, repeatedly made clear that it would hold Epstein to that requirement, and the USAO also subsequently insisted that Epstein was ineligible for work release. For example, in a November 5, 2007 letter, Sloman requested confirmation from defense counsel that "Epstein intends to abide by his agreement to plead guilty to the specified charges and to make a binding recommendation that the Court impose a sentence of *18 months of continuous confinement* in the county jail." Shortly before Epstein entered his plea in June 2008, Villafaña wrote to the State Attorney to remind him that the NPA required Epstein to plead in state court to an offense that required an 18-month

sentence of incarceration, and the USAO would consider a plea that differed from that requirement a breach of the NPA and would "proceed accordingly."

The guilty plea Epstein entered in state court in June 2008 was consistent with the dictates of the NPA, and pursuant to that plea, the court imposed a sentence of 18 months' incarceration. Epstein, however, applied for and was accepted into the work release program, and was able to serve a substantial portion of his sentence outside of the jail. The NPA did not reference work release nor authorize Epstein to receive such benefits during his tenure at the Palm Beach County Stockade. Moreover, Villafaña received assurances from defense counsel that Epstein would serve his entire sentence of confinement "in custody." Responsibility for the decision to afford Epstein work release privileges during his incarceration rested with state officials, who had the sole authority for administering the work release program.

After considering the substantial record documenting the decisions made after Acosta's October 12, 2007 breakfast meeting with Lefkowitz, OPR found nothing in the record to suggest that the meeting resulted in a material change to the NPA, affected the sentence Epstein served pursuant to the NPA, or contributed to state officials' decision to permit him to participate in work release.

F. Villafaña's Emails with Defense Attorney Lefkowitz during the NPA Negotiations Do Not Establish That Villafaña, or Other Subjects, Intended to Give Epstein Preferential Treatment or Were Motivated by Favoritism or Other Improper Influences

During the CVRA litigation, the petitioners obtained from Epstein's attorney, and filed under seal, a redacted series of email exchanges between Epstein attorney Lefkowitz and Villafaña (and others with Acosta and Sloman) during September 2007 when the NPA was being finalized, and thereafter. These emails had been redacted to delete most of Lefkowitz's side of the communications, and consequently they did not reflect the full context of Villafaña's communications to Lefkowitz. The redacted emails were later unsealed and made public over Epstein's objections.[236] Media coverage pointed to the content and tone of Villafaña's emails as proof that Villafaña and the USAO worked in concert with Epstein's attorneys to keep the "sweetheart" deal a secret from the victims and the public. Statements in several emails in particular were cited as evidence of the USAO's improper favoritism towards Epstein. In one example, Villafaña told Lefkowitz that she was willing to include in the NPA a provision agreeing not to prosecute others, but would "prefer not to highlight for the judge all of the other crimes and all of the other persons that we could charge." She also offered to meet with him "'off campus'" to finalize negotiations. She also proposed, "[o]n an 'avoid the press' note," that filing federal charges against Epstein in Miami rather than West Palm Beach would substantially reduce press coverage.

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[236] The USAO did not object to the unsealing but requested additional redactions of portions that would reveal protected information. United States' Response to Petitioners' Motion to Use Correspondence to Prove Violations of the [CVRA] and to Have Their Unredacted Pleadings Unsealed (Apr. 7, 2011). The court declined to order the additional redactions.

OPR asked Villafaña about these emails and about the tenor of her interactions with Lefkowitz during the NPA negotiations and with other defense attorneys generally. Villafaña acknowledged that their tone was collegial and collaborative, and explained that generally, the tone of these emails reflected her personality and her commitment to complete the task her supervisors had assigned to her:

> [I]f you were to pull all my e-mails on every case, you would find that that is how I communicate with people. I'm a Minnesota girl, and I prefer not to be confrontational until I have to be. And I can be when I need to be. But my instructions from my supervisors were to engage in these negotiations and to complete them. So I felt that given that task, the best way to complete them was to reach the agreement and, keeping in mind the terms that . . . our office had agreed to, and do that in a way that is civil. So . . . although my language in the kind of introductory or prefatory communications with Mr. Lefkowitz was casual and was friendly, when you look at the terms and when he would come back to me asking for changes, my response was always, "No, I will not make that change."

Villafaña denied any intention to keep the victims uninformed about the NPA or to provide an improper benefit for Epstein, and she explained the context of the emails in question. The email in which Villafaña expressed reluctance to "highlight for the judge all of the other crimes and all of the other persons that we could charge" was written in response to a defense proposal to include in the federal plea agreement the parties were then considering a promise by the government not to prosecute Epstein's assistants and other employees. Lefkowitz had proposed that the plea agreement state, "Epstein's fulfilling the terms and conditions of the Agreement also precludes the initiation of any and all criminal charges which might otherwise in the future be brought against [four named female assistants] or any employee of [a specific Epstein-owned corporate entity] for any criminal charge that arises out of the ongoing federal investigation." Villafaña told OPR that the USAO was not intending to charge Epstein's assistants and was not aware of anyone else who could be charged, and thus did not oppose the request not to prosecute third parties. However, Villafaña was concerned that an overly detailed federal plea agreement would prompt the court to require the government to provide further information about the uncharged conduct, which might lead Epstein to claim the government breached the agreement by providing information to the court not directly connected to the charges to which he was pleading guilty. Villafaña was not the only one to express concern about how deeply a federal court might probe the facts, and whether such probing would interfere with the viability of a plea agreement. In an earlier email, Lourie had suggested charging Epstein by complaint to allow the USAO more flexibility in plea negotiations and avoid the problem that a court might not accept a plea to a conspiracy charge that required dismissal of numerous substantive counts.

As to Villafaña's offer to meet with Lefkowitz "off campus" to resolve outstanding issues in the NPA negotiation, she explained to OPR that she believed a face-to-face meeting at a "neutral" location—with "all the necessary decision makers present or 'on call'"— might facilitate completion of the negotiations, which had dragged on for some time.

With regard to her comment about "avoid[ing] the press," Villafaña told OPR that her goal was to protect the anonymity of the victims. She said that the case was far more likely to be covered by the Palm Beach press, which had already written articles about Epstein, than in Miami, and "if [the victims] wanted to attend [the plea hearing], I wanted them to be able to go into the courthouse without their faces being splashed all over the newspaper."

In evaluating the emails, OPR reviewed all the email exchanges between Villafaña, as well as Sloman and Acosta, and Lefkowitz and other defense counsel, including the portions redacted from the publicly released emails (except for a few to or from Acosta, copies of which OPR did not locate in the USAO records). OPR also considered the emails in the broader context of Villafaña's overall conduct during the federal investigation of Epstein. The documentary record, as well as witness and subject interviews, establishes that Villafaña consistently advocated in favor of prosecuting Epstein and worked for months toward that goal. She repeatedly pressed her supervisors for permission to indict Epstein and made numerous efforts to expand the scope of the case. She opposed meetings with the defense team, and nearly withdrew from the case because her supervisors agreed to those meetings. Villafaña objected to the decision to resolve the case through a guilty plea in state court, and she engaged in a lengthy and heated email exchange with Menchel about that subject. When she was assigned the task of creating an agreement to effect that resolution, Villafaña fought hard during the ensuing negotiations to hold the USAO's position despite defense counsel's aggressive tactics.

OPR also considered statements of her supervisors regarding her interactions with defense counsel. Sloman, in particular, told OPR that reports that Villafaña "was soft on Epstein . . . couldn't have been further from the truth." Sloman added that Villafaña "did her best to implement the decisions that were made and to hold Epstein accountable." Lourie similarly told OPR that when he read the district court's February 2019 opinion in the CVRA litigation and the emails from Villafaña cited in that opinion, he was "surprised to see how nice she was to them. And she winds up taking it on the chin for being so nice to them. When I know the whole time she was the one who wanted to go after him the most." The AUSA who assisted Villafaña on the investigation told OPR "everything that [Villafaña] did . . . was, as far as I could tell, [ ] completely pro prosecution."

Because the emails in question were publicly disclosed without context and without other information showing Villafaña's consistent efforts to prosecute Epstein and to assist victims, a public narrative developed that Villafaña colluded with defense counsel to benefit Epstein at the expense of the victims. After thoroughly reviewing all of the available evidence, OPR finds that narrative to be inaccurate. The USAO's and Villafaña's interactions with the victims can be criticized, as OPR does in several respects in this Report, but the evidence is clear that any missteps Villafaña may have made in her interactions with victims or their attorneys were not made for the purpose of silencing victims. Rather, the evidence shows that Villafaña, in particular, cared deeply about Epstein's victims. Before the NPA was signed, she raised to her supervisors the issue of consulting with victims, and after the NPA was signed, she drafted letters to notify victims identified in the federal investigation of the pending state plea proceeding and inviting them to appear. The draft letters led defense counsel to argue to Department management that Villafaña and Sloman committed professional misconduct by "threaten[ing] to send a highly improper and unusual 'victim notification letter' to all" of the listed victims. Given the full context of Villafaña's conduct throughout her tenure on the case, OPR concludes that her explanations for her emails are

entitled to significant weight, and OPR credits them. OPR finds, therefore, that the emails in question do not themselves establish that Villafaña (or any other subject) acted to improperly benefit Epstein, was motivated by favoritism or other improper influences, or sought to silence victims.

G. The Evidence Does Not Establish That Acosta, Lourie, or Villafaña Agreed to the NPA's Provision Promising Not to Prosecute "Potential Co-conspirators" in Order to Protect Any of Epstein's Political, Celebrity, or Other Influential Associates

OPR examined the decision by the subjects who negotiated the NPA—Villafaña, Lourie, and Acosta—to include in the agreement a provision in which the USAO agreed not to prosecute "any potential co-conspirators of Epstein," in addition to four named individuals, to determine whether that provision resulted from the subjects' improper favoritism towards Epstein or an improper effort to shield from prosecution any of Epstein's known associates. Other than various drafts of the NPA and of a federal plea agreement, OPR found little in the contemporaneous records mentioning the provision and nothing indicating that the subjects discussed or debated it—or even gave it much consideration. Drafts of the NPA and of the federal plea agreement show that the final broad language promising not to prosecute "any potential co-conspirators of Epstein" evolved from a more narrow provision sought by the defense. The provision expanded as Villafaña and defense counsel exchanged drafts of, first, a proposed federal plea agreement and, then, of the NPA, with apparently little analysis and no substantive discussion within the USAO about the provision.[237]

As the NPA drafting process concluded, Villafaña circulated to Lourie and another supervisor a draft that contained the non-prosecution provision, telling Lourie it was "some of [defense counsel's] requested language regarding promises not to prosecute other people," and commenting only, "I don't think it hurts us." In a reply email, Lourie responded to another issue

[237] As set forth in OPR's factual discussion, early in the negotiations over a federal plea agreement, the defense sought a non-prosecution provision applicable to only four female named assistants of Epstein and to unnamed employees of one of his companies. Villafaña initially countered with "standard language" referring to unnamed "co-conspirators" so as to avoid "highlight[ing] for the judge all of the other crimes and all of the other persons that we could charge." Nonetheless, drafts of the NPA sent by Lefkowitz after Villafaña's email continued to include language referring to the four named assistants and unnamed employees. Villafaña, however, internally circulated drafts of a federal plea agreement that included language stating, "This agreement resolves the federal criminal liability of the defendant and any co-conspirators in the Southern District of Florida growing out of any criminal conduct by those persons known to the [USAO] as of the date of this plea agreement." The federal plea agreement draft revised by Lourie and Acosta on September 20, 2007, included that language. When the defense team reverted to negotiation of state charges, Villafaña advised them, "In the context of a non-prosecution agreement, the [USAO] may be more willing to be specific about not pursuing charges against others." The next day, Lefkowitz sent a revised draft NPA referring to the four named assistants, "any employee" of the named company, and "any unnamed co-conspirators for any criminal charge that arises out of the ongoing federal investigation." The language was finally revised by Villafaña to prohibit prosecution of "any potential co-conspirators of Epstein, including but not limited to [the four named assistants]."

In commenting on OPR's draft report, Villafaña's counsel and Lourie both noted that the non-prosecution provision could bind only the USAO, and Lourie further opined that it was limited to certain specified federal charges and a time-limited scope of conduct. Although the non-prosecution provision in the NPA did not explicitly contain such limitations, those limitations were included in other parts of the agreement.

Villafaña had raised (defense counsel's attempt to insert an immigration waiver into the agreement), but Lourie did not comment on the provision promising not to prosecute co-conspirators or ask Villafaña to explain why she believed the provision did not harm the government's interests. In a subsequent email about the draft NPA, Villafaña asked Lourie for "[a]ny other thoughts," but there is no indication that he provided further input. OPR found no document that suggested Villafaña and Lourie discussed the provision further, or that the other individuals who were copied on Villafaña's email referencing the provision—her immediate supervisor, the supervisor designated to succeed Lourie as manager of the West Palm Beach office, and Villafaña's co-counsel—commented on or had substantive discussions about it. Villafaña told OPR that because none of the three supervisors responded to her observation that the non-prosecution provision "doesn't hurt us," Villafaña assumed that they agreed with her assessment.

Villafaña told OPR that she could not recall a conversation specifically about the provision agreeing not to prosecute "any potential co-conspirators," but she remembered generally that defense counsel told her Epstein wanted "to make sure that he's the only one who takes the blame for what happened." Villafaña told OPR that she and her colleagues believed Epstein's conduct was his own "dirty little secret." Villafaña said that press coverage at the time of Epstein's 2006 arrest did not allege that any of his famous contacts participated in Epstein's illicit activity and that none of the victims interviewed by the case agents before the NPA was signed told the investigators about sexual activity with any of Epstein's well-known contacts about whom allegations arose many years later.[238] Villafaña acknowledged that investigators were aware of Epstein's longtime relationship with a close female friend who was a well-known socialite, but, according to Villafaña, in 2007, they "didn't have any specific evidence against her."[239] Accordingly, Villafaña believed that the only "co-conspirators" of Epstein who would benefit from the provision were the four female assistants identified by name.[240] Villafaña also told OPR that the focus of the USAO's investigation was Epstein, and the office was not inclined to prosecute his four assistants if he entered a plea.[241] Because Villafaña was unaware of anyone else who could or would be charged, she perceived no reason to object to a provision promising not to prosecute other, unspecified "co-conspirators." Villafaña told OPR that given her understanding of the facts at that time, it did not occur to her that the reference to other "potential co-conspirators" might be used to protect any of Epstein's influential associates.

Lourie, who was transitioning to his detail at the Department's Criminal Division at the time Villafaña forwarded to him the draft NPA containing the non-prosecution provision, told OPR that he did not know how the provision developed and did not recall any discussions about it.

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238 Villafaña told OPR that "none of . . . the victims that we spoke with ever talked about any other men being involved in abusing them. It was only Jeffrey Epstein."

239 The FBI had interviewed one victim who implicated the female friend in Epstein's conduct, but the conduct involving the then minor did not occur in Florida.

240 The FBI had learned that one of Epstein's female assistants had engaged in sexual activity with at least one girl in Epstein's presence; this assistant was one of the named individuals for whom the defense sought the government's agreement not to prosecute from the outset. Villafaña explained to OPR that this individual was herself believed to also have been at one time a victim.

241 Villafaña told OPR that the USAO had decided that girls who recruited other girls would not be prosecuted.

Lourie described the promise not to prosecute "potential co-conspirators" as "unusual," and told OPR that he did not know why it was included in the agreement, but added that it would be "unlike me if I read that language to just leave it in there unless I thought it was somehow helpful." Lourie posited that victims who recruited other underage girls to provide massages for Epstein "theoretically" could have been charged as co-conspirators. He told OPR that when he saw the provision, he may have understood the reference to unnamed "co-conspirators" as "a message to any victims that had recruited other victims that there was no intent to charge them."

Acosta did not recall any discussions about the non-prosecution provision. But he told OPR that Epstein was always "the focus" of the federal investigation, and he would have viewed the federal interests as vindicated as long as Epstein was required to face "meaningful consequences" for his actions. Acosta told OPR that when he reviewed the draft NPA, "[t]o the extent I reviewed this co-conspirator provision, I can speculate that my thinking would have been the focus is on Epstein[ ] . . . going to jail. Whether some of his employees go to jail, or other, lesser involved [individuals], is not the focus of this." Acosta also told OPR that he assumed Villafaña and Lourie had considered the provision and decided that it was appropriate. Finally, Sloman, who was not involved in negotiating the NPA, told OPR that in retrospect, he understood the non-prosecution provision was designed to protect Epstein's four assistants, and it "never dawned" on him that it was intended to shield anyone else.

This broad provision promising not to prosecute "any potential co-conspirators" is troubling and, as discussed more fully later in this Report, OPR did not find evidence showing that the subjects gave careful consideration to the potential scope of the provision or whether it was warranted given that the investigation had been curtailed and the USAO lacked complete information regarding possible co-conspirators. Villafaña precipitously revised a more narrow provision sought by the defense. Given its evolution from a provision sought by the defense, it appears unlikely to have been designed to protect the victims, and there is no indication that at the time, the subjects believed that was the purpose. However, the USAO had not indicated interest in prosecuting anyone other than the four named female assistants, and OPR found no record indicating that Epstein had expressed concern about the prosecutive fate of anyone other than the four assistants and unnamed employees of a specific Epstein company. Accordingly, OPR concludes that the evidence does not show that Acosta, Lourie, or Villafaña agreed to the non-prosecution provision to protect any of Epstein's political, celebrity, or other influential associates.[242]

H. OPR's Investigation Did Not Reveal Evidence Establishing That Epstein Cooperated in Other Federal Investigations or Received Special Treatment on That Basis

One final issue OPR explored stemmed from media reports suggesting that Epstein may have received special treatment from the USAO in return for his cooperation in another federal

[242] As previously stated, Sloman was on vacation when Villafaña included the provision in draft plea agreements and did not monitor the case or comment on the various iterations of the NPA that were circulated during his absence. Menchel left the USAO on August 3, 2007, before the parties drafted the NPA.

investigation.[243] Media reports in mid-2009 suggested Epstein was released from his state incarceration "early" because he was assisting in a financial crimes investigation in the Eastern District of New York involving Epstein's former employer, Bear Stearns. At the time, Villafaña was notified by the AUSAs handling the matter that they "had never heard of" Epstein and he was providing "absolutely no cooperation" to the government. In 2011, Villafaña reported to senior colleagues that "this is urban myth. The FBI and I looked into this and do not believe that any of it is true." Villafaña told OPR that the rumor that Epstein had cooperated with the case in New York was "completely false." Acosta told OPR that he did not have any information about Epstein cooperating in a financial investigation or relating to media reports that Epstein had been an "intelligence asset."[244]

In addition to the contemporaneous record attesting that Epstein was not a cooperating witness in a federal matter, OPR found no evidence suggesting that Epstein was such a cooperating witness or "intelligence asset," or that anyone—including any of the subjects of OPR's investigation—believed that to be the case, or that Epstein was afforded any benefit on such a basis. OPR did not find any reference to Epstein's purported cooperation, or even a suggestion that he had assisted in a different matter, in any of the numerous communications sent by defense counsel to the USAO and the Department. It is highly unlikely that defense counsel would have omitted any reason warranting leniency for Epstein if it had existed.

Accordingly, OPR concludes that none of the subjects of OPR's investigation provided Epstein with any benefits on the basis that he was a cooperating witness in an unrelated federal investigation, and OPR found no evidence establishing that Epstein had received benefits for cooperation in any matter.

V. ACOSTA EXERCISED POOR JUDGMENT BY RESOLVING THE FEDERAL INVESTIGATION THROUGH THE NPA

Although OPR finds that none of the subjects committed professional misconduct in this matter, OPR concludes that Acosta exercised poor judgment when he agreed to end the federal investigation through the NPA. Acosta's flawed application of Petite policy principles to this case and his concerns with overstepping the boundaries of federalism led to a decision to resolve the federal investigation through an NPA that was too difficult to administer, leaving Epstein free to manipulate the conditions of his sentence to his own advantage. The NPA relied on state authorities to implement its key terms, leading to an absence of control by federal authorities over the process. Although the prosecutors considered certain events that they addressed in the NPA, such as gain time and community control, many other key issues were not, such as work release and mechanisms for implementing the § 2255 provision. Important provisions, such as promising not to prosecute all "potential co-conspirators," were added with little discussion or consideration by the prosecutors. In addition, although there were evidentiary and legal challenges to a

[243] *See, e.g.*, Julie K. Brown, "Perversion of Justice: How a future Trump Cabinet member gave a serial sex abuser the deal of a lifetime," *Miami Herald*, Nov. 28, 2018.

[244] When OPR asked Acosta about his apparent equivocation during his 2019 press conference, in answering a media question about whether he had knowledge of Epstein being an "intelligence asset," Acosta stated to OPR that "the answer is no." Acosta was made aware that OPR could use a classified setting to discuss intelligence information.

successful federal prosecution, Acosta prematurely decided to resolve the case without adequately addressing ways in which a federal case potentially could have been strengthened, such as by obtaining Epstein's missing computer equipment. Finally, a lack of coordination within the USAO compounded Acosta's flawed reasoning and resulted in insufficient oversight over the process of drafting the NPA, a unique document that required more detailed attention and review than it received. These problems were, moreover, entirely avoidable because federal prosecution, and potentially a federal plea agreement, existed as viable alternatives to the NPA resolution.

In evaluating Acosta's conduct, OPR has considered and taken into account the fact that some of Epstein's conduct known today was not known in 2007 and that other circumstances have changed in the interim, including some victims' willingness to testify. OPR has also evaluated Acosta's decisions in a framework that recognizes and allows for decisions that are made in good faith, even if the decision in question may not have led to the "best" result that potentially could have been obtained. Nonetheless, after considering all of the available evidence and the totality of the then-existing circumstances, OPR concludes that Acosta exercised poor judgment in that he chose an action or course of action that was in marked contrast to that which the Department would reasonably expect of an attorney exercising good judgment.

A. Acosta's Decision to Resolve the Federal Investigation through a State Plea under Terms Incorporated into the NPA Was Based on a Flawed Application of the Petite Policy and Federalism Concerns, and Failed to Consider the Significant Disadvantages of a State-Based Resolution

The Department formulated the Petite policy in response to a series of Supreme Court opinions holding that the Constitution does not deny state and federal governments the power to prosecute for the same act. Responding to the Court's concerns about the "potential for abuse in a rule permitting duplicate prosecutions," the Department voluntarily adopted a policy of declining to bring a federal prosecution following a completed state prosecution for the same conduct, except when necessary to advance a compelling federal interest. *See Rinaldi v. United States*, 434 U.S. at 28. On its face, the Petite policy applies to federal prosecutions that follow completed state prosecutions. USAM § 9-2.031 ("This policy applies whenever there has been a prior state . . . prosecution resulting in an acquittal, a conviction, including one resulting from a plea agreement, or a dismissal or other termination of the case on the merits after jeopardy has attached."). When a state investigation or prosecution is still pending, the policy does not apply. Indeed, even when a state prosecution has resulted in a decision on the merits, the policy permits a subsequent federal prosecution when three substantive prerequisites are satisfied: a "substantial federal interest" exists, "the result in the prior state prosecution was manifestly inadequate in light of the federal interest involved," and there is sufficient admissible evidence to obtain and sustain a conviction on federal charges. The policy also does not apply when "the prior prosecution involved only a minor part of the contemplated federal charges."

No one with whom OPR spoke disputed that the federal government had a substantial interest in prosecuting Epstein. In her prosecution memorandum, Villafaña identified five federal statutes that Epstein had potentially violated. The CEOS Chief described Villafaña's assessment of these statutes as "exhaustive," and he concurred with her analysis of their applicability to the facts of the case. Epstein's crimes involved the sexual exploitation of children, interstate travel, and the use of a facility of interstate commerce, all of which were areas of federal concern.

Notably, in the early 2000s, the Department had begun pursuing specific initiatives to combat child sex trafficking, including Project Safe Childhood, and Congress had then recently passed the PROTECT Act. Acosta himself told OPR that the exploitation of minors was "an important federal interest," which in Epstein's case was compounded by the "sordidness" of the acts involved and the number of victims.

It is also clear that because the state case against Epstein was still pending and had not reached a conviction, acquittal, or other decision on the merits, the Petite policy did not apply and certainly did not preclude a federal prosecution of Epstein. He had been charged with one state charge of solicitation to prostitution on three occasions, involving one or more other persons without regard to age—a charge that would have addressed only a scant portion of the conduct under federal investigation. Acosta acknowledged to OPR that the Petite policy "on its face" did not apply. Moreover, the State Attorney did not challenge the federal government's assumption of prosecutorial responsibility, and despite having obtained an indictment, held back on proceeding with the state prosecution in deference to the federal government's involvement. In these circumstances, the USAO was free to proceed with a prosecution sufficient to ensure vindication of the federal interest in prosecuting a man who traveled interstate repeatedly to prey upon minors. The federal government was uniquely positioned to fully investigate the conduct of an individual who engaged in repeated criminal conduct in Florida but who also traveled extensively and had residences outside of Florida. Even if the Petite policy had applied, OPR has little doubt that the USAO could have obtained authorization from the Department to proceed with a prosecution under the circumstances of this case.[245]

Despite the undeniable federal interest in prosecuting Epstein, the fact that the Petite policy did not apply, and the State Attorney's willingness to hold the state prosecution in abeyance pending the federal government's assumption of the case, Acosta viewed the federal government's role in prosecuting Epstein as limited by principles of federalism.[246] In essence, Acosta believed that a federal prosecution would have interfered improperly with the state's authority. He explained his reasoning to OPR:

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[245] In 2008, the Office of Enforcement Operations, the office charged with reviewing Petite policy waiver requests, opined that even if the Petite policy applied with respect to the victims of the indicted state charges, it would not apply to federal prosecution of charges relating to any other victim. The office also noted that if other factors existed, such as use of the internet to contact victims, those factors might warrant a waiver of the policy, if it did apply.

[246] In commenting on OPR's draft report, Acosta's counsel argued that OPR inappropriately bifurcated Acosta's concerns from those of the other subjects. However, OPR's investigation made clear that, although Acosta shared his subordinates' concerns about the strength of the case, victim-witness credibility, and the novelty of some legal theories, he alone focused on federalism issues. Acosta's counsel also asserted that OPR "misunderstands and devalues Secretary Acosta's very real and legitimate interest in the development of human trafficking laws," and counsel further noted Acosta's concerns that "bringing a case with serious evidentiary challenges pressing novel legal issues could result in an outcome that set back the development of trafficking laws and resulted in an aggregate greater harm to trafficking victims." Although OPR carefully considered counsel's arguments and agrees that it was appropriate to consider any implications the proposed prosecution of Epstein might have for the Department's anti-trafficking efforts, OPR does not believe that those concerns warranted resolving the matter through the NPA, which, for the reasons discussed in this Section, failed to satisfy the federal interest and allowed Epstein to manipulate the state system to his benefit.

> [The prosecution] was going forward on the part of the state, and so here is the big bad federal government stepping on a sovereign . . . state, saying you're not doing enough, [when] to my mind . . . the whole idea of the [P]etite policy is to recognize that the []state . . . is an independent entity, and that we should presume that what they're doing is correct, even if we don't like the outcome, except in the most unusual of circumstances.

Acosta told OPR that "absent USAO intervention," the state's prosecution of Epstein would have become final, and accordingly, it was "prudent" to employ Petite policy analysis. In Acosta's view, "the federal responsibility" in this unique situation was merely to serve as a "back-stop [to] state authorities to ensure that there [was] no miscarriage of justice."[247] Acosta told OPR that he understood the PBPD would not have brought Epstein to the FBI's attention if the State Attorney had pursued charges that required Epstein's incarceration. Acosta therefore decided that the USAO could avert a "manifest injustice" by forcing the state to do more and require Epstein to serve time in jail and register as a sexual offender.

Acosta's reasoning was flawed and unduly constricted. Acosta's repeated references to a "miscarriage of justice" or "manifest injustice" echoes the "manifestly inadequate" language used in the Petite policy to define the circumstances in which the federal government may proceed with a criminal case *after* a completed state prosecution. Nothing in the Petite policy, however, requires similar restraint when the federal government pursues a case in the absence of a completed state prosecution, even if the state is already investigating the same offense. The goal of the Petite policy is to prevent multiple prosecutions for the same offense, not to compel the federal government to defer to a parallel state interest in a case, particularly one in which state officials involved in the state prosecution expressed significant concerns about it, and there were questions regarding the state prosecutor's commitment to the case. Acosta told OPR that "there are any number of instances where the federal government or the state government can proceed, and state charges are substantially less and different, and . . . the federal government . . . stands aside and lets the state proceed." The fact that the federal government can allow the state to proceed with a prosecution, however, does not mean the federal government is compelled to do so, particularly in a matter in which a distinct and important federal interest exists. Indeed, the State Attorney told OPR that the federal government regularly takes over cases initiated by state investigators, typically because federal charges result in "the best sentence."

Epstein was facing a substantial sentence under the federal sentencing guidelines.[248] Despite the Ashcroft Memo's directive that federal prosecutors pursue "the most serious readily provable offense," Acosta's decision to push "the state to do a little bit more" does not approach that standard. In fact, Acosta conceded during his OPR interview that the NPA did not represent an "appropriate punishment" in the federal system, nor even "the best outcome in the state system," and that if the investigation of Epstein had originated with the FBI, rather than as a referral from the PBPD, the outcome might have been different. As U.S. Attorney, Acosta had the authority to

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247 Letter from R. Alexander Acosta "To whom it may concern" at 1 (Mar. 20, 2011), published online in *The Daily Beast*.

248 Villafaña estimated that the applicable sentencing guidelines range was 168 to 210 months' imprisonment.

depart from the Ashcroft Memo. He told OPR, however, that he did not recall discussing the Ashcroft Memo with his colleagues and nothing in the contemporaneous documentary record suggests that he made a conscious decision to depart from it when he decided to resolve the federal investigation through the NPA. Instead, it appears that Acosta simply failed to consider the tension between federal charging policy and the strong federal interest in this case, on the one hand, and his broad reading of the Petite policy and his general concerns about "federalism," on the other hand. OPR concludes that Acosta viewed the federal government's role in prosecuting Epstein too narrowly and through the wrong prism.

Furthermore, Acosta's federalism concerns about intruding on the state's autonomy resulted in an outcome—the NPA—that intruded far more on the state's autonomy than a decision to pursue a federal prosecution would have.[249] By means of the NPA, the federal government dictated to the state the charges, the sentence, the timing, and certain conditions that the state had to obtain during the state's own prosecution. Acosta acknowledged during his OPR interview that his "attempt to backstop the state here[] rebounded, because in the process, it . . . ended up being arguably more intrusive."

Acosta's concern about invading the state's authority led to additional negative consequences. Acosta revised the draft NPA in several respects to "soften" its tone, by substituting provisions requiring Epstein to make his "best efforts" for language that appeared to dictate certain actions to the state. In so doing, however, Acosta undermined the enforceability of the agreement, making it difficult later to declare Epstein in breach when he failed to comply.

OPR found no indication that when deciding to resolve the federal prosecution through a mechanism that relied completely on state action, Acosta considered the numerous disadvantages of having Epstein plead guilty in the state court system, a system in which none of the subjects had practiced and with which they were unfamiliar. Villafaña recognized that there were "a lot of ways to manipulate state sentences," and she told OPR that she was concerned from the outset of negotiations about entering into the NPA, because by sending the case back to the state the USAO was "giving up all control over what was going on." Villafaña also told OPR that defense counsel "had a lot of experience with the state system. We did not." Epstein's ability to obtain work release, a provision directly contrary to the USAO's intent with respect to Epstein's sentence, is a clear example of the problem faced by the prosecutors when trying to craft a plea that depended on a judicial system with which they were unfamiliar and over which they had no control. Although the issue of gain time was considered and addressed in the NPA, none of the subject attorneys negotiating the NPA realized until *after* the NPA was signed that Epstein might be eligible for work release. Acosta, in particular, told OPR that "if it was typical to provide that kind of work release in these cases, that would have been news to me." Because work release was not anticipated, the NPA did not specifically address it, and the USAO was unable to foreclose Epstein from applying for admission to the program.

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[249] The Petite policy only applies to the Department of Justice and federal prosecutions. It does not prevent state authorities from pursuing state charges after a federal prosecution. *See, e.g., United States v. Nichols* and *State v. Nichols* (dual prosecution for acts committed in the bombing of the Oklahoma City federal building). However, in practice and to use their resources most efficiently, state authorities often choose not to pursue state charges if the federal prosecution results in a conviction.

The sexual offender registration provision is yet another example of how Acosta's decision to create an unorthodox mechanism that relied on state procedures to resolve the federal investigation led to unanticipated consequences benefitting Epstein. Acosta told OPR that one of the core aspects of the NPA was the requirement that Epstein plead guilty to a state charge requiring registration as a sexual offender. He cited it as a provision that he insisted on from the beginning and from which he never wavered. However, the USAO failed to anticipate certain factors that affected the sexual offender registration requirement in other states where Epstein had a residence. In selecting the conduct for the factual basis for the crime requiring sexual offender registration, the state chose conduct involving a victim who was at least 16 at the time of her interactions with Epstein, even though Epstein also had sexual contact with a 14-year old victim. The victim's age made a difference, as the age of consent in New Mexico, where Epstein had a residence, was 16; therefore, Epstein was not required to register in that state. As a 2006 letter from defense counsel Lefcourt to the State Attorney's Office made clear, the defense team had thoroughly researched the details and ramifications of Florida's sexual offender registration requirement; OPR did not find evidence indicating similar research and consideration by the USAO.

Finally, Acosta was well aware that the PBPD brought the case to the FBI's attention because of a concern that the State Attorney's Office had succumbed to "pressure" from defense counsel. Villafaña told OPR that she informed both Acosta and Sloman of this when she met with them at the start of the federal investigation. Although Acosta did not remember the meeting with Villafaña, he repeatedly told OPR during his interview that he was aware that the PBPD was dissatisfied with the State Attorney's Office's handling of the case. Shortly before the NPA was signed, moreover, additional information came to light that suggested the State Attorney's Office was predisposed to manipulating the process in Epstein's favor. Specifically, during the September 12, 2007 meeting, at the state prosecutor's suggestion, the USAO team agreed, with Acosta's subsequent approval, to permit Epstein to plead guilty to one state charge of solicitation of minors to engage in prostitution, rather than the three charges the USAO had originally specified. The state prosecutor assured Lourie that the selected charge would require Epstein to register as a sexual offender. Shortly thereafter, the USAO was told by defense counsel that despite the assurances made to Lourie, the state prosecutor had advised Epstein—incorrectly, it turned out—that a plea to that particular offense would *not* require him to register as a sexual offender. Yet, despite this evidence, which at least suggested that the state authorities should not have been considered to be a reliable partner in enforcing the NPA, Acosta did not alter his decision about proceeding with a process that depended completely on state authorities for its successful execution.

OPR finds that Acosta was reasonably aware of the facts and circumstances presented by this case. He stated that he engaged in discussions about various aspects of the case with Sloman and Menchel, and relied upon them for their evaluation of the legal and evidentiary issues and for their assessment of trial issues. Acosta was copied on many substantive emails, reviewed and revised drafts of the NPA, and approved the final agreement. Yet, rather than focusing on whether the state's prosecution was sufficient to satisfy the federal interest in prosecuting Epstein, Acosta focused on achieving the minimum outcome necessary to satisfy the *state's* interest, as defined in part by the state's indictment, by using the threat of a federal prosecution to dictate the terms of

Epstein's state guilty plea.[250] As U.S. Attorney, Acosta had the authority to resolve the case in this manner, but OPR concludes that in light of all the surrounding circumstances, his decision to do so reflected poor judgment. Acosta's application of Petite policy principles was too expansive, his view of the federal interest in prosecuting Epstein was too narrow, and his understanding of the state system was too imperfect to justify the decision to use the NPA.[251]

B. The Assessment of the Merits of a Potential Federal Prosecution Was Undermined by the Failure to Obtain Evidence or Take Other Investigative Steps That Could Have Changed the Complexion of the Case

The leniency resulting from Acosta's decision to resolve the case through the NPA is also troubling because the USAO reached agreement on the terms of the NPA without fully pursuing evidence that could have changed the complexion of the case or afforded the USAO significant leverage in negotiating with Epstein. Acosta told OPR that his decision to resolve the federal investigation through the NPA was, in part, due to concerns about the merits of the case and concerns about whether the government could win at trial. Yet, Acosta made the decision to resolve the case through a state-based resolution and extended that proposal to Epstein's defense attorneys before the investigation was completed. As the investigation progressed, the FBI continued to locate additional victims, and many had not been interviewed by the FBI by the time of the initial offer. In other words, at the time of Acosta's decision, the USAO did not know the full scope of Epstein's conduct; whether, given Epstein's other domestic and foreign residences, his criminal conduct had occurred in other locations; or whether the additional victims might implicate other offenders. In addition, Villafaña planned to approach the female assistants to attempt to obtain cooperation, but that step had not been taken.[252] Most importantly, Acosta ended the investigation without the USAO having obtained an important category of potentially significant evidence: the computers removed from Epstein's home prior to the PBPD's execution of a search warrant.

The PBPD knew that Epstein had surveillance cameras stationed in and around his home, which potentially captured video evidence of people visiting his residence, and that before the state

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[250] Acosta told OPR that he understood that if Epstein had pled to the original charges contemplated by the state, he would have received a two-year sentence, and in that circumstance, the PBPD would not have brought the case to the FBI. OPR was unable to verify that charges originally contemplated by the state would have resulted in a two-year sentence. OPR's investigation confirmed, however, that the PBPD brought the case to the FBI because the PBPD Chief was dissatisfied with the state's handling of the matter.

[251] In commenting on OPR's draft report, Acosta's attorney stated that Acosta "accept[ed] OPR's conclusion that deferring prosecution of Jeffrey Epstein to the State Attorney rather than proceeding with a federal indictment or a federal plea was, in hindsight, poor judgment." Acosta also acknowledged that the USAO's handling of the matter "would have benefited from more consistent staffing and attention. No one foresaw the additional challenges that the chosen resolution would cause. And the [NPA] relied too much on state authorities, who gave Epstein and his counsel too much wiggle-room." Acosta's counsel also noted that Acosta welcomed the public release of the Report, "did not challenge OPR's authority, welcomed the review, and cooperated fully."

[252] Although the FBI interviewed numerous employees of Epstein and Villafaña identified three of his female assistants as potential co-conspirators, at the time that the USAO extended the terms of its offer, there had been no significant effort to obtain these individuals' cooperation against Epstein. The FBI attempted unsuccessfully to make contact with two female assistants on August 27, 2007, as Epstein's private plane was departing for the Virgin Islands, but agents were unable to locate them on board the plane.

search warrant was executed on that property, the computer equipment associated with those cameras had been removed. Villafaña knew who had possession of the computer equipment. Surveillance images might have shown the victims' visits, and photographic evidence of their appearance at the time of their encounters with Epstein could have countered the anticipated argument that Epstein was unaware these girls were minors. The surveillance video might have shown additional victims the investigators had not yet identified. Such images could have been powerful visual evidence of the large number of girls Epstein victimized and the frequency of their visits to his home, potentially persuasive proof to a jury that this was not a simple "solicitation" case.

Epstein's personal computers possibly contained even more damning evidence. Villafaña told OPR that the FBI had information that Epstein used hidden cameras in his New York residence to record his sexual encounters, and one victim told agents that Epstein's assistant photographed her in the nude. Based on this evidence, and experience in other sex cases involving minors, Villafaña and several other witnesses opined to OPR that the computers might have contained child pornography. Moreover, Epstein lived a multi-state lifestyle; it was reasonable to assume that he may have transmitted still images or videos taken at his Florida residence over the internet to be accessed while at one of his other homes or while traveling. The interstate transmission of child pornography was a separate, and serious, federal crime that could have changed the entire complexion of the case against Epstein.[253] Villafaña told OPR, "[I]f the evidence had been what we suspected it was . . . [i]t would have put this case completely to bed. It also would have completely defeated all of these arguments about interstate nexus."

Because she recognized the potential significance of this evidence, Villafaña attempted to obtain the missing computers. After Villafaña learned that an individual associated with one of Epstein's attorneys had possession of the computer equipment that was removed from Epstein's home, she consulted with Department subject matter experts to determine how best to obtain the evidence. Following the advice she received and after notifying her supervisors, Villafaña took legal steps to obtain the computer equipment.

Epstein's team sought to postpone compliance with the USAO's demand for the equipment. In late June 2007, defense attorney Sanchez requested an extension of time to comply; in informing Sloman, Menchel, and Lourie of the request, Villafaña stressed that "we want to get the computer equipment that was removed from Epstein's home prior to the state search warrant as soon as possible." She agreed to extend the date for producing the computer equipment by one week until July 17, 2007. On that day, Epstein initiated litigation regarding the computer equipment. That litigation was still pending at the end of July, when Acosta decided to resolve

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253 18 U.S.C. § 2251(a) provides, in pertinent part:

> Any person who . . . induces . . . any minor to engage in . . . any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, shall be punished . . . if such person knows or has reason to know that such visual depiction will be . . . transmitted using any means or facility of interstate . . . commerce or in or affecting interstate . . . commerce . . . [or] if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or . . . commerce by any means, including by computer.

the federal investigation in exchange for a plea in state court to a charge that carried a two-year sentence. The FBI co-case agent told OPR that, in a meeting to discuss the resolution, at which the FBI was present, the co-case agent specifically suggested that the USAO wait to pursue a resolution until after the litigation was resolved, but this suggestion was "pushed under the rug" without comment. Although the co-case agent could not recall who was present, the case agent recalled that Menchel led the meeting, which occurred while the litigation was still pending.

Even after the NPA two-year state plea resolution was presented to the defense, Villafaña continued to press ahead to have the court resolve the issue concerning the defense production of the computer equipment. On August 10, 2007, she asked Lourie for authorization to oppose Epstein's efforts to stay the litigation until after an anticipated meeting between the USAO and the defense, informing Lourie that a victim interviewed that week claimed she started seeing Epstein at age 14 and had been photographed in the nude. A few days later, Villafaña told defense counsel that she had "conferred with the appropriate people, and we are not willing to agree to a stay." Defense counsel then contacted Lourie, who agreed to postpone the hearing until after the upcoming meeting with Acosta. After the meeting, and when the court sought to reschedule the hearing, Villafaña emailed Sloman to ask if she should "put it off"; he replied, "Yes," and the hearing was re-set for September 18, 2007. As negotiations towards the NPA progressed, however, the hearing was postponed indefinitely. Ultimately the NPA itself put the issue to rest by specifying that all legal process would be held in abeyance unless and until Epstein breached the agreement.

Villafaña told OPR that she had learned through law enforcement channels that the defense team had reviewed the contents of Epstein's computers. She told OPR that, in her view, "the fact that the defense was trying desperately to put off the hearing . . . was further evidence of the importance of the evidence."

OPR questioned Acosta about the decisions to initiate, and continue with, the NPA negotiations while the litigation concerning the computers was still pending, and to agree to postpone the litigation rather than exhausting all efforts to obtain and review the computer evidence. Acosta told OPR that he had no recollection of Villafaña's efforts to obtain the missing computers, but he believed that "there was a desire to move quickly as opposed to slowly" regarding the plea.

Menchel, Sloman, and Lourie also all told OPR that they did not remember Villafaña's efforts to obtain the computers or recalled the issue only "vaguely." Menchel expressed surprise to OPR that a prosecutor could obtain "an entire computer" through the method utilized by Villafaña, telling OPR, "I had not heard of that." However, the contemporaneous records show that Sloman, Menchel, and Lourie had each been aware in 2007 of Villafaña's efforts to obtain Epstein's missing computer equipment.

Villafaña kept Menchel, in particular, well informed of her efforts to obtain the computer equipment. She sent to Menchel, or copied him on, several emails about her plan to obtain the computer equipment; specifically, her emails on May 18, 2007, July 3, 2007, and July 16, 2007, all discussed her proposed steps. Villafaña told OPR that Lourie was involved in early discussions about her proposal to obtain the evidence. Lourie also received Villafaña's July 16, 2007 email discussing the computer equipment and the plan to obtain it, and on one occasion he spoke directly

with one of Epstein's defense attorneys about it. Sloman told OPR during his interview that he "vaguely" remembered the computer issue. The documentary evidence confirms that he had at least some contemporaneous knowledge of the issue—when asked by Villafaña whether to put off a September 12, 2007 hearing on the litigation, he told her to do so. Finally, as noted previously, the FBI co-case agent proposed at a meeting with USAO personnel that the USAO wait until the litigation was resolved before pursuing plea negotiations.

Contemporaneous records show that Acosta was likely aware before the NPA was signed of the USAO's efforts to obtain custody of Epstein's computers and that after the NPA was signed, he was informed about the use of legal process for obtaining the computer equipment. The NPA itself provides that "the federal . . . investigation will be suspended, and all pending [legal process] will be held in abeyance," that Epstein will withdraw his "motion to intervene and to quash certain [legal process]," and, further, that the parties would "maintain . . . evidence subject to [legal process] that have been issued, and *including certain computer equipment,* inviolate" until the NPA's terms had been fully satisfied, at which point the legal process would be "deemed withdrawn." (Emphasis added.) Acosta's numerous edits on the NPA's final draft suggest that he gave it a close read, and OPR expects that Acosta would not have approved the agreement without understanding what legal process his office was agreeing to withdraw, or why the only type of evidence specified was "certain computer equipment." In addition, Acosta told OPR that he worked closely with Sloman and Menchel, consulted with them, and relied on their counsel about the case. Among other things, Acosta said he discussed with them concerns about the law and the evidentiary issues presented by a federal criminal trial. Therefore, although it is possible that Sloman made the decision to postpone the hearing concerning the USAO's efforts to obtain the computer equipment without consulting Acosta, once Acosta reviewed the draft NPA, Acosta was on notice of the existence of and the ongoing litigation concerning Epstein's missing computer equipment.

Villafaña knew where the computers were; litigation over the demand for the equipment was already underway; there was good reason to believe the computers contained relevant—and potentially critical—information; and it was clear Epstein did not want the contents of his computers disclosed. Nothing in the available record reveals that the USAO benefitted from abandoning pursuit of this evidence when they did, or that there was any significant consideration of the costs and benefits of forgoing the litigation to obtain production of the computers.[254] Instead, the USAO agreed to postpone and ultimately to abandon its efforts to obtain evidence that could have significantly changed Acosta's decision to resolve the federal investigation with a state guilty plea or led to additional significant federal charges. By agreeing to postpone the litigation, the USAO gave away leverage that might have caused the defense to come to an agreement much earlier and on terms more favorable to the government. The USAO ultimately agreed to a term in the NPA that permanently ended the government's ability to obtain possible evidence of significant crimes and did so with apparently little serious consideration of the potential cost.

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[254] If the USAO had significant concerns about its likelihood of prevailing, postponing the litigation to use it as leverage in the negotiations might have been strategically reasonable. Lourie suggested in his response to his interview transcript that the court might have precluded production of the computers. However, OPR saw no evidence indicating that Villafaña or her supervisors were concerned that the court would do so, and Villafaña had consulted with the Department's subject matter experts before initiating her action to obtain the equipment.

To be clear, OPR is not suggesting that prosecutors must obtain all available evidence before reaching plea agreements or that prosecutors cannot reasonably determine that reaching a resolution is more beneficial than continuing to litigate evidentiary issues. Every case is different and must be judged on its own facts. In this case, however, given the unorthodox nature of the state-based resolution, the fact that Acosta's decision to pursue it set the case on a wholly different track than what had been originally contemplated by his experienced staff, the nature and scope of Epstein's criminal conduct, the circumstances surrounding the removal of the computers from Epstein's residence, and the potential for obtaining evidence revealing serious additional criminal conduct, Acosta had a responsibility to ensure that he was fully informed about the consequences of pursing the course of action that he proposed and particularly about the consequences flowing from the express terms of the NPA. In deciding to resolve the case pre-charge, Acosta lost sight of the bigger picture that the investigation was not completed and viable leads remained to be pursued. The decision to forgo the government's efforts to obtain the computer evidence and to pursue significant investigative steps should have been made only after careful consideration of all the costs and benefits of the proposed action. OPR did not find evidence that Acosta fully considered the costs of ending the investigation prematurely.[255]

C. OPR Was Unable to Determine the Basis for the Two-Year Term of Incarceration, That It Was Tied to Traditional Sentencing Goals, or That It Satisfied the Federal Interest in the Prosecution

The heart of the controversy surrounding the Epstein case is the apparent undue leniency afforded him concerning his sentence. After offering a deal that required a "non-negotiable" 24-month term of incarceration, Acosta agreed to resolve it for an 18-month term of incarceration, knowing that gain time would reduce it further, and indeed, Epstein served only 13 months. Epstein ultimately did not serve even that minimal sentence incarcerated on a full-time basis because the state allowed Epstein into its work release program within the first four months of his sentence. As Lourie told OPR, "[E]verything else that happened to [Epstein] is exactly what should have happened to him. . . . He had to pay a lot of money. He had to register as a sex offender," but "in the perfect world, [Epstein] would have served more time in jail."

Due to the passage of time and the subjects' inability to recall many details of the relevant events, OPR was unable to develop a clear understanding of how the original two-year sentence requirement was developed or by whom. Two possibilities were articulated during OPR's subject interviews: (1) the two years represented the sentence Epstein would have received had he pled guilty to an unspecified charge originally contemplated by the state; or (2) the two years represented the sentence the USAO determined Epstein would be willing to accept, thus avoiding the need for a trial. As to the former possibility, Acosta told OPR that his "best understanding" of the two-year proposal was that it correlated to "one of the original state charges." He elaborated,

[255] In commenting on OPR's draft report, Acosta's attorney objected to OPR's conclusion that Acosta knew or should have known about the litigation regarding the computers and that he should have given greater consideration to pursuing the computers before the NPA was signed. Acosta's attorney asserted that Acosta was not involved in that level of "granularity"; that his "'small thoughts' edits" on the NPA were limited and focused on policy; and that it was appropriate for him to rely on his staff to raise any issues of concern to him. For the reasons stated above, OPR nonetheless concludes that having developed a unique resolution to a federal investigation, Acosta had a greater obligation to understand and consider what the USAO was giving up and the appropriateness of doing so.

"I'm reconstructing memories of . . . 12 years ago. I can speculate that at some point, the matter came up, and I or someone else said . . . what would the original charges have likely brought? And someone said this amount." Acosta told OPR that he could not recall who initially proposed this method, but he believed that it likely did not result from a single specific discussion but rather from conversations over a course of time. Acosta could not recall specifically with whom he had these discussions, other than that it would have been Lourie, Menchel, or Sloman. Villafaña was not asked for her views on a two-year sentence, and she had no input into the decision before it was made. Villafaña told OPR that she examined the state statutes and could not validate that a state charge would have resulted in a 24-month sentence. OPR also examined applicable state statutes and the Florida sentencing guidelines, but could not confirm that Epstein was, in fact, facing a potential two-year sentence under charges contemplated by the PBPD.

On the other hand, during his OPR interview, Lourie "guess[ed]" that "somehow the defense conveyed . . . we're going to trial if it's more than two years." Menchel similarly told OPR that he did not know how the two year sentence was derived, but "obviously it was a number that the office felt was palatable enough that [Epstein] would take" it. Sloman told OPR that he had no idea how the two-year sentence proposal was reached.

The contemporaneous documentary record, however, provides no indication that Epstein's team proposed a two-year sentence of incarceration or initially suggested, before the USAO made its offer, that Epstein would accept a two-year term of incarceration. As late as July 25, 2007—only days before the USAO provided the term sheet to defense counsel—Epstein's counsel submitted a letter to the USAO arguing that the federal government should not prosecute Epstein at all. Furthermore, after the initial "term sheet" was presented and negotiations for the NPA progressed, Epstein's team continued to strongly press for less or no time in jail.

The USAO had other charging and sentencing options available to it. The most obvious alternative to the two-year sentence proposal was to offer Epstein a plea to a federal offense that carried a harsher sentence. If federally charged, Epstein was facing a substantial sentence under the federal sentencing guidelines, 168 to 210 months' imprisonment. However, it is unlikely that he would have agreed to a plea that required a guidelines sentence, even one at the lower end of the guidelines. Menchel told OPR that he and his colleagues had been concerned that Epstein would opt to go to trial if charged and presented with the option of pleading to a guidelines sentence, and as previously discussed, there were both evidentiary and legal risks attendant upon a trial in this case. If federally charged, Epstein's sentencing exposure could have been managed by offering him a plea under Federal Rule of Criminal Procedure 11(c) for a stipulated sentence, which requires judicial approval. Acosta rejected this idea, however, apparently because of a perception that the federal district courts in the Southern District of Florida did not view Rule 11(c) pleas favorably and might refuse to accept such a plea and thus limit the USAO's options.

Another alternative was to offer Epstein a plea to conspiracy, a federal charge that carried a maximum five-year sentence. Shortly after Villafaña circulated the prosecution memorandum to her supervisors, Lourie recommended to Acosta charging Epstein by criminal complaint and offering a plea to conspiracy "to make a plea attractive." Similarly, before learning that Menchel had already discussed a state-based resolution with Epstein's counsel, Villafaña had considered offering Epstein a plea to one count of conspiracy and a substantive charge, to be served concurrently with any sentence he might receive separately as a result of the state's outstanding

indictment. Given Epstein's continued insistence that federal charges were not appropriate and defense counsel's efforts to minimize the amount of time Epstein would spend in jail, it is questionable whether Epstein would have accepted such a plea offer, but the USAO did not even extend the offer to determine what his response to it would be.

Weighed against possible loss at trial were some clear advantages to a negotiated resolution that ensured a conviction, including sexual offender registration and the opportunity to establish a mechanism for the victims to recover damages. These advantages, added to Acosta's concern about intruding on the state's authority, led him to the conclusion that a two-year state plea would be sufficient to prevent manifest injustice. Menchel told OPR, "I don't believe anybody at the time that this resolution was entered into was looking at the two years as a fair result in terms of the conduct. I think that was not the issue. The issue was whether or not if we took this case to trial, would we risk losing everything?"

During the course of negotiations over a potential federal plea, the USAO agreed to accept a plea for an 18-month sentence, a reduction of six months from the original "non-negotiable" two-year term. The subjects did not have a clear memory of why this reduction was made. Villafaña attributed it to a conversation between Acosta and Lefkowitz, but Acosta attributed it to a decision made during the negotiating process by Villafaña and Lourie, telling OPR that he understood his attorneys needed flexibility to reach a final deal with Epstein.

OPR found no contemporaneous documents showing the basis for the two-year term. Despite extensive subject interviews and review of thousands of contemporaneous records, OPR was unable to determine who initially proposed the two-year term of incarceration or why that term, as opposed to other possible and lengthier terms, was settled on for the initial offer. The term was not tied to statutory or guidelines sentences for potential federal charges or, as far as OPR could determine, possible state charges. Furthermore, while the USAO initially informed the defense that the two-year term was "non-negotiable," Acosta failed to enforce that position and rather than a "floor" for negotiations, it became a "ceiling" that was further reduced during the negotiations. OPR was unable to find any evidence indicating that the term of incarceration was tied either to the federal interest in seeking a just sentence for a serial sexual offender, or to other traditional sentencing factors such as deterrence, either of Epstein or other offenders of similar crimes. Instead, as previously noted, it appears that Acosta primarily considered only a punishment that was somewhat more than that to which the state had agreed. As a result, the USAO had little room to maneuver during the negotiations and because Acosta was unwilling to enforce the "non-negotiable" initial offer, the government ended up with a term of incarceration that was not much more than what the state had initially sought and which was significantly disproportionate to the seriousness of Epstein's conduct.

In sum, it is evident that Acosta's desire to resolve the federal case against Epstein led him to arrive at a target term of incarceration that met his own goal of serving as a "backstop" to the state, but that otherwise was untethered to any articulable, reasonable basis. In assessing the case only through the lens of providing a "backstop" to the state, Acosta failed to consider the need for a punishment commensurate with the seriousness of Epstein's conduct and the federal interest in addressing it.

D. Acosta's Decisions Led to Difficulties Enforcing the NPA

After the agreement was reached, the collateral attacks and continued appeals raised the specter that the defense had negotiated in bad faith. At various points, individual members of the USAO team became frustrated by defense tactics, and in some instances, consideration was given to whether the USAO should declare a unilateral breach. Indeed, on November 24, 2008, the USAO gave notice that it deemed Epstein's participation in work release to be a breach of the agreement but ultimately took no further action. Acosta told OPR: "I was personally very frustrated with the failure to report on October 20, and had I envisioned that entire collateral attack, I think I would have looked at this very differently."

Once the NPA was signed, Acosta could have ignored Epstein's requests for further review by the Department and, if Epstein failed to fulfill his obligations under the NPA to enter his state guilty plea, declared Epstein to be in breach and proceeded to charge him federally. When questioned about this issue, Acosta explained that he believed the Department had the "right" to address Epstein's concerns. He told OPR that because the USAO is part of the Department of Justice, if a defendant asks for Departmental review, it would be "unseemly" to object. During his OPR interview, Sloman described Acosta as very process-oriented, which he attributed to Acosta's prior Department experience. Sloman, however, believed the USAO gave Epstein "[t]oo much process," a result of the USAO's desire to "do the right thing" and to the defense team's ability to keep pressing for more process without triggering a breach of the NPA. Furthermore, Epstein's defense counsel repeatedly and carefully made clear they were not repudiating the agreement. Acosta told OPR that the USAO would have had to declare Epstein in breach of the NPA in order to proceed to file federal charges, and Epstein would undoubtedly have litigated whether his effort to obtain Departmental review constituted a breach. Acosta recalled that he was concerned, as was Sloman, that a unilateral decision to rescind the non-prosecution agreement would result in collateral litigation that would further delay matters and make what was likely a difficult trial even harder.

Acosta's and Sloman's concerns about declaring a breach were not unreasonable. A court would have been unlikely to have determined that defense counsel's appeal of the NPA to the Department and unwillingness to set a state plea date while that appeal was ongoing was sufficient to negate the agreement. However, some of the difficulty the USAO faced in declaring a breach was caused by decisions Acosta made before and shortly after the NPA was signed. For example, and significantly, it was Acosta who changed the language, "Epstein shall enter his guilty plea and be sentenced not later than October 26, 2007" to "Epstein shall use [his] *best efforts* to enter his guilty plea and be sentenced not later than October 26, 2007." (Emphasis added.) Acosta also agreed not to enforce the NPA's October 26, 2007 deadline for entry of Epstein's plea, and he told defense counsel that he had no objection if they decided to pursue an appeal to the Department. Following these decisions, the USAO would have had significant difficulty trying to prove that Epstein was not using his "best efforts" to comply with the NPA and was intentionally failing to comply, as opposed to pursuing a course to which the U.S. Attorney had at least implicitly agreed.

E. Acosta Did Not Exercise Sufficient Supervisory Review over the Process

The question at the center of much of the public controversy concerning the USAO's handling of its criminal investigation of Epstein is why the USAO agreed to resolve a case in which

the defendant faced decades in prison for sexual crimes against minors with such an insignificant term of incarceration, and made numerous other concessions to the defense. As OPR has set forth in substantial detail in this Report, OPR did not find evidence to support allegations that the prosecutors sought to benefit Epstein at the expense of the victims. Instead, the result can more appropriately be tied to Acosta's misplaced concerns about interfering with a traditionally state crime and intruding on state authority. Acosta was also unwilling to abandon the path that he had set, even when Villafaña and Lourie advocated to end the negotiations and even though Acosta himself had learned that the state authorities may not have been a reliable partner.

Many of the problems that developed might have been avoided had Acosta engaged in greater consultation with his staff before making key decisions. The contemporaneous records revealed problems with communication and coordination among the five key participants. Acosta was involved to a greater extent and made more decisions than he did in a typical case. Lourie told OPR that it was "unusual to have a U.S. Attorney get involved with this level of detail." Menchel told OPR, "I know we would have spoken about this case a lot, okay? And I'm sure with Jeff as well, and there were conversations -- a meeting that I had with Marie and Andy as well." Lourie similarly told OPR:

> Well, . . . he would have been talking to Jeff and Matt, talking to me to the extent that he did, he would have been looking at the Pros Memo and . . . the guidance from CEOS, he would have been reading the defense attorney's letters, maybe talking to the State Attorney, I don't know, just . . . all these different sources of information he was -- I'm comfortable that he knew the case, you know, that he was, he was reading everything. Apparently, he, you know, read the Pros Memo, he read all the stuff . . . .

At the same time, Acosta was significantly removed, both in physical distance and in levels in the supervisory chain, from the individuals with the most knowledge of the facts of the case—Villafaña and, to a lesser extent, Lourie. Lourie normally would have signed off on the prosecution memorandum on his own, but as he told OPR, he recognized that the case was going to go through the front office "[b]ecause there was front office involvement from the get go." Yet, although Acosta became involved at certain points in order to make decisions, he did not view himself as overseeing the investigation or the details of implementing his decisions. OPR observed that as a consequence, management of the case suffered from both an absence of ownership of the investigation and failures in communication that affected critical decisions.

On occasion, Villafaña included Acosta directly in emails, but often, information upon which Acosta relied for his decisions and information about the decisions Acosta had made traveled through multiple layers between Acosta and Villafaña. Villafaña did draft a detailed, analytical prosecution memorandum, but it is not clear that Acosta read it and instead may have relied on conversations primarily with Menchel and later with Sloman after Menchel's departure. Despite these discussions, though, it is not clear that Acosta was aware of certain information, such as Oosterbaan's strong opinion from the outset in favor of the prosecution or of Villafaña's concerns and objections to a state-based resolution or the final NPA. Acosta interpreted the state indictment on only one charge as a sign that the case was weak evidentially, but it is not clear that when making his decision to resolve the matter though a state-based plea, he knew the extent to

which Villafaña and Lourie believed that the state had intentionally failed to aggressively pursue a broader state indictment.

One example illustrates this communication gap. In a September 20, 2007 email to Lourie asking him to read the latest version of the proposed "hybrid" federal plea agreement (calling for Epstein to plead to both state and federal charges), Acosta noted, "I don't typically sign plea agreements. *We should only go forward if the trial team supports and signs this agreement.* I didn't even sign the public corruption or [C]ali cartel agreements, so this should not be the first." (Emphasis added.) In his email to Villafaña, Lourie attached Acosta's email and instructed Villafaña to "*change the signature block to your name* and send as final to Jay [Lefkowitz]." (Emphasis added.) Villafaña raised no objection to signing the agreement. Acosta told OPR that he wanted to give the "trial team" a chance to "speak up and let him know" if they did not feel comfortable with the agreement. Villafaña, however, told OPR that she did not understand that she was being given an opportunity to object to the agreement; rather, she believed Acosta wanted her to sign it because he was taking an "arm's length" approach and signaling this "was not his deal." The fact that the top decision maker believed he was giving the line AUSA an opportunity to reflect and stop the process if she believed the deal was inappropriate, but the line AUSA believed she was being ordered to sign the agreement because her boss wanted to distance himself from the decision, reflects a serious communication gap.

As another example, at one point, Villafaña, frustrated and concerned about the decisions being made concerning a possible resolution, requested a meeting with Acosta; in a sternly worded rebuke, Menchel rejected the request. Although Menchel told OPR that he was not prohibiting Villafaña from speaking to Acosta, Villafaña interpreted Menchel's email to mean that she could not seek a meeting with Acosta. As a consequence, Acosta made his decision about a state resolution and the term of incarceration without any direct input from Villafaña. Acosta told OPR that he was unaware that Villafaña had sought a meeting with him and he would have met with her if she had asked him directly. OPR did not find any written evidence of a meeting involving both Acosta—the final decision maker—and Villafaña—the person most knowledgeable about the facts and the law—before Acosta made his decision to resolve the case through state charges or to offer the two-year term, and Villafaña said she did not have any input into the decision. Although a U.S. Attorney is certainly not required to have such direct input, and it may be that Menchel presented what he believed to be Villafaña's views, OPR found no evidence that Acosta was aware of Villafaña's strong views about, and objections to, the proposed resolution.[256]

Two logistical problems hindered effective communication. First, the senior managers involved in the case—Acosta, Sloman, and Menchel—had offices located in Miami, while the offices of the individuals most familiar with facts of the case—Villafaña and, to a lesser extent, Lourie—were located in West Palm Beach. Consequently, Villafaña's discussions with her senior

[256] In her 2017 Declaration in the CVRA litigation, Villafaña stated that, given the challenges of obtaining victims' cooperation with a federal prosecution, "I believed and still believe that a negotiated resolution of the matter was in the best interests of the [USAO] and the victims as a whole. The [USAO] had also reached that same conclusion." Several subjects pointed to this statement as indicating that Villafaña in fact supported the NPA. In her OPR interview, however, Villafaña drew a distinction between resolving the investigation through negotiations that led to what in her view was a reasonable outcome, which she would have supported, and "this negotiated resolution"—that is, the NPA—which she did not support.

managers required more effort than in other offices, where a line AUSA can more easily just stop by a supervisor's office to discuss a case.[257]

Second, key personnel were absent at varying times. Menchel's last day in the office was August 3, 2007, the day he sent to the defense his letter making the initial offer, and presumably in the immediate period before his departure date, Menchel would have been trying to wrap up his outstanding work. Yet, this was also the time when Acosta was deciding how to resolve the matter. Similarly, in the critical month of September, the NPA and plea negotiations intensified and the NPA evolved significantly, with the USAO having to consider multiple different options as key provisions were continuously added or modified while Villafaña pressed to meet her late-September deadline. Although Lourie was involved with the negotiations during this period, he was at the same time transitioning not only to a new job but to one in Washington, D.C., and was traveling between the two locations. Sloman was on vacation in the week preceding the signing, when many significant changes were made to the agreement, and he did not participate in drafting or reviewing the NPA before it was signed. Accordingly, during the key negotiation period for a significant case involving a unique resolution, no one involved had both a thorough understanding of the case and full ownership of the decisions that were being made. Villafaña certainly felt that during the negotiations, she was only implementing decisions made by Acosta. Acosta, however, told OPR that when reviewing the NPA, "I would have reviewed this for the policy concerns. Did it do the . . . bullet points, and my assumption, rightly or wrongly, would have been that Andy and Marie would have looked at this, and that this was . . . appropriate."

The consequences flowing from the lack of ownership and effective communication can be seen in the NPA itself. As demonstrated by the contemporaneous communications, the negotiations were at times confusing as the parties considered multiple options and even revisited proposals previously rejected. Meanwhile, Villafaña sought to keep to a deadline that would allow her to charge Epstein when she had planned to, if the parties did not reach agreement. In the end, Acosta accepted several terms with little apparent discussion or consideration of the ramifications.

The USAO's agreement not to prosecute "any potential co-conspirators" is a notable example. As previously noted, the only written discussion about the term that OPR found was Villafaña's email to Lourie and the incoming West Palm Beach manager, with copies to her co-counsel and direct supervisor, stating that she did not believe the provision "hurts us," and neither Acosta, Lourie, nor Villafaña recalled any further discussion about the provision. Although OPR did not find evidence showing that Acosta, Lourie, or Villafaña intended the scope of the provision to protect anyone other than Epstein's four assistants, the plain language of the provision precluded the USAO from prosecuting anyone who engaged with Epstein in his criminal conduct, within the limitations set by the overall agreement. This broad prosecution declination would likely be unwise in most cases but in this case in particular, the USAO did not have a sufficient investigative basis from which it could conclude with any reasonable certitude that there were no other individuals who should be held accountable along with Epstein or that evidence might not be developed implicating others. Prosecutors rarely promise not to prosecute unidentified third

[257] In his OPR interview, Acosta commented that although Menchel's office was on the same floor as Acosta's, he was in a different suite, which "affects interaction."

parties.[258] The rush to reach a resolution should not have led the USAO to agree to such a significant provision without a full consideration of the potential consequences and justification for the provision. It is highly doubtful that the USAO's refusal to agree to that term would have itself caused the negotiations to fail; the USAO's rejection of the defense proposal concerning immigration consequences did not affect Epstein's willingness to sign the agreement. The possibility that individuals other than Epstein's four female assistants could have criminal culpability for their involvement in his scheme could have been anticipated and should have caused more careful consideration of the provision.

Similarly, the confidentiality provision was also accepted with little apparent consideration of the implications of the provision for the victims, and it eventually became clear that the defense interpreted the provision as precluding the USAO from informing the victims about the status of the investigation. Agreeing to a provision that restricted the USAO's ability to disclose or release information as it deemed appropriate mired the USAO in disputes about whether it was or would be violating the terms of the NPA by disclosing information to victims or the special master. Decisions about disclosure of information should have remained within the authority and province of the USAO to decide as it saw fit.

There is nothing improper about a U.S. Attorney not having a meeting with the line AUSA or other involved members of the prosecution team before he or she makes a decision in a given case; indeed, U.S. Attorneys often make decisions without having direct input from line AUSAs. And Acosta did have discussions with Menchel, and possibly Sloman, before making the critical decision to resolve the matter through a state plea, although the specifics of those discussions could not be recalled by the participants due to the passage of time. This case, however, was different from the norm, and Acosta was considering a resolution that was significantly different from the usual plea agreement. Contemporaneous records show that Acosta believed the case should be handled like any other, but Acosta's decision to fashion an unorthodox resolution made the case unlike any other, and it therefore required appropriate and commensurate oversight. Acosta may well have decided to proceed in the same fashion even if he had sought and received a full briefing

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[258] CEOS Chief Oosterbaan told OPR this provision was "very unusual." Principal Associate Deputy Attorney General John Roth commented, "I don't know how it is that you give immunity to somebody who's not identified. I just don't know how that works." Villafaña's co-counsel told OPR:

> [I]t's effectively transactional immunity which I didn't think we were supposed to do at the Department of Justice. . . . I've never heard of anything of the sort. . . . [W]e go to great lengths in most plea agreements to go and not give immunity for example, for crimes of violence, . . . for anything beyond the specific offense which was being investigated during the specific time periods and for you and nobody else. I mean on rare occasion I've seen cases where say someone was dealing drugs and their wife was involved. . . . And they've got kids. . . . [and] it's understood that the wife probably could be prosecuted and sent to jail too, but you know the husband's willing to go and take the weight . . . . This is not one of those.

Deputy Attorney General Filip called the provision "pretty weird." Menchel's successor as Criminal Chief told OPR that he had never heard of such a thing in his 33 years of experience as a prosecutor. A senior AUSA with substantial experience prosecuting sex crimes against children commented that it was "horrendous" to provide immunity for participants in such conduct.

from Villafaña and others, but given the highly unusual procedure being considered, his decision should have been made only after a full consideration of all of the possible ramifications and consequences of pushing the matter into the state court system, with which neither Villafaña nor the other subjects had experience, along with consideration of the legal and evidentiary issues and possible means of overcoming those issues. OPR did not find evidence indicating that such a meeting or discussion with the full team was held before the decision was made to pursue the state-based resolution, before the decision was made to offer a two-year term of incarceration, or before the NPA, with its unusual terms, was signed. As Acosta later recognized and told OPR, "And a question that I think is a valid one in my mind is, did the focus on, let's just get this done and get a jail term, mean that we didn't take a step back and say, let's evaluate how this train is moving?"

Many features of the NPA were given inadequate consideration, including core provisions like the term of incarceration and sexual offender registration, with the result that Epstein was able to manipulate the process to his benefit. Members of his senior staff held differing opinions about some of the issues that Acosta felt were important and that factored into his decision-making. There does not seem to be a point, however, at which those differing opinions were considered when forming a strategy; rather, Acosta seems to have made a decision that everyone beneath him followed and attempted to implement but without a considered strategy beyond attaining the three core elements. As the U.S. Attorney, Acosta had authority to proceed in this manner, but many of the problems that developed with the NPA might have been avoided with a more thoughtful approach. As Acosta belatedly recognized, "[I]f I was advising a fellow U.S. Attorney today, I would say, think it through."[259]

No one of the individual problems discussed above necessarily demonstrates poor judgment by itself. However, in combination, the evidence shows that the state-based resolution was ill conceived from the start and that the NPA resulted from a flawed decision-making process. From the time the USAO opened its investigation, Acosta recognized the federal interest in prosecuting Epstein, yet after that investigation had run for more than a year, he set the investigation on a path not originally contemplated. Having done so, he had responsibility for ensuring that he received and considered all of the necessary information before putting an end to a federal investigation into serious criminal conduct. Acosta's failure to adequately consider the full ramifications of the NPA contributed to a process and ultimately a result that left not only the line AUSA and the FBI case agents dissatisfied but also caused victims and the public to question the motives of the prosecutors and whether any reasonable measure of justice was achieved. Accordingly, OPR concludes that Acosta exercised poor judgment in that he chose a course of action that was in marked contrast to the action that the Department would reasonably expect an attorney exercising good judgment to take.

[259] In commenting on OPR's draft report, Acosta's attorney acknowledged that "[t]he matter would have benefited from more consistent staffing and attention."

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CHAPTER THREE

ISSUES RELATING TO THE GOVERNMENT'S INTERACTIONS AND COMMUNICATIONS WITH VICTIMS

PART ONE: FACTUAL BACKGROUND

I. OVERVIEW

Chapter Three describes the events pertaining to the federal government's interactions and communications with victims in the Epstein case, and should be read in conjunction with the factual background set forth in Chapter Two, Part One. This chapter sets forth the pertinent legal authorities and Department policies and practices regarding victim notification and consultation, as well as OPR's analysis and conclusions. OPR discusses key events relating to the USAO's and the FBI's interactions with victims before and after the signing of the NPA, beginning with the FBI's initial contact with victims through letters informing them that the FBI had initiated an investigation. A timeline of key events is provided on the following page.

II. THE CVRA, 18 U.S.C. § 3771

A. History

In December 1982, the President's Task Force on Victims of Crime issued a final report outlining recommendations for the three branches of government to improve the treatment of crime victims. The Task Force concluded that victims have been "overlooked, their pleas for justice have gone unheeded, and their wounds—personal, emotional and financial—have gone unattended."[260] Thereafter, the government enacted various laws addressing victims' roles in the criminal justice system: the Victim and Witness Protection Act of 1982, the Victims of Crime Act of 1984, the Victims' Rights and Restitution Act of 1990 (VRRA), the Violent Crime Control and Law Enforcement Act of 1994, the Antiterrorism and Effective Death Penalty Act of 1996, the Victim Rights Clarification Act of 1997, and the Justice for All Act of 2004.[261]

The CVRA, enacted on October 30, 2004, as part of the Justice for All Act, was designed to protect crime victims and to make them "full participants in the criminal justice system."[262] The CVRA resulted from a multi-year bipartisan effort to approve a proposal for a constitutional amendment guaranteeing victims' rights, some of which had previously been codified as a victims'

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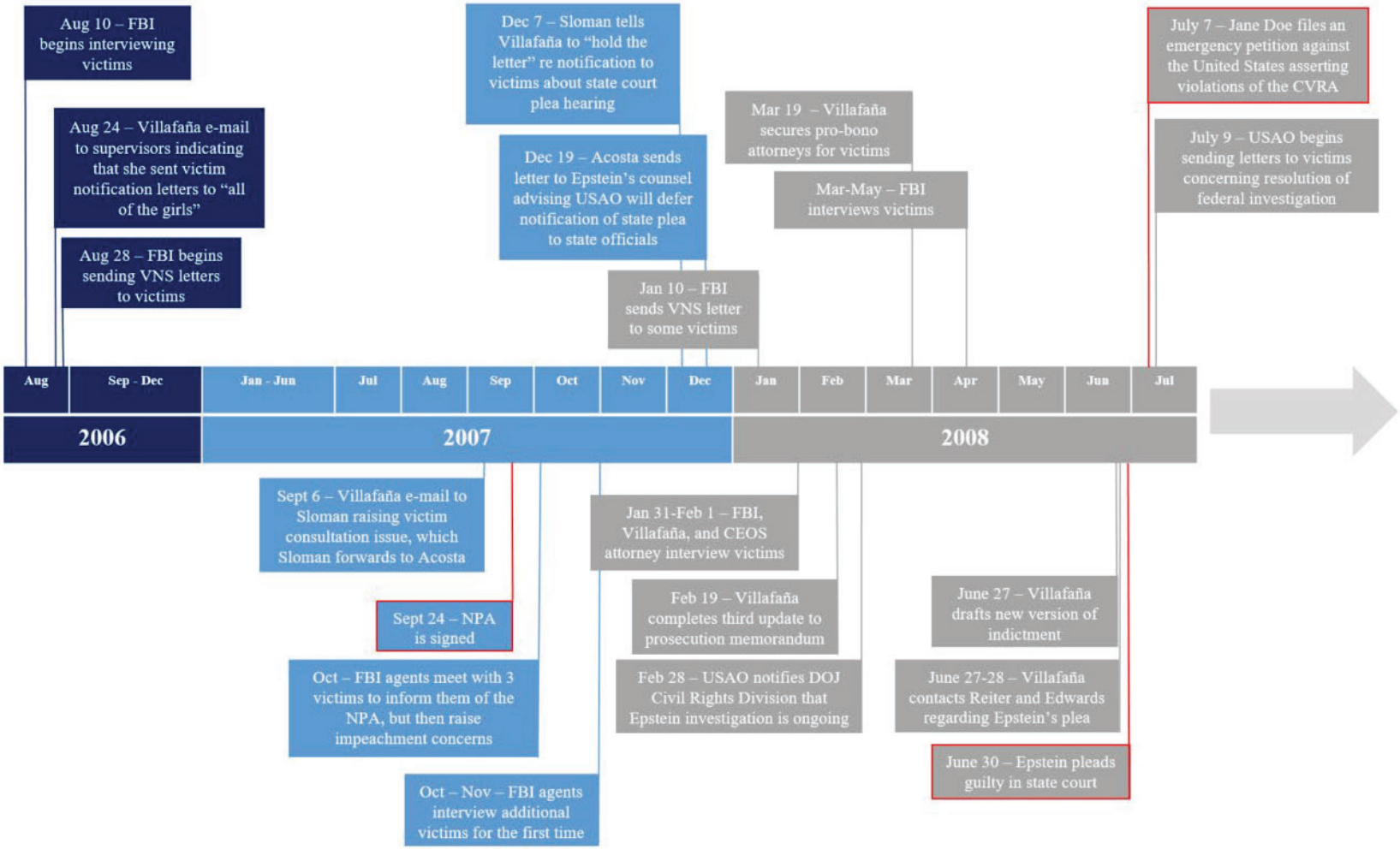
260 President's Task Force on Victims of Crime Final Report at ii (Dec. 1982).

261 *See* Pub. L. No. 97-291 (Victim and Witness Protection Act) (1982); Pub. L. No. 98-473 (Victims of Crime Act) (1984); Pub. L. No. 101-647 (Victims' Rights and Restitution Act) (1990); Pub. L. No. 103-322 (Violent Crime Control and Law Enforcement Act) (1994); Pub. L. No. 104-132 (Antiterrorism and Effective Death Penalty Act) (1996); Pub. L. No. 105-6 (Victim Rights Clarification Act) (1997); and Pub. L. No. 108-405 (Justice for All Act) (2004).

262 *Kenna v. U.S. Dist. Court*, 435 F.3d 1011, 1016 (9th Cir. 2006); *United States v. Moussaoui*, 483 F.3d 220, 234 (4th Cir. 2007); and Justice for All Act.

Timeline of Key Events for Crime Victims' Rights Act Analysis



Additional Key Dates

Dec 17, 2010 – DOJ Office of Legal Counsel issues opinion regarding CVRA

Oct 2011 – DOJ revises AG Guidelines

May 29, 2015 – CVRA amended to include two new rights

Feb 21, 2019 – Dist. Ct. issues opinion finding U.S. violated the CVRA

Jul 6, 2019 – Epstein arrested on SDNY charges

Aug 10, 2019 – Epstein dies in custody

Sep 16, 2019 – Dist. Ct. closes CVRA case and denies petitioners' request for remedies

Apr 14, 2020 – 11th Circuit Court of Appeals denies Mandamus petition

Aug 7, 2020 – Petitioners' petition for rehearing *en banc* granted

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Bill of Rights in the VRRA.[263] Following multiple Senate Judiciary Committee subcommittee hearings and various revisions of the proposed amendment, the Senators determined that such an amendment was unlikely to be approved and, instead, they presented the CVRA as a compromise measure.[264]

B. Enumerated Rights

The CVRA defines the term "crime victim" as "a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia."[265] Initially, and at the time relevant to the federal Epstein investigation, the CVRA afforded crime victims the following eight rights:

> (1) The right to be reasonably protected from the accused.
>
> (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
>
> (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
>
> (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
>
> (5) The reasonable right to confer with the attorney for the Government in the case.

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263 *See* 150 Cong. Rec. S4260-01 at 1, 5 (2004). The VRRA identified victims' rights to (1) be treated with fairness and with respect for the victim's dignity and privacy; (2) be reasonably protected from the accused offender; (3) be notified of court proceedings; (4) be present at all public court proceedings that relate to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial; (5) confer with an attorney for the Government in the case; (6) restitution; and (7) information about the conviction, sentencing, imprisonment, and release of the offender. 42 U.S.C. § 10606(b) (1990). The relevant text of the VRRA is set forth in Chapter Three, Part Two, Section 1.B of this Report.

264 150 Cong. Rec. S4260-01 at 1, 5 (2004). Although nine congressional hearings were held between 1996 and 2003 concerning amending the Constitution to address victims' rights, neither chamber of Congress voted on legislation proposing an amendment. United States Government Accountability Office (GAO), GAO-09-54, *Report to Congressional Committees: Crime Victims' Rights Act – Increasing Awareness, Modifying the Complaint Process and Enhancing Compliance Monitoring Will Improve Implementation of the Act* at 16 (Dec. 2008) (GAO *CVRA Awareness Report*).

265 The relevant text of the CVRA is set forth in Chapter Three, Part Two, Section I.A of this Report.

> (6) The right to full and timely restitution as provided in law.
>
> (7) The right to proceedings free from unreasonable delay.
>
> (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

Although many of the rights included in the CVRA already existed in federal law as part of the VRRA, the CVRA afforded crime victims standing to assert their rights in federal court or by administrative complaint to the Department, and obligated the court to ensure that such rights were afforded. The passage of the CVRA repealed the rights portion of the VRRA (42 U.S.C. § 10606), but kept intact the portion of the VRRA directing federal law enforcement agencies to provide certain victim services, such as counseling and medical care referrals (42 U.S.C. § 10607(c)). Department training emphasizes that the VRRA obligates the Department to provide victim services, which attach upon the detection of a crime, while the CVRA contains court-enforceable rights that attach upon the filing of a charging instrument.

In 2015, Congress amended the CVRA and added the following two rights:[266]

> (9) The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.
>
> (10) The right to be informed of the rights under this section and the services described in section 503(c) of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607(c)) and provided contact information for the Office of the Victims' Rights Ombudsman of the Department of Justice.

III. THE DEPARTMENT'S INTERPRETATION OF THE CVRA'S DEFINITION OF "CRIME VICTIM" AT THE TIME OF THE EPSTEIN INVESTIGATION

A. April 1, 2005 Office of Legal Counsel "Preliminary Review"

In 2005, Department management requested informal guidance from the Department's Office of Legal Counsel (OLC) regarding interpretation of the CVRA's definition of "crime victim."[267] On April 1, 2005, OLC provided "preliminary and informal" guidance by email, concluding that "the status of a 'crime victim' may be reasonably understood to commence upon the filing of a complaint, and that the status ends if there is a subsequent decision not to indict or prosecute the Federal offense that directly caused the victim's harm."[268]

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266 H. Rep. No. 114-7 (Jan. 27, 2015).

267 OLC is responsible for providing legal advice to the President, Department components, and other executive branch agencies.

268 The OLC 2005 Informal Guidance is summarized in a Memorandum Opinion to the Acting Deputy Attorney General from Deputy Assistant Attorney General John E. Bies (Dec. 17, 2010), published as Office of Legal Counsel,

OLC concluded that because the CVRA defines "'crime victim' as a 'person directly and proximately harmed by the commission of a Federal offense,' . . . the definition of victim is thus tethered to the identification of a 'Federal offense,' an event that occurs with the filing of a complaint." OLC further concluded that because the House Report stated that the CVRA codifies the "'rights of crime victims in the Federal judicial system'" and a complaint "commences the 'judicial process' and places an offense within the 'judicial system,'" the legislature must have intended for CVRA rights to commence upon the filing of a complaint.

OLC also found that the language of the CVRA rights supported its interpretation. For example, the first right grants a victim protection from "the accused," not a suspect. Additionally, the second, third, and fourth rights refer to "victim notification, and access to, public proceedings involving release, plea, sentencing or parole—none of which commence prior to the filing of a complaint."

B. 2005 Attorney General Guidelines for Victim and Witness Assistance

In May 2005, the Department updated its Attorney General Guidelines for Victim and Witness Assistance (2005 Guidelines) to include the CVRA.[269] The 2005 Guidelines specifically cited the CVRA requirement that agencies "engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded" their CVRA rights, which in 2005 encompassed the initial eight CVRA rights.

The 2005 Guidelines provided detail regarding implementation of the Department's CVRA duties and divided criminal cases into an "investigation stage," a "prosecution stage," and a "corrections stage." The individuals responsible for notifying crime victims of their CVRA rights varied depending on the stage of the proceedings.

During the "investigation stage" of cases in which the FBI was the investigating agency, the Special Agent in Charge was responsible for identifying the victims "[a]t the earliest opportunity after the detection of a crime" and notifying them of their rights under the CVRA and services available under the VRRA and other federal statutes.

> [D]uring the investigative stage, [the Department] mandates compliance with the Victims' Rights and Restitution Act, 42 U.S.C § 10607, which requires federal officials to, among other things, identify victims, protect victims, arrange for victims to receive reasonable protection from suspected offenders, and provide

The Availability of Crime Victims' Rights Under the Crime Victims' Rights Act of 2004 (Dec. 17, 2010) ("OLC *Availability of Crime Victims' Rights* (2010)") and available at https://www.justice.gov/sites/default/files/olc/opinions/2010/12/31/availability-crime-victims-rights.pdf. "That [2005] informal guidance did not foreclose the possibility that other definitions would also be reasonable." OLC *Availability of Crime Victims' Rights* (2010) at 1.

269 The 2005 Guidelines are set forth in relevant part in Chapter Three, Part Two, Section II of this Report. The Department promulgated the guidelines in response to a congressional directive in a predecessor statute to the CVRA, which instructed the Attorney General to develop and implement such guidelines. Victim and Witness Protection Act, Pub. L. No. 97-291, § 6, 96 Stat. 1248 (1982). The 2005 Guidelines were superseded in October 2011, as explained below.

> information about available services for victims. Therefore, even though [the Department] may not afford CVRA rights to victims if charges have not been filed in their cases, the [D]epartment may provide certain services to victims that may serve the same function as some CVRA rights.[270]

The 2005 Guidelines stated that the "prosecution stage" of the case began when "charges are filed and continue[d] through postsentencing legal proceedings." The "U.S. Attorney in whose district the prosecution is pending" was responsible for making "best efforts to see that crime victims are notified" of their rights under the CVRA.

During the prosecution stage, the 2005 Guidelines required the U.S. Attorney, or a designee, to notify crime victims of case events, such as the filing of charges; the release of an offender; the schedule of court proceedings; the acceptance of a guilty plea or nolo contendere or rendering of a verdict; and any sentence imposed. The 2005 Guidelines required the responsible official to "provide the victim with reasonable, accurate, and timely notice of any public court proceeding . . . that involves the crime against the victim."

The 2005 Guidelines specifically required federal prosecutors to "be available to consult with victims about [their] major case decisions," such as dismissals, release of the accused, plea negotiations, and pretrial diversion. In particular, the 2005 Guidelines required the responsible official to make reasonable efforts to notify identified victims of, and consider victims' views about, prospective plea negotiations. Nevertheless, the 2005 Guidelines cautioned prosecutors to "consider factors relevant to the wisdom and practicality of giving notice and considering [the victim's] views" in light of various factors such as "[w]hether the proposed plea involves confidential information or conditions" and "[w]hether the victim is a possible witness in the case and the effect that relaying any information may have on the defendant's right to a fair trial." Lastly, the 2005 Guidelines stated that "[a] strong presumption exists in favor of providing rather than withholding assistance and services to victims and witnesses of crime."

The "corrections stage" involved both pretrial detention of the defendant and incarceration following a conviction. Depending on the agency having custody of the defendant, the U.S. Attorney or other agencies were responsible for victim notifications during this stage.

IV. USAO AND FBI VICTIM/WITNESS NOTIFICATION PRACTICE AT THE TIME OF THE EPSTEIN INVESTIGATION

A. USAO Training

As U.S. Attorney, Acosta disseminated the May 2005 updated Guidelines to USAO personnel with a transmittal memorandum dated February 27, 2006, stating that he expected each recipient "to read and become familiar with the [2005] Guidelines." Acosta noted in the memorandum that the USAO had recently held an "all office training" addressing the 2005 Guidelines and that new USAO attorneys who missed the training were required to view a videotaped version of the training "immediately." Acosta further noted that the USAO's

[270] GAO *CVRA Awareness Report* at 66.

victim/witness staff were "ready to assist you with the details of victim notification, and other areas for which United States Attorney[']s Offices are now explicitly responsible under the act." The USAO's Victim Witness Program Coordinator told OPR that the USAO provided annual mandatory office-wide training on victim/witness issues and training for new employees.

B. The Automated Victim Notification System

Both the FBI and the USAO manage contacts with crime victims through the Victim Notification System (VNS), an automated system maintained by the Executive Office for United States Attorneys. The 2005 Guidelines mandated that "victim contact information and notice to victims of events . . . shall, absent exceptional circumstances (such as cases involving juvenile or foreign victims), be conducted and maintained using VNS." The VNS is separate from agency case management systems maintained by the FBI and the USAO. Both the FBI and the USAO use the VNS to generate form letters to victims at various points in the investigation and the prosecution of a criminal case. Although each form letter can be augmented to add some limited individual matter-specific content, the letters contain specific language concerning the purpose of the contact that cannot be removed (such as the arrest of the defendant or the scheduling of a sentencing hearing).[271]

In the usual course of a criminal case, the FBI collects victim contact information during the investigation stage, which it stores in its case management system. The FBI's Victim Specialist exports the victim information data from the FBI's case management system into the VNS database. Victim information stored in the VNS is linked to the investigation's VNS case number. At the time of the Epstein investigation, the FBI's Victim Specialist could use the VNS to generate seven different form notification letters: (1) initial notification; (2) case is under investigation; (3) arrest of the defendant; (4) declination of prosecution; (5) other; (6) advice of victim rights; and (7) investigation closed.

After a charging document has been filed and the "prosecution stage" begins, the USAO's Victim Witness Specialist assumes responsibility for victim notification.[272] The USAO imports data from its case management system into the VNS and links to the previously loaded FBI VNS data. The USAO's Victim Witness Specialist uses the VNS to generate form letters providing notice of case events, such as charges filed; an arraignment; a proposed plea agreement; change of plea hearings; sentencing hearings; and the result of sentencing hearings.

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[271] U.S. Dept. of Justice Office of the Inspector General Audit Division Audit Report 08-04, *The Department of Justice's Victim Notification System* at 29 (Jan. 2008), available at https://oig.justice.gov/reports/EOUSA/a0804/final.pdf. The 2008 audit identified concerns with the VNS templates, including that "VNS users . . . cannot alter the format to ensure that it fits with the specific case for which it is being sent," and many users had noted that "information in notifications became confusing and sometimes contradictory when various types of notifications were combined in the same letter."

[272] The FBI and the USAO have different titles for the individual who maintains victim contact: the FBI title is "Victim Specialist," and the USAO title is "Victim Witness Specialist."

C. FBI Victim Notification Pamphlets

The 2005 Guidelines recommended that "victims be given a printed brochure or card that briefly describes their rights and available services . . . and [contact information for] the victim-witness coordinator or specialist . . . ." At the time of the Epstein investigation, FBI agents nationwide routinely followed a practice of providing victims with pamphlets entitled, "Help for Victims of Crime" and "The Department of Justice Victim Notification System." The "Help for Victims of Crime" pamphlet contained a listing of the eight CVRA rights. The pamphlet stated: "Most of these rights pertain to events occurring after the indictment of an individual for the crime, and it will be the responsibility of the prosecuting United States Attorney's Office to ensure you are afforded those rights." The case agent in the Epstein investigation told OPR that she provided victims with the FBI pamphlet upon the conclusion of an interview. The pamphlet entitled "The Department of Justice Victim Notification System" provided an overview of the VNS and instructions on how to access the system.

V. THE INTRODUCTORY USAO AND FBI LETTERS TO VICTIMS

A. August 2006: The FBI Victim Notification Letters

On August 8, 2006, shortly after the FBI opened its investigation into Epstein, the Victim Specialist for the West Palm Beach FBI office, under the case agent's direction, prepared a "Victim Notification Form" naming 30 victims in the Epstein investigation and stating that "additional pertinent information" about them was available in the VNS.[273] Thereafter, the Victim Specialist entered individual victim contact information she received from the case agent into the VNS whenever the case agent directed the Victim Specialist to generate an initial letter to a particular victim. The FBI case agent told OPR that formal victim notification was "always handled by the [FBI's Victim Specialist]."[274]

According to the VNS records, beginning on August 28, 2006, the FBI Victim Specialist used the VNS to generate FBI letters to be sent to the victims, over her signature, identifying the eight CVRA rights and inviting victims to provide updated contact information in order to receive current status information about the matter. The FBI letters described the case as "currently under investigation" and noted that "[t]his can be a lengthy process and we request your continued patience while we conduct a thorough investigation." The letters also stated that some of the CVRA rights did not take effect until after an arrest or indictment: "We will make our best efforts to ensure you are accorded the rights described. Most of these rights pertain to events occurring after the arrest or indictment of an individual for the crime, and it will become the responsibility of the prosecuting United States Attorney's Office to ensure you are accorded those rights." A sample letter follows.

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273 These 30 were drawn from the PBPD investigative file and included individuals that the PBPD had not designated as victims and individuals the PBPD had identified but not interviewed.

274 The case agent told OPR, "[O]nce we identify a victim, then we bring [the FBI Victim Specialist] in, and as far as anything pertaining to victim rights . . . and any resources, federal resources these victims may need comes from [her], the Victim Specialist."

U.S. Department of Justice
Federal Bureau of Investigation
FBI - West Palm Beach
Suite 500
505 South Flagler Drive
West Palm Beach, FL 33401
Phone: (561) 833-7517
Fax: (561) 833-7970

August 28, 2006

[redacted]

[redacted]

Re: Case Number: [redacted]

Dear [redacted]

Your name was referred to the FBI's Victim Assistance Program as being a possible victim of a federal crime. We appreciate your assistance and cooperation while we are investigating this case. We would like to make you aware of the victim services that may be available to you and to answer any questions you may have regarding the criminal justice process throughout the investigation. Our program is part of the FBI's effort to ensure the victims are treated with respect and are provided information about their rights under federal law. These rights include notification of the status of the case. The enclosed brochures provide information about the FBI's Victim Assistance Program, resources and instructions for accessing the Victim Notification System (VNS). VNS is designed to provide you with information regarding the status of your case.

This case is currently under investigation. This can be a lengthy process and we request your continued patience while we conduct a thorough investigation.

As a crime victim, you have the following rights under 18 United States Code § 3771: **(1)** The right to be reasonably protected from the accused; **(2)** The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused; **(3)** The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding; **(4)** The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding; **(5)** The reasonable right to confer with the attorney for the Government in the case; **(6)** The right to full and timely restitution as provided in law; **(7)** The right to proceedings free from unreasonable delay; **(8)** The right to be treated with fairness and with respect for the victim's dignity and privacy.

We will make our best efforts to ensure you are accorded the rights described. Most of these rights pertain to events occurring after the arrest or indictment of an individual for the crime, and it will become the responsibility of the prosecuting United States Attorney's Office to ensure you are accorded those rights. You may also seek the advice of a private attorney with respect to these rights.

The Victim Notification System (VNS) is designed to provide you with direct information regarding the case as it proceeds through the criminal justice system. You may obtain current information about this matter on the Internet at WWW.Notify.USDOJ.GOV or from the VNS Call Center at [redacted] In addition, you may use the Call Center or Internet to update your contact information and/or change your decision about participation in the notification program. If you update your information to include a current email address, VNS will send information to that address. You will need the following Victim Identification Number (VIN) [redacted] and Personal Identification Number (PIN) [redacted] anytime you contact the Call Center and the first time you log on to VNS on the Internet. In addition, the first time you access the VNS Internet site, you will be prompted to enter your last name (or business name) as currently contained in VNS. The name you should enter is [redacted]

[redacted]

[redacted]

[redacted]

If you have additional questions which involve this matter, please contact the office listed above. When you call, please provide the file number located at the top of this letter. Please remember, your participation in the notification part of this program is voluntary. In order to continue to receive notifications, it is your responsibility to keep your contact information current.

Sincerely,

[redacted]

Victim Specialist

VNS data logs, correspondence maintained in the FBI's case management system, and FBI interview reports for the Epstein investigation reflect that, during the Epstein investigation, the FBI generally issued its victim notification letters after the victim had been interviewed by FBI case agents, but its practice was not uniform.[275]

B. August 2006: The USAO's Letters to Victims

During the time that the FBI Victim Specialist was preparing and sending FBI victim notification letters, Villafaña was also preparing her own introductory letter in anticipation of meeting with each victim receiving the letter. Villafaña told OPR that she was "generally aware that the FBI sends letters" but believed the FBI's "process didn't . . . have anything to do with my process." Villafaña told OPR the "FBI had their own victim notification system and their own guidelines for when information had to be provided and what information had to be provided." Moreover, Villafaña "didn't know when [FBI] letters went out" or "what they said."[276] Nevertheless, Villafaña told OPR that she did not intend for the letters she drafted to interfere with the FBI's notification responsibilities.

In August 2006, Villafaña drafted her letters to victims who had been initially identified by the FBI based on the PBPD investigative file. Villafaña told OPR that she "made the decision to make contact with victims early," and she composed the introductory letter and determined to whom they would be sent. Although these letters contained CVRA rights information, Villafaña mainly intended to use them as a vehicle to "introduce" herself and let the victims know the federal investigation "would be a different process" from the State Attorney's Office investigation in which "the victims felt they had not been particularly well-treated." Villafaña told OPR that in a case in which she "needed to be talking to young girls frequently and asking them really intimate

[275] OPR found no uniformity in the time lapse between the FBI's interview of a victim and the issuance of an FBI letter to that particular victim, as the span of time between the two events varied from a few days to months. Furthermore, not every victim interviewed by the FBI received an FBI letter subsequent to her interview, and some FBI letters were sent to victims who had not been interviewed by the case agents. Finally, OPR's review of FBI VNS data revealed some letters that appeared to have been generated in the VNS and not included in the FBI case file. OPR could not confirm whether such letters were mailed or delivered.

[276] Villafaña, who did not have supervisory authority over the FBI's Victim Specialist, told OPR that she did not review the FBI notification letters and did not see them until she gathered them for production in the CVRA litigation, which was initiated after Epstein pled guilty on June 30, 2008.

questions," she wanted to "make sure that they . . . feel like they can trust me." Villafaña directed the FBI case agents to hand deliver the letters "as they were conducting interviews." Villafaña told OPR that the USAO had "no standardized way to do any victim notifications prior to" the filing of federal charges, and therefore Villafaña did not use a template or VNS-generated letter for content, but instead used a letter she "had created and crafted [herself] for another case."[277]

The letters contained contact information for Villafaña, the FBI case agent, and the Department's Office for Victims of Crime in Washington, D.C., and itemized the CVRA rights. The USAO letters described the case as "under investigation" and stated that the victim would be notified "[i]f anyone is charged in connection with the investigation." The letters stated that, in addition to their rights under the CVRA, victims were entitled to counseling, medical services, and potential restitution from the perpetrator, and that, upon request, the government would provide a list of counseling and medical services.[278] Lastly, the letters advised that investigators for the defense might contact the victims and those who felt threatened or harassed should contact Villafaña or the FBI case agent.

Although the USAO letters did not contain any language limiting CVRA rights to the post-arrest or indictment stage, Villafaña told OPR that she did not intend for the letters to activate the USAO's CVRA obligations, which she believed attached only after the filing of a criminal charge. Villafaña told OPR that she did not think that victims potentially receiving both an FBI letter and a USAO letter would be confused about their CVRA rights because the USAO letter "was coming with an introduction from the agents [who were hand delivering them]." Later, in the course of the CVRA litigation, Villafaña stated that she and the investigative team "adopted an approach of providing more notice and assistance to potential victims than the CVRA may have required, even before the circumstances of those individuals had been fully investigated and before any charging decisions had been made."[279]

Villafaña informed Lourie and Sloman about the letters, but the letters were not reviewed by any of Villafaña's supervisors, who considered such correspondence to be a non-management task. Acosta told OPR, "I've had no other case where I'm even aware of victims being notified, because I assume it all operates without it rising to management level." Similarly, Menchel told OPR,

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277 Villafaña told OPR that she thought that "at one point," she showed the letter to the USAO's Victim Witness Specialist who "said it was fine." The USAO's Victim Witness Specialist told OPR that because the USAO did not file a charging document in the Epstein matter, the USAO did not obtain VNS information from the FBI and did not assume responsibility for victim contact. The USAO's Victim Witness Specialist had no contact with Epstein's victims, and OPR's examination of VNS data revealed no USAO case number linked to the FBI's VNS data concerning the Epstein investigation. OPR did locate some victim contact information in the VNS relating to the USAO's case number associated with the Epstein-related CVRA litigation filed in July 2008.

278 Through its administration of the Crime Victims Fund, the Department's Office for Victims of Crime supports programs and services to help victims of crime.

279 Villafaña informed OPR that, as the USAO Project Safe Childhood Coordinator [focusing on prosecutions of individuals who exploit children through the internet], she "treated the [Guidelines] as a floor and tried to provide a higher standard of contact."

> [A]s Chief of the Criminal Division of the USAO, I did not consider it to be within my purview to ensure that appropriate victim notifications occurred in every matter investigated or brought by the Office. I also recall that the USAO employed one or more victim-witness coordinators to work with line prosecutors to ensure that appropriate victim notifications occurred in every matter investigated or brought by the Office.

C. USAO and FBI Letters Are Hand Delivered

The FBI case agent told OPR that the FBI made its notifications "at the time that we met [with] the girls." The case agent recalled that she hand delivered the USAO letters and FBI letters to some victims following in-person interviews, and in the instances when she did not provide a victim with a letter, she provided an FBI pamphlet containing CVRA rights information similar to that set forth in the FBI letters.[280] The co-case agent also recalled that he may have delivered "a few" letters to victims. The FBI Victim Specialist told OPR that she mailed some FBI letters to victims and she provided some FBI letters to the case agent for hand delivery.

Nevertheless, the case agent told OPR that she "did not sit there and go through every right" with the victims. She stated, however, "[I]n the beginning whether it was through [the FBI Victim Specialist] giving the letter, me giving a letter, the pamphlet, I believed that the girls knew that they were victims and had rights, and they had a resource, [the FBI Victim Specialist], that they could call for that." The FBI case agent further explained that once the case agents connected the FBI Victim Specialist with each victim, the Victim Specialist handled the victims' "rights and resources."

VI. AUGUST 2006 – SEPTEMBER 2007: FBI AND USAO CONTACTS WITH VICTIMS BEFORE THE NPA IS SIGNED

Early in the investigation, Villafaña informed her supervisors that, up to that point, "everyone whom the agents have spoken with so far has been willing to tell her story. Getting them to tell their stories in front of a jury at trial may be much harder." Between August 2006 and September 24, 2007, when the NPA was signed, the FBI case agents interviewed 22 victims. On a few occasions, Villafaña met with victims together with the FBI. Villafaña's May 1, 2007 draft indictment included substantive crimes against multiple victims, and Villafaña described the circumstances of each of their encounters with Epstein in her prosecution memorandum.

There is some evidence indicating that during interviews, some of the victims expressed to the FBI case agents and Villafaña concerns about participating in a federal trial of Epstein, and those discussions touched upon, in broad terms, the victims' views regarding the desired outcome of the investigation. Before the USAO entered into the NPA, however, no one from the

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[280] The case agent told OPR, "I remember giving letters to the girls when we would talk to them at . . . the conclusion, or . . . if I didn't have the file on me[,] I had pamphlets in my car, or I made sure [the victims had contact information for the FBI's Victim Specialist]."

government informed any victim about the potential for resolving the federal investigation through a state plea.

A. The Case Agents and Villafaña Solicit Some Victims' Opinions about Resolving the Federal Investigation

Villafaña told OPR that when she and the case agents met with victims, "we would ask them how they wanted the case to be resolved."[281]

> And most of them wanted the case to be resolved via a plea. Some of them wanted him not to be prosecuted at all. Most of them did not want to have to come to court and testify. They were very worried about their privacy rights. Some of them wanted him to go to jail. But . . . [s]ome of them talked about bad experiences with the State Attorney's Office. And so, I felt like sending them back to the State Attorney's Office was not something that they would have supported.

Villafaña told OPR that she also recalled that some victims "expressed . . . concern about their safety," and were worried that Epstein would find out about their participation in the investigation. In her 2017 declaration submitted in the CVRA litigation, Villafaña stated that the two CVRA petitioners "never communicated [their] desires to me or the FBI case agents and my role was to evaluate the entire situation, consider the input received from all of the victims, and allow the Office to exercise its prosecutorial discretion accordingly."[282] She also noted that some victims "fear[ed] having their involvement with Epstein revealed and the negative impact it would have on their relationships with family members, boyfriends, and others."

In the FBI case agent's 2017 declaration filed in the CVRA litigation, she stated, "During interviews conducted from 2006 to 2008, no victims expressed a strong opinion that Epstein be prosecuted." She further described the concerns of some of the victims:

> Throughout the investigation, we interviewed many [of Epstein's] victims . . . . A majority of the victims expressed concern about the possible disclosure of their identities to the public. A number of the victims raised concerns about having to testify and/or their parents finding out about their involvement with Mr. Epstein. Additionally,

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[281] Villafaña created for OPR a chart listing victims identified in the state and federal investigations, with notations indicating several with whom Villafaña recalled discussing their opinions about resolving the case. The chart, however, does not indicate what the victims said, and Villafaña told OPR that the information contained in the chart was based on her memory of her interactions with each victim. OPR was unable to determine the details or extent of any such discussions occurring before September 24, 2007, because Villafaña did not have contemporaneous notes of the interviews, and the FBI reports and corresponding notes of the interviews did not contain information about the victims' desired outcomes. The victims who provided information to OPR did not recall discussing potential resolution of the federal investigation with anyone from the government.

[282] In the declaration, Villafaña stated, "Jane Doe 2 specifically told me that she did not want Epstein prosecuted."

> for some victims, learning of the Epstein investigation and possible exposure of their identities caused them emotional distress. Overall, many of the victims were troubled about the existence of the investigation. They displayed feelings of embarrassment and humiliation and were reluctant to talk to investigators. Some victims who were identified through the investigation refused even to speak to us. Our concerns about the victims' well-being and getting to the truth were always at the forefront of our handling of the investigation.

The case agent told OPR that although she encountered victims who were "strong" and "believable," she did not encounter any who vigorously advocated for the prosecution of Epstein. Rather, "they were embarrassed," "didn't want their parents to know," and "wanted to forget."[283]

As of September 24, 2007, the date the NPA was signed, Villafaña informed Epstein attorney Lefkowitz that she had compiled a preliminary list of victims including "34 confirmed minors" and 6 other potential minor victims who had not yet been interviewed by the FBI.[284] Although the government had contacted many victims before the NPA was signed, Villafaña acknowledged during the CVRA litigation that "individual victims were not consulted regarding the agreement."

B. Before the NPA Is Signed, Villafaña Expresses Concern That Victims Have Not Been Consulted

Before the NPA was signed, Villafaña articulated to her supervisors concerns about the government's failure to consult with victims.

1. July 2007: Villafaña's Email Exchanges with Menchel

In July 2007, Villafaña learned that Menchel had discussed with defense counsel Sanchez a possible state resolution to the federal investigation of Epstein. Villafaña was upset by this information, and sent a strongly worded email to Menchel voicing her concerns. (A full account of their email exchange is set forth at Chapter Two, Part One, Section IV.A.2.) In that email, she told him that it was "inappropriate [for you] to make a plea offer that you know is completely unacceptable to the FBI, ICE, the victims, and me. These plea negotiations violate . . . all of the

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283 The case agent also noted that the victim who became CVRA petitioner Jane Doe #2 had expressed in her April 2007 video-recorded FBI interview her opinion that "nothing should happen to Epstein."

284 The "victims' list" for purposes of the NPA was intended to include the names of all individuals whom the government was prepared to name in a charging document "as victims of an offense enumerated in 18 U.S.C. § 2255." Although the charges Villafaña proposed on May 1, 2007, were based on crimes against 13 victims, thereafter, as explained in Chapter Two of this Report, she continued to revise the proposed charges, adding and removing victims as the federal investigation developed further evidence. At the time the NPA was signed, the proposed charges were based on crimes against 19 victims, but others had been identified for potential inclusion.

various iterations of the victims' rights legislation."[285] Villafaña explained to OPR her reference to the victims:

> [M]y concern was that [Menchel] was violating the CVRA which requires the attorneys for the government, which[] includes me[,] to confer with the victims, and the [VRRA], which requires the agents to keep the victims apprised of what's happening with the case. So in essence, I felt like he was exposing both myself and the agents to allegations of not abiding by our obligations by engaging in these plea negotiations without letting us know about it.[286]

In his reply to Villafaña's email, and after noting that he found her email "totally inappropriate," Menchel denied that he had violated any Departmental policy, and he noted that "[a]s Chief of the Criminal Division, I am the person designated by the U.S. Attorney to exercise appropriate discretion in deciding whether certain pleas are appropriate and consistent with" Departmental policy. Perceiving Menchel's rebuke as a criticism of her judgment, Villafaña responded, "[R]aising concerns about the forgotten voices of victims in this case should not be classified as a lapse in judgment" and that her "first and only concern in this case . . . is the victims."

Menchel told OPR that he did not view his conversation with Sanchez as a plea offer, asserted that he was not obligated to consult with victims during preliminary settlement negotiations, and noted that he left the USAO before the NPA was fully negotiated or signed. Menchel told OPR that "you have discussions . . . with [the] defense all the time, and the notion that even just having a general discussion is something that must be vetted with victims . . . is not even . . . in the same universe as to how I think about this." Menchel also observed that on the very day that Villafaña criticized him for engaging in settlement negotiations without consulting her, the FBI, or the victims, Villafaña had herself sent an email to Sanchez offering "to discuss the possibility of a federal resolution of Mr. Epstein's case that could run concurrently with any state resolution," without having spoken to the victims about her proposal.[287]

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[285] Villafaña told OPR that "some victims, I felt strongly, would have objected to [a state-only disposition]." Villafaña stated to OPR that at the time Menchel engaged in such negotiations, he would only have been aware of the victim information contained in her prosecution memorandum, which included information about the "effects on the victims" but did not likely contain information as to "how they would like the case resolved." Villafaña asserted that Menchel "never reached out to any of the victims to find out what their position would be." Menchel told OPR that the allegations in Villafaña's email that he violated the Ashcroft Memo, USAM, and the CVRA were "way out of line in terms of what the law is and the policies are."

[286] As discussed, the Department's position at the time was that the CVRA did not apply before charges were filed against a defendant.

[287] In commenting on OPR's draft report, Villafaña's counsel asserted that her email to Sanchez was intended only to determine whether Epstein was interested in opening plea negotiations.

2. Villafaña Asserts That Her Supervisors Gave Instructions Not to Consult Victims about the Plea Discussions, but Her Supervisors Do Not Currently Recall Such Instructions

Villafaña told OPR that during an "early" meeting with Acosta, Sloman, and Menchel, which took place when "we were probably just entering into plea negotiations," she raised the government's obligation to confer with victims.[288] Initially, Villafaña told OPR she was instructed, "Don't talk to [the victims]. Don't tell them what's happening," but she was not told why she should not speak to the victims, and she could not recall who gave her this instruction. In a subsequent OPR interview, Villafaña recalled that when she raised the issue of notification during the meeting, she was told, "Plea negotiations are confidential. You can't disclose them."[289] Villafaña remained uncertain who gave her this instruction, but believed it may have been Acosta.

Neither Acosta, Sloman, nor Menchel recalled a meeting at which Villafaña was directed not to notify the victims. Acosta told OPR that the decision whether to solicit the victims' view "is something [that] I think was the focus of the trial team and not something that I was focused on at least at this time," and he did not "recall discussions about victim notification until after the NPA was signed." Sloman also told OPR that he did not recall a meeting at which victim notification was discussed. Menchel wrote in his response to OPR, "I have no recollection of any discussions or decisions regarding whether the USAO should notify victims of its intention to enter into a pre-charge disposition of the Epstein matter." Furthermore, Menchel told OPR he could not think of a reason why the issue of victim notification would have arisen before he left the USAO, because "we were way off from finalizing or having anything even close to a deal," and it would have been "premature" to consider notification.[290]

3. September 6, 2007: Villafaña Informs Sloman, Who Informs Acosta, of Oosterbaan's Opinion That Consultation with Victims Was Required

On September 6, 2007, in a lengthy email to Sloman responding to his question about the government's then-pending offer to the defense, Villafaña raised the victim consultation issue, advising that, "the agents and I have not reached out to the victims to get their approval, which as [CEOS Chief Oosterbaan] politely reminded me, is required under the law" and that "the [PBPD]

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[288] Villafaña could not recall the specific date of the meeting, but Menchel left the USAO on August 3, 2007.

[289] Villafaña also recalled Menchel raising a concern that "telling them about the negotiations could cause victims to exaggerate their stories because of their desire to obtain damages from Epstein."

[290] In commenting on OPR's draft report, Menchel's counsel reiterated his contention that Villafaña's claim about a meeting involving Menchel in which she was instructed not to consult with victims was inaccurate and inconsistent with other evidence. OPR carefully considered the comments but did not conclude that the evidence to which Menchel's attorney pointed necessarily refuted Villafaña's assertion that she had received an instruction from a supervisor not to inform victims about the plea negotiations. However, it is also true that OPR did not find any reference in the emails and other documents dated before the NPA was signed to a meeting at which victim consultation was discussed or to a specific instruction not to consult with the victims. This is one of several events about which Menchel and Villafaña disagreed, but given OPR's conclusion that the Department did not require prosecutors to consult with victims before charges were brought, OPR does not reach a conclusion regarding the alleged meeting and instruction.

Chief wanted to know if the victims had been consulted about the deal."[291] Sloman forwarded this email to Acosta. Villafaña recalled that Sloman responded to her email by telephone, possibly after he had spoken to Acosta, and stated, "[Y]ou can't do that now." Villafaña did not recall Sloman explaining at the time the reason for that instruction.

Villafaña told OPR that shortly before the NPA was signed, Sloman told her, "[W]e've been advised that . . . pre-charge resolutions do not require victim notification." Sloman did not recall any discussions, before the NPA was signed, about contacting the victims or conferring with them regarding the potential resolution of the case. Sloman told OPR that he "did not think that we had to consult with victims prior to entering into the NPA," and "we did not have to seek approval from victims to resolve a case. We did have an obligation to notify them of the resolution in . . . filed cases." Sloman said that no one other than Villafaña raised the notification issue, and because the USAO envisioned a state court resolution of the matter, Sloman "did not think that we had to consult with victims prior to entering into the NPA." Lourie told OPR that he had no memory of Villafaña being directed not to speak to the victims about the NPA.[292] Similarly, the attorney who assumed Lourie's supervisory duties after Lourie transitioned to his detail in the Department told OPR that he did not recall any discussions regarding victim notification and he "assumed that was being handled."[293]

Acosta did not recall the September 6, 2007 email, but told OPR that "there is no requirement to notify [the victims], because it's not a plea, it's deferring in favor of a state prosecution." Acosta told OPR that he could not recall any "pre-NPA discussions" regarding victim notification or any particular concern that factored into the decision not to consult with the victims before entering into the NPA.[294] Ultimately, Acosta acknowledged to OPR, "[C]learly, given the way it's played out, it may have been much better if we had [consulted with the victims]."

CEOS Chief Oosterbaan told OPR that he disagreed with the USAO's stance that the CVRA did not require pre-charge victim consultation, but in his view the USAO "posture" was not "an abuse of discretion" or "an ethical issue," but rather reflected a "serious and legitimate

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[291] Villafaña told OPR that she referred to Oosterbaan in the email because "he was the head of CEOS and because I think they were tired of hearing me nag them [to notify the victims]." As previously noted, Villafaña's statement that victim approval had to be obtained was incorrect. Even when applicable, the CVRA only requires consultation with victims, not their approval of a plea agreement. Moreover, Villafaña's comments concerning the pre-charge application of the USAO's CVRA obligation to consult with the victims appear at odds with her statement to OPR that the CVRA applied to the USAO only after a defendant was charged and that she did not intend to activate the USAO's CVRA obligations when she sent letters to victims in August 2006.

[292] Lourie noted that during this period, he had left Florida and was no longer the supervising AUSA in the office, but was "help[ing] [] out" from offsite because he had "historical knowledge" of the case.

[293] The AUSA who for a time served as Villafaña's co-counsel on the Epstein investigation similarly did not "know anything about" discussions in the USAO regarding the need to inform victims of the likely disposition of the case. The AUSA stated that he stopped working on the case "months earlier" and that he "didn't have anything to do with the [NPA] negotiations."

[294] Villafaña told OPR that she was not aware of any "improper pressure or promise made to [Acosta] in order to . . . instruct [her] not to make disclosures to the victim[s]."

disagreement" regarding the CVRA's requirements.[295] Oosterbaan's disagreement was based on policy considerations, and he told OPR that "from a policy perspective," CEOS would not "take a position that you wouldn't consult with [the victims]." Oosterbaan also told OPR that whether or not the law required it, the victims should have been given an opportunity "to weigh in directly," but he did not fault the USAO's motivations for failing to provide that opportunity:

> The people I know, Andy [Lourie], Jeff [Sloman], . . . were trying to do the right thing. . . . [T]hey weren't acting unethically. I just disagree with the outcome . . . but the point is they weren't trying . . . to do anything improper . . . it was more of this question of . . . you can let the victims weigh in on this, you can get their input on this and maybe it doesn't sway you. You still do what you're going to do but . . . it's hard to say it was a complete, completely clean exercise of . . . prosecutorial discretion when [the USAO] didn't really know what [the victims] would say.

Sloman told OPR, "I don't think we had a concern about entering into the NPA at that point in terms of notifying victims. . . . I was under the perception that once the NPA was entered into and [Epstein] was going to enter a guilty plea in state court that we were going to notify the victims."

VII. SEPTEMBER 24, 2007 – JUNE 30, 2008: AFTER THE NPA IS SIGNED, THE USAO MAKES VARIOUS VICTIM NOTIFICATION DECISIONS

The contemporaneous emails make clear that once the NPA was signed, Villafaña and the case agents planned to inform the victims about the resolution of the federal investigation. However, the emails also show that the USAO was unclear about how much information could be given to the victims in light of the NPA's nondisclosure provision and consulted with Epstein's defense counsel regarding victim notifications.[296] As a result, although the expectation in the USAO was that the victims would be informed about the NPA, the monetary damages provision, and the state plea, the USAO became entangled in more negotiations with the defense attorneys, who strongly objected to the government's notification plan. In addition, Villafaña and the case agents grew concerned that notifying the victims about the NPA monetary damages provision would damage the victims' credibility if Epstein breached the NPA and the case went to trial. In the end, Acosta decided to defer to the State Attorney's discretion whether to notify the victims about the state plea, and information about the NPA and the monetary damages provision was not provided to victims until after Epstein pled guilty in June 2008.

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[295] Oosterbaan stated that, in retrospect, "maybe I should have been more aggressive with how . . . I dealt with [the USAO]."

[296] The NPA nondisclosure provision stated: "The parties anticipate that this agreement will not be made part of any public record. If the United States receives a Freedom of Information Act request or any compulsory process commanding the disclosure of the agreement, it will provide notice to Epstein before making that disclosure."

A. September – October 2007: The Case Agents Notify Some Victims about the NPA, but Stop When the Case Agent Becomes Concerned about Potential Impeachment

In transmitting the signed NPA to Villafaña on September 24, 2007, defense attorney Lefkowitz asked Villafaña to "do whatever you can to prevent [the NPA] from becoming public."[297] Villafaña forwarded this email to Acosta, Lourie, and the new West Palm Beach manager noting that, "I don't intend to do anything with it except put it in the case file." Acosta responded that he "thought the [NPA] already binds us not to make [it] public except as required by law or [FOIA]" and noted that because the USAO would not proactively inform the media about the NPA, "this is the State Attorney[']s show."[298] Acosta added, "In other words, what more does he want?" Villafaña responded, "My guess is that if we tell anyone else (like the police chief or FBI or the girls), that we ask them not to disclose." Lourie agreed, noting that "there really is no reason to tell anyone all the details of the non pros or provide a copy. The [PBPD] Chief was only concerned that he not get surprised by all this."[299] Acosta responded that he would set up a call on September 26, 2007, to talk "about who we can tell and how much."[300]

Also on September 24, 2007, Villafaña emailed the new West Palm Beach manager to inform him that once the attorney representative was appointed for the victims, she planned to "meet with the girls myself to explain how the system [for obtaining relief under 18 U.S.C. § 2255] will work." Villafaña also emailed Lefkowitz stating that she planned to discuss with him "what I can tell [the attorney representative] and the girls about the agreement," and she assured Lefkowitz that her office "is telling Chief Reiter not to disclose the outcome to anyone." Villafaña also provided Lefkowitz with a list of potential candidates for the attorney representative position and advocated for an attorney representative who would minimize press coverage of the matter.

On September 26, 2007, Villafaña emailed Lefkowitz to request guidance on informing the victims about the NPA: "Can you give me a call . . . I am meeting with the agents and want to give them their marching orders regarding what they can tell the girls." Villafaña told OPR that because the government and the defense had not agreed on the attorney representative for the victims, she reached out to the defense at the direction of either Acosta or Sloman in order to coordinate how to inform the victims about the resolution of the case and the fact that there would be an attorney to assist them in recovering monetary damages from Epstein. Villafaña told OPR that the defense responded to her email by complaining to her supervisors that she should not be

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297 Villafaña had assured Lefkowitz that the NPA "would not be made public or filed with the Court, but it would remain part of our case file. It probably would be subject to a FOIA request, but it is not something that we would distribute without compulsory process."

298 Acosta told OPR that he believed that the NPA "would see the light of day" because the victims would have to "hear about [their § 2255 rights] from somewhere" and "given the press interest, eventually this would be FOIA'd."

299 Lourie told OPR that the § 2255 provisions of the NPA "that benefitted the victims were there for the victims to take advantage of. . . . and they did. How . . . they were going to receive that information and when they were going to receive it is a different question, but there's no . . . issue with the fact that they were going to get that information."

300 OPR was unable to determine whether the call took place.

involved in such notifications. According to Villafaña, Sloman then directed her to have the case agents make the victim notifications.

Accordingly, Villafaña directed the case agents to "meet with the victims to provide them with information regarding the terms of the [NPA] and the conclusion of the federal investigation." The case agent told OPR, "[T]here was a discussion that Marie and I had as to . . . how we would tell them, and what we would tell them, and what that was I don't recall, but it was the terms of the agreement." Villafaña believed that if "victims were properly notified of the terms [of the NPA] that applied to them, regarding their right to seek damages from [Epstein], and he paid those damages, that the rest of the [NPA] doesn't need to be disclosed." Villafaña "anticipated that [the case agents] would be able to inform the victims of the date of the state court change of plea [hearing], but that date had not yet been set by state authorities at the time the first victims were notified [by the FBI]." Villafaña told OPR that it was her belief that because the USAO had agreed to a confidentiality clause, the government could not disclose the NPA to the general public, but victims could be informed "because by its terms they needed to be told what the agreement was about." Villafaña told OPR that no one in her supervisory chain expressed a concern that if victims learned of the NPA, they would try to prevent Epstein from entering a plea.

Within a week after the NPA was signed, news media began reporting that the parties had reached a deal to resolve the Epstein case. For example, on October 1, 2007, the *New York Post* reported that Epstein "has agreed to plead guilty to soliciting underage prostitutes at his Florida mansion in a deal that will send him to prison for about 18 months," and noted that Epstein would plead guilty in state court and that "the feds have agreed to drop their probe into possible federal criminal violations in exchange for the guilty plea to the new state charge."[301]

The case agent recalled informing some victims that "there was an agreement reached" and "we would not be pursuing this federally." In October 2007, for example, the case agents met with victim Courtney Wild, "to advise her of the main terms of the Non-Prosecution Agreement." According to the case agent, during that meeting, the case agents told Wild "that an agreement had been reached, Mr. Epstein was going to plead guilty to two state charges, and there would not be a federal prosecution."[302] However, in a declaration filed in 2015 in the CVRA litigation, Wild described the conversation differently:

> [T]he agents explained that Epstein was also being charged in State court and may plea [*sic*] to state charges related to some of his other victims. I knew that State charges had nothing to do with me.

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[301] Dan Mangan, "'Unhappy Ending' Plea Deal—Moneyman to Get Jail For Teen Sex Massages," *New York Post*, Oct. 1, 2007. *See also* "Model Shop Denies Epstein Tie," *New York Post*, Oct. 6, 2007; "Andrew Pal Faces Sex List Shame," *Mail on Sunday*, Oct. 14, 2007; "Epstein Eyes Sex-Rap Relief," *New York Post*, Oct. 9, 2007; "Sex Case 'Victims' Lining Up," *New York Post "Page Six,"* Oct. 15, 2007; Dareh Gregorian and Mathew Nestel, "I Was Teen Prey of Pervert Tycoon," *New York Post*, Oct. 18, 2007. The following month, the Palm Beach Post reported the end of the federal investigation as well. *See* "Epstein Has One Less Worry These Days," *Palm Beach Post*, Nov. 9, 2007; "How Will System Judge Palm Beach Predator?," *Palm Beach Post* "Opinion," Nov. 16, 2007.

[302] The co-case agent recalled meeting with the victims about the resolution of the case, but could not recall the specifics of the discussions.

> During this meeting, the Agents did not explain that an agreement had already been signed that precluded any prosecution of Epstein for federal charges against me. I did not get the opportunity to meet or confer with the prosecuting attorneys about any potential federal deal that related to me or the crimes committed against me.
>
> My understanding of the agents' explanation was that the federal investigation would continue. I also understood that my own case would move forward towards prosecution of Epstein.

In addition, the case agent spoke to two other victims and relayed their reactions to Villafaña in an email:

> Jane Doe #14 asked me why [Epstein] was receiving such a lite [*sic*] jail sentence and Jane Doe #13 has asked for our Victim Witness coordinator to get in touch with her so she can receive some much needed [p]rofessional counseling. Other than that, their response was filled with emotion and grateful to the Federal authorities for pursuing justice and not giving up.[303]

The case agent told OPR that when she informed one of these victims, that individual cried and expressed "a sense of relief." Counsel for "Jane Doe #13" told OPR that while his client recalled meeting with the FBI on a number of occasions, she did not recall receiving any information about Epstein's guilty plea. In a letter to OPR, "Jane Doe #14's" attorney stated that although her client recalled speaking with an FBI agent, she was not told about the NPA or informed that Epstein would not face federal charges in exchange for his state court plea.

After meeting with these three victims, the FBI case agent became concerned that, if Epstein breached the NPA and the case went to federal trial, the defense could use the victims' knowledge of the NPA's monetary damages provision as a basis to impeach the victims.[304] The case agent explained to OPR that she became "uncomfortable" talking to the victims about the damages provision, and that as the lead investigator, "if we did end up going to trial . . . [if] Mr. Epstein breached this that I would be on the stand" testifying that "I told every one of these girls that they could sue Mr. Epstein for money, and I was not comfortable with that, I didn't think it was right."

Similarly, the co-case agent told OPR, "[T]hat's why we went back to Marie [Villafaña] and said we're not comfortable now putting this out there . . . because . . . it's likely that [the case agent] and I are going to have to take the stand if it went to trial, and this could be a problem." Villafaña told OPR that the case agents were concerned they would be accused of "offering a bribe

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[303] The case agent did not record any of the victim notifications in interview reports, because "it wasn't an interview of them, it was a notification. . . . [I]f there was something . . . relevant [that] came up pertaining to the investigation, or something that I thought was noteworthy . . . I might have [recorded it in an interview report]."

[304] Within limitations set by the Federal Rules of Evidence, a defendant may attack the credibility of a witness through evidence of bias, which may include the witness having received money, or expecting to receive money, from the government, the defendant, or other sources as a result of the witness's allegations or testimony.

for [victims] to enhance their stories" and that the defense would try to have Villafaña or the case agents removed from the case.

Both the lead case agent and Villafaña told OPR that after the FBI raised with Villafaña the concern that notifying the victims would create potential impeachment material in the event of a breach and subsequent trial, they contacted the USAO's Professional Responsibility Officer for advice. Villafaña recalled that during a brief telephone consultation, the Professional Responsibility Officer advised her and the case agent that "it's not really that big a concern, but if you're concerned about it then you should stop making the notification."[305] In her 2017 CVRA declaration, the case agent stated that after conferring with the USAO, the case agents stopped notifying victims about the NPA.

B. October 2007: Defense Attorneys Object to Government Victim Notifications

While the case agents and Villafaña considered the impact that notifying the victims about the resolution of the case might have on a potential trial, defense counsel also raised concerns about what the victims could be told about the NPA. As discussed in Chapter Two, after the NPA was signed on September 24, 2007, the USAO proposed using a special master to select the attorney representative for the victims, which led to further discussions about the § 2255 provision. On October 5, 2007, when defense attorney Lefkowitz sent Villafaña a letter responding to the USAO's proposal to use a special master, he cautioned that "neither federal agents nor anyone from your Office should contact the identified individuals to inform them of the resolution of the case" because such communications would "violate the confidentiality of the agreement" and would prevent Epstein from having control over "what is communicated to the identified individuals at this most critical stage." Lefkowitz followed this communication with an October 10, 2007 letter to Acosta, arguing that "[n]either federal agents nor anyone from your Office should contact the identified individuals to inform them of the resolution of the case."[306] Rather, Lefkowitz wanted to "participate in crafting a mutually acceptable communication to the identified individuals."

On October 23, 2007, Villafaña raised the issue of victim notification with Sloman, stating:

> We also have to contact the victims to tell [them] about the outcome of the case and to advise them that an attorney will be contacting them regarding possible claims against Mr. Epstein. If we don't do that, it may be a violation of the Florida Bar Rules for the selected attorney to 'cold call' the girls.

As discussed in greater detail in Chapter Two, on October 23, 2007, Lefkowitz sent Acosta a letter stating that Epstein expected to enter a guilty plea in state court on November 20, 2007,

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305 The Professional Responsibility Officer told OPR that he did not recall the case agent contacting him about victim notification, nor did he recall being involved in the Epstein matter before the CVRA litigation was instituted in July 2008 and he was assigned to handle the litigation. Villafaña told OPR that they consulted the Professional Responsibility Officer over the telephone, the call took no more than "five minutes," and the Professional Responsibility Officer had no other exposure to the case and thus "wouldn't have [any] context for it."

306 Lefkowitz also argued that direct contact with the victims could violate grand jury secrecy rules.

and thanking Acosta for agreeing on October 12, 2007, not to "contact any of the identified individuals, potential witnesses, or potential civil claimants and their respective counsel in this matter."[307] Shortly thereafter, Sloman drafted a response to Lefkowitz's letter, which Acosta revised to clarify the "inaccurate" representations made by Lefkowitz, in particular noting that Acosta did not agree to a "gag order" with regard to victim contact. The draft response, as revised by Acosta, stated:

> You should understand, however, that there are some communications that are typical in these matters. As an example, our Office has an obligation to contact the victims to inform them that either [the Special Master], or his designee, will be contact[ing] them. Rest assured that we will continue to treat this matter as we would any similarly situated case.[308]

In a November 5, 2007 letter, Sloman complained to Lefkowitz that private investigators working for Epstein had been contacting victims and asking whether government agents had discussed financial settlement with them. Sloman noted that the private investigators' "actions are troublesome because the FBI agents legally are required to advise the victims of the resolution of the matter, which includes informing them that, as part of the resolution, Mr. Epstein has agreed to pay damages in some circumstances." The same day, Villafaña emailed Sloman expressing her concern that "if we [file charges] now, cross-examination will consist of- 'and the government told you that if Mr. Epstein is convicted, you are entitled to a large amount of damages, right?'"[309]

C. October – November 2007: The FBI and the USAO Continue to Investigate, and the FBI Sends a Notice Letter to One Victim Stating That the Case is "Under Investigation"

Although Villafaña and the FBI case agents decided to stop informing victims about the NPA, the FBI continued its investigation of the case, which included locating and interviewing potential victims. In October and November 2007, the FBI interviewed 12 potential new victims, 8 of whom had been identified in a "preliminary" victim list in use at the time Epstein signed the

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[307] Villafaña later emailed Sloman stating that she planned to meet with the case agents to have a "general discussion about staying out of the civil litigation."

[308] Sloman's draft also stated that Acosta had informed the defense in a previous conference call that the USAO would not accept a "gag order." OPR recovered only a draft version of the communication and was unable to find any evidence that the draft letter was finalized or sent to defense counsel.

[309] Subsequent records also referred to the prosecutors' concerns about creating impeachment evidence and that such concerns played a role in their decision not to notify victims of the NPA until after Epstein pled guilty. In August 2008, the AUSA handling the CVRA litigation emailed Villafaña, Acosta, and Sloman expressing his understanding that the "victims were not consulted [concerning the NPA] . . . because [the USAO] did not believe the [CVRA] applied." Acosta responded: "As I recall, we also believed that contacting the victims would compromise them as potential witnesses. Epstein argued very forcefully that they were doing this for the money and we did not want to discuss liability with them, which was [a] key part of [the] agree[ment]."

NPA.[310] The FBI reports of the victim interviews do not mention the NPA or indicate that the victims were asked for their input regarding the resolution of the case. Villafaña acknowledged that she and the case agents did not tell any of the "new" post-NPA-signing victims about the agreement because "at that point we believed that the NPA was never going to be performed and that we were in fact going to be [charging] Mr. Epstein."

On October 12, 2007, the FBI Victim Specialist sent a VNS form notice letter to a victim the case agents had interviewed two days earlier. This letter was identical to the VNS form notice letter the FBI Victim Specialist sent to other victims before the NPA was signed, describing the case as "under investigation" and requesting the victim's "patience." The letter listed the eight CVRA rights, but made no mention of the NPA or the § 2255 provision. Villafaña told OPR she was unaware the FBI sent the letter, but she knew "there were efforts to make sure that we had identified all victims of the crimes under investigation." In response to OPR's questions about the accuracy of the FBI letter's characterization of the case as "under investigation," Villafaña told OPR that the NPA required Epstein to enter a plea by October 26, 2008, and "at this point we weren't actively looking for additional charges," but "the investigation wasn't technically suspended until he completed all the terms of the NPA."

D. The USAO Informs the Defense That It Intends to Notify Victims by Letter about Epstein's State Plea Hearing and the Resolution of the Federal Investigation, but the Defense Strongly Objects to the Notification Plan

In anticipation of Epstein's state court plea, Villafaña reported on November 16, 2007, to Acosta, Sloman, and other supervisors that she had learned, from FBI agents who met with Assistant State Attorney Belohlavek, that the State Attorney's Office wanted the USAO to notify victims of the state plea hearing.

> [Belohlavek] would still like us to do the victim notifications. The State does not have a procedure (like we do federally) where the Court has to provide a separate room for victims who want to attend judicial proceedings, so I do not know how many victims will actually want to be present.[311]

Belohlavek told OPR that she did not recall the conversation referenced by the FBI nor any coordination between her office and federal officials to contact or notify victims about Epstein's state plea hearing.

On November 19, 2007, Villafaña decided that to avoid any misconduct accusations from the defense about the information given to victims, she "would put the victim notification in writing." She provided Sloman with a draft victim notification letter, in which among other things,

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[310] Not all the individuals interviewed qualified for inclusion on the victim list. For example, one would not cooperate with investigators; a second claimed to have simply massaged Epstein with no sexual activity; and a third claimed she had no contact with Epstein.

[311] Villafaña told OPR that she understood the state took the position that because "there was either only one or two victims involved in their case," they "could not do victim notifications to all of the victims."

she would inform victims of the terms of the resolution of the federal case, including Epstein's agreement to plead guilty to state charges and serve 18 months in county jail, and the victims' ability to seek monetary damages against Epstein. The letter also would invite victims to appear at the state court hearing and make a statement under oath or provide a written statement to be filed by the State Attorney's Office. Sloman and Villafaña exchanged edits on the draft victim notification letter, and Villafaña also informed Sloman that "[t]here are a few girls who didn't receive the original letters, so I will need to modify the introductory portion of the letter for those."[312]

Sloman informed Lefkowitz of the government's need to meet its "statutory obligation (Justice for All Act of 2004) to notify the victims of the anticipated upcoming events and their rights associated with the agreement" and his intent to "notify the victims by letter after COB Thursday, November 29." Lefkowitz objected to the proposal to notify the victims, asserting that it was "incendiary and inappropriate" and not warranted under the Justice for All Act of 2004. He argued that the defense "should have a right to review and make objections to that submission prior to it being sent to any alleged victims." He also insisted that if any notification letters were sent to "victims, who still have not been identified to us, it should happen only after Mr. Epstein has entered his plea" and that the letter should come from the attorney representative rather than the government. On November 28, 2007, at Sloman's instruction, Villafaña provided Lefkowitz with the draft victim notification letter, which would advise victims that the state court plea was to occur on December 14, 2007.[313]

In a November 29, 2007 letter to Acosta, Lefkowitz strongly objected to the proposed draft notification letter, arguing that the government was not obligated to send any letter to victims until after Epstein's plea and sentencing. Lefkowitz also contended that the victims had no right to appear at Epstein's state plea hearing and sentencing or to provide a written statement for such a proceeding. In a November 30, 2007 reply letter to Lefkowitz, Acosta did not address the substance of Lefkowitz's arguments, but accused the defense team of "in essence presenting collateral challenges" delaying effectuation of the NPA, and asserted that if Epstein was dissatisfied with the NPA, "we stand ready to unwind the Agreement" and proceed to trial. Shortly thereafter, Acosta informed defense counsel Starr by letter that he had directed prosecutors "not to issue victim notification letters until this Friday [December 7] at 5 p.m., to provide you with time to review these options with your client." In the letter, Acosta also refuted defense allegations that Villafaña had acted improperly by informing the victims of the potential for receiving monetary damages, stating that "the victims were not told of the availability of Section 2255 relief during the investigation phase of this matter."

On December 5, 2007, Starr and Lefkowitz sent a letter to Acosta, with copies to Sloman and Assistant Attorney General Fisher, "reaffirm[ing]" the NPA, but taking "serious issue" with

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312 On November 28, 2007, two months after the NPA was signed, the lead case agent informed Villafaña that only 15 of the then-known victims had received victim notification letters from either the FBI or the USAO. On December 6, 2007, the lead case agent reported to Villafaña that she was "still holding many of the original V/W letters addressed to victims from the USAO."

313 Villafaña understood the state prosecutors had set the December 14, 2007 date, and emailed them for confirmation, stating, "[I]f the matter is set for the 14th, please let me know so I can include that in my victim notifications."

the USAO's interpretation of the agreement and "the use of Section 2255." The Starr and Lefkowitz letter asserted it was "wholly inappropriate" for the USAO to send the proposed victim notification letter "under any circumstances," and "strongly urg[ed]" Acosta to withhold the notification letter until after the defense was able "to discuss this matter with Assistant Attorney General Fisher."

The following day, Sloman sent a letter to Lefkowitz, with copies to Acosta and Villafaña, asserting that the VRRA obligated the government to notify victims of the 18 U.S.C. § 2255 proceedings as "other relief" to which they were entitled. Sloman also stated that the VRRA obligated the government to provide the victims with information concerning restitution to which they may be entitled and "*the earliest possible*" notice of the status of the investigation, the filing of charges, and the acceptance of a plea.[314] (Emphasis in original). Sloman added:

> Just as in 18 U.S.C. § 3771 [the CVRA], these sections are not limited to proceedings in a *federal* district court. Our Non-Prosecution Agreement resolves the federal investigation by allowing Mr. Epstein to plead to a state offense. The victims identified through the federal investigation should be appropriately informed, and our Non-Prosecution Agreement does not require the U.S. Attorney's Office to forego [*sic*] its legal obligations.[315]

Sloman also addressed the defense objection to advising the victims to contact Villafaña or the FBI case agent with questions or concerns: "Again, federal law requires that victims have the 'reasonable right to confer with the attorney for the Government in this case.'" Sloman advised the defense: "The three victims who were notified prior to your objection had questions directed to Mr. Epstein's punishment, not the civil litigation. Those questions are appropriately directed to law enforcement."

Along with this letter, Sloman forwarded to Lefkowitz for comment a revised draft victim notification letter that was substantially similar to the prior draft provided to the defense. The letter stated that "the federal investigation of Jeffrey Epstein has been completed," Epstein would plead guilty in state court, the parties would recommend 18 months of imprisonment at sentencing, and Epstein would compensate victims for damage claims brought under 18 U.S.C. § 2255. The letter provided specific information concerning the upcoming change of plea hearing:

> As I mentioned above, as part of the resolution of the federal investigation, Mr. Epstein has agreed to plead guilty to state charges. Mr. Epstein's change of plea and sentencing will occur on December 14, 2007, at ___ a.m., before Judge Sandra K. McSorley,

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314 *See* 42 U.S.C. § 10607(c)(1)(B) and (c)(3).

315 Emphasis in original. Sloman also stated that the USAO did not seek to "federalize" a state plea, but "is simply informing the victims of their rights." Villafaña informed OPR that Sloman approved and signed the letter, but she was the primary author of the document. OPR notes that Villafaña was the principal author of most correspondence in the Epstein case, and that following the signing of the NPA, regardless of whether the letter went out with her, Sloman's, or Acosta's signature, the three attorneys reviewed and edited drafts of most correspondence before a final version was sent to the defense.

> in Courtroom 11F at the Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida. Pursuant to Florida Statutes Sections 960.001(1)(k) and 921.143(1), you are entitled to be present and to make a statement under oath. If you choose, you can submit a written statement under oath, which may be filed by the State Attorney's Office on your behalf. If you elect to prepare a written statement, it should address the following:
>
> > the facts of the case and the extent of any harm, including social, psychological, or physical harm, financial losses, loss of earnings directly or indirectly resulting from the crime for which the defendant is being sentenced, and any matter relevant to an appropriate disposition and sentence. Fl[a]. Stat. [§] 921.143(2).

Sloman told OPR that he was "proceeding under the belief that we were going to notify [the victims], even though it wasn't a federal case. Whether we were required or not." Sloman also told OPR that while "we didn't think that we had an obligation to send them victim notification letters . . . I think . . . Marie and . . . the agents . . . were keeping the victims apprised at some level."

On December 7, 2007, Villafaña prepared letters containing the above information to be sent to multiple victims and emailed Acosta and Sloman, requesting permission to send them.[316] Sloman, however, had that day received a letter from Sanchez, advising that Epstein's plea hearing was scheduled for January 4, 2008, and requesting that the USAO "hold off" sending the victim notification letters until "we can further discuss the contents." Also that day, Starr and Lefkowitz submitted to Acosta the two lengthy "independent ethics opinions" supporting the defense arguments against the federal investigation and the NPA's use of 18 U.S.C. § 2255. Sloman responded to Villafaña's request with an email instructing her to "Hold the letter."[317] Sloman told OPR that he "wanted to push the [victim notification] letter out," but his instruction to Villafaña was "the product of me speaking to somebody," although he could not be definitive as to whom. Sloman further told OPR that once the NPA "looked like it was going to fall apart," the USAO "had concerns that if we g[a]ve them the victim notification letter . . . and the deal fell apart, then the victims would be instantly impeached by the provision that you're entitled to monetary compensation."

On December 10, 2007, Villafaña contacted the attorney who at the time represented the victim who later became CVRA petitioner "Jane Doe #2" to inform him that she "was preparing victim notification letters." In her 2017 declaration filed in the CVRA litigation, Villafaña noted that she reached out to Jane Doe #2's counsel, despite the fact that the USAO no longer considered

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316 The FBI case agent had emailed Villafaña the day before stating, "The letter that is currently being revised needs to take into account that several victims have never been notified by your office or mine." The case agent also stated, "I do not feel that [the defense] should have anything to do with the drafting or issuing of this letter. My primary concern is that we meet our federal obligations to the victims in accordance with federal law."

317 Villafaña told OPR that she did not recall asking Sloman for an explanation for not sending the letters; rather, she "just remember[ed] putting them all in the Redweld and putting them in a drawer and being disgusted."

her a victim for purposes of the federal charges, and continued to treat her as a victim because she wanted "to go above and beyond in terms of caring for the victims."[318]

E. December 19, 2007: Acosta Advises the Defense That the USAO Will Defer to the State Attorney the Decision Whether to Notify Victims of the State Plea Hearing, but the USAO Would Notify Them of the Federal Resolution, "as Required by Law"

On December 11, 2007, Starr transmitted to Acosta two lengthy submissions authored by Lefkowitz presenting substantive challenges to the NPA and to "the background and conduct of the investigation" into Epstein. Regarding issues relevant to victim notification, in his transmittal letter, Starr asserted that the "latest episodes involving [§] 2255 notification to the alleged victims put illustratively in bold relief our concerns that the ends of justice, time and time again, are not being served." By way of example, Starr complained the government had recently inappropriately provided "oral notification of the victim notification letter" to one girl's attorney, even though it was clear from the girl's recorded FBI interview that she "did not in any manner view herself as a victim."

In his submissions, Lefkowitz argued that the government was not required to notify victims of the § 2255 provision:

> Villafaña's decision to utilize a civil remedy statute in the place of a restitution fund for the alleged victims eliminates the notification requirement under the Justice for All Act of 2004, a federal law that requires federal authorities to notify victims as to any available restitution, not of any potential civil remedies. Despite this fact, [she] proposed a Victims Notification letter to be sent to the alleged federal victims.

Lefkowitz also argued that a victim trust fund would provide a more appropriate mechanism for compensating the victims than the government's proposed use of 18 U.S.C. § 2255, and a trust fund would not violate Epstein's due process rights. Lefkowitz took issue with the government's "assertion" that the USAO was obligated to send a victim notification letter to the alleged victims, or even that it was appropriate for the USAO to do so. Lefkowitz further argued that the government misinterpreted both the CVRA and the VRRA, because neither applied to a public, state court proceeding involving the entry of a plea on state charges.

In a letter from Villafaña to Lefkowitz, responding to his allegations that she had committed misconduct, she specifically addressed the "false" allegations that the government had

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[318] As noted previously, in April 2007, this victim gave a video-recorded interview to the FBI that was favorable to Epstein. Villafaña told OPR she was instructed by either Sloman or Acosta "not to consider [this individual] as a victim for purposes of the NPA because she was not someone whom the Office was prepare[d] to include in" a federal charging document. Accordingly, the victim who became "Jane Doe #2" was not included on the victim list ultimately furnished to the defense. The attorney who was representing this victim at the time of her FBI interview was paid by Epstein, and she subsequently obtained different counsel.

informed victims "of their right to collect damages prior to a thorough investigation of their allegations against Mr. Epstein":

> None of the victims were informed of the right to sue under Section 2255 prior to the investigation of the claims. Three victims were notified shortly after the signing of the [NPA] of the general terms of that Agreement. You raised objections to any victim notification, and no further notifications were done. Throughout this process you have seen that I have prepared this case as though it would proceed to trial. Notifying the witnesses of the possibility of damages claims prior to concluding the matter by plea or trial would only undermine my case. If my reassurances are insufficient the fact that not a single victim has threatened to sue Mr. Epstein should assure you of the integrity of the investigation.

On December 14, 2007, Villafaña forwarded to Acosta the draft victim notification letter previously sent to the defense, along with two draft letters addressed to State Attorney Krischer; Villafaña's transmittal email to Acosta had the subject line, "The letters you requested." One of the draft letters to Krischer, to be signed by Villafaña, was to advise that the USAO had sent an enclosed victim notification letter to specified identified victims and referred to an enclosed "list of the identified victims and their contact information, in case you are required to provide them with any further notification regarding their rights under Florida law."[319] The second draft letter to Krischer, for Acosta's signature, requested that Krischer respond to defense counsel's allegations that the State Attorney's Office was not comfortable with the proposed plea and sentence because it believed that the case should be resolved with probation and no sexual offender registration. OPR found no evidence that these letters were sent to Krischer.[320]

A few days later, in an apparent effort to move forward with victim notifications, Villafaña emailed Sloman, stating, "[Is there] anything that I or the agents should be doing?" Villafaña told Sloman that "[the FBI case agent] is all worked up because another agent and [a named AUSA] are the subject of an OPR investigation for failing to properly confer with and notify victims [in an unrelated matter]. We seem to be in a Catch 22."[321] OPR did not find a response to Villafaña's email.

In their December 14, 2007 meeting with Acosta and other USAO personnel and in their lengthy follow-up letter to Acosta on December 17, 2007, Starr and Lefkowitz continued to press their objections to the USAO's involvement in the Epstein matter. They requested that Acosta

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319 The draft victim notification letter was identical to the draft victim notification letter sent to the defense on December 6, 2007, except that it contained a new plea date of January 4, 2008.

320 Moreover, the letters were not included in the publicly released State Attorney's file, which included other correspondence from the USAO. *See* Palm Beach State Attorney's Office Public Records/Jeffrey Epstein, available at http://sa15.org/stateattorney/NewsRoom/indexPR htm.

321 OPR was unable to locate any records indicating that such allegations had ever been referred to OPR. Villafaña told OPR that "Catch 22" was a reference to instructions from supervisors "[t]hat we can't go forward on" filing federal charges and "I was told not to do victim notifications and confer at the time."

review the appropriateness of the potential federal charges and the government's "unprecedentedly expansive interpretation" of 18 U.S.C. § 2255.

In a December 19, 2007 response to the defense team, Acosta offered to revise two paragraphs in the NPA to resolve "disagreements" with the defense and to clarify that the parties intended Epstein's § 2255 liability to "place these identified victims in the same position as they would have been had Mr. Epstein been convicted at trial. No more; no less." Acosta also advised that although the USAO intended to notify the victims of the resolution of the federal investigation, the USAO would leave to the State Attorney the decision whether to notify victims about the state proceedings:

> I understand that the defense objects to the victims being given notice of [the] time and place of Mr. Epstein's state court sentencing hearing. I have reviewed the proposed victim notification letter and the statute. I would note that the United States provided the draft letter to the defense as a courtesy. In addition, First Assistant United States Attorney Sloman already incorporated in the letter several edits that had been requested by defense counsel. I agree that [the CVRA] applies to notice of proceedings and results of investigations of federal crimes as opposed to the state crime. We intend to provide victims with notice of the federal resolution, as required by law. We will defer to the discretion of the State Attorney regarding whether he wishes to provide victims with notice of the state proceedings, although we will provide him with the information necessary to do so if he wishes.

Acosta told OPR that he "would not have sent this letter without running it by [Sloman], if not other individuals in the office," and records show he sent a draft to Sloman and Villafaña. Acosta explained to OPR that he was not concerned about deferring to Krischer on the issue of whether to notify the victims of the state proceedings because he did not view it as his role, or the role of the USAO, "to direct the State Attorney's Office on its obligations with respect to the state outcome."[322] Acosta further explained to OPR that despite the USAO's initial concerns about the State Attorney's Office's handling of the Epstein case, he did not believe it was appropriate to question that office's ability to "fulfill whatever obligation they have," and he added, "Let's not assume . . . that the State Attorney's Office is full of bad actors." Acosta told OPR that it was his understanding "that the victims would be aware of what was happening in the state court and have an opportunity to speak up at the state court hearing." Acosta also told OPR that the state would

[322] Sloman's handwritten notes from a December 21, 2007 telephone conference indicate that Acosta asked the defense, "Are there concerns re: 3771 lang[uage]," to which Lefkowitz replied, "The state should have their own mechanism." At the time of the Epstein matter, under the Florida Constitution, upon request, victims were afforded the "right to reasonable, accurate, and timely notice of, and to be present at" a defendant's plea and sentencing. Fla. Const. art. I, § 16(b)(6). Similarly, pursuant to state statute, "Law enforcement personnel shall ensure" that victims are given information about "[t]he stages in the criminal or juvenile justice process which are of significance to the victim[.]" Fla. Stat. § 960.001(1)(a) (2007). Victims were also entitled to submit an oral or written impact statement. Fla. Stat. § 960.001(1)(k) (2007). Moreover, "in a case in which the victim is a minor child," the guardian or family of the victim must be consulted by the state attorney "in order to obtain the views of the victim or family about the disposition of any criminal or juvenile case" including plea agreements. Fla. Stat. § 960.001(1)(g) (2007).

have "notified [the victims] that that was an all-encompassing plea, that that state court sentence would also mean that the federal government was not proceeding."

Sloman told OPR that he thought Acosta and Criminal Division Deputy Assistant Attorney General Sigal Mandelker had agreed that the decision whether to notify the victims of the state court proceedings should be "left to the state."[323] Mandelker, however, had no memory of advising Acosta to defer the decision to make notifications to the State Attorney, and she noted that the "correspondence [OPR] provided to me from that time period" discussing such a decision "demonstrates that all of the referenced language came from Mr. Acosta and/or his team, and that I did not provide, suggest, or edit the language." Sloman told OPR that he initially believed that "the victims were going to be notified at some level, especially because they had restitution rights under § 2255"; but, his expectations changed after "there was an agreement made that we were going to allow the state, since it was going to be a state case, to decide how the victims were going to be notified."

Assistant State Attorney Belohlavek told OPR that she did not at any time receive a victim list from the USAO. She further said she did not receive any request from the USAO with regard to contacting the victims.

In response to Acosta's December 19, 2007 letter, Lefkowitz asserted that the FBI should not communicate with the victims, and that the state, not the USAO, should determine who can be heard at the sentencing hearing:

> [Y]our letter also suggests that our objection to your Office's proposed victims notification letter was that the women identified as victims of federal crimes should not be notified of the state proceedings. That is not true, as our previous letter clearly states. Putting aside our threshold contention that many of those to whom [CVRA] notification letters are intended are in fact not victims as defined in the Attorney General's 2000 Victim Witness Guidelines—a status requiring physical, emotional or pecuniary injury of the [victim]—it was and remains our position that these women may be notified of such proceedings but since they are neither witnesses nor victims to the state prosecution of this matter, they should not be informed of fictitious "rights" or invited to make sworn written or in-court testimonial statements against Mr. Epstein at such proceedings, as Ms. Villafaña repeatedly maintained they had the right to do. Additionally, it was and remains our position that any notification should be by mail and that all proactive efforts by the FBI to have communications with the witnesses after the execution of the Agreement should finally come to an end. We agree, however, with your December 19 modification of the previously drafted federal notification letter and agree that the

[323] In his June 3, 2008 letter to Deputy Attorney General Mark Filip, Sloman wrote, "Acosta again consulted with DAAG Mandelker who advised him to make the following proposal [to defer notification to the State Attorney's Office]." OPR found no other documentation relating to Mandelker's purported involvement in the decision.

> decision as to who can be heard at a state sentencing is, amongst many other issues, properly within the aegis of state decision making.[324]

Following a conversation between Acosta and Lefkowitz, in which Acosta asked that the defense clarify its positions on the USAO proposals regarding, among other things, notifications to the victims, Lefkowitz responded with a December 26, 2007 letter to Acosta, objecting again to notification of the victims. Lefkowitz argued that CVRA notification was not appropriate because the Attorney General Guidelines defined "crime victim" as a person harmed as a result of an offense charged in federal district court, and Epstein had not been charged in federal court. Nevertheless, Lefkowitz added that, despite their objection to CVRA notification, "[W]e do not object (as we made clear in our letter last week) that some form of notice be given to the alleged victims." Lefkowitz requested both that the defense be given an opportunity to review any notice sent by the USAO, and that "any and all notices with respect to the alleged victims of state offenses should be sent by the State Attorney rather than [the USAO]," and he agreed that the USAO "should defer to the discretion of the State Attorney regarding all matters with regard to those victims and the state proceedings."

Months later, in April 2008, Epstein's attorneys complained in a letter to Mandelker that Sloman and Villafaña committed professional misconduct by threatening to send a "highly improper and unusual 'victim notification letter' to all" victims.

F. January – June 2008: While the Defense Presses Its Appeal to the Department in an Effort to Undo the NPA, the FBI and the USAO Continue Investigating Epstein

As described in Chapter Two of this Report, from the time the NPA was signed through the end of June 2008, the defense employed various measures to delay, or avoid entirely, implementation of the NPA. Ultimately, defense counsel's advocacy resulted in the USAO's decision to have the federal case reviewed afresh. A review of the evidence was undertaken first by USAO Criminal Chief Robert Senior and then, briefly, by an experienced CEOS trial attorney. A review of the case in light of the defense challenges was then conducted by CEOS Chief Oosterbaan, in consultation with his staff and with Deputy Assistant Attorney General Sigal Mandelker and Assistant Attorney General Alice Fisher, and then by the Office of the Deputy Attorney General. Each review took weeks and delayed Epstein's entry of his state guilty plea.

As set forth below, during that time, Villafaña and the FBI continued investigating and working toward potential federal charges.

1. Villafaña Prepares to Contact Victims in Anticipation That Epstein Will Breach the NPA

On January 3, 2008, the local newspaper reported that Epstein's plea conference in state court, at that point set for early January, had been rescheduled to March 2008, at which time he would plead guilty to felony solicitation of prostitution, and that "in exchange" for the guilty plea,

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[324] The 2000 Guidelines were superseded by the 2005 Guidelines.

"federal authorities are expected to drop their probe into whether Epstein broke any federal laws."[325]

Nevertheless, as Epstein's team continued to argue to higher levels of the Department that there was no appropriate federal interest in prosecuting Epstein and thus no basis for the NPA, and with his attorneys asserting that "the facts had gotten better for Epstein," Villafaña came to believe that Epstein would likely breach the NPA.[326] In January 2008, Villafaña informed her supervisors that the FBI "had very tight contact with the victims several months ago when we were prepared to [file charges], but all the shenanigans over the past few months have resulted in no contact with the vast majority of the victims." Villafaña then proposed that the FBI "re-establish contact with all the victims so that we know we can rely on them at trial."[327] Villafaña told OPR that at this point, "[w]hile the case was being investigat[ed] and prepared for indictment, I did not prepare or send any victim notification letters—there simply was nothing to update. I did not receive any victim calls during this time."

2. The FBI Uses VNS Form Letters to Re-Establish Contact with Victims

On January 10, 2008, the FBI Victim Specialist mailed VNS generated victim notification letters to 14 victims articulating the eight CVRA rights and inviting recipients to update their contact information with the FBI in order to obtain current information about the matter.[328] The case agent informed Villafaña in an email that the Victim Specialist sent a "standard form [FBI] letter to all the remaining identified victims." These 2008 letters were identical to the FBI form letters the Victim Specialist had sent to victims between August 28, 2006, and October 12, 2007. Like those previous letters, most of which were sent before the NPA was signed on September 24, 2007, the 2008 letters described the case as "currently under investigation" and noted that "[t]his can be a lengthy process and we request your continued patience while we conduct a thorough investigation." The letters also stated:

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325 Michele Dargan, "Jeffrey Epstein Plea Hearing Moved to March," *Palm Beach Daily News* "The Shiny Sheet," Jan. 3, 2008.

326 Epstein's attorneys used discovery proceedings in the state case to depose federal victims, and as they learned unflattering details or potential impeachment information concerning likely federal victims, they argued for the exclusion of those victims from the federal case. For example, defense attorneys questioned one victim as to whether the federal prosecutors or FBI agents told her that she was entitled to receive money from Epstein. *See* Exhibit 9 to Villafaña June 2, 2017 Declaration: Deposition of [REDACTED], *State v. Epstein,* Case No. 2006-CF-9454, at 44, 50, 51 (Feb. 20, 2008). One victim's attorney told OPR that the defense attorneys tried to "smear" victims by asking highly personal sexual questions about "terminations of pregnancies . . . sexual encounters . . . masturbation." Epstein's attorney used similar tactics in questioning victims who filed civil cases against their client. For example, the *Miami Herald* reported that, "One girl was asked about her abortions, and her parents, who were Catholic and knew nothing about the abortions, were also deposed and questioned." *See* Julie Brown, "Perversion of Justice: Cops Worked to Put a Serial Sex Abuser in Prison. Prosecutors Worked to Cut Him a Break," *Miami Herald*, Nov. 28, 2018.

327 Villafaña also told her supervisors that she wanted the FBI to interview two specific victims.

328 The Victim Specialist later generated an additional letter dated May 30, 2008. After Epstein's June 30, 2008 state court pleas, she sent out substantially similar notification letters to two victims who resided outside of the United States.

> We will make our best efforts to ensure you are accorded the rights described. Most of these rights pertain to events occurring after the arrest or indictment of an individual for the crime, and it will become the responsibility of the prosecuting United States Attorney's Office to ensure you are accorded those rights. You may also seek the advice of a private attorney with respect to these rights.

The FBI case agent informed Villafaña that the Victim Specialist sent the letters and would follow up with a phone call "to offer assistance and ensure that [the victims] have received their letter." A sample letter is shown on the following pages.

Villafaña told OPR that she did not recall discussing the content of the letters at the time they were sent to the victims, or reviewing the letters until they were collected for the CVRA litigation, sometime after July 2008. Rather, according to Villafaña, "The decision to issue the letter and the wording of those letters were exclusively FBI decisions." Nevertheless, Villafaña asserted to OPR that from her perspective, the language regarding the ongoing investigation "was absolutely true and, despite being fully advised of our ongoing investigative activities, no one in my supervisory chain ever told me that the case was not under investigation." Villafaña identified various investigative activities in which she engaged from "September 2007 until the end of June 2008," such as collecting and reviewing evidence; interviewing new victims; re-interviewing victims; identifying new charges; developing new charging strategies; drafting supplemental prosecution memoranda; revising the charging package; and preparing to file charges. Similarly, the FBI case agent told OPR that at the time the letters were sent the "case was never closed and the investigation was continuing." The co-case agent stated that the "the case was open . . . it's never been shut down."

Victim Courtney Wild received one of the January 10, 2008 FBI letters; much later, in the course of the CVRA litigation, she stated that her "understanding of this letter was that [her] case was still being investigated and the FBI and prosecutors were moving forward on the Federal prosecution of Epstein for his crimes against [her]."[329]

[329] CVRA petitioner Jane Doe #2 also received a January 10, 2008 FBI letter that was sent to her counsel.

U.S. Department of Justice
Federal Bureau of Investigation
FBI - West Palm Beach
Suite 500
505 South Flagler Drive
West Palm Beach, FL 33401
Phone: (561) 833-7517
Fax: (561) 833-7970

January 10, 2008

[redacted]

Re: Case Number: [redacted]

Dear [redacted]

This case is currently under investigation. This can be a lengthy process and we request your continued patience while we conduct a thorough investigation.

As a crime victim, you have the following rights under 18 United States Code § 3771: (1) The right to be reasonably protected from the accused; (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused; (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding; (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding; (5) The reasonable right to confer with the attorney for the Government in the case; (6) The right to full and timely restitution as provided in law; (7) The right to proceedings free from unreasonable delay; (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

We will make our best efforts to ensure you are accorded the rights described. Most of these rights pertain to events occurring after the arrest or indictment of an individual for the crime, and it will become the responsibility of the prosecuting United States Attorney's Office to ensure you are accorded those rights. You may also seek the advice of a private attorney with respect to these rights.

The Victim Notification System (VNS) is designed to provide you with direct information regarding the case as it proceeds through the criminal justice system. You may obtain current information about this matter on the Internet at WWW.Notify.USDOJ.GOV or from the VNS Call Center at [redacted] In addition, you may use the Call Center or Internet to update your contact information and/or change your decision about participation in the notification program. If you update your information to include a current email address, VNS will send information to that address. You will need the following Victim Identification Number (VIN) [redacted] and Personal Identification Number (PIN) [redacted] anytime you contact the Call Center and the first time you log on to VNS on the Internet. In addition, the first time you access the VNS Internet site, you will be prompted to enter your last name (or business name) as currently contained in VNS. The name you should enter is [redacted]

If you have additional questions which involve this matter, please contact the office listed above. When you call, please provide the file number located at the top of this letter. Please remember, your participation in the notification part of this program is voluntary. In order to continue to receive notifications, it is your responsibility to keep your contact information current.

Sincerely,

[redacted]

Victim Specialist

3. Villafaña, the FBI, and the CEOS Trial Attorney Interview Victims

As Villafaña resumed organizing the case for charging and trial, the FBI case agent provided Villafaña with a list of "the 19 identified victims we are planning on using in" the federal charges and noted that she and her co-case agent wanted to further evaluate some additional victims.[330] In Washington, D.C., CEOS assigned a Trial Attorney to the Epstein case in order to bring expertise and "a national perspective" to the matter.[331]

On January 18, 2008, one attorney representing a victim and her family contacted Sloman by telephone, stating that he planned to file civil litigation against Epstein on behalf of his clients, who were "frustrated with the lack of progress in the state's investigation" of Epstein. The attorney asked Sloman if the USAO "could file criminal charges even though the state was looking into the matter," but Sloman declined to answer his questions concerning the investigation.[332] In late January, the *New York Post* reported that the attorney's clients had filed a $50 million civil suit against Epstein in Florida and that "Epstein is expected to be sentenced to 18 months in prison when he pleads guilty in March to a single charge of soliciting an underage prostitute."[333]

Between January 31, 2008, and May 28, 2008, the FBI, with the prosecutors, interviewed additional victims and reinterviewed several who had been interviewed before the NPA was signed.[334] In late January 2008, as Villafaña and the CEOS Trial Attorney prepared to participate

330 The case agent also informed Villafaña that she expected to ask for legal process soon in order to obtain additional information.

331 The CEOS Trial Attorney told OPR that she was under the impression that she was brought in to help prepare for the trial because the "plea had fallen through."

332 Because Sloman and the attorney were former legal practice partners, Sloman reported the interaction to Acosta, and the USAO reported the incident to OPR shortly thereafter. OPR reviewed the matter as an inquiry and determined that no further action was warranted.

333 Dareh Gregorian, "Tycoon Perved Me at 14 - $50M Suit Hits NY Creep Over Mansion Massage," *New York Post*, Jan. 25, 2008.

334 An FBI interview report from May 28, 2008, indicates that one victim "believes Epstein should be prosecuted for his actions."

in FBI interviews of Wild and other victims, Villafaña informed CEOS Chief Oosterbaan that she anticipated the victims "would be concerned about the status of the case."

On January 31, 2008, Villafaña, the CEOS Trial Attorney, and the FBI interviewed three victims, including Wild. Prior to the interview, Wild had received the FBI's January 10, 2008 letter stating that the case was under investigation; however, according to the case agent, Wild and two other victims had also been told by the FBI, in October 2007, that the case had been resolved. In her 2015 CVRA-case declaration, Wild stated that after receiving the FBI letter, she believed that the FBI was investigating the case, and she was not told "about any [NPA] or any potential resolution of the federal criminal investigation I was cooperating in. If I had been told of a[n NPA], I would have objected." In Villafaña's 2017 declaration in the CVRA litigation, Villafaña recalled interviewing Wild on January 31, 2008, along with FBI agents, and Villafaña told OPR she "asked [Wild] whether she would be willing to testify if there were a trial." Villafaña recalled Wild responding that she "hoped Epstein would be prosecuted and that she was willing to testify."[335]

After the first three victim interviews on January 31, 2008, Villafaña described for Acosta and Sloman the toll that the case had taken on two of the victims:

> One girl broke down sobbing so that we had to stop the interview twice . . . she said she was having nightmares about Epstein coming after her and she started to break down again so we stopped the interview.
>
> The second girl . . . was very upset about the 18 month deal she had read about in the paper.[336] She said that 18 months was nothing and that she had heard that the girls could get restitution, but she would rather not get any money and have Epstein spend a significant time in jail.[337]

Villafaña closed the email by requesting that Acosta and Sloman attend the interviews with victims scheduled for the following day, but neither did so.[338] Acosta told OPR that it "wasn't typical"

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335 The FBI report of the interview did not reflect a discussion of Wild's intentions.

336 *See* Dareh Gregorian, "Tycoon Perved Me at 14 - $50M Suit Hits NY Creep Over Mansion Massage," *New York Post*, Jan. 25, 2008. As early as October 2007, the New York Post reported the 18-month sentence and that "[t]he feds have agreed to drop their probe into possible federal criminal violations in exchange for the guilty plea to the new state charge." Dan Mangan, "'Unhappy Ending' Plea Deal – Moneyman to Get Jail For Teen Sex Massages," *New York Post*, Oct. 1, 2007.

337 Acosta told OPR, "The United States can't unwind an agreement just because . . . some victim indicates that they don't like it." The CEOS Trial Attorney recalled that she did not "think that any one of these girls was interested in this prosecution going forward." Furthermore, as previously noted, the CEOS Trial Attorney also opined that "[the victims] would have testified for us," but the case would have required an extensive amount of "victim management," as the girls were "deeply embarrassed" that they "were going to be called prostitutes."

338 OPR located FBI interview reports relating to only one February 1, 2008 victim interview. Although Villafaña's emails indicated that two additional victims were scheduled to be interviewed on February 1, 2008, OPR located no corresponding reports for those victim interviews. OPR located undated handwritten notes Villafaña

for him, as U.S. Attorney, to attend witness interviews, and further, that no one in the USAO "was questioning the pain or the suffering of the victims." Sloman told OPR that he himself had "never gone to a line assistant's victim or witness interview."

Villafaña told OPR that although three of the victims interviewed during this period had been notified by the FBI in October 2007 about the resolution of the case, at this point Villafaña did not specifically tell these victims that "there was a signed non-prosecution agreement that had these terms." Villafaña also told OPR she "didn't talk about money" because she "didn't want there to be an allegation at the time of trial . . . that [the victims] were either exaggerating their claims or completely making up claims in order to increase their damages amount." Rather, according to Villafaña, she told the three victims that "an agreement had been reached where [Epstein] was going to be entering a guilty plea, but it doesn't look like he intends to actually perform . . . [and] now it looks like this may have to be charged, and may have to go to trial." Villafaña recalled "explaining that the case was under investigation," that they "were preparing the case [for charging] again," and "expressing our hope that charges would be brought." Villafaña recalled one victim "making a comment about the amount of [imprisonment] time and why was it so low" and Villafaña answered, "that was the agreement that the office had reached."[339]

With regard to the victims Villafaña interviewed who had not received an FBI notification in October 2007, Villafaña recalled discussing one victim's safety concerns but not whether they discussed the agreement. She recalled telling another victim that "we thought we had reached an agreement with [Epstein] and then we didn't," but was "pretty sure" that she did not mention the agreement during the interview of the third victim. Villafaña explained that she likely did not discuss the agreement because

> at that point I just felt . . . like it was nonexistent. [The victim] didn't know anything about it beforehand, and as far as I could tell it was going to end up being thrown on the heap, and I didn't want to -- . . . if you tell people, oh, look, he's already admitted that he's guilty, like, I didn't want that to color her statement. I just wanted to get the facts of the case.

The CEOS Trial Attorney told OPR that she did not recall any discussion with the victims about the NPA or the status of the case.[340] She did remember explaining the significance of the prosecution to one victim who "did not think anything should happen" to Epstein. The FBI case agent told OPR that she did not recall the January 2008 interviews. OPR located notes to an FBI interview report, stating that one of the victims wanted another victim to be prosecuted. Attorneys for the two victims other than Wild who had been notified by the FBI in October 2007 about the resolution of the case informed OPR that as of 2020, their clients had no memory of meeting with

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authored concerning one of the two victims that contained no information regarding a discussion of the status of the investigation or the resolution of the case. Through her attorney, this victim told OPR that she did not recall having contact with anyone from the USAO.

339 Villafaña did not recall any other specific questions from victims.

340 The CEOS Trial Attorney noted that CEOS did not issue victim notifications; rather, such notifications were generally handled by a Victim Witness Specialist in the assigned USAO.

prosecutors and did not recall learning any information about Epstein's guilty plea until after the plea was entered on June 30, 2008.

When asked whether she was concerned that her statements would mislead the victims, Villafaña told OPR:

> From my perspective we were conducting an investigation and it was an investigation that was going to lead to an indictment. You know, I was interviewing witnesses, I was issuing [legal process], . . . I was doing all [these] things to take the case to a federal indictment and a federal trial. So to me, saying to a victim the case is now back under investigation is perfectly accurate.

4. February – March 2008: Villafaña Takes Additional Steps to Prepare for a Prosecution of Epstein, Arranges for *Pro Bono* Attorneys for Victims, and Cautions about Continued Delay

In February 2008, Villafaña revised the prosecution memorandum and supplemental memorandum. Villafaña removed some victims known to Epstein from the PBPD investigation and others subject to impeachment as a result of civil suits they filed against Epstein, added newly discovered victims, and made changes to the proposed indictment.

While the defense appealed the USAO's decision to prosecute Epstein to higher levels of the Department, Villafaña sought help for victims whom defense investigators were harassing and attempting to subpoena for depositions as part of Epstein's defense in civil lawsuits that some victims had brought against him, as well as purportedly in connection with the state criminal case. Villafaña reported to her supervisors that she was able to locate a "national crime victims service organization" to provide attorneys for the victims, and the FBI Victim Specialist contacted some victims to provide contact information for the attorneys.[341] During this period, an attorney from the victims service organization was able to help Courtney Wild avoid an improper deposition. Villafaña also informed her supervisors, including Sloman, that "one of the victims tried to commit suicide last week," and advocated aggressively for a resolution to the case: "I just can't stress enough how important it is for these girls to have a resolution in this case. The 'please be patient' answer is really wearing thin, especially when Epstein's group is still on the attack while we are forced to wait on the sidelines."

5. March – April 2008: Villafaña Continues to Prepare for Filing Federal Charges

Villafaña continued to revise the proposed charges by adding new victims and by removing others who had filed civil suits against Epstein. Villafaña also prepared search warrants for digital

[341] The FBI Victim Specialist informed Villafaña that she spoke "directly to seven victims" and informed them of the *pro bono* counsel and explained that her "job as a Victim Specialist is to ensure that victims[] of a Federal crime are afforded their rights, information and resource referral."

camera memory cards seized by the PBPD in order to have them forensically examined for deleted images that could contain child pornography.[342]

By early April 2008, as the defense pursued its appeal to the Department's Criminal Division, Acosta predicted in an email to Villafaña and Sloman that federal charges against Epstein were "more and more likely." Villafaña asked Oosterbaan for help to "move this [Criminal Division review] process along," noting that the defense continued to undermine the government's case by deposing the victims "under the guise of 'trial prep' for the state case" and that the "agents and the victims" were "losing their patience."

On April 24, 2008, Villafaña emailed Sloman and USAO Criminal Division Chief Senior asking whether she had the "green light" to file charges and raising the same concerns she had expressed to Oosterbaan. Villafaña further cautioned that, although she was planning to file charges on May 6, if that was not going to happen, "then we all need to meet with the victims, the agents, and the police officers to decide how the case will be resolved and to provide them with an explanation for the delay." Because the Department's Criminal Division did not conclude its review of Epstein's appeal by May 6, however, Villafaña did not file charges that day.

VIII. USAO SUPERVISORS CONSIDER CVRA OBLIGATIONS IN AN UNRELATED MATTER AND IN LIGHT OF A NEW FIFTH CIRCUIT OPINION

During the period after the NPA was signed, and before Epstein complied with the NPA by entering his state guilty pleas, the USAO supervisors were explicitly made aware of a conflict between the Department's position that CVRA's victims' rights attached upon the filing of a criminal charge and a new federal appellate ruling to the contrary. The contemporaneous communications confirm that in 2008, Acosta and Sloman were aware of the Department's policy regarding the issue.

Unrelated to the Epstein investigation, on April 18, 2008, Acosta and Sloman received a citizen complaint from an attorney who requested to meet with them regarding his belief that the Florida Bar had violated his First Amendment rights. The attorney asserted that the CVRA guaranteed him "an absolute right to meet" with USAO officials because he believed that he was the victim of a federal crime. Acosta forwarded the message to the USAO Appellate Division Chief, who informed Acosta and Sloman that, according to the 2005 Guidelines, "our obligations under [the CVRA] are not triggered until charges are filed." On April 24, 2008, the Appellate Division Chief emailed Acosta and Sloman, stating that she had "confirmed with DOJ that [her] reading of [the 2005 Guidelines] is correct and that our obligations under [the CVRA] are not triggered until a case is filed."[343]

On May 7, 2008, the Appellate Division Chief sent Acosta and Sloman a copy of a U.S. Court of Appeals for the Fifth Circuit opinion issued that day, *In re Dean*, holding that a victim's

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342 The forensic examination did not locate useful evidence on the memory cards.

343 The Appellate Division Chief advised Acosta that Acosta could inform the complainant that, prior to the initiation of charges, the investigating agency was responsible for carrying out the Department's statutory obligations to the victim.

CVRA rights attach prior to the filing of criminal charges.[344] The Appellate Division Chief noted that, although the holding conflicted with the 2005 Guidelines, the "court's opinion makes sense."

Dean involved a federal prosecution arising from a 2005 explosion at an oil refinery operated by BP Products North America, Inc. (BP) that killed 15 people and injured more than 170. Before bringing criminal charges, the government negotiated a guilty plea with BP without notifying the victims. The government filed a sealed motion, alerting the district court to the potential plea and claiming that consultation with all the victims was impractical and that such notification could result in media coverage that would undermine the plea negotiations. The court then entered an order prohibiting the government from notifying the victims of the pending plea agreement until after it had been signed by the parties. Thereafter, the government filed a criminal information, the government and BP signed the plea agreement, and the government mailed notices of the plea hearing to the victims informing them of their right to be heard. One month later, 12 victims asked the court to reject the plea because it was entered into in violation of their rights under the CVRA. The district court denied their motion, but concluded that the CVRA rights to confer with the prosecutor in the case and to be treated with fairness and respect for the victim's dignity and privacy vested prior to the initiation of charges.[345] The district court noted that the legislative history reflected a view that "the right to confer was intended to be broad," as well as being a "mechanism[]" to ensure that victims were treated with fairness.

In denying the victims relief, the Fifth Circuit nevertheless concluded that the district court "failed to accord the victims the rights conferred by the CVRA."[346] In particular, the Fifth Circuit cited the district court's acknowledgement that "[t]here are clearly rights under the CVRA that apply before any prosecution is underway." The Fifth Circuit also noted that such consultation was not "an infringement" on the government's independent prosecutorial discretion, but "it is only a requirement that the government confer in some reasonable way with the victims before ultimately exercising its broad discretion." In the wake of the *Dean* opinion, two Department components wrote separate memoranda to the Solicitor General with opposing views concerning whether the CVRA right to confer with the prosecution vests prior to the initiation of a prosecution.

IX. JUNE 2008: VILLAFAÑA'S PRE-PLEA CONTACTS WITH THE ATTORNEY REPRESENTING THE VICTIMS WHO LATER BECAME THE CVRA PETITIONERS

According to an affidavit filed in the CVRA litigation by her attorney, Bradley Edwards, Wild retained Edwards in June 2008 to represent her "because she was unable to get anyone from the [USAO] to tell her what was actually going on with the federal criminal case against Jeffrey Epstein."[347] Villafaña told OPR that Wild did not contact her directly and she was not aware of

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344 *In re Dean*, 527 F.3d 391 (5th Cir. 2008). The Fifth Circuit opinion was not binding precedent in Florida, which is within the Eleventh Circuit.

345 *United States v. BP Products North America, Inc.,* 2008 WL 501321, at *11 (S.D. Tex. 2008). Victims who wished to be heard were permitted to speak at the plea hearing.

346 *Dean*, 527 F.3d at 394.

347 Before Epstein's state court plea hearing, Edwards also began representing the victim who became Jane Doe #2. Although OPR focuses on Villafaña's communications with Edwards in this section, OPR notes that Villafaña

an instance in which Wild "asked a question that wasn't answered" of anyone in the USAO or of the FBI case agents.

Edwards contacted Villafaña by email and telephone in mid-June, stating that he had "information and concerns that [he] would like to share."[348] In his affidavit, Edwards alleged that during multiple telephone calls with Villafaña, he "asked very specific questions about what stage the investigation was in," and Villafaña replied that she could not answer his questions because the matter "was an on-going active investigation[.]" Edwards attested that Villafaña gave him "the impression that the Federal investigation was on-going, very expansive, and continuously growing, both in the number of identified victims and [in] complexity."[349]

In her written response to OPR, Villafaña said that she "listened more than [she] spoke" during these interactions with Edwards, which occurred before the state court plea:

> Given the uncertainty of the situation – Epstein was still challenging our ability to prosecute him federally, pressing allegations of prosecutorial misconduct, and trying to negotiate better plea terms, while the agents, my supervisors, and I were all moving towards [filing charges] – I did not feel comfortable sharing any information about the case. It is also my practice not to talk about status before the grand jury.

In her 2017 declaration in the CVRA litigation, Villafaña explained that during these exchanges, Villafaña did not inform Edwards of the existence of the NPA because she "did not know whether the NPA remained viable at that time or whether Epstein would enter the state court guilty plea that would trigger the NPA."[350] Villafaña told OPR that she did not inform Edwards

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also had interactions with other victims' attorneys. For example, another attorney informed OPR that he spoke to Villafaña two to five times concerning the status of the case and each time was told that the case was under investigation. The attorney noted, "[W]e never got any information out of [Villafaña]. We were never told what was happening or going on to any extent." Villafaña's counsel told OPR that Villafaña did not have any interaction with the attorney or his law partner until after Epstein's state court plea hearing, and that in her written communications responding to the attorney's inquiries, she provided information to the extent possible. OPR found no documentation that Villafaña's communications with the attorney occurred prior to June 30, 2008. Villafaña also had more ministerial interactions with other victims' counsel, as well as contact regarding their ongoing civil cases. For example, in March 2008, one victim's attorney informed Villafaña of his representation of a victim and requested that the government provide him with photographs of the victim and information concerning the tail registration number for Epstein's airplane. Villafaña responded that she was unable to provide the requested information, but asked that counsel keep her updated about the civil litigation.

348 Villafaña later stated in a July 9, 2008 declaration filed in the CVRA litigation that, although she invited Edwards to provide her with information, "[n]othing was provided."

349 Edwards did not respond to OPR's request to interview him, although he did assist OPR in locating other attorneys who were representing victims.

350 The government later admitted in court filings that Villafaña and Edwards "discussed the possibility of federal charges being filed in the future and that the NPA was not mentioned." *Doe*, Government's Response to Petitioners' Statement of Undisputed Material Facts in Support of Petitioners' Motion for Partial Summary Judgment at 14, ¶101 (June 6, 2017).

22-1426

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 22-1426

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

SUPPLEMENTAL APPENDIX
VOLUME II OF II
(Pages SA-257 to SA-471)

DAMIAN WILLIAMS,
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about the NPA because it was "confidential" and because the case was under "investigation and leading towards" the filing of charges. Villafaña recalled mentioning the conversation to her supervisors and the case agents because she "thought he was somebody who could be of assistance to us and . . . could perhaps persuade Alex Acosta that this was a case that was meritorious and should be prosecuted."

Nevertheless, when OPR asked Villafaña why she did not inform Edwards of the same information that the FBI and she had provided to Wild in October 2007 and January 2008, Villafaña explained that she felt "prohibited":

> At the time that I spoke with him, you know, there had been all of this . . . letter writing or all of these concerns and instructions that I had been given by Alex [Acosta] and Jeff [Sloman] not to disclose things further and not to have any involvement in victim notification, and so I felt like that prohibited me from telling him about the existence of the NPA.

X. JUNE 2008: EFFORTS TO NOTIFY VICTIMS ABOUT THE JUNE 30, 2008 PLEA HEARING

The Epstein team's appeals through the Department ended on June 23, 2008, when the Deputy Attorney General determined that "federal prosecution of this case is appropriate" and Epstein's allegations of prosecutorial misconduct did not rise to a level that would undermine such a decision. Immediately thereafter, at Sloman's instruction, Villafaña notified Lefkowitz that Epstein had until "the close of business on Monday, June 30, 2008, to comply with the terms and conditions of the agreement . . . including entry of a guilty plea, sentencing, and surrendering to begin his sentence of imprisonment." That same day, Villafaña made plans to file charges on July 1, 2008, if Epstein did not enter his guilty plea by the June 30 deadline.

On Friday, June 27, 2008, Villafaña received a copy of the proposed state plea agreement and learned that the plea hearing was scheduled for 8:30 a.m. on Monday, June 30, 2008. Also on that Friday, Villafaña submitted to Sloman and Criminal Division Chief Senior a "final final" proposed federal indictment of Epstein.

Villafaña and the FBI finalized the government's victim list that they intended to disclose, for § 2255 purposes, to Epstein after the plea and, at Sloman's instruction, Villafaña contacted PBPD Chief Reiter to ask him to notify the victims of the plea hearing. Villafaña told OPR that Sloman said, "Chief Reiter could contact the victims from the state case, and tell them about the plea."[351] On Saturday, June 28, 2008, Villafaña emailed Sloman to inform him that PBPD Chief Reiter "is going to notify victims about the plea."[352]

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[351] Villafaña further stated, "I requested permission to make oral notifications to the victims regarding the upcoming change of plea, but the Office decided that victim notification could only come from a state investigator, and Jeff Sloman asked PBPD Chief Reiter to assist."

[352] Sloman replied, "Good."

Villafaña told OPR that before the state plea hearing, she sent Reiter a list of the victims, including their telephone numbers, to notify and asked him to destroy the list. Villafaña recalled that Reiter told her that he would "try to contact as many as he could" and that he would destroy the list afterwards. Villafaña did not recall being "asked [to] provide a list of all our victims to the State Attorney's Office."

In his 2009 deposition, Reiter stated that Villafaña sent him a letter "around the time of sentencing," listing the victims in the federal investigation, and that she asked him to destroy the letter after he reviewed it. Reiter recalled that he requested the list because he was aware that the state grand jury's indictment of Epstein did not include all of the victims that the PBPD had identified and he "wanted to make sure that some prosecution body had considered all of our victims."[353]

In her 2017 declaration in the CVRA litigation, Villafaña stated that she and the PBPD "attempted to notify the victims about [the June 30] hearing in the short time available to us."[354] In her 2008 declaration, however, Villafaña conceded that "all known victims were not notified."

Villafaña told OPR that Edwards was the only victim attorney she was authorized to contact—she thought probably by Sloman—about the June 30, 2008 plea hearing because Edwards "had expressed a specific interest in the outcome." Villafaña recalled, "I was told that I could inform [Edwards] of [the plea date], but I still couldn't inform him of the NPA."[355] In her 2008 declaration in the CVRA litigation, Villafaña stated that she called Edwards and informed him of the plea hearing scheduled for Monday; Villafaña stated that Edwards told her that he could not attend the hearing but "someone" would be present. In a later filing in the CVRA litigation, however, Edwards asserted that Villafaña told him only that "Epstein was pleading guilty to state solicitation of prostitution charges involving other victims—not Mr. Edwards' clients nor any of the federally-identified victims."[356] Edwards further claimed that because Villafaña failed to inform him that the "guilty pleas in state court would bring an end to the possibility of federal prosecution pursuant to the plea agreement," his clients did not attend the hearing. Villafaña told OPR that her expectation was that the state plea proceeding would allow Edwards and his clients the ability to comment on the resolution:

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353 Reiter showed the letter to the lead Detective so he could "confirm that all of the victims that we had for the state case were included on that." The Detective "looked at it and he said they're all there and then [Reiter] destroyed it." The Detective recalled viewing the list in Reiter's office, but he could not recall when Reiter showed it to him.

354 The FBI co-case agent told OPR that "I don't think the [FBI] reached out to anyone."

355 Villafaña told OPR that she thought that it was Sloman who gave her the instructions, but she could not "remember the specifics of the conversation."

356 Villafaña stated that she "never told Attorney Edwards that the state charges involved 'other victims,' and neither the state court charging instrument nor the factual proffer limited the procurement of prostitution charge to a specific victim." Although Edwards criticized Villafaña's conduct in his CVRA filings, in his recently published book, Edwards described Villafaña as a "kindhearted prosecutor who tried to do right," noting that she "believ[ed] in the victims and tr[ied] . . . to bring down Jeffrey Epstein." Bradley J. Edwards with Brittany Henderson, *Relentless Pursuit* at 380 (Gallery Books 2020).

> [M]y expectation of what was going [to] happen at the plea was that it would be like a federal plea where there would be a factual proffer that was read, and where the judge would ask if there were any victims present who wanted to be heard, and that at that point if Brad Edwards wanted to address the court or if his clients wanted to address the court, they would be given the opportunity to do so.[357]

Sloman told OPR that he did not recall directing Villafaña to contact anyone about the plea hearing or directing her specifically not to contact anyone about it. Acosta told OPR that he believed the state would notify the victims of the "all-encompassing plea" resolving the federal case "and [the victims would] have an opportunity to speak up at the state court hearing." Nevertheless, Acosta did not know whether the state victims overlapped with the federal victims or whether the USAO "shared that list with them." Villafaña told OPR that she and Acosta "understood that the state would notify the state victims" but that neither of them were aware "that the state only believed they had one victim."[358] Villafaña told OPR that there was "very little" communication between the USAO and the State Attorney's Office, and although she discussed a factual proffer with the State Attorney's Office and "the fact that . . . the federal investigation had identified additional victims," she did not recall discussing "who the specific people were that they considered victims in the state case."[359]

Sloman told OPR that the "public perception . . . that we tried to hide the fact of the results of this resolution from the victims" was incorrect. He explained:

> [E]ven though we didn't have a legal obligation, I felt that the victims were going to be notified and the state was going . . . to fulfill that obligation, and even as another failsafe, [the victims] would be notified of . . . the restitution mechanism that we had set up on their behalf.

Sloman acknowledged that although neither the NPA terms nor the CVRA prevented the USAO from exercising its discretion to notify the victims,

> it was [of] concern that this was going to break down and . . . result in us prosecuting Epstein and that the victims were going to be witnesses and if we provided a victim notification indicating, hey, you're going to get $150,000, that's . . . going to be instant impeachment for the defense.

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357 Assistant State Attorney Belohlavek told OPR that federal victims who were not a party to the state case would not have been able to simply appear at the state plea hearing and participate in the proceedings. Rather, such a presentation would have required coordination between the USAO and the State Attorney's Office and additional investigation of the victims' allegations and proposed statements by the State Attorney's Office.

358 In an email a few months earlier, Villafaña noted, "The state indictment [for solicitation of adult prostitution] is related to two girls. One of those girls is included in the federal [charging document], the other is not."

359 As noted in Chapter Two, Villafaña had stopped communicating with the State Attorney's Office regarding the state case following Epstein's defense team's objections to those communications.

When asked why the USAO did not simply notify the victims of the change of plea hearing, Sloman responded that he "was more focused on the restitution provisions. I didn't get the sense that the victims were overly interested in showing up . . . at the change of plea."

Also, in late June, Villafaña drafted a victim notification letter concerning the June 30, 2008 plea.[360] Villafaña told OPR that, because "Mr. Acosta had agreed in December 2007 that we would not provide written notice of the state change of plea, the written victim notifications were prepared to be sent immediately following Epstein's guilty plea."[361] As she did with prior draft victim notification letters, Villafaña provided the draft to the defense for comments.[362]

Although Epstein's plea hearing was set for June 30, 2008, Villafaña took steps to facilitate the filing of federal charges on July 1, 2008, in the event he did not plead guilty in state court.

OPR reviewed voluminous Epstein-related files that the State Attorney's Office made available online, but OPR was unable to locate any document establishing that before the hearing date, the state informed victims of the June 30, 2008 plea. On March 12, 2008, the State Attorney's Office issued trial subpoenas to three victims and one non-law enforcement witness commanding the individuals to "remain on call" during the week of July 8, 2008. However, the Palm Beach County Sheriff was unable to serve one of the victims in person because the victim was "away [at] college."

XI. JUNE 30, 2008: EPSTEIN ENTERS HIS GUILTY PLEAS IN A STATE COURT HEARING AT WHICH NO VICTIMS ARE PRESENT

On June 30, 2008, Epstein appeared in state court in West Palm Beach, with his attorney Jack Goldberger, and pled guilty to an information charging him with procuring a person under 18 for prostitution, as well as the indictment charging him with felony solicitation of prostitution. The information charged that between August 1, 2004, and October 9, 2005, Epstein "did knowingly and unlawfully procure for prostitution, or caused to be prostituted, [REDACTED], a person under the age of 18 years," and referred to no other victims. The indictment did not identify any victims and alleged only that Epstein engaged in the charged conduct on three occasions between August 1, 2004, and October 31, 2005. Although the charges did not indicate whether they applied to multiple victims, during the hearing, Assistant State Attorney Belohlavek informed the court that "[t]here's several" victims. When the court asked Belohlavek whether "the victims in both these cases [were] in agreement with the terms of this plea," Belohlavek replied, "I have spoken to several myself and I have spoken to counsel, through counsel as to the other victim, and I believe,

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360 Sloman forwarded the draft victim notification letter to Acosta, who responded with his own edited version stating, "What do you think?" Villafaña edited it further.

361 The letter began with the statement, "On June 30, 2008, Jeffrey Epstein . . . entered a plea of guilty." A week after Epstein's state guilty plea, Villafaña notified Acosta, Sloman, and other supervisors that "[Epstein's local attorney] Jack Goldberger is back in town today, so I am hoping that we will finalize the last piece of our agreement—the victim list and Notification. If I face resistance on that front, I will let you know."

362 According to Villafaña, either Acosta or Sloman made the decision to send the notifications following the state plea and to share the draft notification letters with the defense.

yes." The court also asked Belohlavek if the juvenile victim's parents or guardian agreed with the plea, and Belohlavek stated that because the victim was no longer under age 18, Belohlavek spoke with the victim's counsel, who agreed with the plea agreement.[363]

Both Villafaña and the FBI case agent were present in the courtroom gallery to observe the plea hearing. Later that day, Villafaña met with Goldberger and gave him the list of 31 individuals the government was prepared to name as victims and to whom the § 2255 provision applied.

In her 2015 CVRA case declaration, Wild stated that, "I did not have any reason to attend that hearing because no one had told me that this guilty plea was related to the FBI's investigation of Epstein's abuse of me." She stated that she "would have attended and tried to object to the judge and prevent that plea from going forward," had she known that the state plea "had some connection to blocking the prosecution of my case." Similarly, CVRA petitioner Jane Doe #2 stated that "no one notified me that [Epstein's] plea had anything to do with my case against him."

An attorney who represented several victims, including one whom the state had subpoenaed for the potential July trial, told OPR that he was present in court on June 30, 2008, in order to serve a complaint upon Epstein in connection with a civil lawsuit brought on behalf of one of his clients. The USAO had not informed him about the plea hearing.[364] Moreover, the attorney informed OPR that, although one of the victims he represented had been interviewed in the PBPD's investigation and had been deposed by Epstein's attorneys in the state case (with the Assistant State Attorney present), he did not recall receiving any notice of the June 30, 2008 plea hearing from the State Attorney's Office.[365] Similarly, another of the victims the state had subpoenaed for the July trial told OPR through her attorney that she received subpoenas from the State Attorney's Office, but she was not invited to or aware of the state plea hearing. Belohlavek told OPR that she did not recall whether she contacted any of the girls to appear at the hearing, and she noted that given the charge of solicitation of prostitution, they may not have "technically" been victims for purposes of notice under Florida law but, rather, witnesses. On July 24, 2008, the State Attorney's Office sent letters to two victims stating that the case was closed on June 26, 2008 (although the plea occurred on June 30, 2008) and listed Epstein's sentence. The letters did not mention the NPA or the federal investigation.

XII. SIGNIFICANT POST-PLEA DEVELOPMENTS

A. Immediately After Epstein's State Guilty Pleas, Villafaña Notifies Some Victims' Attorneys

Villafaña's contemporaneous notes show that immediately after Epstein's June 30, 2008 guilty pleas, she attempted to reach by telephone five attorneys representing various victims in

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363 Villafaña, who was present in court and heard Belohlavek's representation, told OPR that she had no information as to whether or how the state had notified the victims about the plea hearing.

364 Villafaña did contact this attorney's law partner later that day.

365 When interviewed by OPR in 2020, this same attorney indicated that he was surprised to learn that despite the fact that his client was a minor at the time Epstein victimized her, she was not the minor victim that the state identified in the information charging Epstein.

civil suits that were pending against Epstein.[366] Villafaña also emailed one of the *pro bono* attorneys she had engaged to help victims avoid defense harassment, informing him that the federal investigation had been resolved through a state plea and that Epstein had an "agreement" with the USAO "requir[ing] him to make certain concessions regarding possible civil suits brought by the victims." Villafaña advised Goldberger: "The FBI has received several calls regarding the [NPA]. I do not know whether the title of the document was disclosed when the [NPA] was filed under seal, but the FBI and our Office are declining comment if asked."

B. July 7, 2008: The CVRA Litigation Is Initiated

On July 3, 2008, victims' attorney Edwards spoke to Villafaña by telephone about the resolution of the state case against Epstein "and the next stage of the federal prosecution."[367] In his 2017 affidavit filed in the CVRA litigation, Edwards asserted that during this conversation, Villafaña did not inform him of the NPA, but that during the call, he sensed that the USAO "was beginning to negotiate with Epstein concerning the federally identified crimes." However, in an email Villafaña sent after the call, she informed Sloman that during the call, Edwards stated that "his clients can name many more victims and wanted to know if we can get out of the deal." Villafaña told Sloman that after she told Edwards that the government was bound by the agreement, assuming Epstein completed it, Edwards asked that "if there is the slightest bit of hesitation on Epstein's part of completing his performance, that he and his [three] clients be allowed to consult with [the USAO] before making a decision."[368]

That same day, Edwards wrote a letter to Villafaña, complaining that Epstein's state court sentence was "grossly inadequate for a predator of this magnitude" and urged Villafaña to "move forward with the traditional indictments and criminal prosecution commensurate with the crimes Mr. Epstein has committed."

On July 7, 2008, Edwards filed his emergency petition in the U.S. District Court for the Southern District of Florida on behalf of Courtney Wild, who was then identified only as "Jane Doe." She was soon joined by a second petitioner, and they were respectively referred to as "Jane Doe 1" and "Jane Doe 2."[369] Edwards claimed that the government had violated his clients' rights under the CVRA by negotiating to resolve the federal investigation of Epstein without consulting with the victims. The petition requested that the court order the United States to comply with the CVRA. The USAO opposed the petition, arguing that the CVRA did not apply because there were

366 According to Villafaña's handwritten notes from June 30, 2008, Villafaña left a message for two of the attorneys.

367 In his 2017 affidavit filed in the CVRA case, Edwards recalled that his telephone conversation occurred on June 30, 2008, but noted that it could possibly have occurred on July 3, 2008.

368 Sloman responded, "Thanks."

369 Later attempts by two additional victims to join the ongoing CVRA litigation were denied by the court.

no federal charges filed against Epstein as a result of the government's agreement in mid-2007 to defer prosecution to the state.[370]

C. July 2008: Villafaña Prepares and Sends a Victim Notification Letter to Listed Victims

On July 8, 2008, Villafaña provided Goldberger with an updated victim list for 18 U.S.C. § 2255 purposes, noting that she had inadvertently left off one individual in her June 30, 2008 letter. Villafaña also informed the defense that, beginning the following day, she would distribute notifications to each of the 32 victims and their counsel informing them that Epstein's attorney would be the contact for any civil litigation, if the victim decided to pursue damages. Finally, the letter informed the defense that the government would consider a denial by Epstein that any "one of these victims is entitled to proceed under 18 U.S.C. § 2255" to be considered a breach of the terms of the NPA.

After exchanging emails and letters with the defense concerning the content of the notice letter, Villafaña drafted a letter she sent, on July 9 and 10, to nine victims who had previously retained counsel. The letter informed the victims and their counsel that, "[i]n light of" Epstein's June 30, 2008 state court plea to felony solicitation of prostitution and procurement of minors to engage in prostitution, and his sentence of a total of 18 months' imprisonment followed by 12 months' community control, "the United States has agreed to defer federal prosecution in favor of this state plea and sentence, subject to certain conditions." The letter included a reference to the 18 U.S.C. § 2255 provision of the NPA, and although the defense had never agreed to it, used language from Acosta's December 19, 2007 letter to Epstein defense attorney Sanchez clarifying the damages provision. The paragraph below was described as "[o]ne such condition to which Epstein has agreed":

> Any person, who while a minor, was a victim of a violation of an offense enumerated in Title 18, United States Code, Section 2255, will have the same rights to proceed under Section 2255 as she would have had, if Mr. Epstein had been tried federally and convicted of an enumerated offense. For purposes of implementing this paragraph, the United States shall provide Mr. Epstein's attorneys with a list of individuals whom it was prepared to name . . . as victims of an enumerated offense by Mr. Epstein. Any judicial authority interpreting this provision, including any authority determining which evidentiary burdens if any a plaintiff must meet, shall consider that it is the intent of the parties to place these identified victims in the same position as they would have been had Mr. Epstein been convicted at trial. No more; no less.

On July 10, 2008, Villafaña sent Goldberger a "Final Notification of Identified Victims," highlighting the defendant's obligations under the NPA concerning victim lawsuits pursuant to

[370] As described in Section XII.G of this Part, the matter continued in litigation for years and resulted in the district court's February 21, 2019 opinion concluding that the government violated the victims' rights under the CVRA by failing to consult with them before signing the NPA.

18 U.S.C. § 2255 and again listing the 32 "individuals whom the United States was prepared to name as victims of an enumerated offense."[371] The same day, Villafaña sent Goldberger a second letter, noting that the defense would receive copies of all victim notifications on a rolling basis.

Villafaña informed her managers that the FBI case agents would reach out by telephone to the listed victims who were unrepresented, to inform them that the case was resolved and to confirm their addresses for notification by mail. With regard to the content of the telephone calls, Villafaña proposed the following language to the case agents:

> We are calling to inform you about the resolution of the Epstein investigation and to thank you for your help.
>
> Mr. Epstein pled guilty to one child sex offense that will require him to register as a sex offender for life and received a sentence of 18 months imprisonment followed by one year of home confinement. Mr. Epstein also made a concession regarding the payment of restitution.
>
> All of these terms are set out in a letter that AUSA Villafaña is going to send out. Do you have a lawyer? Get name or address. If not[,] where do you want [the] letter sent? If you have questions when you receive the letter, please understand that we cannot provide legal advice but the lawyers at the following victim rights organizations are able to help you at no cost to you. (Provide names and phone numbers)
>
> Also ask about counseling and let them know that counseling is still available even though the investigation is closed.

On July 21, 2008, Villafaña sent the letter to the 11 unrepresented victims whose addresses the FBI had by that time confirmed. Villafaña provided Epstein's defense counsel with a copy of the letter sent to each victim, directly or though counsel (with the mailing addresses redacted).

D. July – August 2008: The FBI Sends the Victim Notification Letter to Victims Residing Outside of the United States

While attempting to locate and contact the unrepresented victims, the FBI obtained contact information for two victims residing outside of the United States. On July 23 and August 8, 2008, respectively, the FBI Victim Specialist transmitted an automated VNS form notification letter to each victim through the FBI representative at the U.S diplomatic mission for each country. This

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[371] A month later, in an August 18, 2008 letter to the USAO, the defense sought to limit the government's victim list to those victims who were identified before the September 24, 2007 execution of the NPA. Villafaña also raised with Acosta, Sloman, and other supervisors the question whether the USAO had developed sufficient evidence to include new victims it had identified since creation of the July 2008 list and whether Jane Doe #2, who had previously given a statement in support of Epstein, should be added back to the list. Ultimately, Villafaña sent the defense a letter confirming that the government's July 10, 2008 victim list was "the final list."

letter was substantially identical to the previous FBI victim notification letter the FBI had sent to victims (in 2006, 2007, and 2008) in that it identified each recipient as "a possible victim of a federal crime" and listed her eight CVRA rights.

The letter did not indicate that Epstein had pled guilty in state court on June 30, 2008, or that the USAO had resolved its investigation by deferring federal prosecution in favor of the state plea. Rather, like the previous FBI VNS-generated letter, the letter requested the victims' "assistance and cooperation while we are investigating the case."

For each of the two victims residing outside of the United States, Villafaña also drafted a notification letter concerning the June 30, 2008 plea and the 18 U.S.C. § 2255 process, which were to be hand delivered along with the FBI's letters. However, FBI records do not reflect whether the USAO's letter was delivered to the two victims.

E. August – September 2008: The Federal Court Orders the USAO to Disclose the NPA to Victims, and the USAO Sends a Revised Victim Notification Letter

On August 1, 2008, the petitioners in the CVRA litigation filed a motion seeking access to the NPA. The USAO opposed the motion by relying on the confidentiality portion of the NPA.[372] On August 21, 2008, the court ordered the government to provide the petitioners with a copy of the NPA subject to a protective order. In addition, the court ordered the government to produce the NPA to other identified victims upon request:

> (d) If any individuals who have been identified by the USAO as victims of Epstein and/or any attorney(s) for those individuals request the opportunity to review the [NPA], then the USAO shall produce the [NPA] to those individuals, so long as those individuals also agree that they shall not disclose the [NPA] or its terms to any third party absent further court order, following notice to and an opportunity for Epstein's counsel to be heard[.][373]

In September 2008, the USAO sent a revised notification letter to victims, and attorneys for represented victims, concerning Epstein's state court guilty plea and his agreement to not contest liability in victim civil suits brought under 18 U.S.C. § 2255.[374] The September letter appeared to address concerns raised by Epstein attorney Lefkowitz that the government's earlier notification letter referenced language concerning 18 U.S.C. § 2255 that the government had proposed in Acosta's December 19, 2007 letter to Epstein attorney Sanchez, but that the defense had not accepted.[375] As a result of the defense objection, Villafaña determined that she was

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372 Pursuant to paragraph 13 of the NPA, Villafaña made Epstein's attorneys aware of the petitioners' request for the NPA.

373 *Doe*, Order to Compel Production and Protective Order at 1-2 (Aug. 21, 2008).

374 The USAO also sent a notification letter to additional victims who had not received a notification letter in July.

375 This issue is discussed more fully in Chapter Two.

obligated to amend her prior letter to victims to correct the reference to the December letter.[376] Accordingly, the September letter contained no information about the parties' intent in implementing 18 U.S.C. § 2255, but merely referred to the NPA language concerning Epstein's waiver of his right to contest liability under the provision. In addition, the September letter described the appointment of a special master, the special master's selection of an attorney to represent the victims in their 18 U.S.C. § 2255 litigation against Epstein, and Epstein's agreement to pay the attorney representative's fees arising out of such litigation. The letter also clarified that Epstein's agreement to pay for attorneys' fees did not extend to contested litigation against him.

The government also intended for the letter to comply with the court's order concerning providing victims with copies of the NPA. The initial draft included a paragraph advising the victims that they could receive a copy of the NPA:

> In addition, a judge has ordered that the United States make available to any designated victim (and/or her attorney) a copy of the actual agreement between Mr. Epstein and the United States, so long as the victim (and/or her attorney) reviews, signs, and agrees to be bound by a Protective Order entered by the Court. If [the victim] would like to review the Agreement, please let me know, and I will forward a copy of the Protective Order for her signature.

The government shared draft versions of the September letter with Epstein's counsel and responded to criticism of the content of the proposed letter. For example, in response to the above language regarding the August 21, 2008 court order in the CVRA litigation, the defense argued that there was "no court order requiring the government to provide the alleged 'victims' with notice that the [NPA] is available to them upon request and doing so is in conflict with the confidentiality provisions of the [NPA]." In response, and in consultation with USAO management, Villafaña revised the paragraph as follows:

> In addition, there has been litigation between the United States and two other victims regarding the disclosure of the entire agreement between the United States and Mr. Epstein. [The attorney selected by the special master] can provide further guidance on this issue, or if you select another attorney to represent you, that attorney can review the Court's order in the [CVRA litigation].

On September 18, 2009, a state court judge unsealed the copy of the NPA that had been filed in the state case.[377]

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[376] In the letter, Villafaña expressed frustration with defense counsels' claim relative to the December 19, 2007 letter that was included in the July 2008 notification letter, noting that the July 2008 letter had been approved by defense counsel before being sent.

[377] *See* Susan Spencer-Wendel, "Epstein's Secret Pact With Fed Reveals 'Highly Unusual' Terms," *Palm Beach Post*, Sept. 19, 2009.

F. 2010 – 2011: Department and Congressional Actions Regarding Interpretation of the CVRA

In connection with the Department's 2010 effort to update its 2005 Guidelines, the Office of the Deputy Attorney General convened a Victim of Crimes Working Group that asked OLC to revisit its 2005 preliminary review concerning the definition of "crime victim" under the CVRA and solicited input concerning the issue from Department components and federal law enforcement agencies. In response, OLC issued a December 17, 2010 opinion entitled, *The Availability of Crime Victims' Rights Under the Crime Victims' Rights Act of 2004*. Based on the CVRA's language, relevant case law, and memoranda opinions from Department components, OLC reaffirmed its 2005 conclusion that CVRA rights do not vest until a criminal charge has been filed (by complaint, information, or indictment) and the rights cease to be available if "all charges are dismissed either voluntarily or on the merits (or if the [g]overnment declines to bring formal charges after the filing of a complaint)."[378]

After OLC issued its opinion, the Department revised the 2005 Guidelines in October 2011 but did not change its fundamental position that the CVRA rights did not vest until after criminal charges were filed. The 2011 revision did, however, add language concerning victim consultation before a defendant is charged: "In circumstances where plea negotiations occur before a case has been brought, Department policy is that this should include reasonable consultation prior to the filing of a charging instrument with the court."[379] The use of the word "should" in the 2011 Guidelines indicates that "personnel are expected to take the action . . . unless there is an appropriate, articulable reason not to do so."[380] Nevertheless, the required consultation "may be general in nature" and "does not have to be specific to a particular plea offer."[381] The revisions also specified that AUSAs were to ensure that victims had a right to be reasonably heard at plea proceedings.[382]

On November 2, 2011, U.S. Senator Jon Kyl, a co-sponsor of the CVRA, sent a letter to Attorney General Eric Holder, arguing that the 2011 Guidelines revisions "conflict[ed] quite clearly with the CVRA's plain language" because the 2011 Guidelines did "not extend any rights to victims until charges have been filed." The Department's response emphasized that the

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378 OLC "express[ed] no opinion" as to whether it is a matter of "good practice" to inform victims of their CVRA rights prior to the filing of a complaint or after the dismissal of charges.

379 *See* 2011 Guidelines, Art. V, ¶ G.2, available at https://www.justice.gov/sites/default/files/olp/docs/ag_guidelines2012. pdf. In its 2011 online training video regarding the Guidelines, the Department encouraged such consultation when reasonable, but it also continued to maintain that there was no CVRA right to confer for pre-indictment plea negotiations.

380 *See* 2011 Guidelines, Art. I, ¶ B.2.

381 *See* 2011 Guidelines, Art. V, ¶ G.2.

382 The 2005 Guidelines contained no specific provision requiring AUSAs to ensure that victims were able to exercise their right to be reasonably heard at plea proceedings, only at sentencing. *See* 2005 Guidelines, Art. IV, ¶ C.3.b.(2). However, the 2005 Guidelines generally require AUSAs to use their best efforts to comply with the CVRA, and the CVRA specifically affords victims the right to be heard at plea proceedings. The 2011 revision remedied this omission.

Department had made its "best efforts in thousands of federal and District of Columbia cases to assert, support, and defend crime victims' rights." The response also referenced OLC's December 2010 opinion concluding that CVRA rights apply when criminal proceedings are initiated, noting that "the new AG Guidelines go further and provide that Department prosecutors should make reasonable efforts to notify identified victims of, and consider victims' views about, prospective plea negotiations, even prior to the filing of a charging instrument with the court."[383]

In 2015, Congress amended the CVRA, and added the following two rights:

> (9) The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.
>
> (10) The right to be informed of the rights under this section and the services described in section 503(c) of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607(c)) and provided contact information for the Office of the Victims' Rights Ombudsman of the Department of Justice.

G. The CVRA Litigation Proceedings and Current Status

While the CVRA litigation was pending in the Southern District of Florida, numerous federal civil suits against Epstein, brought in the same district, were transferred to the same judge as "related cases," as a matter of judicial economy pursuant to the Local Rules. As the parties agreed on settlements in those civil cases, they were dismissed.[384] Several of the victims who had settled their civil cases filed a pleading in the CVRA litigation asking the court to "maintain their anonymity" and not "further disseminate[]" their identities to the CVRA petitioners.[385]

In the CVRA case, the petitioners claimed that the government violated their CVRA rights to confer by (1) negotiating and signing the NPA without victim input; (2) sending letters to the victims claiming that the matter was "under investigation" after the NPA was already signed; and (3) not properly informing the victims that the state plea would also resolve the federal investigation. In addition, the petitioners alleged that the government violated their CVRA right to be treated with fairness by concealing the NPA negotiation and also violated their CVRA right to reasonable notice by concealing that the state court proceeding impacted the enforcement of the NPA and resolved the federal investigation.

During the litigation, the USAO argued that (1) the victims had no right to notice or conferral about the NPA because the CVRA rights did not apply pre-charge; (2) the government's

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383 157 Cong. Rec. S7359-02 (2011) (Kyl letter and Department response).

384 Epstein also resolved some county court civil cases during this time period as well. In addition, numerous other cases were resolved outside of formal litigation. For example, one attorney told OPR that he resolved 16 victim cases, but did not file all cases with the court. Court data indicate that the attorney filed only 3 of the 16 cases he said he resolved.

385 *Doe,* Response to Court Order of July 6, 2015 and United States' Notice of Partial Compliance at 1 (July 24, 2015).

letters to victims sent after the NPA was signed were not misleading in stating that the matter was "under investigation" because the government continued to investigate given its uncertainty that Epstein would plead guilty; and (3) Villafaña contacted the petitioners' attorney prior to Epstein's state plea to advise him of the hearing. Nonetheless, Villafaña told OPR that, while there were valid reasons for the government's position that CVRA rights do not apply pre-charge, "[T]his is a case where I felt we should have done more than what was legally required. I was obviously prepared to spend as much time, energy and effort necessary to meet with each and every [victim]."

Over the course of the litigation, the district court made various rulings interpreting the provisions of the CVRA, including the court's key conclusion that victim CVRA rights "attach before the Government brings formal charges against a defendant." The court also held that (1) "the CVRA authorizes the rescission or 'reopening' of a prosecutorial agreement, including a non-prosecution agreement, reached in violation of a prosecutor's conferral obligations under the statute"; (2) the CVRA authorizes the setting aside of pre-charge prosecutorial agreements"; (3) the CVRA's "reasonable right to confer" "extends to the pre-charge state of criminal investigations and proceedings"; (4) the alleged federal sex crimes committed by Epstein render the *Doe* petitioners "victims" under the CVRA; and (5) "questions pertaining to [the] equitable defense[s] are properly left for resolution after development of a full evidentiary record."

On February 21, 2019, the district court granted the petitioners' Motion for Partial Summary Judgment, ruling that "once the Government failed to advise the victims about its intention to enter into the NPA, a violation of the CVRA occurred." The government did not dispute the fact that it did not confer with the petitioners prior to signing the NPA, and the court concluded that "[a]t a bare minimum, the CVRA required the Government to inform Petitioners that it intended to enter into an agreement not to prosecute Epstein." The court found that the post-NPA letters the government sent to victims describing the investigation as ongoing "misled the victims to believe that federal prosecution was still a possibility" and that "[i]t was a material omission for the Government to suggest to the victims that they have patience relative to an investigation about which it had already bound itself not to prosecute."[386]

The court relied on *Dean* and *BP Products* to support its holding and noted that the government's action with respect to the NPA was especially troubling because, unlike a plea agreement for which the victims could voice objection at a sentencing hearing, "[o]nce an NPA is entered into without notice, the matter is closed and the victims have no opportunity to be heard regarding any aspect of the case." The court also highlighted the inequity of the USAO's failure to communicate with the victims while it simultaneously engaged in "lengthy negotiations" with Epstein's counsel and assured the defense that the NPA would not be "made public or filed with the Court."

Although the USAO defended its actions by citing the 2005 Guidelines for the Department's position that CVRA rights do not attach until after a defendant is charged, the court was "not persuaded that the [G]uidelines were the basis for the Government's decision to withhold information about the NPA from the victims." The court found that the government's reliance on

386 The court did not resolve the factual question as to whether the victims were given adequate notice of Epstein's state court plea hearing.

the 2005 Guidelines was inconsistent with positions the USAO had taken in correspondence with Epstein's attorneys, in which the government acknowledged that "it had obligations to notify the victims." The court ordered the parties to submit additional briefs regarding the appropriate remedies. Accordingly, the petitioners requested multiple specific remedies, including rescission of the NPA; a written apology to all victims from the government; a meeting with Acosta, Villafaña, and her supervisors; access to government records, including grand jury materials; training for USAO employees; and monetary sanctions and attorneys' fees.[387]

Following Epstein's indictment on federal charges in New York and subsequent death while in custody, on September 16, 2019, the district judge presiding over the CVRA case denied the petitioners' motion for remedies and closed the case, stating that Epstein's death "rendered the most significant issue that was pending before the Court, namely, whether the Government's violation of Petitioners' rights under the CVRA invalidated the NPA, moot."[388] The court did not order the government to take corrective measures, but stated that it "fully expects the Government will honor its representation that it will provide training to its employees about the CVRA and the proper treatment of crime victims."[389] The court also denied the petitioners' request for attorneys' fees, finding that the government did not act in bad faith, because, "[a]lthough unsuccessful on the merits of the issue of whether there was a violation of the CVRA, the Government asserted legitimate and legally supportable positions throughout this litigation."

On September 30, 2019, Wild appealed the district court's rejection of the requested remedies, through a Petition for a Writ of Mandamus filed with the U.S. Court of Appeals for the Eleventh Circuit.[390] In its responsive brief, the government expressed sympathy for Wild and "regret[] [for] the manner in which it communicated with her in the past."[391] Nevertheless, the government argued that, "as a matter of law, the legal obligations under the CVRA do not attach prior to the government charging a case" and thus, "the CVRA was not triggered in SDFL because no criminal charges were brought."[392] The government conceded, however, that with regard to the New York prosecution in which Epstein had been indicted, "[p]etitioner and other Epstein

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387 *Doe*, Jane Doe 1 and Jane Doe 2's Submission on Proposed Remedies (May 23, 2019).

388 *Doe*, Opinion and Order (Sept. 16, 2019). Among other things, the court rejected the petitioners' contention that it did not address whether the government had violated the victims' CVRA right to be treated with fairness and to receive fair notice of the proceedings, noting that "[t]hese rights all flow from the right to confer and were encompassed in the Court's ruling finding a violation of the CVRA."

389 The Department's Office of Legal Programs provided a training entitled Crime Victims' Rights in the Federal System to the USAO on January 10, 2020.

390 *See In re Wild*, No. 19-13843, Petition for a Writ of Mandamus Pursuant to the Crime Victims' Rights Act, 18 U.S.C. § 3771(d)(3) (Sept. 30, 2019).

391 *Wild*, Brief of the United States of America in Response to Petition for Writ of Mandamus Under the Crime Victims Rights Act at 14 (Oct. 31, 2019). As previously noted, at this point, the litigation was being handled by the U.S. Attorney's Office for the Northern District of Georgia.

392 The government also noted that although the CVRA was amended in 2015 to include a victim's right to be notified in a timely manner of plea bargains and deferred prosecution agreements, "the amendment did not extend to non-prosecution agreements" which, unlike plea agreements and deferred prosecution agreements, do not require court involvement.

victims deserve to be treated with fairness and respect, and to be conferred with on the criminal case, not just because the CVRA requires it, but because it's the right thing to do." During oral argument on January 16, 2020, the government apologized for the USAO's treatment of Wild:

> The issue is whether or not the office was fully transparent with Ms. Wild about what it is that was going on with respect to the NPA, and they made a mistake in causing her to believe that the case was ongoing when in fact the NPA had been signed. The government should have communicated in a straightforward and transparent way with Ms. Wild, and for that, we are genuinely sorry.[393]

On April 14, 2020, a divided panel of the Court of Appeals for the Eleventh Circuit denied Wild's petition for a writ of mandamus, concluding that "the CVRA does not apply before the commencement of criminal proceedings—and thus, on the facts of this case, does not provide the petitioner here with any judicially enforceable rights."[394] The court conducted a thorough analysis of the language of the statute, the legislative history, and previous court decisions. The court distinguished *In re Dean* as "dictum" consisting of a "three-sentence discussion . . . devoid of any analysis of the CVRA's text, history, or structural underpinnings." The court noted that its interpretation of the CVRA was consistent with the Department's 2010 OLC opinion concerning victim standing under the CVRA and the Department's efforts in "implementing regulations." Finally, the court raised separation of powers concerns with Wild's (and the dissenting judge's) interpretation of victim standing under the CVRA, noting that such an interpretation would interfere with prosecutorial discretion.

Nevertheless, the court was highly critical of the government's conduct in the underlying case, stating that the government "[s]eemingly . . . defer[red] to Epstein's lawyers" regarding information it provided victims about the NPA and that its "efforts seem to have graduated from passive nondisclosure to (or at least close to) active misrepresentation." The court concluded that although it "seems obvious" that the government "should have consulted with petitioner (and other victims) before negotiating and executing Epstein's NPA," the court could not conclude that the government was obligated to do so. In addition, the dissenting judge filed a lengthy and strongly worded opinion asserting that the majority's statutory interpretation was "contorted" because the "plain and unambiguous text of the CVRA does not include [a] post-indictment temporal restriction."

On May 5, 2020, Wild filed a petition for rehearing *en banc*. On August 7, 2020, the court granted the petition for rehearing *en banc* and vacated the panel's opinion; as of the date of this Report, a briefing schedule has been issued and oral argument is set for December 3, 2020.

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393 Audio recording of Oral Argument, *Wild*, No. 19-13843 (Jan. 16, 2020).

394 *In re Wild*, 955 F.3d 1196, 1220 (11th Cir. 2020).

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CHAPTER THREE

PART TWO: APPLICABLE STANDARDS

I. STATUTORY PROVISIONS

Pertinent sections of the CVRA and the VRRA, applicable during the relevant time period, are set forth below.

A. The CVRA, 18 U.S.C. § 3771

(a) Rights of Crime Victims. —A crime victim has the following rights:

(1) The right to be reasonably protected from the accused.
(2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
(3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
(4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
(5) The reasonable right to confer with the attorney for the Government in the case.
(6) The right to full and timely restitution as provided in law.
(7) The right to proceedings free from unreasonable delay.
(8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

. . . .

(c) Best Efforts To Accord Rights.—

(1) Government.—Officers and employees of the Department of Justice . . . shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).

. . . .

(e) Definitions.

. . . .

(2) Crime victim.—

(A) In general. —The term "crime victim" means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.

B. The Victims' Rights and Restitution Act of 1990 (VRRA), 34 U.S.C. § 20141, Services to Victims (formerly cited as 42 USCA § 10607)

(b) Identification of victims

At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall—

(1) identify the victim or victims of a crime;
(2) inform the victims of their right to receive, on request, the services described in subsection (c); and
(3) inform each victim of the name, title, and business address and telephone number of the responsible official to whom the victim should address a request for each of the services described in subsection (c).

(c) Description of services

(1) A responsible official shall—

(A) inform a victim of the place where the victim may receive emergency medical and social services;
(B) inform a victim of any restitution or other relief to which the victim may be entitled under this or any other law and manner in which such relief may be obtained;
(C) inform a victim of public and private programs that are available to provide counseling, treatment, and other support to the victim; and
(D) assist a victim in contacting the persons who are responsible for providing the services and relief described in subparagraphs (A), (B), and (C).

(2) A responsible official shall arrange for a victim to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender.

(3) During the investigation and prosecution of a crime, a responsible official shall provide a victim the earliest possible notice of—

(A) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;
(B) the arrest of a suspected offender;
(C) the filing of charges against a suspected offender;
(D) the scheduling of each court proceeding that the witness is either required to attend or, under section 10606(b)(4) of Title 42, is entitled to attend;
(E) the release or detention status of an offender or suspected offender;
(F) the acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial; and
(G) the sentence imposed on an offender, including the date on which the offender will be eligible for parole.

(4) During court proceedings, a responsible official shall ensure that a victim is provided a waiting area removed from and out of the sight and hearing of the defendant and defense witnesses.

. . . .

(e) Definitions

. . . .

(2) the term "victim" means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime . . . .

II. DEPARTMENT POLICY: THE 2005 ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE (2005 GUIDELINES)

In 2005, the Department revised its guidelines for victim and witness assistance in order to incorporate the provisions of the CVRA. The purpose of the 2005 Guidelines was "to establish guidelines to be followed by officers and employees of Department of Justice investigative, prosecutorial, and correctional components in the treatment of victims of and witnesses to crime." The relevant portions of the 2005 Guidelines are as follows:

Article IV: Services to Victims and Witnesses

A. Investigation Stage

The investigative agency's responsibilities begin with the report of the crime and extend through the prosecution of the case. In some instances, when explicitly stated, the investigative agency's responsibility for a certain task is transferred to the prosecuting agency when charges are filed.

. . . .

2. Identification of Victims. At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, the responsible official of the investigative agency shall identify the victims of the crime.

3. Description of Services.

a. Information, Notice, and Referral

(1) Initial Information and Notice. Responsible officials must advise a victim pursuant to this section at the earliest opportunity after detection of a crime at which it may be done without interfering with an investigation. To comply with this requirement, it is recommended that victims be given a printed brochure or card that briefly describes their rights and the available services, identifies the local

service providers, and lists the names and telephone numbers of the victim-witness coordinator or specialist and other key officials. A victim must be informed of—

(a) His or her rights as enumerated in 18 U.S.C. § 3771(a).

(b) His or her right entitlement, on request, to the services listed in 42 U.S.C. § 10607(c).

(c) The name, title, business address, and telephone number of the responsible official to whom such a request for services should be addressed.

(d) The place where the victim may receive emergency medical or social services.

(e) The availability of any restitution or other relief (including crime victim compensation programs) to which the victim may be entitled under this or any other applicable law and the manner in which such relief may be obtained.

(f) Public and private programs that are available to provide counseling, treatment, and other support to the victim.

. . . .

(i) The availability of services for victims of domestic violence, sexual assault, or stalking.

(j) The option of being included in VNS.

(k) Available protections from intimidation and harassment.

. . . .

(3) Notice during the investigation. During the investigation of a crime, a responsible official shall provide the victim with the earliest possible notice concerning—

(a) The status of the investigation of the crime, to the extent that it is appropriate and will not interfere with the investigation.

(b) The arrest of a suspected offender.

B. Prosecution Stage

The prosecution stage begins when charges are filed and continues through postsentencing legal proceedings, including appeals and collateral attacks.

1. Responsible Officials. For cases in which charges have been instituted, the responsible official is the U.S. Attorney in whose district the prosecution is pending.

2. Services to Crime Victims

. . . .

b. Information, Notice, and Referrals

(1) Notice of Rights. Officers and employees of the Department of Justice shall make their best efforts to see that crime victims are notified of the rights enumerated in 18 U.S.C. § 3771(a).

(2) Notice of Right To Seek Counsel. The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in 18 U.S.C. § 3771(a).

(3) Notice of Right To Attend Trial. The responsible official should inform the crime victim about the victim's right to attend the trial regardless of whether the victim intends to make a statement or present any information about the effect of the crime on the victim during sentencing.

(4) Notice of Case Events. During the prosecution of a crime, a responsible official shall provide the victim, using VNS (where appropriate), with reasonable notice of—

(a) The filing of charges against a suspected offender.

(b) The release or escape of an offender or suspected offender.

(c) The schedule of court proceedings.

(i) The responsible official shall provide the victim with reasonable, accurate, and timely notice of any public court proceeding or parole proceeding that involves the crime against the victim. In the event of an emergency or other last-minute hearing or change in the time or date of a hearing, the responsible official should consider providing notice by telephone or expedited means. This notification requirement relates to postsentencing proceedings as well.

(ii) The responsible official shall also give reasonable notice of the scheduling or rescheduling of any other court proceeding that the victim or witness is required or entitled to attend.

(d) The acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial.

(e) If the offender is convicted, the sentence and conditions of supervised release, if any, that are imposed.

. . . .

(6) Referrals. Once charges are filed, the responsible official shall assist the victim in contacting the persons or offices responsible for providing the services and relief [previously identified].

c. Consultation With a Government Attorney

(1) In General. A victim has the reasonable right to confer with the attorney for the Government in the case. The victim's right to confer, however, shall not be construed to impair prosecutorial discretion. Federal prosecutors should be available to consult with victims about major case decisions, such as dismissals, release of the accused pending judicial proceedings (when such release is for noninvestigative purposes), plea negotiations, and pretrial diversion. Because victims are not clients, may become adverse to the Government, and may disclose whatever they have learned from consulting with prosecutors, such consultations may be limited to gathering information from victims and conveying only nonsensitive data and public information. Consultations should comply with the prosecutor's obligations under applicable rules of professional conduct.

Representatives of the Department should take care to inform victims that neither the Department's advocacy for victims nor any other effort that the Department may make on their behalf constitutes or creates an attorney-client relationship between such victims and the lawyers for the Government.

Department personnel should not provide legal advice to victims.

(2) Prosecutor Availability. Prosecutors should be reasonably available to consult with victims regarding significant adversities they may suffer as a result of delays in the prosecution of the case and should, at the appropriate time, inform the court of the reasonable concerns that have been conveyed to the prosecutor.

(3) Proposed Plea Agreements. Responsible officials should make reasonable efforts to notify identified victims of, and consider victims' views about, prospective plea negotiations. In determining what is reasonable, the responsible official should consider factors relevant to the wisdom and practicality of giving notice and considering views in the context of the particular case, including, but not limited to, the following factors:

(a) The impact on public safety and risks to personal safety.
(b) The number of victims.
(c) Whether time is of the essence in negotiating or entering a proposed plea.

(d) Whether the proposed plea involves confidential information or conditions.
(e) Whether there is another need for confidentiality.
(f) Whether the victim is a possible witness in the case and the effect that relaying any information may have on the defendant's right to a fair trial.

III. FLORIDA RULES OF PROFESSIONAL CONDUCT

A. FRPC 4-4.1 – Candor in Dealing with Others

FRPC 4-4.1 prohibits a lawyer from knowingly making a false statement of material fact or law to a third person during the course of representation of a client. A comment to this rule explains that "[m]isrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements," and "[w]hether a particular statement should be regarded as one of fact can depend on the circumstances."

B. FRPC 4-8.4 – Conduct Prejudicial to the Administration of Justice

FRPC 4-8.4(c) states that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

FRPC 4-8.4(d) prohibits a lawyer from engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice.

As previously noted, courts have determined that FRPC 4-8.4(d) is not limited to conduct that occurs in a judicial proceeding, but can be applied to "conduct in connection with the practice of law." *Frederick*, 756 So. 2d at 87; *see also Shankman*, 41 So. 3d at 172.

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CHAPTER THREE

PART THREE: ANALYSIS

I. OVERVIEW

In addition to criticism of Acosta's decision to end the federal investigation by means of the NPA, public and media attention also focused on the government's treatment of victims. In the CVRA litigation and in more recent media reports, victims complained that they were not informed about the government's intention to end its investigation of Epstein because the government did not consult with victims before the NPA was signed; did not inform them of Epstein's state plea hearing and sentencing, thereby denying them the opportunity to attend; and actively misled them through statements that the federal investigation was ongoing. The district court overseeing the CVRA litigation concluded that the government violated the Crime Victims' Rights Act and "misl[ed] the victims to believe that federal prosecution was still a possibility" and that "[i]t was a material omission for the Government to suggest to the victims that they have patience relative to an investigation about which it had already bound itself not to prosecute."[395] The government's conduct, which involved both FBI and USAO actions, led to allegations that the prosecutors had purposefully failed to inform victims of the NPA to prevent victims from complaining publicly or in state court.

OPR examined the government's course of conduct when interacting with the victims, including the lack of consultation with the victims before the NPA was signed; Acosta's decision to defer to state authorities the decision to notify victims of Epstein's state plea; and the decision to delay informing victims about the NPA until after Epstein entered his plea on June 30, 2008. OPR considered whether letters sent to victims by the FBI after the NPA was signed contained false or misleading statements. OPR also evaluated representations Villafaña made to victims in January and February 2008, and to an attorney for a victim in June 2008.

II. THE SUBJECTS DID NOT VIOLATE A CLEAR AND UNAMBIGUOUS STANDARD BY ENTERING INTO THE NPA WITHOUT CONSULTING THE VICTIMS

During the CVRA litigation, the government acknowledged that the USAO did not consult with victims about the government's intention to enter into the NPA. In its February 21, 2019 opinion, the district court concluded that "once the Government failed to advise the victims about its intention to enter into the NPA, a violation of the CVRA occurred." OPR considered this finding as part of its investigation into the USAO's handling of the Epstein case, and examined whether, before the NPA was signed on September 24, 2007, federal prosecutors were obligated to consult with victims under the CVRA, and if so, whether any of the subject attorneys—Acosta, Sloman, Menchel, Lourie, or Villafaña—intentionally violated or recklessly disregarded that obligation.

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395 *Doe v. United States,* 359 F. Supp. 3d 1201, 1219, 1221 (S.D. Fla. Feb. 21, 2019).

As discussed below, OPR concludes that none of the subject attorneys violated a clear and unambiguous duty under the CVRA because the USAO resolved the Epstein investigation without a federal criminal charge. In September 2007, when the NPA was signed, the Department did not interpret CVRA rights to attach unless and until federal charges had been filed, and the federal courts had not established a clear and unambiguous standard applying the CVRA before criminal charges were brought. Pursuant to OPR's established analytical framework, OPR does not find professional misconduct unless a subject attorney intentionally or recklessly violated a clear and unambiguous standard. Accordingly, OPR finds that the subject attorneys' conduct did not rise to the level of professional misconduct. OPR nevertheless concludes that the lack of consultation was part of a series of government interactions with victims that ultimately led to public and court condemnation of the government's treatment of the victims, reflected poorly on the Department as a whole, and is contradictory to the Department's mission to "minimize the frustration and confusion that victims of a crime endure in its wake."[396]

A. At the Time, No Clear and Unambiguous Standard Required the USAO to Notify Victims Regarding Case-Related Events until after the Filing of Criminal Charges

Although the rights enumerated in the CVRA are clear on their face, the threshold issue of whether an individual qualifies as a victim to whom CVRA rights attach was neither clear nor unambiguous at the time the USAO entered into the NPA with Epstein in September 2007. At that time, the Department interpreted the CVRA in a way that differed markedly from the district court's later interpretation in the CVRA litigation.

The CVRA defines a "crime victim" as "a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia." On April 1, 2005, soon after the CVRA was enacted, OLC concluded that "the status of a 'crime victim' may be reasonably understood to commence upon the filing of a criminal complaint, and that the status ends if there is a subsequent decision not to indict or prosecute the Federal offense that directly caused the victim's harm." Beginning with the 2005 OLC guidance, the Department has consistently taken the position that CVRA rights do not apply until the initiation of criminal charges against a defendant, whether by complaint, indictment, or information. OLC applied its definition to all eight CVRA rights in effect in 2005, but noted that the obligation created by the eighth CVRA right—to "treat[] victims with fairness and respect"—is "always expected of Federal officials, and the Victims' Rights and Restitution Act of 1990 [(VRRA)] indicates that this right applies 'throughout the criminal justice process.'"[397] Consistent with the OLC interpretation, in May 2005, the Department issued the 2005 Guidelines to implement the CVRA.

The 2005 Guidelines assigned CVRA-related obligations to prosecutors only after the initiation of federal charges. Specifically, the 2005 Guidelines stated that during the "prosecution stage," the "responsible official" should make reasonable efforts to notify identified victims of,

396 2005 Guidelines, Foreword.

397 Nevertheless, the portion of the VRRA referenced in the OLC 2005 Informal Guidance, 42 U.S.C. § 10606, had been repealed upon passage of the CVRA.

and consider victims' views about, prospective plea negotiations.[398] The "prosecution stage" began when charges were filed and continued through all post-sentencing legal proceedings.[399]

At the time the parties signed the NPA in September 2007, few courts had addressed victim standing under the CVRA. Notably, district courts in New York and South Carolina had ruled that standing attached only upon the filing of federal charges.[400] Two cases relied upon by the court in its February 2019 opinion—*Dean* and its underlying district court opinion, *BP Products*—were decided after the NPA was signed.

The CVRA litigation and proposed federal legislation—both pending as of the date of this Report—show that the interpretation of victim standing under the CVRA continues to be a matter of debate.[401] In a November 21, 2019 letter to Attorney General William Barr, a Congressional Representative stated that she had recently introduced legislation specifically to "[c]larify that victims of federal crimes have the right to confer with the Government and be informed about key pre-charging developments in a case, such as . . . non-prosecution agreements."[402] The CVRA litigation arising from the Epstein case shows the lack of clarity regarding when CVRA rights apply: the district court concluded that CVRA rights applied pre-charge, but a sharply divided panel of the Eleventh Circuit Court of Appeals came to a contrary conclusion, a decision that has now been vacated while the entire court hears the case *en banc*.

Because the Supreme Court had not addressed the issue of when CVRA rights apply, the lower courts had reached divergent conclusions, and the Department had concluded that CVRA rights did not apply pre-charge, OPR concludes that the subjects' failure to consult with victims before signing the NPA did not constitute professional misconduct because at that time, the CVRA did not clearly and unambiguously require prosecutors to consult with victims before the filing of federal criminal charges.[403]

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398 2005 Guidelines, Art. IV, ¶ B.2.c.(3). Under the 2005 Guidelines, the term "should" means that "the employee is expected to take the action or provide the service described unless there is an appropriate, articulable reason not to do so." *Id*., Art. II, ¶ C.

399 *Id.*, Art. IV, ¶ B.1.

400 *Searcy v. Paletz*, 2007 WL 1875802, at *5 (D.S.C. June 27, 2007) (an inmate is not considered a crime victim for purposes of the CVRA until the government has filed criminal charges); *United States v. Turner*, 367 F. Supp. 2d 319, 326-27 (E.D.N.Y. 2005) (victims are not entitled to CVRA rights until the government has filed charges, but courts have discretion to take a more inclusive approach); and *United States v. Guevara-Toloso,* 2005 WL 1210982, at *2 (E.D.N.Y. May 23, 2005) (order *sua sponte*) (in case involving a federal charge of illegal entry after a felony conviction, the court determined that victims of the predicate state conviction were not victims under the CVRA).

401 *See Wild*, 955 F.3d at 1220; Courtney Wild Crime Victims' Rights Reform Act of 2019, H.R. 4729, 116th Cong. (2019).

402 165 Cong. Rec. E1495-01 (2019).

403 Violations of an unambiguous obligation concerning victims' rights could result in a violation of the rules of professional responsibility. For example, in *Attorney Griev. Comm'n of Md. v. Smith*, 109 A.3d 1184 (Md. 2015), the Court of Appeals of Maryland concluded that a prosecutor's failure to provide any notice to the minor victim's foster family about the resolution of a sex abuse case during the ten months the prosecutor was responsible for the matter was a "consistent failure" amounting to "gross negligence in the discharge of the prosecutorial function" that deprived the victim of his rights under the Maryland Constitution. The court found violations of Maryland Rules of Professional

In *Wild*, the Eleventh Circuit panel compared the language of the CVRA to the language of the VRRA, noting that the VRRA "clearly extends victim-notice rights into the pre-charge phase" and opining that the government "may well have violated" the VRRA with regards to its investigation of Epstein. As a predecessor to the CVRA, the VRRA afforded victims various rights and services; however, it provided no mechanism for a victim to assert such rights in federal court or by administrative complaint. Like the CVRA, the rights portion of the VRRA established the victims' right to be treated with fairness and respect and the right to confer with an attorney for the government. However, the rights portion of the VRRA was repealed upon passage of the CVRA and was not in effect at the time of the Epstein investigation.

The portion of the VRRA directing federal law enforcement agencies to provide certain victim services such as counseling and medical care referrals remained in effect following passage of the CVRA. Furthermore, two of the VRRA requirements—one requiring a responsible official to "inform a victim of any restitution or other relief to which the victim may be entitled," and another requiring that a responsible official "shall provide a victim the earliest possible notice of the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation"—may have applied to the Epstein investigation. However, the VRRA did not create a clear and unambiguous obligation on the part of the subject attorneys, as the 2005 Guidelines assigned the duty of enforcing the two requirements to the investigative agency rather than to prosecutors. Moreover, the VRRA did not require notice to victims before the NPA was signed because, at that point, the case remained "under investigation," and the victims did not become entitled to pursue monetary damages under the NPA until Epstein entered his guilty pleas in June 2008. Once Epstein did so, and the victims identified by the USAO became entitled to pursue the § 2255 remedy, the USAO furnished the victims with appropriate notification.

B. OPR Did Not Find Evidence Establishing That the Lack of Consultation Was Intended to Silence Victims

During her OPR interviews, Villafaña recalled more than one discussion in which she raised with her supervisors the issue of consulting with the victims before the NPA was signed on September 24, 2007. Acosta, Sloman, Menchel, and Lourie, however, had no recollection of discussions about consulting victims before the NPA was signed, and Menchel disputed Villafaña's assertions. OPR found only one written reference before that date, explicitly raising the issue of consultation. Given the absence of contemporaneous records, OPR was unable to conclusively determine whether the lack of consultation stemmed from an affirmative decision made by one or more of the subjects or whether the subjects discussed consulting the victims about the NPA before it was signed. Villafaña's recollection suggests that Acosta, Menchel, and Sloman may have been concerned with maintaining the confidentiality of plea negotiations and did not believe that the government was obligated to consult with victims about such negotiations. OPR

Conduct 1.3, lack of diligence, and 8.4(d), conduct prejudicial to the administration of justice. The holding in *Smith* was based on Article 47 of the Maryland Constitution and various specific statutes affording victims the right, among others, to receive various notices and an opportunity to be heard concerning "a case originating by indictment or information filed in a circuit court." However, both the underlying statutory provisions and, significantly, the facts are substantially different from the Epstein investigation. In *Smith*, the criminal defendant had been arrested and charged before entering a plea.

did not find evidence showing that the subjects intended to silence victims or to prevent them from having input into the USAO's intent to resolve the federal investigation.

Although the contemporaneous records provide some information about victim notification decisions made after the NPA was signed on September 24, 2007, the records contain little about the subjects' views regarding consultation with victims before the NPA was signed. In a September 6, 2007 email primarily addressing other topics, as the plea negotiations were beginning in earnest and almost three weeks before the NPA was signed, Villafaña raised the topic of victim consultation with Sloman: "The agents and I have not reached out to the victims to get their approval, which as [CEOS Chief Oosterbaan] politely reminded me, is required under the law. . . . [A]nd the [PBPD] Chief wanted to know if the victims had been consulted about the deal."[404] Sloman forwarded the email to Acosta with a note stating, "fyi." Villafaña recalled that after she sent the email, Sloman told her by telephone, "[Y]ou can't do that now."[405] Villafaña also told OPR that shortly before the NPA was signed, Sloman told her, "[W]e've been advised that . . . pre-charge resolutions do not require victim notification." Villafaña also recalled a discussion with Acosta, Menchel, and Sloman, during which she stated that she would need to get victims' input on the terms being proposed to the defense, and she was told, "Plea negotiations are confidential. You can't disclose them."[406]

None of the other subjects recalled a specific discussion before the NPA was signed about the USAO's CVRA obligations. Menchel told OPR he believed the USAO was not required to consult with victims during the preliminary "general discussion" phase of settlement negotiations; moreover, he left the USAO before the terms of the NPA were fully developed.

Sloman told OPR that he "did not think that we had to consult with victims prior to entering into the NPA" and "we did not have to seek approval from victims to resolve a case." Sloman believed the USAO was obligated only to notify victims about resolution of "the cases that we handled, filed cases." Sloman recalled that because the USAO envisioned a state court resolution of the matter, he did not "think that that was a concern of ours at the time to consult with [the victims] prior to entering into . . . the NPA."

Lourie told OPR that he did not recall any discussions about informing the victims about the terms of the NPA or any instructions to Villafaña that she not discuss the NPA with the victims. He stated that everything the USAO did was "to try and get the best result as possible for the victims. . . . [O]nce you step back and look at the whole forest . . ., you will see that. . . . [I]f you look at each tree and say, well, you didn't do this right for the victim, you didn't tell the victim this and that, you're missing the big picture."

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404 As noted, the Department's position at the time was that the CVRA did not require consultation with victims because no criminal charges had been filed. In addition, Villafaña's reference to victim "approval" was inaccurate because the CVRA, even when applicable, requires only "consultation" with victims about prosecutorial decisions.

405 Villafaña did not recall Sloman explaining the reason for the decision.

406 Villafaña also told OPR that she recalled Menchel raising a concern that "telling them about the negotiations could cause victims to exaggerate their stories because of their desire to obtain damages from Epstein." Villafaña was uncertain of the date of the conversation, but Menchel's presence requires it to have occurred before August 3, 2007.

Acosta told OPR that there was no requirement to notify the victims because the NPA was "not a plea, it's deferring in favor of a state prosecution." Acosta said, "[W]hether or not victims' views were elicited is something I think was the focus of the trial team and not something that I was focused on at least at this time." Acosta could not recall any particular concern that factored into the decision not to consult with the victims before entering into the NPA, but he acknowledged to OPR, "[C]learly, given the way it's played out, it may have been much better if we had [consulted with the victims]."[407]

As indicated, the contemporaneous records reflect little about decisions made regarding victim consultation prior to when the NPA was signed. Villafaña raised the issue in writing to her supervisors in early September, but there is no evidence showing whether her supervisors affirmatively rejected Villafaña's contention that the USAO was obligated to consult with victims, ignored the suggestion, or failed to address it for other reasons, possibly because of the extended uncertainty as to whether Epstein would ever agree to the government's plea proposal. OPR notes that its subject interviews were conducted more than a decade after the NPA was signed, and the passage of time affected the recall of each individual OPR interviewed. Although Villafaña recalled discussions with her supervisors about notifying victims, her supervisors did not, and Menchel contended that Villafaña's recollection is inaccurate. Assuming the discussions occurred, the timing is unclear. Sloman was on vacation before the NPA was signed, so a call with Villafaña about victim notification at that point in time appears unlikely. Any discussion involving Menchel necessarily occurred before August 3, 2007, when it was unclear whether the defense would agree to the government's offer. Supervisors could well have decided that at such an early stage, there was little to discuss with victims.

To the extent that Villafaña's supervisors affirmatively made a decision not to consult victims, Villafaña's recollection suggests that the decision arose from supervisors' concerns about the confidentiality of plea negotiations and a belief that the government was not obligated to consult with victims about a pre-charge disposition. That belief accurately reflected the Department's position at the time about application of the CVRA. Importantly, OPR did not find evidence establishing that the lack of consultation was for the purpose of silencing victims, and Villafaña told OPR that she did not hear any supervisor express concerns about victims objecting to the agreement if they learned of it. Because the subjects did not violate any clear and unambiguous standard in the CVRA by failing to consult with the victims about the NPA, OPR concludes that they did not engage in professional misconduct.

However, OPR includes the lack of consultation in its criticism of a series of government interactions with victims that ultimately led to public and court condemnation of the government's treatment of the victims. Although the government was not obligated to consult with victims, a more straightforward and open approach would have been consistent with the government's goal to treat victims of crime with fairness and respect. This was particularly important in a case in which victims felt excluded and mistreated by the state process. Furthermore, in this case, consulting with the victims about a potential plea would have given the USAO greater insight into the victims' willingness to support a prosecution of Epstein. The consultation provision does not

[407] Villafaña told OPR that she was not aware of any "improper pressure or promise made to [Acosta] in order to . . . instruct [her] not to make disclosures to the victim[s]."

require victim approval of the prosecutors' plans, but it allows victims the opportunity to express their views and to be heard before a final decision is made. The lack of consultation in this case denied the victims that opportunity.[408]

III. LETTERS SENT TO VICTIMS BY THE FBI WERE NOT FALSE STATEMENTS BUT RISKED MISLEADING VICTIMS ABOUT THE STATUS OF THE FEDERAL INVESTIGATION

After the NPA was signed on September 24, 2007, Villafaña and the FBI separately communicated with numerous victims and victims' attorneys, both in person and through letters. Apart from three victims who likely were informed in October or November 2007 about a resolution ending the federal investigation, victims were not informed about the NPA or even more generally that the USAO had agreed to end its federal criminal investigation of Epstein if he pled guilty to state charges until after Epstein entered his guilty plea in June 2008. Despite the government's agreement on September 24, 2007, to end its federal investigation upon Epstein's compliance with the terms of the NPA, the FBI sent to victims in October 2007, January 2008, and May 2008, letters stating that the case was "currently under investigation." In its February 21, 2019 opinion in the CVRA case, the district court found those letters "misl[ed] the victims to believe that federal prosecution was still a possibility" and that "[i]t was a material omission for the Government to suggest to the victims that they have patience relative to an investigation about which it had already bound itself not to prosecute."[409]

In the discussions throughout this section, OPR examines the government's course of conduct with victims after the NPA was signed. As set forth in the previous subsection, OPR did not find evidence supporting a finding that Acosta, Sloman, or Villafaña acted with the intent to silence victims. Nonetheless, after examining the full scope and context of the government's interactions with victims, OPR concludes that the government's inconsistent messages concerning the federal investigation led to victims feeling confused and ill-treated by the government.

In this section, OPR examines and discusses letters sent to victims by the FBI that were the subject of the district court's findings. OPR found no evidence that Acosta, Sloman, or Villafaña was aware of the content of the letters until the USAO received them from the FBI for production for the CVRA litigation. OPR determined that the January 10, 2008 and May 30, 2008 letters that the district court determined to be misleading, as well as the October 12, 2007 letter OPR located during its investigation, were "standard form letter[s]" sent by the FBI's Victim Specialist. As noted previously in this Report, after the NPA was signed, Villafaña and the FBI agents continued to conduct their investigation in anticipation that Epstein would breach the NPA; absent such a

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408 Villafaña told OPR that she recalled speaking to several victims along with FBI agents before the NPA was signed and "ask[ing] them how they wanted the case to be resolved." FBI interview reports indicate that Villafaña was present with FBI agents for some of the interviews occurring well in advance of the NPA negotiations. *See* 2005 Guidelines, Art. IV, ¶ B.2.c (1) (consultations may be limited to gathering information from victims and conveying only nonsensitive data and public information). However, Villafaña did not meet with all of the victims identified in the federal investigation, including the CVRA litigation petitioners, and the government conceded during the CVRA litigation that it entered into the NPA without conferring with the petitioners. *Doe,* 359 F. Supp. 3d at 1218.

409 *Doe,* 359 F. Supp. 3d at 1219, 1221.

breach, however, Epstein would enter his state guilty plea and the federal investigation would end. Thus, the statement that the case was "currently under investigation" was literally true, but the omission of important contextual information about the existence of the NPA deprived the victims of important information about the exact status of the investigation.

A. The USAO Was Not Responsible for Victim Notification Letters Sent by the FBI in October 2007, January 2008, and May 2008 Describing the Status of the Case as "Under Investigation"

The 2005 Guidelines charged the FBI with informing the victims of CVRA rights and available services during the "investigative stage" of a case. During the Epstein investigation, the FBI case agents complied with the agency's notification obligation by hand delivering pamphlets to victims following their interviews and through computer-generated letters sent to the victims by the FBI's Victim Specialist. The FBI's notification process is independent of the USAO's. The USAO has its own Victim Witness Specialist who assumes the responsibility for victim notification after an indictment or complaint moved the case into the "prosecution stage."

The FBI's Victim Specialist used the VNS to prepare the October 2007, January 2008, and May 2008 letters, a system the FBI regularly employs to comply with its obligations under the 2005 Guidelines to inform the victims of their rights and other services during the "investigative stage." The stock language of that letter, however, was generic and failed to communicate the unique case-specific status of the Epstein investigation at that time. The FBI Victim Specialist who sent the letters acted at the case agent's direction and was not aware of the existence of the NPA at the time she created the letters.[410] Neither FBI case agent reviewed any of the letters sent by the FBI's Victim Specialist.[411] According to Villafaña, "The decision to issue the letters and the wording of those letters were exclusively FBI decisions." Although the FBI case agents informed Villafaña after the fact that the FBI's Victim Specialist sent her "standard form letter," Villafaña had never reviewed an FBI-generated victim notification letter and was not aware of its contents.[412] Villafaña told OPR she was unaware of the content of the FBI letters until they were collected for the CVRA litigation, sometime after July 2008.

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410 The case agent told OPR that she did not recall specifically directing the Victim Specialist to send a letter, but acknowledged that "she would come to us before she would approach a victim."

411 The case agent told OPR that she had no role in drafting the letters and believed them to be "standard form letters." Similarly, the co-case agent told OPR, "I can't think that I've ever reviewed any of them . . . they just go from the victim coordinator."

412 Villafaña's lack of familiarity with the language in the FBI letters led to some inconsistency in the information provided to victims concerning their CVRA rights. Beginning in 2006, the FBI provided to victims standard letters advising victims of their CVRA rights but which also noted that only some of the rights applied pre-charge. During this period, Villafaña also crafted her own introductory letters to the victims to let them know of their CVRA rights and that the federal investigation "would be a different process" from the prior state investigation in which "the victims felt they had not been particularly well-treated by the State Attorney's Office." Villafaña told OPR that in a case in which she "need[ed] to be talking to young girls frequently and asking them really intimate questions," she wanted to "make sure that they . . . feel like they can trust me." Villafaña's letter itemized the CVRA rights, but it did not explain that those rights attached only after a formal charge had been made. The letter was hand

B. Because the Federal Investigation Continued after the NPA Was Signed, the FBI Letters Were Accurate but Risked Misleading Victims regarding the Status of the Federal Investigation

As described previously, given Epstein's appeal to the Department and continued delay entering his guilty plea, Villafaña and other subjects came to believe that Epstein did not intend to comply with the NPA and that the USAO would ultimately file charges against Epstein. By April 2008, Acosta predicted in an email that charging Epstein was "more and more likely." As a result, Villafaña and the case agents continued their efforts to prepare for a likely trial with additional investigative steps. Among other actions, Villafaña, her supervisors, CEOS, and the case agents engaged in the following investigative activities:

- The FBI interviewed victims in October and November 2007 and between January and May 2008, and discovered at least six new victims.
- In January 2008, CEOS assigned a Trial Attorney to bring expertise and "a national perspective" to the matter.
- In January and February 2008, Villafaña and the CEOS Trial Attorney participated in victim interviews.
- Villafaña revised the prosecution memorandum to focus "on victims who are unknown to Epstein's counsel."
- The USAO informed the Department's Civil Rights Division "pursuant to USAM [§] 8-3.120," of the USAO's "ongoing investigation of a child exploitation matter" involving Epstein and others.
- Villafaña secured *pro bono* legal representation for victims whose depositions were being sought by Epstein's attorneys in connection with the Florida criminal case.[413]
- Villafaña prepared a revised draft indictment.
- Villafaña sought and obtained approval to provide immunity to a potential government witness in exchange for that witness's testimony.
- Even after Epstein's state plea hearing was set for June 30, 2008, Villafaña took steps to facilitate the filing of federal charges on July 1, 2008, in the event he did not plead guilty.

Villafaña told OPR that from her perspective, the assertion in the FBI victim letter that the case was "currently under investigation" was "absolutely true." Similarly, the FBI case agent told OPR that at the time the letters were sent the "case was never closed and the investigation was

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delivered, along with the FBI's own victim's rights pamphlet and notification letter, to victims following their FBI interviews.

[413] According to the 2017 affidavit filed by Wild's CVRA-case attorney, Edwards, the *pro bono* counsel that Villafaña secured assisted Wild in "avoiding the improper deposition."

continuing." The co-case agent also told OPR that, as of the time of his OPR interview in 2019, the "the case was open . . . it's never been shut down."

OPR found no evidence that the FBI's victim letters were drafted with the intent to mislead the victims about the status of the federal investigation. The "ongoing investigation" language generated by the VNS was generic template language in use nationwide at the time and identical to that contained in standard form notification letters the FBI generated and distributed from August 2006 through the 2007 signing of the NPA.[414] Nevertheless, the FBI's letters omitted important information about the status of the case because they failed to notify the victims that a federal prosecution would go forward *only if* Epstein failed to fulfill his obligations under an agreement he had reached with the USAO. Victims receiving the FBI's letter would logically conclude that the federal government was continuing to gather evidence to support a federal prosecution. CVRA petitioner Wild stated during the CVRA litigation that her "understanding of this letter was that [her] case was still being investigated and the FBI and prosecutors were moving forward on the Federal prosecution of Epstein for his crimes against" her. Furthermore, when the fact that the USAO had agreed to end its federal investigation in September 2007 eventually came to light, the statement in the subsequent letters contributed to victims' and the public's conclusions that the government had purposefully kept victims in the dark.

In sum, OPR concludes that the statement in the FBI victim letters that the matter was "currently under investigation" was not false because the USAO and the FBI did continue to investigate and prepare for a prosecution of Epstein. The letters, however, risked misleading the victims, and contributed to victim frustration and confusion, because the letters did not provide important information that would have advised victims of the actual status of the investigation. Nonetheless, OPR found no evidence that Villafaña or her supervisors participated in drafting those letters or were aware of the content of the FBI's letters until the Department gathered them for production in the CVRA litigation. The use of FBI form letters that gave incomplete information about the status of the investigation demonstrated a lack of coordination between the federal agencies responsible for communicating with Epstein's victims and showed a lack of attention to and oversight regarding communication with victims. Despite the fact that the case was no longer on the typical path for resolving federal investigations, form letters continued to be sent without any review by prosecutors or the case agents to determine whether the information provided to the victims was appropriate under the circumstances.[415]

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414 The Department of Justice Inspector General's Audit Report of the Department's Victim Notification System indicates that letters the FBI system generated in 2006 contained stock language for the notification events of "Initial (Investigative Agency)" and "Under Investigation" and letters generated in 2008 contained stock language for the notification events of "Advice of Victims Rights (Investigative)" and "Under Investigation."

415 After Epstein entered his guilty pleas, the FBI sent a similar form letter requesting "assistance and cooperation while we are investigating the case" to the two victims living outside the United States.

IV. ACOSTA'S DECISION TO DEFER TO THE STATE ATTORNEY'S DISCRETION WHETHER TO NOTIFY VICTIMS ABOUT EPSTEIN'S STATE COURT PLEA HEARING DID NOT VIOLATE A CLEAR OR UNAMBIGUOUS STANDARD; HOWEVER, ACOSTA EXERCISED POOR JUDGMENT BY FAILING TO ENSURE THAT VICTIMS IDENTIFIED IN THE FEDERAL INVESTIGATION WERE ADVISED OF THE STATE PLEA HEARING

As set forth in the factual discussion, within a few weeks of the NPA's signing, it became clear that the defense team disagreed with, and strongly objected to, the government's plan to inform victims of their ability to recover monetary damages from Epstein, under the 18 U.S.C. § 2255 provision of the NPA, and about Epstein's state court plea hearing. The USAO initially took the position that it was obligated to, and intended to, inform victims of both the NPA, including the § 2255 provision, and Epstein's change of plea hearing and sentencing, so that victims who wanted to attend could do so.

In November and December 2007, Epstein's attorneys challenged the USAO's position regarding victim notification. Ultimately, Acosta made two distinct decisions concerning victim notifications. Consistent with Acosta's concerns about intruding into state actions, Acosta elected to defer to state authorities the decision whether to notify victims about the state's plea hearing pursuant to the state's own victim's rights requirements. Acosta also determined that the USAO would notify victims about their eligibility to obtain monetary damages from Epstein under § 2255, a decision that was implemented by letters sent to victims after Epstein entered his state pleas. This decision, which postponed notification of the NPA until after Epstein entered his guilty pleas, was based, at least in part, on Villafaña's and the case agents' strategic concerns relating to preserving the victims' credibility and is discussed further in Section V, below.

In this section, OPR analyzes Acosta's decision to defer to the state the responsibility for notifying victims of Epstein's plea hearing and sentencing. OPR concludes that neither the CVRA nor the VRRA required the government to notify victims of the state proceeding and therefore Acosta did not violate any statutes or Department policy by deferring to the discretion of the State Attorney whether to notify victims of Epstein's state guilty pleas and sentencing. However, OPR also concludes that Acosta exercised poor judgment because by failing to ensure that the state intended to and would notify victims of the federal investigation, he failed to treat victims forthrightly and with the sensitivity expected by the Department. Through counsel, Acosta "strongly disagree[d]" with OPR's conclusion and argued that OPR unfairly applied a standard "never before expected of any U.S. Attorney." OPR addresses Acosta's criticisms in the discussion below.

A. Acosta's Decision to Defer to the State Attorney's Discretion Whether to Notify Victims about Epstein's State Court Plea Hearing Did Not Violate Any Clear or Unambiguous Standard

In November 2007, Villafaña sought to avoid defense accusations of misconduct concerning her interactions with the victims by preparing a written notice to victims informing them of the resolution of the federal case and of their eligibility for monetary damages, and inviting them to appear at the state plea hearing. Villafaña and Sloman exchanged edits of the draft letter and, at Sloman's instruction, she provided the draft to defense attorney Lefkowitz, who, in turn,

strongly objected to the government's plan to notify victims of the state proceedings, which he described as "highly inappropriate" and an "intrusion into state affairs, when the identified individuals are not even victims of the crime for which Mr. Epstein is being sentenced."

Thereafter—at a time when the USAO believed Epstein's plea to be imminent—Villafaña drafted, and Sloman signed, the December 6, 2007 letter to Lefkowitz rejecting the defense arguments regarding notification and reiterating the USAO's position that the victims identified in the federal investigation be invited to appear at the state plea hearing. The letter took an expansive view of the applicable statutes by contending that both the CVRA and the VRRA required the USAO to notify the victims of the state proceedings:

> [T]hese sections are not limited to proceedings in a *federal* district court. Our Non-Prosecution Agreement resolves the federal investigation by allowing Mr. Epstein to plead to a state offense. The victims identified through the federal investigation should be appropriately informed, and our Non-Prosecution Agreement does not require the U.S. Attorney's Office to forego [*sic*] its legal obligations.[416]

The letter also asserted that the VRRA obligated the USAO to provide the victims with information concerning restitution to which they may be entitled and "the *earliest possible*" notice of the status of the investigation, the filing of charges, and the acceptance of a plea. Along with the letter, Sloman forwarded a revised draft victim notification letter to Lefkowitz for his comments. This draft victim notification letter stated that the federal investigation had been completed, Epstein would plead guilty in state court, the parties would recommend 18 months of imprisonment at sentencing, and Epstein would compensate victims for monetary damages claims brought under 18 U.S.C. § 2255. The draft victim notification letter provided specific information concerning the upcoming change of plea hearing and invited the victims to attend or provide a written statement to the State Attorney's Office. When Lefkowitz asked Sloman to delay sending victim notifications until after a discussion of their contents, Sloman instructed Villafaña, who was preparing letters for transmittal to 30 victims, to "Hold the letter." During his OPR interview, Sloman recalled that he had "wanted to push the letter out," but he "must have had a conversation with somebody" about whether the CVRA applied, and based on that conversation he directed Villafaña to hold the letter.

In his response letter to Acosta, Lefkowitz contended that the government had misinterpreted both the CVRA and VRRA because neither applied to the "public proceeding in this matter [which] will be in state court for the purpose of the entry of a plea on state charges."

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416 Sloman told Lefkowitz the USAO did not seek to "federalize" a state plea, but "is simply informing the victims of their rights." Sloman also addressed the defense attorneys' objection to advising the victims that they could contact Villafaña or the FBI case agent with questions or concerns by referencing the CVRA, noting, "Again, federal law requires that victims have the 'reasonable right to confer with the attorney for the Government in this case.'"

Thereafter, in his December 19, 2007 letter to defense counsel mainly addressing other matters, Acosta informed the defense that the USAO would defer to the State Attorney's discretion the responsibility for notifying victims about Epstein's state plea hearing:

> I understand that the defense objects to the victims being given notice of [the] time and place of Mr. Epstein's state court [plea and] sentencing hearing. I have reviewed the proposed victim notification letter and the statute. I would note that the United States provided the draft letter to the defense as a courtesy. In addition, First Assistant United States Attorney Sloman already incorporated in the letter several edits that had been requested by defense counsel. I agree that Section 3771 applies to notice of proceedings and results of investigations of federal crimes as opposed to the state crime. We intend to provide victims with notice of the federal resolution, as required by law. *We will defer to the discretion of the State Attorney regarding whether he wishes to provide victims with notice of the state proceedings, although we will provide him with the information necessary to do so if he wishes*.

(Emphasis added.)

Acosta told OPR that he "would not have sent this [letter] without running it by [Sloman], if not other individuals in the office." Acosta explained that it was "not for me to direct the State Attorney, or for our office to direct the State Attorney's Office on its obligations with respect to the state outcome." Acosta acknowledged that the USAO initially had concerns about the state's handling of the case, but he told OPR, "that doesn't mean that they will not fulfill whatever obligation they have. Let's not assume. . . that the State Attorney's office is full of bad actors." Sloman initially believed that "the victims were going to be notified at some level, especially because they had restitution rights under [§] 2255"; but his expectations changed after "there was an agreement made that we were going to allow the state, since it was going to be a state case, to decide how the victims were going to be notified."[417] Sloman told OPR he had been "proceeding under the belief that we were going to notify the victims," even though "this was not a federal case," but once the NPA "looked like it was going to fall apart," the USAO "had concerns that if we g[a]ve them the victim notification letter . . . and the deal fell apart, then the victims would be instantly impeached by the provision that you're entitled to monetary compensation."

OPR could not determine whether the State Attorney's Office notified any victims in advance of the June 30, 2008 state plea hearing. Krischer told OPR that the State Attorney's Office had a robust and effective victim notification process and staff, but he was not aware of whether or how it was used in the Epstein case. Belohlavek told OPR that she could not recall whether victims were notified of the hearing nor whether the state law required notification for the

[417] Sloman stated in his June 3, 2008 letter to Deputy Attorney General Filip that Acosta made the decision together with the Department's Criminal Division Deputy Assistant Attorney General Mandelker. Acosta did consult with Mandelker about the § 2255 civil damages recovery process, but neither Acosta nor Mandelker recalled discussing the issue of victim notification, and OPR found no other documentation indicating that Mandelker played a role in the deferral decision.

particular charges and victims at issue. Once the hearing was scheduled, Sloman told Villafaña to contact PBPD Chief Reiter about notifying the victims, and on June 28, 2008, she reported back to Sloman that Reiter "is going to notify victims about the plea."[418] Villafaña recalled that she sent Reiter a list of the girls identified as victims during the federal investigation, and Reiter said he would "contact as many as he could." The contemporaneous records do not show how many or which victims, if any, Reiter contacted, and no victims were present in the courtroom. No victim who provided information to OPR, either in person or through her attorney, recalled receiving notice of the plea hearing from federal or state officials. At the time Epstein pled guilty in state court, no one in the USAO knew exactly who, if anyone, Reiter or the State Attorney's Office had notified about the proceeding. Accordingly, Villafaña, who was present in the courtroom for the hearing, had no knowledge to whom Belohlavek referred when she told the court that the victims were "in agreement with the terms of this plea."[419]

OPR considered whether Acosta's decision to defer to the State Attorney's Office the decision to notify victims of the scheduled date for Epstein's plea hearing constituted professional misconduct. OPR could not conclude that the CVRA or VRRA provisions in question, requiring notice of any public proceeding involving the crime against the victim or that the victim is entitled to attend, unambiguously required federal prosecutors to notify victims of state court proceedings. Furthermore, as discussed previously, OLC had issued guidance stating that the CVRA did not apply to cases in which no federal charges had been filed.[420] Moreover, the section of the VRRA requiring notice of court proceedings that the victim is "entitled to attend" referred specifically to proceedings under 42 U.S.C. § 10606(b)(4), which, at the time of the Epstein case, had become part of the CVRA (18 U.S.C. § 3771(a)(2)).[421]

Because Acosta had no clear or unambiguous duty to inform victims identified in the federal investigation of the state plea hearing, OPR concludes that his decision to defer to the State Attorney the decision to notify victims of the state's plea hearing and the responsibility for doing so did not constitute professional misconduct.[422]

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418 Sloman replied, "Good." In her written response to OPR, Villafaña stated, "I requested permission to make oral notifications to the victims regarding the upcoming change of plea, but the Office decided that victim notification could only come from a state investigator, and Jeff Sloman asked PBPD Chief Reiter to assist."

419 Plea Hearing Transcript at 42.

420 OLC 2005 CVRA Informal Guidance; *see also United States v. Guevara-Toloso,* No. 04-1455, 2005 WL 1210982, at *2 (E.D.N.Y. May 23, 2005) (in case involving a federal charge of illegal entry after a felony conviction, the court determined that victims of the predicate state conviction were not victims under the CVRA).

421 In *Wild*, the Eleventh Circuit panel noted that the petitioner argued "only in passing" that the government violated her CVRA right "to reasonable, accurate, and timely notice of any public court proceeding . . . involving the crime"; however, the court concluded this provision "clearly appl[ies] only after the initiation of criminal proceedings." *Wild*, 955 F.3d at 1205 n.7, 1208.

422 The government's letter to victims, following Epstein's guilty pleas, informing them of the resolution of the case by state plea and the availability of § 2255 relief, also appear to satisfy the potentially applicable VRRA requirements to "inform a victim of any restitution or other relief to which the victim may be entitled," and to "provide a victim the earliest possible notice of the status of the investigation of the crime, to the extent it is appropriate to

B. Acosta Exercised Poor Judgment When He Failed to Ensure That Victims Identified in the Federal Investigation Were Informed of the State Plea Hearing

Although Acosta (or the USAO) was not required by law or policy to notify victims of the state's plea hearing, he also was not *prohibited* by law or policy from notifying the victims that the federal investigation had been resolved through an agreement that included pleas to state charges. As the contemporary records indicate, Acosta consistently expressed hesitancy to interfere in the state's processes or to "dictate" actions to the State Attorney. His decision that the USAO refrain from notifying victims about the state plea hearing and defer to the State Attorney's judgment regarding whether and whom to notify was consistent with this view. However, OPR found no evidence that Acosta's decision to defer victim notification "to the discretion of the State Attorney" was ever actually communicated to any state authorities or that Acosta recognized that the state, absent significant coordination with federal authorities, was unlikely to contact all of the victims identified in the state and federal investigations or that the state would inform the victims that it did notify that the state plea hearing was part of an agreement that resolved the federal investigation into their own cases.[423]

Even taking into account Acosta's views on principles of federalism and his reluctance to interfere in state processes, Acosta should have recognized the problems that would likely stem from passing the task of notifying victims to the State Attorney's Office and made appropriate efforts to ensure that those problems were minimized. Appropriate notification would have included advising victims identified in the federal investigation that the USAO had declined to bring charges and that the matter was being handled by the State Attorney, and, at a minimum, provided the victims with Belohlavek's contact information. Acosta could have interacted with the State Attorney, or instructed Villafaña or others to do so, to ensure the state intended to make notifications in a way that reached the most possible victims and that it had the information necessary to accomplish the task. Instead, Acosta deferred the responsibility for victim notification entirely to the State Attorney's discretion without providing that office with the names of individuals the USAO believed were victims and, apparently, without even informing the state prosecutors that he was deferring to them to make the notifications, if they chose to do so.

Epstein was required by the NPA to plead to only two state charges, and even assuming that each charge was premised on a crime against a different victim, and the solicitation charge involved three separate victims, there were thus only at most four victims of the charged state offenses. Without at least inquiring into the state's intentions, Acosta had no way of determining whether the state intended to notify more than those few victims. Moreover, the federal investigation had resulted in the identification of several victims who had not been identified by

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inform the victim and to the extent that it will not interfere with the investigation." *See* 42 U.S.C. §§ 10607(c)(1)(B) and (c)(3)(A).

[423] Through counsel, Acosta argued that OPR's criticism of him for "electing to 'defer' the notification obligation to the state" was inappropriate and "a *non sequitur"* because "where no federal notification obligation exists, it cannot be deferred." OPR's criticism, as explained further below, is not with the decision itself, but rather with the fact that although Acosta intended for the federal victims to be notified of the state plea hearing, and believed that they should receive such notification, he nonetheless left responsibility for such notification to the state without ensuring that it had the information needed to do so and without determining the state's intended course of action.

the PBPD during its investigation into Epstein's conduct. Absent information from the USAO, the state would not have been in a position to notify those additional victims of the state plea proceeding, even if the State Attorney had decided to include other victims identified during the state investigation. Furthermore, at the time he made his decision, Acosta had already been advised by Villafaña that Belohlavek, in November 2007, had requested that the USAO notify victims, presumably those identified during the federal investigation, about the state plea hearing.

Acosta told OPR that it had been his understanding at the time of Epstein's plea that the victims would be made aware of the proceeding and would have an opportunity to speak. Acosta also told OPR that he expected the state would have "notified [the victims] that that was an all-encompassing plea, that the state court sentence would also mean that the federal government was not proceeding." There is no evidence, however, that he verified this understanding with Sloman or Villafaña, let alone the State Attorney. OPR found no indication that Acosta ever communicated, or directed Sloman or Villafaña to communicate, his decision to the State Attorney or to provide the State Attorney's Office with a complete list of victims identified during the federal investigation. OPR located a draft letter to the State Attorney's Office that Villafaña prepared and forwarded to Acosta in December 2007, which did provide such information, but OPR found no evidence that the letter was ever sent, and it was not among materials publicly released from the State Attorney's Office.[424] OPR also found evidence that both Sloman and Villafaña interacted with the State Attorney's Office in the months leading up to the June 30, 2008 plea hearing, but there is no indication that they discussed victim notification issues with that office, and Villafaña's last minute request to PBPD Chief Reiter to notify victims indicates that the USAO had not coordinated with the State Attorney's Office. Belohlavek told OPR that no one from the USAO provided her with a list of victims or coordinated any notification of victims to appear at the hearing.

Krischer and Belohlavek were thus evidently unaware that Acosta had decided to leave it to them to decide whether to notify victims about the state proceeding. In the absence of some discussion of which or how many victims the state intended to notify, what the state intended to tell them about Epstein's plea, and whether the state intended to let the victims speak at the plea hearing, Acosta had no way to ensure that his assumption about victim notification was accurate. In other words, Acosta failed to plan for how all of the identified victims of Epstein's crimes, both federal and state, "would be aware of what was happening in the state court and have an opportunity to speak up at the state court hearing."

OPR did not find evidence that Acosta acted for the purpose of excluding victims from the plea hearing, and Acosta's assumption that the state would handle victim notification appropriately was not unsupported. State prosecutors are subject to victim notification requirements under the Florida Constitution, and the state prosecution offices have victim witness personnel, resources, and processes to help accomplish notification. However, Acosta was aware—through the prosecution memoranda, the draft indictment, and email communications from Villafaña—that the USAO's investigation had expanded beyond those victims identified in the original PBPD

[424] The text of the letter indicated that Epstein's attorneys asked the USAO not to inform victims of "any rights they may have as victims of the charges filed by the State Attorney's Office" and that the USAO was providing the State Attorney's Office with a list of the 33 identified federal victims "in case you are required to provide them with any further notification regarding their rights under Florida law."

investigation. Because the state indictment and information appeared to pertain to far fewer than the total victims identified in either the state or the federal investigation, and no one at the USAO was certain which victims were covered by the state charges, it should have been apparent to Acosta that without advance planning between the USAO and the State Attorney's Office, there was a substantial risk that most of the victims identified in the federal investigation would not receive notice of the hearing.[425] Notification to the broadest possible number of identified victims could only have been successful if there was appropriate communication between the USAO and the state prosecutors, communication that had previously been lacking regarding other significant issues relating to Epstein. Villafaña and Sloman's hastily arranged effort to enlist in the notification process PBPD Chief Reiter, who likely played little role in complying with the state's victim notification obligations in a typical case, was not an adequate substitute for careful planning and coordination with the State Attorney's Office.[426]

Even if the State Attorney's Office had notified all of the identified victims of the upcoming plea hearing, there was no guarantee that such notification would have included information that the state plea was resolving not just the state's investigation of Epstein, but the federal investigation as well. The State Attorney was not obligated by state statutes to inform the victims of the status of the federal investigation, and there was little reason to assume Krischer, or one of his staff, would voluntarily do so, thereby putting the State Attorney's Office in the position of fielding victim questions and concerns about the outcome. Furthermore, as both the USAO and the defense had differing views as to who could lawfully participate in the state plea hearing, there is no indication that Acosta, Sloman, or Villafaña took steps to confirm that, if victims appeared, they could actually participate in the state court proceeding when they were not victims of the charged crimes.[427]

Through counsel, Acosta asserted to OPR that because Villafaña and Sloman both told OPR that they believed that state officials would notify the victims, "OPR identified no reason why Secretary Acosta should have distrusted his team on these points." Acosta's counsel further

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425 Krischer told OPR that the state's notification obligation extended to all victims identified in the state investigation. Nonetheless, which victims were encompassed in the state's investigation was unclear. The PBPD's probable cause affidavit included crimes against only 5 victims, not the 19 identified in the state investigation. According to state records made public, the state subpoenaed to the grand jury only 3 victims. After Epstein's guilty plea, the state sent notification letters to only 2 victims. Belohlavek told OPR that because of the nature of the charges, she did not know whether "technically under the law" the girls were "victims" she was required to notify of the plea hearing.

426 The State Attorney's Office had its own procedures and employees who handled victim notification, and Belohlavek told OPR that the Chief of the Police Department would not regularly play a role in the state victim notification process.

427 Although Villafaña's notes indicate that she researched Florida Statutes §§ 960.001 and 921.143 when she drafted unsent letters to victims in November and December 2007 inviting them to participate in the state plea hearing pursuant to those statues, the caselaw was not clear that all federal victims would have been allowed to participate in the state plea hearing. In Lefkowitz's November 29, 2007 letter to Acosta, he argued that the statutes afforded a right to speak at a defendant's sentencing or to submit a statement only to the victims of the crime for which the defendant was being sentenced. In April 2008, a Florida District Court of Appeal ruled against a defendant who argued that Florida Statute § 921.143(l) did not allow the testimony of the victim's relatives at the sentencing hearing. The court ruled that § 921.143(l) "should not be read as limiting the testimony Rule 3.720(b) allows trial courts to consider at sentencing hearings." *Smith v. State*, 982 So. 2d 69, 72 (Fla. Dist. Ct. App. 2008).

argued that Acosta should have been able to rely on his staff to accomplish the victim notification task, and thus had no responsibility to personally confirm that Chief Reiter would notify the victims of the hearing.[428] Acosta is correct that under usual circumstances, USAO management played no role in the victim notification process; however, in this case, the issue of victim notification had been elevated from a rote administrative task to a major area of dispute with the defense. Acosta personally involved himself by resolving the notification dispute with defense counsel in his December 19, 2007 letter. Villafaña provided Acosta with a draft letter to state officials that would have opened a dialogue concerning the notification of all the victims identified in the federal investigation. OPR found no evidence, however, that Acosta sent the letter or any similar communication to the State Attorney's Office or that he provided Villafaña and Sloman with instructions concerning victim notification other than those contained in his December 19, 2007 letter. Having inserted himself into the notification process, Acosta had a responsibility to ensure that his expectation that the victims would be notified could be accomplished through the state process.

Many victims only learned of Epstein's state court pleas when they later received a letter from the USAO informing them that those pleas had resolved the federal investigation, and some victims only learned of the state court pleas and sentencing from the news media. In the end, although Villafaña and Sloman hastily attempted to ensure victim notification through Chief Reiter, their effort was too little and too late to ensure that victims had the opportunity to attend the plea hearing or were given sufficient information about its significance to their own cases.[429] Although Acosta may have conferred with others about the decision to defer the responsibility for notifying victims to the State Attorney, Acosta was responsible for choosing this course of action. OPR concludes that under these unique circumstances, its criticisms are warranted because Acosta personally decided to change the process initiated by his staff, and although he expected that the federal victims would be notified, he did not take the necessary steps to ensure that they would be. Acosta could have authorized disclosure of the plea hearing to victims, even if he did not believe the CVRA required it, to ensure that the victims identified in the federal investigation were aware of the state court proceeding. Because the state pleas ended the federal investigation into Epstein's conduct, ensuring that the victims were notified of the state plea hearing would have been consistent with the Department's overarching commitment to treat victims with fairness, dignity, and sensitivity. Acosta's failure to prioritize notification and coordinate communication about the

[428] As noted, in his comments on OPR's draft report, Acosta's counsel strongly objected to OPR's finding of poor judgment with respect to victim notification, arguing that OPR "unwarrantedly applies a standard never before expected of any US Attorney," and inappropriately criticizes Acosta for "not personally confirming that the State Attorney had the information needed" to notify the victims and for "not personally confirming" that Chief Reiter had actually notified the victims. For the reasons discussed, the issue is not whether Acosta "personally" took certain specific steps but that he stopped his staff from implementing a notification plan they had devised, and instead, shifted responsibility for notification to another entity while failing to consider how or even whether that entity would be able to accomplish the notification that Acosta expected to happen.

[429] OPR notes that Villafaña contacted Reiter soon after the state plea hearing was scheduled, and the resulting window of time for Reiter to make any notifications was short. Had the USAO coordinated with the State Attorney at some point in time closer to Acosta's December 19, 2007 letter and decision, the USAO could have ensured that the State Attorney had an appropriate notification process in place to act quickly when the hearing was scheduled and that issues concerning the victims' appearance at the hearing were appropriately considered by state authorities. Similarly, if the USAO believed that Reiter should make the notifications, it could have coordinated with Reiter in the months that the matter was under review by the Department.

resolution of the case to ensure Epstein's victims were given an opportunity to attend the plea hearing, and to possibly speak about the impact of Epstein's crimes, presented a glaring contrast with Acosta's responsiveness to the demands of Epstein's attorneys, which included the unusual courtesy of allowing them to preview and respond to the USAO's draft victim notifications. This contrast added to the victims' perception that they had been treated unfairly, a view shared by the public.

Nothing in the documentary record suggests that Acosta thought through the issue of determining which victims would be notified by the state, or that he took any steps to ensure that all of the known federal victims received information about the state plea hearing. Instead, as with his decision to resolve the federal investigation through a state-based resolution, Acosta exercised poor judgment when he made critical decisions affecting the federal investigation and the victims, but also failed to consider the full consequences of those decisions or what was needed to implement them. Acosta's failure to consider these issues before simply leaving the responsibility for making notifications entirely to the State Attorney's discretion reflected poorly on the USAO and the Department as a whole. It left victims in the dark about an important proceeding that resolved the federal investigation, an investigation about which the USAO had communicated with victims for months. It also ultimately created the misimpression that the Department intentionally sought to silence the victims by keeping them uninformed about the NPA and the resulting state proceeding. Acosta failed to ensure that victims were afforded an opportunity to attend a hearing that was related to their own cases and thus failed to ensure that victims were treated with forthrightness and dignity.

V. VILLAFAÑA DID NOT COMMIT PROFESSIONAL MISCONDUCT IN HER ORAL COMMUNICATIONS TO VICTIMS AND VICTIMS' ATTORNEYS, IN WHICH SHE DESCRIBED THE CASE AS "UNDER INVESTIGATION" BUT DID NOT DISCLOSE THE EXISTENCE OF THE NPA TO SOME VICTIMS

From September 24, 2007, when the NPA was signed, until after Epstein's June 30, 2008 state court plea, the case agents, acting under Villafaña's direction, directly informed only three victims that the government had signed an NPA and that, if Epstein complied with its terms, the federal investigation would be closed. During this time period, Villafaña and the case agents interacted with several victims and their attorneys, and Villafaña contacted victims' attorney Bradley Edwards to encourage him to attend the state court plea hearing, but she did not inform victims or Edwards of the NPA or the resolution of the federal investigation.

As described in Part One of this chapter, after the NPA was signed, the FBI case agent and co-case agent began notifying victims about the NPA.[430] After speaking to three victims, however, the FBI case agent became concerned that informing the victims about the NPA and the monetary damages provision would create potential impeachment material for the victims and the agent should Epstein breach the NPA and the case proceed to indictment and trial. As the case agent told OPR, "I would . . . have to testify that I told every one of these girls that they could sue Mr. Epstein for money, and I was not comfortable with that, I didn't think it was right." The case

[430] Although Wild disputed that she was informed of the resolution of the federal case, the case agent's email to Villafaña from this time period reflects that at least one victim understood that the federal case was resolved and that she was unhappy with the resolution.

agent and Villafaña consulted with the USAO's Professional Responsibility Officer about the matter, and thereafter stopped notifying the victims about the NPA and their ability to pursue monetary damages according to its terms.

Villafaña advised Sloman by email of her concerns regarding the potential impeachment evidence, telling him, "One thing I am concerned about is that, if we [file charges] now, cross-examination will consist of- 'and the government told you that if Mr. Epstein is convicted, you are entitled to a large amount of damages right?'" Explaining the decision in her later CVRA declaration, Villafaña said that after Epstein's attorneys "complained that the victims were receiving an incentive to overstate their involvement with Mr. Epstein in order to increase their damages claims," she "concluded that informing additional victims could compromise the witnesses' credibility at trial if Epstein reneged on the agreement." Acosta was aware of these concerns as he referred to them in an August 2008 email, "[W]e also believed that contacting the victims would compromise them as potential witnesses. Epstein argued very forcefully that they were doing this for the money, and we did not want to discuss liability with them, which was [a] key part of [the] agree[ment]."

The case agents interviewed victims in October and November 2007, but did not inform them about the NPA.[431] On January 31, 2008, the FBI agents, Villafaña, and the CEOS Trial Attorney interviewed three victims, including Courtney Wild, and they interviewed at least one more victim the next day.[432] Wild and two others had been contacted by the FBI in the fall of 2007 and may have been informed about the resolution of the federal investigation.

Villafaña told OPR that during the January 31, 2008 interviews, she did not specifically tell the victims that "there was a signed non-prosecution agreement that had these terms." She stated that she would not use "terminology" such as "NPA" because "most people don't understand what that means." Instead, with respect to the three victims who, according to Villafaña, had been informed by the FBI about the resolution, she stated that "an agreement had been reached where [Epstein] was going to be entering a guilty plea, but it doesn't look [like] he intends to actually perform . . . [and] now it looks like this may have to be charged . . . and may have to go to trial." Villafaña recalled telling some victims that Epstein "was supposed to enter a plea in state court" that would end the investigation, but she did not recall distinguishing between the "federal investigation versus a state investigation." Villafaña told OPR she explained "the case was under investigation," she and the agents "were preparing . . . again" to file charges, and they hoped "that charges would be brought." An email from Villafaña to Sloman and Acosta during this time period reflects that she had such discussions with at least one victim interviewed on this date: "The second girl . . . was very upset about the 18 month deal she had read about in the paper. . . . [S]he would rather not get any money and have Epstein spend a significant time in jail." Villafaña, however, did not recall telling all of the victims interviewed at this time of the state plea; rather, she likely only told those who knew about the resolution from the FBI. In her own 2015 CVRA-case declaration, Wild stated that she "was not told about any [NPA] or any potential resolution of

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431 FBI agents also interviewed victims in March and May of 2008, without prosecutors, and did not inform the victims of the NPA.

432 Two additional victims were scheduled to be interviewed on February 1, 2008, but the evidence is unclear as to whether the interviews occurred.

the federal investigation I was cooperating in. If I had been told of a[n NPA], I would have objected." Wild further stated in her declaration that, "Based on what the FBI had been telling me, I thought they were still investigating my case."

Neither the CEOS Trial Attorney nor the FBI case agent recalled the specifics of the victim interviews. The FBI reports memorializing each interview primarily addressed the facts elicited from the victim regarding Epstein's abuse and did not describe any discussion about the status of the case or the victim's view about the prosecution of Epstein.[433]

When asked whether she was concerned that failing to tell victims about the NPA when she was interviewing them would mislead victims, as previously noted, Villafaña told OPR that she believed she and the agents were conducting an investigation because they continued "interviewing witnesses" and "doing all these things" to file charges and prepare for a federal trial. As Villafaña stated, "So to me, saying to a victim the case is now back under investigation is perfectly accurate."

Villafaña was also aware that some victims were represented by counsel in connection with civil lawsuits against Epstein, but did not proactively inform the victims' attorneys about the NPA. In a 2017 affidavit filed in the CVRA litigation, victims' attorney Bradley Edwards alleged that during telephone calls with Villafaña, he "asked very specific questions about what stage the investigation was in," and Villafaña replied that she could not answer his questions because the matter "was an on-going active investigation." Edwards stated that Villafaña gave him "the impression that the Federal investigation was on-going, very expansive, and continuously growing, both in the number of identified victims and complexity." Edwards also stated, "A fair characterization of each call was that I provided information and asked questions and Villafaña listened and expressed that she was unable to say much or answer the questions I was asking."

In her written response to OPR, Villafaña stated that she "listened more than [she] spoke" during her interactions with Edwards and that due to the "uncertainty of the situation" and the possibility of a trial, she "did not feel comfortable sharing any information about the case." Villafaña also told OPR that because of "all of these concerns and instructions that I had been given by Alex [Acosta] and Jeff [Sloman] not to disclose things further and not to have any involvement in victim notification," she felt "prohibited" from providing additional information to Edwards.

Sloman told OPR that although neither the NPA terms nor the CVRA prevented the USAO from exercising its discretion to notify the victims, "[I]t was [of] concern that this was going to break down and . . . result in us prosecuting Epstein and that the victims were going to be witnesses and if we provided a victim notification indicating, hey, you're going to get $150,000, that's . . . going to be instant impeachment for the defense."[434] Acosta told OPR that, because Epstein did

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433 As noted above, the FBI agent's notes for one victim's interview reported that she wanted another victim to be prosecuted.

434 When asked why the USAO did not simply notify the victims of the change of plea hearing, Sloman responded that he "was more focused on the restitution provisions. I didn't get the sense that the victims were overly interested in showing up . . . at the change of plea."

not plead guilty in October 2007 as the USAO expected, it was a "very open question" whether the case would go to trial, and Acosta thought that "where there is no legal requirement[,] [t]here has to be discretion to judge how much you can tell the victims and when."

Epstein's attorneys' conduct during the period between the signing of the NPA and Epstein's entry of his state guilty pleas illustrated the risk that Acosta, Sloman, and Villafaña all identified. As Epstein's counsel deposed victims related to the state court criminal charges and civil cases against Epstein, counsel suggested that the victims were motivated to testify against Epstein by the government's promises of financial gain. For example, during a February 20, 2008 state deposition of a victim, defense counsel asked her whether the federal prosecutors or FBI agents told her that she was entitled to receive money from Epstein.[435] In her 2017 declaration in the CVRA litigation, Villafaña identified that line of questioning as a motivating factor in the government's decision to stop notifying the victims about the potential for 18 U.S.C. § 2255 recovery.

On June 27, 2008, the Friday before Epstein's Monday, June 30, 2008 state court guilty plea hearing, Villafaña contacted Edwards to inform him about that upcoming hearing. Villafaña told OPR she "was not given authorization to contact" any victim's attorney other than Edwards about the scheduled state plea hearing.[436] In his 2017 affidavit prepared for the CVRA litigation, Edwards stated that Villafaña "gave the impression that she was caught off-guard herself that Epstein was pleading guilty or that this event was happening at all."

Edwards said in a 2016 court filing that Villafaña told him only that "Epstein was pleading guilty to state solicitation of prostitution charges involving other victims—not Mr. Edward's clients nor any of the federally-identified victims." Villafaña stated in her 2017 declaration that she "never told Attorney Edwards that the state charges involved 'other victims,' and neither the state court charging instrument nor the factual proffer limited the procurement of prostitution charge to a specific victim." Villafaña told OPR she "strongly encouraged [Edwards] and his clients to attend" the plea hearing but "could not be more explicit" because she was not "authorized by the Office to disclose the terms of the NPA." In his 2017 affidavit, Edwards acknowledged that "Villafaña did express that this hearing was important, but never told me why she felt that way." Edwards claimed that Villafaña's failure to inform him that the "guilty pleas in state court would bring an end to the possibility of federal prosecution pursuant to the plea agreement" resulted in his clients not attending the hearing. Edwards himself was out of town and not able to

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435 As previously noted, the defense used Florida criminal procedure to depose potential federal victims to learn information concerning the federal investigation even though those individuals were not involved in the state prosecution. For example, in a March 2008 email, Villafaña informed her managers that she spoke to a victim who had received a subpoena "issued in connection with the state criminal case, which, as you know, doesn't involve most of the victims in our case (including the girl who was subpoenaed)." Villafaña further observed that because Epstein is "going to plead to the solicitation of adults for prostitution charge [in state court], [the act of subpoenaing the victim] seems to be a clear effort to find out about our case through the state case."

436 Villafaña's June 30, 2008 handwritten notes reflect that, at the time of Epstein's state court guilty plea, Villafaña was aware of the identities of a least five other attorneys representing Epstein's victims. In her written response to OPR, Villafaña stated, "I requested permission to make oral notifications to the victims regarding the upcoming change of plea, but the Office decided that victim notification could only come from a state investigator, and Jeff Sloman asked PBPD Chief Reiter to assist." On Saturday, June 28, 2008, Villafaña emailed Sloman to inform him that PBPD Chief Reiter "is going to notify victims about the plea." Sloman replied, "Good."

attend the hearing. In his affidavit, Edwards asserted, "[T]here was no possible way I could have believed that this state plea could affect the federal investigation or the rights of my clients in that federal investigation."

In *Wild*, the Eleventh Circuit panel stated that the government "seemingly" deferred to Epstein's attorneys' requests not to notify the victims about the NPA, and that in sending the January and May 2008 FBI letters, the government's efforts "seem to have graduated from passive nondisclosure to (or at least close to) active misrepresentation."[437] Although both the appellate court and district court focused on the FBI's letters for which OPR concludes that neither Villafaña, Sloman, nor Acosta was responsible, OPR considered the courts' analyses in evaluating whether similar representations Villafaña made to the victims whom she interviewed on January 31 and February 1, 2008, and to Edwards, were misleading. Therefore, OPR considered whether Villafaña's statements that the matter was "under investigation" and her failure to inform all of the victims whom she interviewed or Edwards about the NPA violated FRPC 4-4.1(a), 4-8.4(c), or 4-8.4(d).

FRPC 4-4.1(a) prohibits an attorney from "knowingly mak[ing] a false statement of material fact or law to a third person" during the representation of a client. The FRPC defines "knowingly" as "denot[ing] actual knowledge of the fact in question" and states that such knowledge may be "inferred from circumstances."[438] The comment to FRPC 4-4.1 states that "[m]isrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements." The comment references FRPC 4-8.4 "[f]or dishonest conduct that does not amount to a false statement." Like FRPC 4-4.1(a), Rule 4-8.4(c) requires evidence that the attorney knew the statement in question was false. Under FRPC 4-8.4(c), the intent requirement can be satisfied "merely by showing that the conduct was deliberate or knowing" and the "motive underlying the lawyer's conduct is not determinative; instead the issue is whether he or she purposefully acted."[439] In *Feinberg*, the court concluded that the prosecutor violated FRPC 4-4.1 and 4-8.4(c) and (d) by deliberately making untruthful statements to a defense attorney, despite evidence that the prosecutor intended to help the defendant by making the statements.[440] In this case, Villafaña was fully aware of the signed NPA when she interviewed the victims on January 31 and February 1, 2008, and when she spoke to Edwards on the telephone, but she did not inform them specifically of the signed NPA. The question is whether this omission amounted to a knowing false statement or misrepresentation.

One difficulty is determining what Villafaña actually said during conversations that participants were asked to recall many years later. With respect to three of the victims whom she interviewed in January and February 2008, Villafaña contended that she discussed the agreement with them, even if she did not specifically refer to it as the NPA or discuss all of its terms, and as

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437 *Wild,* 955 F.3d at 1199-1200.

438 *See* R. Regulating Fla. Bar 4-Preamble: A Lawyer's Responsibilities, "Terminology."

439 *Florida Bar v. Schwartz*, 284 So. 3d 393, 396 (Fla. 2019) (citing *Florida Bar v. Berthiaume*, 78 So. 3d 503, 510 n.2 (Fla. 2011); *Florida Bar v. Riggs*, 944 So. 2d 167, 171 (Fla. 2006); *Florida Bar v. Smith*, 866 So. 2d 41, 46 (Fla. 2004)).

440 *Florida Bar v. Feinberg*, 760 So. 2d 933, 937-38 (Fla. 2000).

previously noted, there is some contemporaneous evidence supporting her assertion. Villafaña's mention of the agreement, even if not described in specific terms, would have been sufficient to apprise those victims of the status of the federal investigation.

Nevertheless, Villafaña did not recall discussing the NPA specifically or in general terms with other victims interviewed at that time, nor did she do so with Edwards or any other victim's attorney. OPR therefore considered whether the omission of information about the existence of the NPA during these interactions rose to the level of professional misconduct in violation of FRPC 4-4.1 or 4-8.4.[441]

OPR evaluated Villafaña's conduct in light of the comment to FRPC 4-4.1:

> A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements.

The victims and their attorneys were certainly not "opposing part[ies]" to the USAO, but the comment indicates that the rule recognizes that omissions made during discussions with third parties, even of relevant facts, are not always treated as false statements.

Here, the evidence does not show that Villafaña knowingly made an affirmative false statement to the victims or Edwards or that her omissions were "the equivalent of affirmative false statements" about material facts. First, Villafaña told OPR that she believed the investigation was ongoing and her statement to that effect truthful, and as discussed earlier in this Chapter, the evidence shows that Villafaña and the agents did continue to investigate the case until Epstein entered his guilty plea in state court in June 2008. Villafaña's email correspondence with her supervisors reflects her strong advocacy during that timeframe to declare Epstein in breach and to charge him. The evidence similarly does not show that Villafaña knowingly made any affirmative false statement to Edwards when she informed him of the state court plea, although she declined to provide additional information in response to his questions.[442]

Second, in reaching its conclusion, OPR considered the full context in which Villafaña interacted with the victims and Edwards. Prosecutors routinely make decisions about what information will be disclosed to witnesses, including victims, for a variety of strategic reasons. In many cases, prosecutors must make difficult decisions about providing information to witnesses,

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441 In *Florida Bar v. Joy,* the court affirmed a referee's conclusion that Joy violated FRPCs 4-4.1(a) and 4-8.4(c) "for making false statements by omission of material facts in his representations [to counsel]." *Florida Bar v. Joy*, 679 So. 2d 1165, 1166-68 (Fla. 1996). *See also Florida Bar re Webster,* 647 So. 2d 816 (Fla. 1994) (petition for reinstatement denied due to "misrepresentation by omission").

442 In *Feinberg*, 760 So. 2d at 938, the court found that an Assistant State Attorney lacked candor and violated ethics rules when, after meeting with a defendant outside his attorney's presence, the prosecutor falsely stated to the defense attorney that he (the prosecutor) had not met with the defendant.

and they often cannot fully reveal either the facts or the status of an investigation, even with victims. The 2005 Guidelines advise that in consulting with a victim, prosecutors may be limited in their disclosures: "Because victims are not clients, may become adverse to the Government, and may disclose whatever they have learned from consulting with prosecutors, such consultations may be limited to gathering information from victims and conveying only nonsensitive data and public information."[443]

Villafaña's concern about generating potential impeachment evidence by informing victims of their potential to recover monetary damages from Epstein was not unreasonable. Indeed, the case agents initially raised the impeachment issue, and after considering the problem, Villafaña agreed with the agents' concerns. Villafaña raised those concerns with the USAO's Professional Responsibility Officer in October 2007 after the agents brought the issue to her attention, and she ultimately raised the issue with Sloman and Acosta as well, neither of whom advised her that those concerns were improper or unsound. OPR also considered that although Villafaña had sought to notify the victims in writing of the NPA soon after it was signed, her supervisor, the U.S. Attorney, had decided otherwise. When authorized to inform Edwards of the scheduled change of plea hearing, she did so. Although she did not inform Edwards that the plea was part of a global resolution that would end the federal investigation, the evidence does not show that Villafaña acted for the purpose of deceiving Edwards or preventing him from attending the hearing. Had she sought to exclude him from the state proceedings, she could have elected not to inform Edwards at all, or she could have discouraged him from attending the state proceedings. Rather, as Edwards confirmed, Villafaña told him the hearing was "important." Villafaña sought to strike a difficult balance of securing Edwards's (and his clients') attendance at the state court plea, while obeying her management's directive that informing victims of the resolution of the federal investigation should not be done until completion of the state plea.

Therefore, after carefully considering all of the circumstances, OPR concludes that the evidence does not establish that Villafaña violated her obligations under FRPC 4-4.1 or 4-8.4(c) or (d).[444] Nonetheless, as discussed below, Villafaña's interactions with victims and victims' attorneys without informing them of the NPA and the potential conclusion of the federal investigation contributed to the likelihood that the victims would feel that the government was

[443] 2005 Guidelines, Art. IV, ¶ B.2.c(1). As noted, some victims continued to express favorable views of Epstein during interviews with the government and they, or their attorneys, could have provided information to Epstein about the government's communications. For example, within a day of Villafaña contacting a victim's attorney about a potential victim notification letter, Starr complained to Acosta that the government had recently inappropriately provided "oral notification of the victim notification letter" to one girl's attorney, even though it was clear from the girl's recorded FBI interview that she "did not in any manner view herself as a victim."

[444] The case most directly on point is *Smith*, 109 A.3d 1184, in which the Maryland Court of Appeals affirmed a violation of Maryland Rule of Professional Conduct 8.4(d) based on a prosecutor's failure to notify the victim of the resolution of a sex abuse case. However, as noted previously, in *Smith*, the criminal defendant had been arrested and charged before entering a plea, and various specific statutes afforded victims the right to receive notices and an opportunity to be heard concerning "a case originating by indictment or information in a circuit court." In this case, for the reasons previously discussed, Villafaña did not have a clear and unambiguous obligation to inform the victims or Edwards of the NPA.

intentionally concealing information from them and was part of a series of interactions with victims that led to condemnation of the government's treatment of victims.[445]

VI. THE GOVERNMENT FAILED TO TREAT VICTIMS FORTHRIGHTLY AND WITH SENSITIVITY WHEN IT FAILED TO TIMELY PROVIDE VICTIMS WITH IMPORTANT INFORMATION ABOUT THE RESOLUTION OF THE FEDERAL INVESTIGATION

Although OPR does not conclude that any of the subjects committed professional misconduct, either by failing to consult with the victims before the NPA was signed or in interactions afterwards, OPR's findings are not an endorsement of the government's course of action. The government's interactions with victims confused and frustrated many of the victims, particularly the two CVRA petitioners and the two victims who had unsuccessfully attempted to join in the CVRA litigation. As a result, the victims' and the public's perception of the matter is that the prosecutors worked with Epstein's attorneys to disenfranchise and silence the victims. It is unfortunate, and appears fundamentally unfair to the victims, that Acosta and Sloman (after Menchel and Lourie departed) took the unusual step of deciding to vet the USAO victim notification letters with the defense after the NPA was signed, but failed to go beyond the requirements of the CVRA or the 2005 Guidelines to consult with the victims before the NPA was signed. This result is contrary to the Department's intent, as set forth in the 2005 Guidelines, that Department employees work to "minimize the frustration and confusion that victims of crime endure in its wake." When considering the entirety of the government's interactions with victims, OPR concludes that victims were not treated with the forthrightness and sensitivity expected by the Department.

Wild's criticisms of the government's conduct were based on interactions that are similar to and generally representative of the government's interactions with other Epstein victims and that demonstrate an overall lack of sensitivity to the victims by the government. Wild experienced a series of confusing and inconsistent communications in her interactions with Villafaña and the case agents. Wild received Villafaña's letter in June 2007 stating inaccurately that she was a federal victim entitled to CVRA rights. She was interviewed by the FBI in August 2007 but was not told that a potential outcome was a state plea. Shortly after the September 24, 2007 signing of the NPA, the FBI contacted her to inform her of the resolution of the federal case. Nonetheless, on January 10, 2008, the FBI sent her a victims' rights letter indicating that the case was under investigation and that some of her CVRA rights may not apply until after the defendant was charged. On January 31, 2008, Villafaña re-interviewed Wild, along with a CEOS attorney and the FBI agents, and told Wild that the case was under investigation, but did not specifically mention the NPA, although she may have mentioned a possible resolution. In mid-June 2008, when Edwards contacted Villafaña on Wild's behalf, Villafaña informed him that the case was under investigation but did not mention the NPA. Just before Epstein's June 30, 2008 state court plea,

[445] OPR notes that, similar to Villafaña, Sloman interacted with a victim's attorney during the time period between the signing of the NPA and Epstein's state guilty plea. In January 2008, Sloman received a telephone call from his former law partner, who represented one of the victims and who asked Sloman whether the federal government could bring charges against Epstein. Sloman, concerned about the potential for conflict of interest allegations due to his prior business relations with the attorney, refused to answer any questions regarding Epstein. Because Sloman refused to provide any information, OPR found no basis for finding that Sloman misled the attorney.

Villafaña informed Edwards about the state plea, but did not mention the NPA or the fact that the state pleas would resolve the federal investigation. Edwards then filed the CVRA petition and learned about the NPA signed months earlier and that the federal investigation of Epstein had concluded with Epstein's state guilty pleas. Wild only received access to the NPA when a judge permitted it in August 2008 pursuant to a protective order. After considering this series of interactions, it is not surprising that Wild came away from the experience feeling confused and believing she had been misled.

OPR did not find evidence supporting a conclusion that Villafaña, Acosta, Sloman, Menchel, or Lourie opted not to consult with the victims in order to protect Epstein or shield the NPA from public scrutiny. Although neither Sloman nor Acosta could recall a specific discussion of CVRA obligations before the NPA was signed, both recalled knowing that victim consultation was not required, and Menchel also told OPR that consultation was not required, at least not up to the point when he left the USAO. The evidence is clear that Villafaña sought at various points to consult with and to notify victims about the details of the NPA but was constrained before the NPA was signed by managers who either made a decision to not consult victims or did not address the issue after it was raised, and after the signing by her own concern about creating possible impeachment evidence that would damage the victims' credibility at a possible trial.

Nonetheless, a more open and straightforward approach with the victims, both before and after the signing of the NPA, would have been the better practice. Before the NPA was signed, victims could have been asked for their views about the general terms the USAO was contemplating offering, including that a plea to state charges was one of the options being considered; asked for their views in general about a guilty plea; or, at a minimum, asked to share their views of how the case should be resolved. Even if the USAO ultimately determined to proceed with the NPA, the government would have had the benefit of the victims' thoughts and concerns, particularly on the issue of punishment, and victims would have felt included in the process. OPR found no evidence that the benefits of victim consultation were discussed or considered before the NPA was signed.

After the NPA was signed, no one from the government explained the agreement to the majority of the victims until months later and only after the entry of Epstein's guilty plea. Although the evidence supports Villafaña's assertion that she acted from a good faith belief that Epstein might breach the NPA and a potential trial would be harmed if information about the NPA was divulged to the victims and their counsel, she, Sloman, and Acosta failed to consider how the desire to shield the victims from that potential impeachment might impact the victims' sense of the openness and fairness of the process. As Wild stated during the CVRA litigation, she believed she had been "mistreated in the process." When deciding not to inform the victims of the NPA to avoid creating impeachment evidence, Villafaña, Sloman, and Acosta do not appear to have carefully considered possible alternatives to, or all of the ramifications of, that decision, nor did they revisit the decision before Villafaña met the victims in person to discuss a potential trial or spoke to Edwards or other attorneys representing victims.[446] Furthermore, more attention needed

[446] It is not at all clear whether a court would have permitted impeachment of the victims concerning one provision in a plea agreement that otherwise could not be used as evidence. *See* Fed. R. Crim. P. 11(f) ("The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Federal Rule of Evidence 410."). In any case, the victims could have been impeached regarding the possibility of their obtaining monetary damages through either a civil suit or through 18 U.S.C. § 2255 (if Epstein were convicted after a trial),

to be paid to the FBI's communications to ensure that the victims were receiving accurate and timely information that was consistent with the status of the case and with the USAO's communications with victims.[447]

The decision not to inform victims and their attorneys about the existence of the NPA gave victims and the public the misimpression that the government had colluded with Epstein's counsel to keep the agreement secret from the victims. Moreover, the lack of openness about the NPA gave the impression that the USAO lacked sensitivity for the victims in resolving the matter and undercut public confidence in the legitimacy of the resulting plea agreement. The overall result of the subjects' anomalous handling of this case left at least some of the victims feeling ignored and frustrated, failed to promote their healing process, and resulted in extensive public criticism. Although OPR credits Villafaña's statements that she wanted to go beyond her obligations in dealing with victims, the end result nonetheless was that communications with victims were not prioritized by the USAO. In part this was due to the fact that interactions with victims are generally handled by staff in the USAO and the FBI who are trained and have expertise in dealing with victims and other witnesses. However, decisions made by Acosta, Sloman, and Villafaña also contributed to the problems. The government, as it ultimately acknowledged in the CVRA litigation, could have, and should have, engaged with the victims in a more transparent and unified fashion.

OPR recognizes that the Epstein investigation occurred soon after the passage of the CVRA. In the years since, the Department's prosecutors and personnel have become more familiar with its provisions. OPR encourages the Department as a whole to take the issues discussed above into account when providing training and direction to its employees regarding victims' rights to ensure that in the future, Department attorneys' actions promote victim inclusion whenever possible.[448] For example, although the division of responsibility between the FBI and the USAO for communicating with victims works efficiently and appropriately in the average case, the USAO failed to consider that in a case involving a pre-charge disposition, the victims were receiving inconsistent and confusing communications from the separate entities. In certain cases, such as the Epstein case, prosecutors may need to provide more oversight when multiple Department components are communicating with victims to avoid providing confusing and contradictory messages.

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independent of the NPA provision. OPR also notes that impeachment regarding the NPA provision may have permitted the government to rehabilitate the victims through their prior statements to law enforcement. In other words, while the USAO's view concerning potential impeachment was not unreasonable, more extensive consideration of the case agent's concerns might have led the prosecutors to conclude that the risk of the information being used to significantly damage the credibility of the victims was low.

447 In addition to the FBI letters previously discussed, another example of the inconsistent communication can be seen in letters that were to be sent after Epstein entered his guilty plea to two victims residing in foreign countries. Although OPR was unable to confirm that the two victims actually received the letters, it appears from the records OPR reviewed that the government intended to provide them with a standard FBI letter stating that the case was under investigation while also providing them with a USAO letter stating that the case had been resolved through Epstein's state guilty plea.

448 OPR understands that the Department is in the process of revising the 2011 Guidelines.

CONCLUSION

In November 2018, the *Miami Herald* published an extensive investigative report about state and federal criminal investigations initiated more than 12 years earlier into allegations that Jeffrey Epstein, a wealthy financier with residences in Florida, New York, and other United States and foreign locations, had coerced girls into engaging in sexual activity with him at his Palm Beach, Florida estate. The *Miami Herald* reported that in 2007, the U.S. Attorney for the Southern District of Florida, R. Alexander Acosta, entered into an "extraordinary" deal with Epstein that permitted Epstein to avoid federal prosecution and a potentially lengthy prison sentence by pleading guilty in state court to "two prostitution charges," immunized from prosecution Epstein's co-conspirators, and concealed from Epstein's victims the terms of the NPA.

Following the *Miami Herald's* report, and after receiving a Congressional request to investigate, OPR initiated an investigation into the allegations that prosecutors in the USAO improperly resolved the federal investigation into the criminal conduct of Jeffrey Epstein by negotiating and executing the NPA. OPR subsequently included in its investigation allegations stemming from judicial criticism of the government's conduct relating to federal prosecutors' and law enforcement agents' interactions with Epstein's victims. In July 2008, a victim, later joined by a second victim, filed in federal court in the Southern District of Florida an emergency petition for enforcement of her rights under the CVRA. In February 2019, the district court found that the government violated the CVRA by failing to advise victims about its intention to enter into the NPA. The court also found that letters the government sent to victims after the NPA was signed, describing the investigation as ongoing, were misleading.

During the course of its investigation, OPR obtained and reviewed hundreds of thousands of records from the USAO, the FBI, and other Department of Justice components. The records included emails, letters, memoranda, and investigative materials. OPR also collected and reviewed materials relating to the state investigation and prosecution of Epstein, including sealed pleadings, grand jury transcripts, and grand jury audio recordings; examined extensive publicly available information, including depositions, pleadings, orders, and other court records; and reviewed media reports and interviews, articles, podcasts, and books relating to the Epstein case. OPR conducted more than 60 interviews of witnesses, including the FBI case agents, their supervisors, and FBI administrative personnel; current and former USAO staff and attorneys; current and former Department attorneys and senior managers; and the former State Attorney and Assistant State Attorney in charge of the state investigation of Epstein. OPR also interviewed or received written information from several victims and attorneys representing victims concerning victim contacts with the USAO and federal law enforcement.

OPR identified the following five former USAO attorneys as subjects of its investigation based on information indicating that each of them was involved in the decision to resolve the case through the NPA or in the negotiations leading to the agreement: former U.S. Attorney R. Alexander Acosta, and former AUSAs Jeffrey H. Sloman, Matthew I. Menchel, Andrew C. Lourie, and Ann Marie C. Villafaña. Each subject submitted written responses detailing their involvement in the federal investigation of Epstein, the drafting and execution of the NPA, and decisions relating to victim notification and consultation. OPR conducted extensive interviews of all five subjects. The subjects also submitted comments on OPR's draft report.

OPR evaluated the conduct of each subject based on his or her individual role in various decisions and events and assessed that conduct pursuant to OPR's analytical framework. OPR found that Acosta made the pivotal decision to resolve the federal investigation of Epstein through a state-based plea and either developed or approved the terms of the initial offer to the defense that set the beginning point for the subsequent negotiations that led to the NPA. Although Acosta did not sign the NPA, he participated in its drafting and approved it, with knowledge of its terms. Therefore, OPR considers Acosta to be responsible for the NPA and for the actions of the other subjects who implemented his decisions.

Based on its extensive investigation, OPR concludes that the subjects did not commit professional misconduct with respect to the development, negotiation, and approval of the NPA. Under OPR's framework, professional misconduct requires a finding that a subject attorney intentionally or recklessly violated a clear and unambiguous standard governing the conduct at issue. OPR found no clear and unambiguous standard that required Acosta to indict Epstein on federal charges or that prohibited his decision to defer prosecution to the state. Furthermore, none of the individual terms of the NPA violated Department or other applicable standards.

As the U.S. Attorney, Acosta had the "plenary authority" under established federal law and Department policy to resolve the case as he deemed necessary and appropriate, as long as his decision was not motivated or influenced by improper factors. Acosta's decision to decline to initiate a federal prosecution of Epstein was within the scope of his authority, and OPR did not find evidence that his decision was based on corruption or other impermissible considerations, such as Epstein's wealth, status, or associations. Evidence shows that Acosta resisted defense efforts to have the matter returned to the state for whatever result state authorities deemed appropriate, and he refused to eliminate the incarceration and sexual offender registration requirements. OPR did not find evidence establishing that Acosta's "breakfast meeting" with one of Epstein's defense counsel in October 2007 led to the NPA, which had been signed weeks earlier, or to any other significant decision that benefited Epstein. The contemporaneous records show that USAO managers' concerns about legal issues, witness credibility, and the impact of a trial on the victims led them to prefer a pre-charge resolution and that Acosta's concerns about the proper role of the federal government in prosecuting solicitation crimes resulted in his preference for a state-based resolution. Accordingly, OPR does not find that Acosta engaged in professional misconduct by resolving the federal investigation of Epstein in the way he did or that the other subjects committed professional misconduct through their implementation of Acosta's decisions.

Nevertheless, OPR concludes that Acosta's decision to resolve the federal investigation through the NPA constitutes poor judgment. Although this decision was within the scope of Acosta's broad discretion and OPR does not find that it resulted from improper factors, the NPA was a flawed mechanism for satisfying the federal interest that caused the government to open its investigation of Epstein. In Acosta's view, the federal government's role in prosecuting Epstein was limited by principles of federalism, under which the independent authority of the state should be recognized, and the federal responsibility in this situation was to serve as a "backstop" to state authorities by encouraging them to do more. However, Acosta failed to consider the difficulties inherent in a resolution that relied heavily on action by numerous state officials over whom he had no authority; he resolved the federal investigation before significant investigative steps were completed; and he agreed to several unusual and problematic terms in the NPA without the consideration required under the circumstances. In sum, Acosta's application of federalism

principles was too expansive, his view of the federal interest in prosecuting Epstein was too narrow, and his understanding of the state system was too imperfect to justify the decision to use the NPA. Furthermore, because Acosta assumed a significant role in reviewing and drafting the NPA and the other three subjects who were supervisors left the USAO, were transitioning to other jobs, or were absent at critical junctures, Acosta should have ensured more effective coordination and communication during the negotiations and before approving the final NPA. The NPA was a unique resolution, and one that required greater oversight and supervision than Acosta provided.

OPR further concludes that none of the subject attorneys committed professional misconduct with respect to the government's interactions with victims. The subjects did not intentionally or recklessly violate a clear and unambiguous duty under the CVRA by entering into the NPA without consulting with victims, because the USAO resolved the Epstein investigation without a federal criminal charge. Significantly, at the time the NPA was signed, the Department did not interpret CVRA rights to attach unless and until federal charges had been filed, and the federal courts had not established a clear and unambiguous standard applying the CVRA before criminal charges were brought. In addition, OPR did not find evidence that the lack of consultation was for the purpose of silencing victims. Nonetheless, the lack of consultation was part of a series of government interactions with victims that ultimately led to public and court condemnation of the government's treatment of the victims, reflected poorly on the Department as a whole, and is contradictory to the Department's mission to minimize the frustration and confusion that victims of a crime endure.

OPR determined that none of the subjects was responsible for communications sent to certain victims after the NPA was signed that described the case as "under investigation" and that failed to inform them of the NPA. The letters were sent by an FBI administrative employee who was not directly involved in the investigation, incorporated standard form language used by the FBI when communicating with victims, and were not drafted or reviewed by the subjects. Moreover, the statement that the matter was "under investigation" was not false because the government in fact continued to investigate the case in anticipation that Epstein would not fulfill the terms of the NPA. However, the letters risked misleading the victims and contributed to victim frustration and confusion by failing to provide important information about the status of the investigation. The letters also demonstrated a lack of coordination between the federal agencies responsible for communicating with Epstein's victims and showed a lack of attention to and oversight regarding communication with victims.

After the NPA was signed, Acosta elected to defer to the State Attorney the decision whether to notify victims about the state's plea hearing pursuant to the state's own victim's rights requirements. Although Acosta's decision was within his authority and did not constitute professional misconduct, OPR concludes that Acosta exercised poor judgment when he failed to make certain that the state intended to and would notify victims identified through the federal investigation about the state plea hearing. His decision left victims uninformed about an important proceeding that resolved the federal investigation, an investigation about which the USAO had communicated with victims for months. It also ultimately created the misimpression that the Department intentionally sought to silence the victims. Acosta failed to ensure that victims were made aware of a court proceeding that was related to their own cases, and thus he failed to ensure that victims were treated with forthrightness and dignity.

OPR concludes that the decision to postpone notifying victims about the terms of the NPA after it was signed and the omission of information about the NPA during victim interviews and conversations with victims' attorneys in 2008 do not constitute professional misconduct. Contemporaneous records show that these actions were based on strategic concerns about creating impeachment evidence that Epstein's victims had financial motives to make claims against him, evidence that could be used against victims at a trial, and were not for the purpose of silencing victims. Nonetheless, the failure to reevaluate the strategy prior to interviews of victims and discussions with victims' attorneys occurring in 2008 led to interactions that contributed to victims' feelings that the government was intentionally concealing information from them.

After examining the full scope and context of the government's interactions with victims, OPR concludes that the government's lack of transparency and its inconsistent messages led to victims feeling confused and ill-treated by the government; gave victims and the public the misimpression that the government had colluded with Epstein's counsel to keep the NPA secret from the victims; and undercut public confidence in the legitimacy of the resulting agreement. The overall result of the subjects' anomalous handling of this case understandably left many victims feeling ignored and frustrated and resulted in extensive public criticism. In sum, OPR concludes that the victims were not treated with the forthrightness and sensitivity expected by the Department.

METHODOLOGY

A. Document Review

As referenced in the Executive Summary, OPR obtained and reviewed hundreds of thousands of pages of documents from the U.S. Attorney's Office for the Southern District of Florida (USAO), other U.S. Attorney's offices, the FBI, and other Department components, including the Office of the Deputy Attorney General, the Criminal Division, and the Executive Office for U.S. Attorneys (EOUSA). The categories of documents reviewed by OPR, and their sources, are set forth below.

1. USAO Records

The USAO provided OPR with access to all of its records from its handling of the Epstein investigation and the CVRA litigation. The records included, but were not limited to, boxes of material that Villafaña updated and maintained through the course of both actions, which contained pleadings from the Epstein investigation, the CVRA litigation, and other related cases; extensive compilations of internal and external correspondence, including letters and emails; evidence such as telephone records, FBI reports, material received from the state investigation, and other confidential investigative records; court transcripts; investigative transcripts; prosecution team handwritten notes; research material; and draft and final case documents such as the NPA, prosecution memoranda, and federal indictments.

The USAO also provided OPR with access to filings, productions, and privileged material in the CVRA litigation; Outlook data collected to respond to production requests in that case; a set of Epstein case documents maintained by Acosta and Sloman; computer files regarding the Epstein case collected by Sloman; Villafaña's Outlook data; Acosta's hard drive; and the permanently retained official U.S. Attorney records of Acosta held by the Federal Records Center.

2. EOUSA Records

EOUSA provided OPR with Outlook data from all five subjects and six additional witnesses. This information, dating back to 2005, included all inbox, outbox, sent, deleted, and saved emails, and calendar entries that it maintained. EOUSA provided OPR with over 850,000 Outlook records in total (not including email attachments or excluding duplicate records). OPR identified key time periods and fully reviewed those records. OPR applied search terms to the remainder of the records and reviewed any responsive documents.

After reviewing the emails, OPR identified a data gap in Acosta's email records: his inbox contained no emails from May 26, 2007, through November 2, 2008. This gap, however, was not present with respect to Acosta's sent email. OPR requested that EOUSA investigate. During its investigation, EOUSA discovered a data association error that incorrectly associated Acosta's data with an unrelated employee who had a similar name. Once the data was properly associated, EOUSA found and produced 11,248 Acosta emails from April 3, 2008, through the end of his tenure at the USAO. However, with respect to the remaining emails, EOUSA concluded that the emails were not transferred from the USAO when, in 2008 and 2009, Outlook data for all U.S.

Attorney's Offices was migrated to EOUSA's centralized system to be maintained. The USAO's data was migrated between March and June 2008.

EOUSA and OPR separately confirmed with the USAO that it was unable to locate any additional emails. OPR questioned Acosta, as well as numerous administrative staff, about the email gap. Acosta and the witnesses denied having any knowledge of the problem, or that they or, to their knowledge, anyone else made any efforts to intentionally delete the emails. In addition, at OPR's request, EOUSA conducted an analysis of records migrated from four other U.S. Attorney's Offices and found that each office provided data that also contained significant gaps in their U.S. Attorney email records, although the time periods varied for each office. OPR found no evidence indicating that the gap in Acosta's emails was caused by any intentional act or for the purpose of concealing evidence relating to the Epstein investigation and concludes that it was most likely the result of a technological error.

Although a gap in Acosta's email inbox from May 26, 2007, through April 2, 2008, remained, OPR was nonetheless able to examine a significant number of Acosta's emails from this time due to the extensive case files kept by the USAO; the availability of Acosta's sent email, which did not contain a similar gap; and the availability of emails of other USAO subjects and witnesses who were included on emails with Acosta.

3. Federal Bureau of Investigation Records

OPR worked with the FBI's Palm Beach Office, including with two case agents and the Victim Witness Specialist who worked on the Epstein matter, to obtain relevant FBI documents. In addition, the FBI searched its Automated Case Support system and also provided documentation concerning its victim notification system.

4. Criminal Division Records

The Office of the Assistant Attorney General for the Criminal Division provided OPR with Outlook data for the four individuals from that Office who examined issues connected to the USAO's Epstein investigation. The data included the individuals' inbox, outbox, sent, deleted, and saved emails, and calendar entries.

CEOS also provided OPR with Outlook data for the four individuals from that office who worked on, or examined issues connected to, the USAO's Epstein investigation. The data included the individuals' inbox, outbox, sent, deleted, and saved emails. CEOS also conducted a check of its shared hard drive and provided documents that were potentially relevant to OPR's investigation.

5. Office of the Deputy Attorney General Records

OPR obtained Outlook data for the three individuals from the Office of the Deputy Attorney who examined issues connected to the USAO's Epstein investigation, including the former Deputy Attorney General. The data included the individuals' inbox, outbox, sent, deleted, and saved emails, and calendar entries.

6. U.S. Attorney's Office for the Middle District of Florida Records

The U.S. Attorney's Office for the Middle District of Florida provided OPR with records related to its review of evidence against Epstein, after he concluded his Florida state sentence, when the Department recused the USAO in August 2011 from "all matters, to include the investigation and potential prosecution, relating to Jeffrey Epstein's alleged sexual activities with minor females," and assigned the matter to the Middle District of Florida U.S. Attorney's Office for further consideration. The records included a declination of the matter due to the NPA.

7. U.S. Attorney's Office for the Northern District of Georgia Records

The U.S. Attorney's Office for the Northern District of Georgia provided OPR with records related to its work on the CVRA litigation after the recusal of the USAO.

8. Public Records

OPR obtained and reviewed a variety of public records, including publicly released records of the Palm Beach Police Department, the State Attorney's Office for the 15th Judicial Circuit, and the Palm Beach Sheriff's Office; documents pertaining to the CVRA litigation and other court proceedings involving Epstein and related individuals; and books and media reports.

B. Information from Subjects, Witnesses, and Victims

1. Subjects

OPR requested that all five subjects provide written responses detailing their involvement in the federal investigation of Epstein, the drafting and execution of the NPA, and decisions relating to victim notification and consultation. In addition, OPR conducted extensive interviews of each subject under oath and before a court reporter. Each subject was represented by counsel and had access to relevant contemporaneous documents before the subject's OPR interview. The subjects reviewed and provided comments on their interview transcripts and on OPR's draft report.

2. Witnesses

OPR conducted more than 60 interviews of witnesses, including the FBI case agents, their supervisors, and FBI administrative personnel. OPR interviewed current and former USAO staff and attorneys and current and former Department attorneys and senior managers, including former Deputy Attorney General Mark Filip and former Assistant Attorney General for the Criminal Division Alice Fisher. OPR also interviewed former State Attorney Barry Krischer and former Assistant State Attorney Lanna Behlolovick.

3. Communications with Victims and Victims' Attorneys

OPR contacted attorneys known to represent 26 victims among the 30 surviving individuals who were identified in the USAO's July 2008 listing of 32 victims the USAO was prepared to include in federal charges against Epstein and who accordingly were entitled to the benefits of the 18 U.S.C. § 2255 monetary damages provision of the NPA. OPR contacted the attorneys to invite

the victims to provide OPR with information regarding their contacts with, and notification received from, the FBI and USAO, during the period before the NPA was signed or before Epstein's state plea hearing, about the status of the federal investigation, about Epstein's state plea, or about the NPA. OPR received information from or pertaining to 13 victims.

EXHIBIT 1

State Indictment

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INDICTMENT

A TRUE BILL 06-9454CF A2

FILED
05 JUL 19 PM 2:43
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL

IN THE NAME OF AND BY THE AUTHORITY OF THE STATE OF FLORIDA

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA

For Palm Beach County, at the Spring Term thereof, in the year of our Lord Two Thousand and Six, to-wit: The Grand Jurors of the State of Florida, inquiring in and for the body of said County of Palm Beach, upon their oaths do present that JEFFREY E. EPSTEIN in the County of Palm Beach aforesaid, in the Circuit and State aforesaid,

COUNT ONE
FELONY SOLICITATION OF PROSTITUTION

on or about or between the 1st day of August in the year of our Lord Two Thousand and Four and October 31, 2005, did solicit, induce, entice, or procure another to commit prostitution lewdness, or assignation, contrary to Florida Statute 796.07(1) on three or more occasions between August 01, 2004 and October 31, 2005, contrary to Florida Statute 796.07(2)(f) and (4)(c). (3 DEG FEL)(LEVEL 1)

against the form of the statute, to the evil example of all others, and against the peace and dignity of the State of Florida.

I hereby certify that I have advised the Grand Jury returning this indictment as authorized and required by law.

STATE OF FLORIDA PALM BEACH COUNTY
I hereby certify that the foregoing is a true copy of the record in my office.
THIS 19 DAY OF JUL 2006, 20
SHARON R. BOCK
CLERK & COMPTR.
BY DEPUTY CLERK

Assistant State Attorney of the Fifteenth Judicial Circuit of the State of Florida, prosecuting for the said State

GRAND JURY FOREPERSON

July 19, 2006
DATE

Jeffrey E. Epstein, Race: White, Sex: Male, DOB: [redacted], SS#: [redacted]; Issue Warrant

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EXHIBIT 2

September 6, 2007 Draft Non-Prosecution Agreement

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IN RE:
INVESTIGATION OF
JEFFREY EPSTEIN
_____/

NON-PROSECUTION AGREEMENT

IT APPEARING that Jeffrey Epstein (hereinafter "Epstein") is reported to have committed offenses against the United States from in or around 2001 through in or around October 2005, including:

(1) knowingly and willfully conspiring with others known and unknown to commit an offense against the United States, that is, to use a facility or means of interstate or foreign commerce to knowingly persuade, induce, or entice minor females to engage in prostitution, in violation of Title 18, United States Code, Section 2422(b); all in violation of Title 18, United States Code, Section 371;

(2) knowingly and willfully conspiring with others known and unknown to travel in interstate commerce for the purpose of engaging in illicit sexual conduct, as defined in 18 U.S.C. § 2423(f), with minor females, in violation of Title 18, United States Code, Section 2423(b); all in violation of Title 18, United States Code, Section 2423(e);

(3) using a facility or means of interstate or foreign commerce to knowingly persuade, induce, or entice minor females to engage in prostitution; in violation of Title 18, United States Code, Sections 2422(b) and 2;

(4) traveling in interstate commerce for the purpose of engaging in illicit sexual conduct, as defined in 18 U.S.C. § 2423(f), with minor females; in violation of Title 18, United States Code, Section 2423(b); and

(5) knowingly, in and affecting interstate and foreign commerce, recruiting, enticing, and obtaining by any means a person, knowing that the person had not attained the age of 18 years and would be caused to engage in a commercial sex act as defined in 18 U.S.C. § 1591(c)(1); in violation of Title 18, United States Code, Sections 1591(a)(1) and 2; and

IT APPEARING that Epstein has accepted responsibility for his behavior by his

signature on this Agreement; and

IT APPEARING, after an investigation of the offenses and Epstein's background, that the interest of the United States and Epstein's own interest and the interest of justice will be served by the following procedure;

THEREFORE, on the authority of R. Alexander Acosta, United States Attorney for the Southern District of Florida, prosecution in this District for these offenses shall be deferred in favor of prosecution by the State of Florida, provided that Epstein abides by the following conditions and the requirements of this Agreement set out below.

Should Epstein violate any of the conditions of this Agreement, the United States Attorney may at any time initiate prosecution against Epstein for any offense. In this case, the United States Attorney will furnish Epstein with notice specifying the conditions of the Agreement which he has violated.

After timely fulfilling all the terms and conditions of the Agreement, no prosecution for the offenses set out on page 1 of this Agreement will be instituted in this District, and the charges against Epstein if any, will be dismissed.

Neither this Agreement nor any other document filed with the United States Attorney as part of this Agreement will be used against Epstein, except for impeachment purposes, in connection with any prosecution for the above-described offenses.

Terms of the Agreement:

1. Epstein shall plead guilty (not nolo contendere) to an Information filed by the State Attorney's Office for the 15th Judicial Circuit in and for Palm Beach County (hereinafter, the "State Attorney's Office") charging violations of the following Florida Statutes:

   (a) lewd and lascivious battery on a child, in violation of Fl. Stat. 800.04(4);

   (b) solicitation of minors to engage in prostitution, in violation of Fl. Stat. 796.03; and

   (c) engaging in sexual activity with minors at least sixteen years of age, in violation of Fl. Stat. 794.05.

2. Epstein and the State Attorney's Office shall make a joint, binding recommendation that Epstein serve at least two years in prison, without any opportunity for withholding adjudication or sentencing; and without probation or community control in lieu of imprisonment.

3. Epstein shall waive all challenges to the Information filed by the State Attorney's Office and shall waive the right to appeal his conviction and sentence.

4. Epstein agrees that, if any of the victims identified in the federal investigation file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the U.S. District Court for the Southern District of Florida over his person and/or the subject matter, and Epstein will not contest that the identified victims are persons who, while minors, were victims of violations of Title 18, United States Code, Sections(s) 2422 and/or 2423.

5. The United States shall provide Epstein's attorneys with a list of the identified victims, which will not exceed forty, after Epstein has signed this agreement and entered his guilty plea. The United States shall make a motion with the United States District Court for the Southern District of Florida for the appointment of a guardian ad litem for the identified victims and Epstein's counsel may contact the identified victims through that counsel.

6. Epstein shall enter his guilty plea and be sentenced not later than September 28, 2007, and shall begin service of his sentence not later than October 15, 2007.

By signing this agreement, Epstein asserts and certifies that each of these terms is material to this agreement and is supported by independent consideration and that a breach of any one of these conditions allows the United States to elect to terminate the agreement and to investigate and prosecute Epstein for any and all federal offenses.

By signing this agreement, Epstein asserts and certifies that he is aware of the fact that the Sixth Amendment to the Constitution of the United States provides that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. Epstein further is aware that Rule 48(b) of the Federal Rules of Criminal Procedure provides that the Court may dismiss an indictment, information, or complaint for unnecessary delay in presenting a charge to the Grand Jury, filing an information, or in bringing a defendant to trial. Epstein hereby requests that the United States Attorney for the Southern District of Florida defer such prosecution. Epstein agrees and consents that any delay from the date of this Agreement to the date of initiation of prosecution, as provided for in the terms expressed herein, shall be deemed to be a necessary delay at his own request, and he hereby waives any defense to such prosecution on the ground that such delay operated to deny him rights under Rule 48(b) of the Federal Rules of Criminal Procedure and the Sixth Amendment to the Constitution of the United States to a speedy trial or to bar the prosecution by reason of the running of the statute of limitations for a period of months equal to the period between the signing of this agreement and the breach of this

agreement. Epstein further asserts and certifies that he understands that the Fifth Amendment and Rule 7(a) of the Federal Rules of Civil Procedure provide that all felonies must be charged in an indictment presented to a grand jury. Epstein hereby agrees and consents that, if a prosecution against him is instituted, it may be by way of an Information signed and filed by the United States Attorney, and hereby waives his right to be indicted by a grand jury.

By signing this agreement, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the conditions of this non-Prosecution Agreement and agrees to comply with them.

Dated: _____

_____
Jeffrey Epstein

Dated: _____

_____
Roy Black, Esq.
Counsel to Jeffrey Epstein

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: _____

By: _____
A. Marie Villafaña
Assistant United States Attorney

EXHIBIT 3

September 24, 2007 Non-Prosecution Agreement

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IN RE:
INVESTIGATION OF
JEFFREY EPSTEIN
_____/

NON-PROSECUTION AGREEMENT

IT APPEARING that the City of Palm Beach Police Department and the State Attorney's Office for the 15th Judicial Circuit in and for Palm Beach County (hereinafter, the "State Attorney's Office") have conducted an investigation into the conduct of Jeffrey Epstein (hereinafter "Epstein");

IT APPEARING that the State Attorney's Office has charged Epstein by indictment with solicitation of prostitution, in violation of Florida Statutes Section 796.07;

IT APPEARING that the United States Attorney's Office and the Federal Bureau of Investigation have conducted their own investigation into Epstein's background and any offenses that may have been committed by Epstein against the United States from in or around 2001 through in or around September 2007, including:

(1) knowingly and willfully conspiring with others known and unknown to commit an offense against the United States, that is, to use a facility or means of interstate or foreign commerce to knowingly persuade, induce, or entice minor females to engage in prostitution, in violation of Title 18, United States Code, Section 2422(b); all in violation of Title 18, United States Code, Section 371;

(2) knowingly and willfully conspiring with others known and unknown to travel in interstate commerce for the purpose of engaging in illicit sexual conduct, as defined in 18 U.S.C. § 2423(f), with minor females, in violation of Title 18, United States Code, Section 2423(b); all in violation of Title 18, United States Code, Section 2423(e);

(3) using a facility or means of interstate or foreign commerce to knowingly persuade, induce, or entice minor females to engage in prostitution; in violation of Title 18, United States Code, Sections 2422(b) and 2;

(4) traveling in interstate commerce for the purpose of engaging in illicit sexual conduct, as defined in 18 U.S.C. § 2423(f), with minor females; in violation

of Title 18, United States Code, Section 2423(b); and

(5) knowingly, in and affecting interstate and foreign commerce, recruiting, enticing, and obtaining by any means a person, knowing that the person had not attained the age of 18 years and would be caused to engage in a commercial sex act as defined in 18 U.S.C. § 1591(c)(1); in violation of Title 18, United States Code, Sections 1591(a)(1) and 2; and

IT APPEARING that Epstein seeks to resolve globally his state and federal criminal liability and Epstein understands and acknowledges that, in exchange for the benefits provided by this agreement, he agrees to comply with its terms, including undertaking certain actions with the State Attorney's Office;

IT APPEARING, after an investigation of the offenses and Epstein's background by both State and Federal law enforcement agencies, and after due consultation with the State Attorney's Office, that the interests of the United States, the State of Florida, and the Defendant will be served by the following procedure;

THEREFORE, on the authority of R. Alexander Acosta, United States Attorney for the Southern District of Florida, prosecution in this District for these offenses shall be deferred in favor of prosecution by the State of Florida, provided that Epstein abides by the following conditions and the requirements of this Agreement set forth below.

If the United States Attorney should determine, based on reliable evidence, that, during the period of the Agreement, Epstein willfully violated any of the conditions of this Agreement, then the United States Attorney may, within ninety (90) days following the expiration of the term of home confinement discussed below, provide Epstein with timely notice specifying the condition(s) of the Agreement that he has violated, and shall initiate its prosecution on any offense within sixty (60) days' of giving notice of the violation. Any notice provided to Epstein pursuant to this paragraph shall be provided within 60 days of the United States learning of facts which may provide a basis for a determination of a breach of the Agreement.

After timely fulfilling all the terms and conditions of the Agreement, no prosecution for the offenses set out on pages 1 and 2 of this Agreement, nor any other offenses that have been the subject of the joint investigation by the Federal Bureau of Investigation and the United States Attorney's Office, nor any offenses that arose from the Federal Grand Jury investigation will be instituted in this District, and the charges against Epstein if any, will be dismissed.

Terms of the Agreement:

1. Epstein shall plead guilty (not nolo contendere) to the Indictment as currently pending against him in the 15th Judicial Circuit in and for Palm Beach County (Case No. 2006-cf-009495AXXXMB) charging one (1) count of solicitation of prostitution, in violation of Fl. Stat. § 796.07. In addition, Epstein shall plead guilty to an Information filed by the State Attorney's Office charging Epstein with an offense that requires him to register as a sex offender, that is, the solicitation of minors to engage in prostitution, in violation of Florida Statutes Section 796.03;

2. Epstein shall make a binding recommendation that the Court impose a thirty (30) month sentence to be divided as follows:

   (a) Epstein shall be sentenced to consecutive terms of twelve (12) months and six (6) months in county jail for all charges, without any opportunity for withholding adjudication or sentencing, and without probation or community control in lieu of imprisonment; and

   (b) Epstein shall be sentenced to a term of twelve (12) months of community control consecutive to his two terms in county jail as described in Term 2(a), *supra*.

3. This agreement is contingent upon a Judge of the 15th Judicial Circuit accepting and executing the sentence agreed upon between the State Attorney's Office and Epstein, the details of which are set forth in this agreement.

4. The terms contained in paragraphs 1 and 2, *supra*, do not foreclose Epstein and the State Attorney's Office from agreeing to recommend any additional charge(s) or any additional term(s) of probation and/or incarceration.

5. Epstein shall waive all challenges to the Information filed by the State Attorney's Office and shall waive the right to appeal his conviction and sentence, except a sentence that exceeds what is set forth in paragraph (2), *supra*.

6. Epstein shall provide to the U.S. Attorney's Office copies of all

proposed agreements with the State Attorney's Office prior to entering into those agreements.

7. The United States shall provide Epstein's attorneys with a list of individuals whom it has identified as victims, as defined in 18 U.S.C. § 2255, after Epstein has signed this agreement and been sentenced. Upon the execution of this agreement, the United States, in consultation with and subject to the good faith approval of Epstein's counsel, shall select an attorney representative for these persons, who shall be paid for by Epstein. Epstein's counsel may contact the identified individuals through that representative.

8. If any of the individuals referred to in paragraph (7), *supra*, elects to file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the United States District Court for the Southern District of Florida over his person and/or the subject matter, and Epstein waives his right to contest liability and also waives his right to contest damages up to an amount as agreed to between the identified individual and Epstein, so long as the identified individual elects to proceed exclusively under 18 U.S.C. § 2255, and agrees to waive any other claim for damages, whether pursuant to state, federal, or common law. Notwithstanding this waiver, as to those individuals whose names appear on the list provided by the United States, Epstein's signature on this agreement, his waivers and failures to contest liability and such damages in any suit are not to be construed as an admission of any criminal or civil liability.

9. Epstein's signature on this agreement also is not to be construed as an admission of civil or criminal liability or a waiver of any jurisdictional or other defense as to any person whose name does not appear on the list provided by the United States.

10. Except as to those individuals who elect to proceed exclusively under 18 U.S.C. § 2255, as set forth in paragraph (8), *supra*, neither Epstein's signature on this agreement, nor its terms, nor any resulting waivers or settlements by Epstein are to be construed as admissions or evidence of civil or criminal liability or a waiver of any jurisdictional or other defense as to any person, whether or not her name appears on the list provided by the United States.

11. Epstein shall use his best efforts to enter his guilty plea and be

sentenced not later than October 26, 2007. The United States has no objection to Epstein self-reporting to begin serving his sentence not later than January 4, 2008.

12. Epstein agrees that he will not be afforded any benefits with respect to gain time, other than the rights, opportunities, and benefits as any other inmate, including but not limited to, eligibility for gain time credit based on standard rules and regulations that apply in the State of Florida. At the United States' request, Epstein agrees to provide an accounting of the gain time he earned during his period of incarceration.

13. The parties anticipate that this agreement will not be made part of any public record. If the United States receives a Freedom of Information Act request or any compulsory process commanding the disclosure of the agreement, it will provide notice to Epstein before making that disclosure.

Epstein understands that the United States Attorney has no authority to require the State Attorney's Office to abide by any terms of this agreement. Epstein understands that it is his obligation to undertake discussions with the State Attorney's Office and to use his best efforts to ensure compliance with these procedures, which compliance will be necessary to satisfy the United States' interest. Epstein also understands that it is his obligation to use his best efforts to convince the Judge of the 15th Judicial Circuit to accept Epstein's binding recommendation regarding the sentence to be imposed, and understands that the failure to do so will be a breach of the agreement.

In consideration of Epstein's agreement to plead guilty and to provide compensation in the manner described above, if Epstein successfully fulfills all of the terms and conditions of this agreement, the United States also agrees that it will not institute any criminal charges against any potential co-conspirators of Epstein, including but not limited to [redacted]. Further, upon execution of this agreement and a plea agreement with the State Attorney's Office, the federal Grand Jury investigation will be suspended, and all pending federal Grand Jury subpoenas will be held in abeyance unless and until the defendant violates any term of this agreement. The defendant likewise agrees to withdraw his pending motion to intervene and to quash certain grand jury subpoenas. Both parties agree to maintain their evidence, specifically evidence requested by or directly related to the grand jury subpoenas that have been issued, and including certain computer equipment, inviolate until all of the terms of this agreement have been satisfied. Upon the successful completion of the terms of this agreement, all outstanding grand jury subpoenas shall be deemed withdrawn.

By signing this agreement, Epstein asserts and certifies that each of these terms is material to this agreement and is supported by independent consideration and that a breach of any one of these conditions allows the United States to elect to terminate the agreement and to investigate and prosecute Epstein and any other individual or entity for any and all federal offenses.

By signing this agreement, Epstein asserts and certifies that he is aware of the fact that the Sixth Amendment to the Constitution of the United States provides that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. Epstein further is aware that Rule 48(b) of the Federal Rules of Criminal Procedure provides that the Court may dismiss an indictment, information, or complaint for unnecessary delay in presenting a charge to the Grand Jury, filing an information, or in bringing a defendant to trial. Epstein hereby requests that the United States Attorney for the Southern District of Florida defer such prosecution. Epstein agrees and consents that any delay from the date of this Agreement to the date of initiation of prosecution, as provided for in the terms expressed herein, shall be deemed to be a necessary delay at his own request, and he hereby waives any defense to such prosecution on the ground that such delay operated to deny him rights under Rule 48(b) of the Federal Rules of Criminal Procedure and the Sixth Amendment to the Constitution of the United States to a speedy trial or to bar the prosecution by reason of the running of the statute of limitations for a period of months equal to the period between the signing of this agreement and the breach of this agreement as to those offenses that were the subject of the grand jury's investigation. Epstein further asserts and certifies that he understands that the Fifth Amendment and Rule 7(a) of the Federal Rules of Criminal Procedure provide that all felonies must be charged in an indictment presented to a grand jury. Epstein hereby agrees and consents that, if a prosecution against him is instituted for any offense that was the subject of the grand jury's investigation, it may be by way of an Information signed and filed by the United States Attorney, and hereby waives his right to be indicted by a grand jury as to any such offense.

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By signing this agreement, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the conditions of this Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: _____ By: _____
A. MARIE VILLAFAÑA
ASSISTANT U.S. ATTORNEY

Dated: 9/24/07
JEFFREY EPSTEIN

Dated: _____
GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: _____
LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

By signing this agreement, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the conditions of this Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: 9/27/07

By: _____
A. MARIE VILLAFAÑA
ASSISTANT U.S. ATTORNEY

Dated: _____

_____
JEFFREY EPSTEIN

Dated: 9/24/07

_____
GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: _____

_____
LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

By signing this agreement, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the conditions of this Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: _____ By: _____
A. MARIE VILLAFAÑA
ASSISTANT U.S. ATTORNEY

Dated: _____ _____
JEFFREY EPSTEIN

Dated: _____ _____
GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: 9-24-07 _____
LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

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EXHIBIT 4

Addendum to the Non-Prosecution Agreement

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IN RE:

INVESTIGATION OF

JEFFREY EPSTEIN

_____/

ADDENDUM TO THE NON-PROSECUTION AGREEMENT

IT APPEARING that the parties seek to clarify certain provisions of page 4, paragraph 7 of the Non-Prosecution Agreement (hereinafter "paragraph 7"), that agreement is modified as follows:

7A. The United States has the right to assign to an independent third-party the responsibility for consulting with and, subject to the good faith approval of Epstein's counsel, selecting the attorney representative for the individuals identified under the Agreement. If the United States elects to assign this responsibility to an independent third-party, both the United States and Epstein retain the right to make good faith objections to the attorney representative suggested by the independent third-party prior to the final designation of the attorney representative.

7B. The parties will jointly prepare a short written submission to the independent third-party regarding the role of the attorney representative and regarding Epstein's Agreement to pay such attorney representative his or her regular customary hourly rate for representing such victims subject to the provisions of paragraph C, infra.

7C. Pursuant to additional paragraph 7A, Epstein has agreed to pay the fees of the attorney representative selected by the independent third party. This provision, however, shall not obligate Epstein to pay the fees and costs of contested litigation filed against him. Thus, if after consideration of potential settlements, an attorney representative elects to file a contested lawsuit pursuant to 18 U.S.C. s 2255 or elects to pursue any other contested remedy, the paragraph 7 obligation of the Agreement to pay the costs of the attorney representative, as opposed to any statutory or other obligations to pay reasonable attorneys fees and costs such as those contained in s 2255 to bear the costs of the attorney representative, shall cease.

By signing this Addendum, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the clarifications to the Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: 10/30/07

By: Jeffrey H. Sloman FAUSA
for A. MARIE VILLAFAÑA
ASSISTANT U.S. ATTORNEY

Dated: 10/29/07

JEFFREY EPSTEIN

Dated: _____

GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: _____

LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

By signing this Addendum, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the clarifications to the Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: 10/30/07

By: Jeffrey H. Sloman FAUSA
A. MARIE VILLAFAÑA
ASSISTANT U.S. ATTORNEY

Dated: _____

JEFFREY EPSTEIN

Dated: 10/29/07

Gerald Lefcourt
GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: _____

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COUNSEL TO JEFFREY EPSTEIN

Dated: 10-29-07

_____
LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

EXHIBIT 5

State Information

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, STATE OF FLORIDA
CRIMINAL DIVISION "W" (LB)

08CF9381

STATE OF FLORIDA

ARISES FROM BOOKING NO.:
2006036744

vs.

JEFFREY E EPSTEIN, W/M, [redacted]

FILED
08 JUL 26 PM 3:30
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL

INFORMATION FOR:

1) PROCURING PERSON UNDER 18 FOR PROSTITUION

In the Name and by Authority of the State of Florida:
BARRY E. KRISCHER, State Attorney for the Fifteenth Judicial Circuit, Palm Beach County, Florida, by and through his undersigned Assistant State Attorney, charges that JEFFREY E EPSTEIN on or about or between the 1st day of August in the year of our Lord Two Thousand and Four and October 9, 2005, did knowingly and unlawfully procure for prostitution, or caused to be prostituted, [redacted], a person under the age of 18 years, contrary to Florida Statute 796.03. (2 DEG FEL)

LANNA BELOHLAVEK
FL. BAR NO. 0776726
Assistant State Attorney

STATE OF FLORIDA
COUNTY OF PALM BEACH

Appeared before me, LANNA BELOHLAVEK Assistant State Attorney for Palm Beach County, Florida, personally known to me, who, being first duly sworn, says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true, and which, if true, would constitute the offense therein charged, that this prosecution is instituted in good faith, and certifies that testimony under oath has been received from the material witness or witnesses for the offense.

Assistant State Attorney

Sworn to and subscribed to before me this 26th day of June, 2008.

NOTARY PUBLIC, State of Florida

Damaris Pina
MY COMMISSION # DD560798 EXPIRES
August 2, 2010
BONDED THRU TROY FAIN INSURANCE, INC.

LB/dp

STATE OF FLORIDA • PALM BEACH COUNTY
I hereby certify that the foregoing is a true copy of the record in my office.
THIS JUL 22 2008 DAY OF ____, 20____
SHARON R. BOCK
CLERK & COMPTROLLER
BY ____ DEPUTY CLERK

FCIC REFERENCE NUMBERS:
1) FELONY SOLICITATION OF PROSTITUTION 3699

CAA JUN 26

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USDC SDNY
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DOC #:
DATE FILED: 2/24/22

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America,

–v–

Ghislaine Maxwell,

Defendant.

20-CR-330 (AJN)

OPINION & ORDER

ALISON J. NATHAN, District Judge:

Before the Court is the Defendant's motion for a new trial pursuant to Federal Rule of Criminal Procedure 33, which the Government opposes. *See* Maxwell Br., Jan. 19, 2022; Gov. Br., Feb. 2, 2022. The Defendant seeks a new trial on the basis that Juror 50 "falsely answered a material question during *voir dire* and . . . that, had he answered truthfully, he would have been subject to a challenge for cause." Maxwell Br. at 48. The Defendant contends that the current paper record sufficiently supports her motion and should be granted without a hearing. *Id.* In the alternative the Defendant requests an evidentiary hearing to inquire into Juror 50's alleged nondisclosure. She also argues a broader hearing is required based on a news article that suggests a second juror was allegedly a victim of sexual abuse. *Id.* at 49. The Government urges this Court to deny the Defendant's motion on the current record, but it consents to a limited hearing on the issue of whether Juror 50 provided a materially false answer to Question 48 of the questionnaire. Gov. Br. at 31–32.

The Defendant's motion for a new trial based on the current record is DENIED. Defendant's motion on the current record relies extensively on statements made by Juror 50 regarding what occurred during jury deliberations that the Court is prohibited from considering under Rule 606. With regard to Juror 50's statements that do not pertain to jury deliberations, in

order to resolve the motion at this stage, the Court would have to accept these unsworn statements made to media outlets as true and reach factual determinations that are not available on the current record.

Accordingly, a hearing is necessary to resolve the Defendant's motion. The Court concludes, and the Government concedes, that the demanding standard for holding an evidentiary hearing is met as to Juror 50's answer to Question 48 of the questionnaire. The Court further concludes that Juror 50's response to Question 25 is relevant to the inquiry. Following trial, Juror 50 made several direct, unambiguous statements to multiple media outlets about his own experience that do not pertain to jury deliberations and that cast doubt on the accuracy of his responses to Questions 25 and 48. Such statements are "clear, strong, substantial and incontrovertible evidence that a specific, nonspeculative impropriety"—namely a false statement during jury selection—has occurred. To be clear, the potential impropriety is not that someone with a history of sexual abuse may have served on the jury. Rather, it is the potential failure to respond truthfully to questions during the jury selection process that asked for that material information so that any potential bias could be explored. Conversely, the demanding standard for ordering an evidentiary hearing is not met as to Juror 50's use of social media nor the conduct of any other juror. The Court therefore ORDERS a hearing take place at which the Court will question Juror 50 under oath. The Defendant's request for a broader hearing and pre-hearing discovery is DENIED.

I. Background

On December 29, 2021, the jury returned a verdict in this case, finding the Defendant guilty of five counts. A week after the jury announced its verdict, on January 5, 2022, the Government informed the Court that a juror had given at least three post-verdict interviews to

press outlets about his jury service and requested a hearing be held on the matter. Dkt. No. 568. The letter noted that in the interviews, which were both in print and on video, the juror "described being a victim of sexual abuse" and asserted that he "flew through" the juror questionnaire and did not recall being asked whether he had been a victim of sexual abuse. *Id.* at 1. The Government indicated in a redacted footnote that it believed the juror to be Juror 50, and a review of his questionnaire showed that he had provided a negative response to a question that asked whether a prospective juror had been a victim of sexual abuse. *Id.* at 2 n.2.[1] Finally, the Government requested that the Court offer court-appointed counsel to the juror in the event a hearing was ordered. A letter from the Defendant followed shortly thereafter also informing the Court about the juror's interviews. Dkt. No. 569. The Defendant filed a second letter that same day opposing the Government's request "because based on undisputed, publicly available information, the Court can and should order a new trial without any evidentiary hearing." Dkt. No. 570.[2]

The Defendant filed a motion for a new trial on January 19, 2022. The Government opposed the motion on February 2, 2022, and the Defendant filed a reply in support on February 9, 2022. In addition to Juror 50's post-trial interviews, the Defendant's motion relies on a *New York Times* article reporting that "a second juror described in an interview . . . having been

[1] The Government proposed redacting the footnote because the juror questionnaire was not a public document at that time. Because (for the reasons explained below) the Court now unseals the questionnaire, that redaction is no longer necessary.

[2] For completeness of the record, the Court notes the following occurred also on January 5, 2022: The Jury Department of the Southern District of New York received a call from Juror 50 asking for guidance because of statements he had given to certain media outlets that were being widely reported on in the press and inquiring whether he needed an attorney. At the Court's direction, the District Executive returned Juror 50's call and informed him that the Court was unable to provide any guidance or response to his question. Juror 50 then asked the District Executive if he could access his questionnaire. The District Executive, again at the Court's direction, informed Juror 50 that the questionnaire was not a public document and could not be provided to him.

sexually abused as a child" as a basis for a broader hearing beyond inquiry into Juror 50. Maxwell Br. at 21, 49.

II. Motion for a new trial on the current record

Federal Rule of Criminal Procedure 33 provides that "[u]pon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a). The parties agree that a defendant's Rule 33 motion premised on a juror's alleged nondisclosure during *voir dire* is governed by *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548 (1984). Maxwell Br. at 22–28; Gov. Br. at 11. In *McDonough*, the Supreme Court held that to obtain a new trial on the basis of juror nondisclosure during *voir dire*, "a party must first demonstrate that a juror failed to answer honestly a material question on *voir dire*, and then further show that a correct response would have provided a valid basis for a challenge for cause." *McDonough*, 464 U.S. at 556; *see also United States v. McCoy*, 995 F.3d 32, 51 (2d Cir. 2021); *United States v. Shaoul*, 41 F.3d 811, 815–16 (2d Cir. 1994); *United States v. Langford*, 990 F.2d 65, 68 (2d Cir. 1993).[3]

> The *McDonough* inquiry is restricted by Federal Rule of Evidence 606, which states:
>
> > During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.
>
> Fed. R. Evid. 606(b)(1).

[3] The parties dispute certain contours of the *McDonough* test, including whether it requires a deliberately false answer. But at a minimum, the parties agree that the deliberateness of a juror's incorrect answer is relevant to this inquiry. Maxwell Reply at 13–14. Because, as explained below, the Court does not now resolve at this juncture whether Juror 50's answers on the questionnaire and *voir dire* merit a new trial, it need not and does not resolve those disputes pre-hearing.

The Defendant urges this Court to resolve the motion on the papers, without the need for a hearing. Maxwell Br. at 28. But resolving the motion now would require the Court to accept as true Juror 50's unsworn statements made to media outlets. Moreover, in arguing for a new trial based on the current record, the Defendant relies extensively on statements prohibited from consideration by Rule 606. *E.g.*, Maxwell Br. at 12–14 (describing Juror 50's statements in deliberation and other jurors' reactions). The Defendant also urges the Court to reach factual conclusions that are unavailable on the current record; for example, that Juror 50 deliberately lied in failing to disclose that he was the victim of sexual abuse. *See* Maxwell Br. at 39–43. Finally, the Defendant cites no authority—nor is the Court aware of any—in which a court granted a new trial under the *McDonough* standard without first conducting an evidentiary hearing. As the Second Circuit has instructed, "if any significant doubt as to a juror's impartiality remains in the wake of objective evidence of false *voir dire* responses, an evidentiary hearing generally should be held." *United States v. Stewart*, 433 F.3d 273, 306 (2d Cir. 2006) (citing *United States v. Boney*, 977 F.2d 624, 634 (D.C. Cir. 1992)). The Court therefore denies the Defendant's motion to grant a new trial on the current record.

III. Evidentiary hearing

For the reasons outlined below, the Court determines that a hearing must be held regarding Juror 50's alleged nondisclosure during the jury selection process.

A. Threshold for an evidentiary hearing

Because of the importance of finality of judgments, the threshold for conducting a post-verdict inquiry is high. A post-verdict inquiry into juror misconduct is conducted only "when there is clear, strong, substantial and incontrovertible evidence that a specific, nonspeculative impropriety has occurred which could have prejudiced the trial of a defendant." *United States v.*

Baker, 899 F.3d 123, 130 (2d Cir. 2018) (cleaned up) (quoting *United States v. Moon*, 718 F.2d 1210, 1234 (2d Cir. 1983)). Mere "[g]ossip and anonymous tips do not satisfy this standard." *United States v. Stewart*, 317 F. Supp. 2d 432, 443 (S.D.N.Y. 2004). Rather, "[a]llegations of impropriety must be 'concrete allegations of inappropriate conduct that constitute competent and relevant evidence.'" *Baker*, 899 F.3d at 130 (quoting *United States v. Ianniello*, 866 F.2d 540, 543 (2d Cir. 1989)).

The Defendant argues that this is the wrong standard. Maxwell Reply, Feb. 9, 2022, at 8 n.4. But the Defendant does not identify an alternative standard. And the Second Circuit has applied precisely this standard to determine whether a district court should hold a *McDonough* hearing on the basis of a juror's nondisclosure during *voir dire*. *Stewart*, 433 F.3d at 302–03. The Court is bound to apply this demanding standard.

This high standard for an evidentiary hearing intentionally raises an "exacting hurdle" for defendants because "motions to set aside a jury verdict are disfavored." *United States v. Ventura*, No. 09-CR-1015 (JGK), 2014 WL 259655, at *3 (S.D.N.Y. Jan. 21, 2014). As the Second Circuit has repeatedly warned, "post-verdict inquiries may lead to evil consequences: subjecting juries to harassment, inhibiting juryroom deliberation, burdening courts with meritless applications, increasing temptation for jury tampering and creating uncertainty in jury verdicts." *Ianniello*, 866 F.2d at 543; *see also Tanner v. United States*, 483 U.S. 107, 119–20 (1987) (citing *McDonald v. Pless*, 238 U.S. 264, 267–68 (1915)). And an evidentiary hearing "is not held to afford a convicted defendant the opportunity 'to conduct a fishing expedition.'" *Stewart*, 433 F.3d at 306 (quoting *Moon*, 718 F.2d at 1234).

The Defendant argues that the considerations in *Tanner* and *Ianniello* are inapplicable to her motion because those cases "involved alleged conduct during trial and, crucially, during

deliberations." Maxwell Reply Br. at 8. This argument is wrong, as "the ultimate purpose of the [requested] post-trial evidentiary hearing is to set aside a jury verdict." *Ventura*, 2014 WL 259655, at *3. And "there is no discernible reason to apply a different general standard to new trial motions based on juror misconduct than to those premised on any other reason." *United States v. Guzman Loera*, No. 09-CR-0466 (BMC), 2019 WL 2869081, at *5 n.5 (E.D.N.Y. July 3, 2019), *aff'd*, 24 F.4th 144 (2d Cir. 2022). "[E]ven though there are additional considerations . . . when ruling on an evidentiary hearing and new trial motion premised upon allegations of juror misconduct, these are the overarching legal standards applicable to all Rule 33 motions, including when juror misconduct is at issue." *Id.*

If a hearing is held, "its scope should be limited to only what is absolutely necessary to determine the facts with precision." *Ianniello*, 866 F.2d at 544. "Therefore, in the course of a post-verdict inquiry . . . , when and if it becomes apparent that the above-described reasonable grounds to suspect prejudicial jury impropriety do not exist, the inquiry should end." *Moon*, 718 F.2d at 1234. The Court has discretion to structure the hearing and to determine what testimony is needed. *Ianniello*, 866 F.2d at 544.

B. The scope of the hearing

The Court will conduct an evidentiary hearing on whether Juror 50 provided false answers on the questionnaire, the explanation for those answers, and how Juror 50 would have responded to follow-up questions if accurate answers had been provided. The Government acknowledges that Juror 50's answer to Question 48 satisfies the demanding standard for an evidentiary hearing under *McDonough*. Gov. Br. at 33. The Court agrees. Question 48 asked jurors:

> Have you or a friend or family member ever been the victim of sexual harassment, sexual abuse, or sexual assault? (This includes actual or attempted

> sexual assault or other unwanted sexual advance, including by a stranger, acquaintance, supervisor, teacher, or family member.)

Dkt. No. 462 at 24. In response to that question, Juror 50 checked the box for "No," not the box for either "Yes (self)" or "Yes (friend or family member)." But in several public statements made to media outlets after the trial, including interviews in *The Independent* and *The Daily Mail* dated January 5, 2022, Juror 50 stated that he was sexually abused as a minor. The statements are direct, unambiguous, and made by Juror 50 himself to multiple media outlets. Moreover, the statements themselves describe Juror 50's own experience.[4] They constitute "clear, strong, substantial and incontrovertible evidence that a specific, nonspeculative impropriety has occurred," and so warrant an evidentiary hearing. *Baker*, 99 F.3d at 130.

Although the Court does not decide whether the threshold to hold a hearing based on Question 25 alone has been met, because the Court will hold a hearing on Juror 50's answer to Question 48 and because Question 48 and 25 are sufficiently related, the Court will inquire into Juror 50's answer to Question 25. Question 25 asked jurors:

> Have you, or any of your relatives or close friends, ever been a victim of a crime?

Dkt. No. 462 at 13. Again, Juror 50 checked the box for "No," and not the box for either "Yes (self)" or "Yes (friend or family member)." But Juror 50's post-trial statements, if true, may describe criminal conduct of which he was the victim. Therefore, Juror 50's answer to Question 25 is sufficiently related to the answer to Question 48 and so the Court will also inquire as to Question 25 at an evidentiary hearing. *See Baker*, 99 F.3d at 130.

[4] The articles additionally state that Juror 50 shared this experience with the jury during deliberations. The Court is prohibited by Rule 606 from considering that Juror 50 also told this information to the jury. That Juror 50 revealed that he also disclosed this information to the jury does not prohibit the Court from considering Juror 50's independent statements made to a reporter about his own experience.

The potential impropriety that warrants a hearing is not that someone with a history of sexual abuse may have served on the jury. Rather, it is Juror 50's potential failure to respond truthfully to questions during the jury selection process that asked for such material information so that any potential bias could be explored. Accordingly, the Court will hold a hearing limited in scope to Juror 50's answers to Questions 25 and 48 of the questionnaire.

C. The Defendant has not justified an inquiry into Juror 50's social media

The parties devote significant portions of the briefs to the question of whether Juror 50 answered falsely the Court's questions about social media usage during *voir dire*. To the extent that the Defendant seeks a hearing to probe Juror 50's answers to *voir dire* about his social media usage, her arguments are based on speculation, and she has failed to make the high showing required. *See Baker*, 899 F.3d at 130. At *voir dire*, when asked if he "use[s] social media," Juror 50 stated, "I do, but I actually just deleted them because I just got out of a relationship and I didn't want to see anything regarding them. So I am fully off of it right now." Nov. 16, 2021 Tr. at 133. The Court then asked, "What did you use, Facebook, Twitter?" to which Juror 50 replied "Facebook and Instagram," clarifying that the accounts contained "[p]ersonal stuff, like selfies." *Id.*

The screenshots proffered by the Defendant do not demonstrate that any of these answers implicate *McDonough*. First, Juror 50 did not deny having a Twitter account. Second, Juror 50's account had only 1 follower and followed only 39 people, which corroborates that his Twitter use was, at most, relatively minimal. *See* Maxwell Br. at 17. Third, the fact that Juror 50's Twitter account was opened in April 2021 and that he used it again in January 2022, after the completion of the trial, is consistent with Juror 50's answer that he deleted his social media accounts, or just the social media applications, shortly before *voir dire*. The same is true of Juror

50's Instagram account, on which he also posted in January 2022, after the completion of the trial. *Id.* at 20. And fourth, the screenshots proffered match Juror 50's description of his social media accounts as containing only "[p]ersonal stuff, like selfies." *Id.* The threshold for a hearing has not been met on this issue and the Court will not permit "a fishing expedition" into Juror 50's social media usage. *Moon*, 718 F.2d at 1234 (quoting *United States v. Moten*, 582 F.2d 654, 667 (2d Cir. 1978)).

D. The Defendant has not justified an inquiry into other jurors

The Defendant seeks to examine not only Juror 50 at an evidentiary hearing but also the other eleven members of the jury in order to identify a second juror who, according to an article published by the *New York Times*, also was sexually abused as a minor. Maxwell Br. at 21, 49–50. The Defendant further argues that even if the article alone is insufficient to order a hearing as to the juror mentioned in the article, Juror 50's post-trial statements corroborate that another juror discussed sexual abuse during deliberations. Maxwell Reply at 24. As explained below, the evidence of this allegation is inadequate to meet the exacting standard for a hearing and the Court denies the Defendant's request to examine any jurors on this basis.[5]

[5] On December 31, 2021, the Court informed the parties by sealed order that a juror had contacted court staff about being approached by a reporter despite the fact that the juror had not identified themselves publicly and wished to remain anonymous. Because the contact by the member of the media had been uninvited by the juror, chambers staff notified all jurors via email on December 30, 2021, about the development. Subsequently, on January 5, 2022, a juror replied to the December 30 email sent by court staff. In that reply email, the juror wrote regarding news reports about the issue with Juror 50. The Court informed the parties of the juror communications by sealed order on January 6, 2022. The Defendant requested the communications, which the Court denied without prejudice. *See* Sealed Memo Endorsement, Jan. 13, 2022. The Defendant now renews her request on the theory that the communications could shed light on the identity of the second juror referred to by the *New York Times*. *See* Maxwell Br. at 21 n.10; Maxwell Reply at 23 n.12. Such a request is nothing but unfounded speculation. A juror's communication expressing fear about the media reports and the parties' responses to Juror 50's interviews are not relevant to the current inquiry. Nonetheless, in order to ensure a complete record, the Court will transmit under seal the concerned juror's communications to the parties with the name and contact information of the concerned juror redacted in order to protect the juror's privacy and prevent juror harassment. *See Ianniello*, 866 F.2d at 543. The Court also includes a subsequent communication with the same juror expressing additional concerns so that the parties have a complete record of non-logistical juror communications. The Court will file the unredacted communications under seal for preservation for the appellate record.

First, the news article upon which the Defendant relies does not warrant a hearing. *Baker*, 899 F.3d at 130. The article includes a short, non-detailed mention of an anonymous juror. As the Second Circuit recently held in affirming the denial of a hearing after a high-profile trial, "the unsworn, uncorroborated statements that one unidentified juror made to a magazine reporter do not constitute the 'clear, strong, substantial and incontrovertible evidence'" of misconduct that requires a hearing. *United States v. Guzman Loera*, 24 F.4th 144, 161 (2d Cir. 2022) (quoting *Moon*, 718 F.2d at 1234). Another court in this circuit held that a *New York Times* article that, in a single sentence, alleged misconduct by an unidentified juror was insufficient to justify a hearing. *United States v. Bin Laden*, No. S7R 98-CR-1023 (KTD), 2005 WL 287404, at *2 (S.D.N.Y. Feb. 7, 2005), *aff'd sub nom. In re Terrorist Bombings of U.S. Embassies in E. Afr.*, 552 F.3d 93 (2d Cir. 2008) ("This single sentence, an unsworn snippet of hearsay within a newspaper article, is far less substantial than the sworn affidavits present in cases where evidentiary hearings have been ordered.").

Other courts have also concluded that unsworn, hearsay, and/or anonymous reports of juror misconduct are not the clear, strong, and nonspeculative evidence required for a hearing. *See, e.g.*, *King v. United States*, 576 F.2d 432, 438 (2d Cir. 1978) (affirming the denial of a hearing where the defendant presented "weakly authenticated, vague, and speculative material as to one juror," even where that juror was not anonymous); *United States v. Wilbern*, 484 F. Supp. 3d 79, 87 (W.D.N.Y. 2020) (finding a "double hearsay" report of misconduct inadequate to justify a hearing); *Stewart*, 317 F. Supp. 2d at 438 (denying the defendant's request for an evidentiary hearing where the defendant's support, including post-trial media interviews, "amount[s] to little more than hearsay, speculation, and in one instance, vague allegations made by a person who refused to identify himself"). Accordingly, the *New York Times* article is an

insufficient basis for an evidentiary hearing, especially one that, according to the Defendant, would require the Court to "haul [11] jurors in after they have reached a verdict" to probe for who, if anyone, may have been mentioned in the article. *Guzman Loera*, 24 F.4th at 161 (quoting *Moon*, 718 F.2d at 1234).

Second, Federal Rule of Evidence 606 bars the Court from considering Juror 50's statements as evidence of another juror's statements purportedly made during deliberations. As previously quoted, the rule states:

> During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

Fed. R. Evid. 606(b)(1).

Rule 606(b) is subject to three enumerated exceptions that permit a juror to testify about whether (A) "extraneous prejudicial information was improperly brought to the jury's attention"; (B) "an outside influence was improperly brought to bear on any juror"; or (C) "a mistake was made in entering the verdict on the verdict form." Fed. R. Evid. 606(b)(2). In addition to these exceptions enumerated in the rule, the Supreme Court has held that Rule 606 "give[s] way" where "a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant." *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 863 (2017). Absent one of these circumstances, evidence within the ambit of Rule 606 may not be considered.

Here, the Defendant relies on Juror 50's statements of what another juror allegedly stated during deliberations. That proffer is barred by Rule 606.

In response, the Defendant argues that Juror 50's statements about the second juror fall outside the scope of Rule 606 because she "does not seek to impeach the verdict based on the

content of deliberations" but instead to demonstrate that the second juror made a false statement during *voir dire*, like Juror 50 allegedly did. Maxwell Br. at 50. But this reading of Rule 606 has been squarely rejected by the Supreme Court, which held that the "plain meaning" of this language is that "Rule 606(b) applies to juror testimony during a proceeding in which a party seeks to secure a new trial on the ground that a juror lied during *voir dire*." *Warger v. Shauers*, 574 U.S. 40, 44 (2014). The Defendant's one-sentence attempt to dismiss *Warger* because it involved a civil rather than a criminal case is unavailing. Maxwell Reply at 23 n.11. It is the same rule of evidence in issue, and the principles enunciated by the Supreme Court apply here with equal force.

The Defendant may also be suggesting in this argument that Rule 606 does not bar Juror 50's statements because they concern "extraneous prejudicial information," which is an enumerated exception to the rule. *See* Fed. R. Evid. 606(b)(2)(A). To the extent that argument is raised, it is meritless. Information is "extraneous" when it is "external to the jury"—that is, "publicity and information related specifically to the case the jurors are meant to decide," rather than "the general body of experiences that jurors are understood to bring with them to the jury room." *Warger*, 574 U.S. at 51 (cleaned up). So, for example, the Supreme Court has held that a foreperson's undisclosed experience with a car accident is not extraneous information, even in a motor-vehicle lawsuit where that failure to disclose could have supported a for-cause strike. *Id.* at 42–43. The same is true here, as the second juror's alleged undisclosed experience "did not provide either [the juror] or the rest of the jury with any specific knowledge regarding" this particular case. *Id.* at 51–52. Rather, as this Court instructed, jurors are expected to bring their "reason, experience, and common sense" to bear in evaluating witnesses' credibility and the

Defendant's ultimate guilt. Trial Tr. at 3066; *see also U.S. ex rel. Owen v. McMann*, 435 F.2d 813, 818 (2d Cir. 1970).

Last, the Defendant argues—in a single sentence of her reply brief—that if Rule 606 does bar consideration of Juror 50's statements about the second juror, then the rule "violates Ms. Maxwell's constitutional rights to due process and to confrontation as applied to her." Maxwell Reply at 23. The Court rejects this argument. The Confrontation Clause guarantees a criminal defendant the right "to be confronted with the witnesses against him." U.S. Const., amend. VI. The Defendant's right to confrontation is not implicated here because Juror 50 is not a "witness[] against" the Defendant but was instead a factfinder in her trial. Simply put, Juror 50's testimony at the hearing will be proffered to determine whether *Juror 50* has engaged in any misconduct warranting a new trial, not to accuse *the Defendant* of any crime. *Cf. Crawford v. Washington*, 541 U.S. 36, 43 (2004) (describing the Confrontation Clause as a "right to confront one's *accusers*" (emphasis added)). Even if the Confrontation Clause were implicated, Rule 606's prohibition on juror affidavits to impeach a verdict is a reasonable limitation, subject to other exceptions not at issue here, on the evidence that a defendant may muster, a limitation with a long historical pedigree. *See Pena-Rodriguez*, 137 S. Ct. at 863 (tracing Rule 606 to traditional English common law); *Crawford*, 541 U.S. at 54 (explaining that the Confrontation Clause "is most naturally read as a reference to the right of confrontation at common law, admitting only those exceptions established at the time of the founding").

Next, the Defendant's due-process claim is squarely foreclosed by controlling precedent. The Supreme Court in *Tanner v. United States* rejected a constitutional challenge to Rule 606, explaining that a criminal defendant's right to an impartial jury is "protected by several aspects of the trial process," including questions asked in *voir dire*; observations in court made by the

judge, court personnel, and counsel; observations by other jurors, who "may report inappropriate juror behavior to the court *before* they render a verdict"; and "impeach[ment] [of] the verdict by nonjuror evidence of misconduct." 483 U.S. at 127; *see also Warger*, 574 U.S. at 51 ("[A] party's right to an impartial jury remains protected despite Rule 606(b)'s removal of one means of ensuring that jurors are unbiased."). The Defendant cites in support the Supreme Court's decision in *Pena-Rodriguez v. Colorado*, but that case is unavailing to her position. There, the Supreme Court held that "where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee." 137 S. Ct. at 869. Throughout the opinion, the Supreme Court took great care to hold that the "unique historical, constitutional, and institutional concerns" intrinsic to a juror with racial animus do not attach to other forms of juror misconduct. *Id.* at 868. In fact, it *expressly* contrasted the case of a juror with racial animus to a juror that "ha[s] a personal experience that improperly influences her consideration of the case," as was at issue in *Warger v. Shauers* and as is alleged here. *Id.* at 869.

Third, even if the Court did consider Juror 50's statements about what another juror said during deliberations—which Rule 606 prohibits—the statements proffered by the Defendant do not meet the threshold of "clear, strong, substantial and incontrovertible evidence that a specific, nonspeculative impropriety has occurred." *Baker*, 899 F.3d at 130. According to an article in the *Daily Mail*, Juror 50 "revealed that he was not the only juror to share a story of sexual abuse." That sentence summarizes an unsworn and non-specific statement, which does not identify the alleged misconduct or the juror in question with any particularity. It therefore falls

short of the demanding standard for ordering a post-verdict evidentiary hearing. *See Bin Laden*, 2005 WL 287404, at *2. Notably, this case is far from *United States v. Colombo*, where the Second Circuit ordered an evidentiary hearing on the basis of two sworn affidavits that identified another juror by name and described with particularity the alleged misconduct. 869 F.2d 149, 151 (2d Cir. 1989).

The Court therefore rejects the Defendant's as-applied constitutional challenge to Rule 606 and further concludes that Rule 606 bars the Court's consideration of Juror 50's statements about the second juror. Even if the Court considered Juror 50's statement about another juror, the evidence would be insufficient to meet the high threshold for an inquiry. Without nonspeculative evidence of misconduct by any juror but Juror 50, the Court restricts the focus of the evidentiary hearing to Juror 50. *See Ianniello*, 866 F.2d at 544.[6]

IV. The nature of the hearing

A. The Court will examine the witnesses and the parties may submit questions

In concluding that an inquiry into Juror 50's conduct is warranted, the Court is mindful that the "object of the proceeding is to permit the truth to be discovered with the least possible harm to other interests." *Moten*, 582 F.2d at 666. Accordingly, the Court denies the Defendant's request that counsel directly question the juror—a decision committed to this Court's "sound discretion." *Id.* at 667; *see also Ianniello*, 866 F.2d at 544 ("We leave it to the district court's discretion to decide the extent to which the parties may participate in questioning the witnesses, and whether to hold the hearing in camera."). The Court will conduct the questioning at the

[6] The Defendant's briefing is unclear as to whether she seeks to question the other 11 jurors only to identify the juror implicated by the news article, or if she would seek to question the other jurors in any event to determine "what Juror No. 50 said to the other jurors." *See* Maxwell Br. at 49. To the extent the Defendant is requesting the ability to question jurors about what Juror 50 allegedly disclosed during deliberations, that request is denied as it is plainly foreclosed by Rule 606. *See also Ianniello*, 866 F.2d at 544.

public hearing with input from counsel. The parties may submit questions consistent with this ruling, including what the Court holds in this Opinion are the limitations imposed by Rule 606 and the appropriate scope of the hearing. Once again, the scope of the inquiry is whether Juror 50's answers were false; if so, what is the explanation for the answers; and how Juror 50 would have responded to follow-up questions if accurate answers had been provided.

Per this Court's prior order, the parties must submit the proposed questions under temporary seal to ensure the integrity of the inquiry. *See* Dkt. No. 596 at 4. Proposed questions must be submitted via email on or before **March 1, 2022**. The proposed questions will be unsealed following the hearing.

B. The Defendant's subpoena requests are denied

The Defendant seeks two sets of subpoenas to conduct discovery in advance of the hearing. Maxwell Br. at 48–49. First, from Juror 50, the Defendant seeks any emails or other communications between Juror 50 and any alleged victim or witness; any other juror; any other person or media organization about Juror 50's jury service; and, finally, any record of payments for any interview or information that Juror 50 gave about his jury service. Second, from Facebook, Twitter, LinkedIn, Instagram, and other social media platforms, the Defendant seeks all communications to and from Juror 50 regarding his jury service; all posts, comments, or photographs by Juror 50 regarding his jury service; and all documents reflecting when Juror 50 opened or closed his accounts. In her initial brief, the Defendant simply lists these requests without justification. In her reply, she provides only a short rebuttal to the Government's objections and does not explain why each request is relevant or proper.

The Court denies these requests as vexatious, intrusive, unjustified, and a fishing expedition. Given the focused inquiry the Court is ordering, the evidentiary hearing's scope

must be "limited to only what is absolutely necessary to determine the facts with precision." *Ianniello*, 866 F.2d at 544. The Defendant can only speculate that the requested communications between Juror 50 and unknown persons and entities would shed any light on Juror 50's answers to the questionnaire and his bias *before* the trial at the time of *voir dire*. Nor has the Defendant explained why Juror 50's receipt of financial payment for interviews *after* the trial, if true, would be probative of his inclination to not disclose at *voir dire prior* to trial. The Court will not grant the Defendant "the opportunity to 'conduct a fishing expedition.'" *Moon*, 718 F.2d at 1234 (quoting *Moten*, 582 F.2d at 667).

Moreover, the Defendant's requested subpoenas directed at social media companies who have custody of Juror 50's communications, comments, and posts are procedurally improper. Those requests for social media content are subject to the Stored Communications Act, 18 U.S.C. §§ 2701–11, which requires an additional factual showing for the Court to order disclosure, *see* 2 Wayne LaFave et al., Criminal Procedure §§ 4.8(b), 4.8(d) (4th ed. 2021); *Matter of Warrant to Search a Certain E-Mail Acct. Controlled & Maintained by Microsoft Corp.*, 829 F.3d 197, 206 (2d Cir. 2016), *vacated and remanded on other grounds*, 138 S. Ct. 1186 (2018). And only the Government, not private parties like the Defendant, may request disclosure pursuant to the Act. *United States v. Nix*, 251 F. Supp. 3d 555, 559 (W.D.N.Y. 2017) ("[T]he [SCA] does not permit a defendant in a criminal case to subpoena the content of a Facebook or Instagram account."); *Facebook, Inc. v. Wint*, 199 A.3d 625, 629 (D.C. 2019) (collecting cases). Though the Government raised the Act in its briefing, the Defendant does not acknowledge it or purport to show she is entitled to make a request. Accordingly, the requests as to the listed social media companies are denied.

The Court concludes that the Defendant has not made a showing that any pre-hearing discovery is appropriate, and the request to engage in an intrusive fishing expedition is denied.

C. The Court will release Juror 50's questionnaire

This Court previously reserved ruling on Juror 50's request that the Court release his jury questionnaire to counsel, but that the document otherwise remain under seal to protect his supposed privacy interest. *See* Dkt. No. 596 at 5 n.1. The Defendant opposes both the unsealing and releasing the questionnaire to counsel, arguing that "advance disclosure . . . will undoubt[edly] color Juror No. 50's testimony and allow him to place himself in the best possible posture." Maxwell Br. at 53. The Government argues that there is no legitimate interest in limiting Juror 50's access and opposes maintaining the questionnaire under seal. Gov. Br. at 42; *see also* Dkt. No. 594.

The Court will provide Juror 50 a copy of his completed questionnaire. Unlike the parties' proposed questions, Juror 50's access to his completed questionnaire—the answers to which he wrote—will not undermine the integrity of the inquiry. The Defendant's concern that advance disclosure may somehow taint Juror 50's testimony is unfounded. *See United States v. McCoy et al.*, No. 14-CR-6181 (EAW), Dkt. No. 329, at 15 (W.D.N.Y. June 2, 2017) (providing the jury questionnaire to juror's counsel in advance of the hearing). Rather, delaying disclosure until the hearing would needlessly delay the fact-finding process.

Moreover, the Court concludes that the presumption of access dictates that the questionnaire must be docketed. Juror 50's and the Defendant's request that the questionnaire remain sealed is governed by the three-part test articulated by the Second Circuit in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006). *See* Dkt. No. 596 at 2 (outlining the test). First, the jury questionnaire easily qualifies as a judicial document. It is a key exhibit to

the Defendant's motion for a new trial. *Cf. Carbon Inv. Partners, LLC v. Bressler*, No. 20-cv-3617 (ER), 2020 WL 5441497, at *2 (S.D.N.Y. Sept. 10, 2020). Accordingly, a high presumption of access attaches. For the reasons stated in this Court's prior order, this presumption of access is not outweighed by the possibility of media interest in the document. *See* Dkt. No. 596 at 3. Nor is sealing necessary to safeguard a possible hearing for the reasons stated above. Finally, any privacy interest Juror 50 may have had in his questionnaire, *see Press-Enterprise Co. v. Superior Ct. of Cal.*, 464 U.S. 501, 511–12 (1984), has at least been greatly diminished, if not extinguished, since his public comments. The Court further notes that prospective jurors had the opportunity to request that particular questionnaire answers remain confidential; Juror 50 did not make any such request. Accordingly, Juror 50's privacy interest in the questionnaire is now outweighed by the presumption of access. *Lugosch*, 435 F.3d at 119–20. The Defendant is accordingly ORDERED to docket Exhibit 1 to her motion for a new trial, Juror 50's completed questionnaire.

V. Conclusion

For the reasons stated above, the Court will hold a hearing regarding Juror 50's answers to Questions 25 and 48 of the questionnaire. The public proceeding will take place on **March 8, 2022, at 10:00 a.m.** Juror 50 is hereby ORDERED to appear in Courtroom 906 of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York at that date and time to give testimony under oath in response to the Court's questions. Counsel for the Defendant and the Government are ORDERED to submit via email proposed questions in accordance with this Opinion & Order on or before **March 1, 2022**.

SO ORDERED.

Dated: February 24, 2022
New York, New York

ALISON J. NATHAN
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v. 20 CR 330 (AJN)
Sentencing

GHISLAINE MAXWELL,

Defendant.

New York, N.Y.
June 28, 2022
11:00 a.m.

Before:

HON. ALISON J. NATHAN,

United States Circuit Judge
Sitting by Designation

APPEARANCES

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York
BY: MAURENE COMEY
ALISON MOE
LARA POMERANTZ
ANDREW ROHRBACH
Assistant United States Attorneys

HADDON MORGAN AND FOREMAN
Attorneys for Defendant
BY: CHRISTIAN R. EVERDELL
-and-
BOBBI C. STERNHEIM

Also Present: Amanda Young, FBI
Paul Byrne, NYPD
Sunny Drescher,
Paralegal, U.S. Attorney's Office

(In open court; case called)

DEPUTY CLERK: Counsel, please state your name for the record starting with the government.

MS. MOE: Good morning, your Honor. Alison Moe, Lara Pomerantz, Maurene Comey and Andrew Rohrbach for the government. We're joined at counsel table by paralegal specialist Sunny Drescher. Also as a member of our team in the gallery are our case agents, Special Agent Amanda Young and Detective and Paul Byrne.

THE COURT: Good morning to you all.

MS. STERNHEIM: Good morning. Bobbi C. Sternheim and Christian R. Everdell for Ghislaine Maxwell, who is present at counsel table.

THE COURT: Good morning, Counsel.

Good morning, Ms. Maxwell.

Please, be seated everyone.

We are here today for sentencing in United States v. Ghislaine Maxwell 20 CR 330.

In preparation for today's proceeding, I have reviewed the probation report, which is dated June 9, 2022 by revision date.

I have also received and reviewed the following additional submissions: I have the defense memorandum in support of PSR objections, which is dated June 15, 2022. I have the defendant's primary sentencing submission, which is

dated June 15, 2022. There are exhibits attached to that sentencing submission, Exhibits A through J. A through H -- I'm sorry -- A through I were a series of letters from friends and family members of Ms. Maxwell. J is a forensic psychiatric evaluation. And then I received by a later transmission date of June 26, 2022 a letter from an inmate at MDC related to Ms. Maxwell's assistance of other inmates with tutoring.

I have the government's sentencing submission, which is dated June 22, 2022.

With respect to victim impact statements, I have dated June 22, 2022 a victim impact statement from Annie Farmer. I have a victim impact statement from the witness who went by the name of Kate under my pseudonym order during trial. That I believe is undated. I have a statement dated June 22, 2022 from Virginia Roberts, or Giuffre. I have same date from Juliette Bryant, same date from Maria Farmer, same date from Teresa Helm. I also have undated statements from Sarah Ransome -- I apologize if I'm saying your name wrong -- and Elizabeth Stein.

Counsel, is there anything else I should have in front of me for purposes of sentencing?

MS. MOE: No, your Honor. Thank you.

THE COURT: Ms. Sternheim.

MS. STERNHEIM: Other than the submissions that we made in connection with the CVRA, that is a complete record of

what we have received and reviewed.

THE COURT: Yes. Thank you. And that is part of the record including there was an ethics letter and other materials submitted in connection with your objection to that.

MS. STERNHEIM: Thank you very much.

THE COURT: Thank you.

All right. Counsel, would you just please confirm that you've received each other's submissions?

MS. MOE: Yes, your Honor.

MS. STERNHEIM: Yes.

THE COURT: Let's also confirm all submissions are filed on ECF.

MS. MOE: That's correct, your Honor.

MS. STERNHEIM: Yes.

THE COURT: Thank you.

Ms. Moe, I did have the government indicate this in a letter, but if you would confirm and articulate what the government has done to notify any crime victims of their rights under the Justice For All Act?

MS. MOE: Yes, your Honor.

With respect to the six individuals who were proved at trial to be directly impacted by the offense conduct, the government has notified those individuals through their counsel about the sentencing and about their right to be heard.

In addition to that notification, the government has

used the victim notification page on the U.S. Attorney's Office website regarding this case about the upcoming sentencing.

THE COURT: And you posted the Court's order there regarding a process for submission of statements.

MS. MOE: Yes, your Honor.

THE COURT: Thank you.

We'll turn to the presentence report.

Ms. Sternheim, I know that you have because you've objected to a lot which we will talk about, but for the record, have you read the presentence report and discussed it with your client?

MS. STERNHEIM: Yes, your Honor.

And, if I may, Mr. Everdell will handle the objections portion of our presentation.

THE COURT: Okay. We'll get to that in just a moment. Thank you.

Ms. Maxwell, can you please confirm that you've read the presentence report and had a full opportunity to discuss it with your counsel?

THE DEFENDANT: I did have an opportunity to read it.

THE COURT: And an opportunity to discuss it with your counsel?

THE DEFENDANT: I did.

THE COURT: Okay.

Ms. Moe, for the record, have you reviewed the

presentence report?

MS. MOE: Yes, your Honor.

THE COURT: Thank you.

So we will turn first -- we'll set aside first the guideline calculation. We'll turn to the factual accuracy of the report. And I did receive substantial factual objections to factual assertions in the report. I am prepared to go through those with respect to any continuing factual objections by the defense.

Let me confirm, Ms. Moe, does the government have any objections to the report regarding factual accuracy?

MS. MOE: None, aside from those which are already noted in the PSR.

THE COURT: No continuing objections.

MS. MOE: That's correct, your Honor.

THE COURT: Mr. Everdell, I know that you do have continuing objections. Tell me where you'd like to begin.

MR. EVERDELL: Well, your Honor, I don't know if the Court is planning on resolving each and every factual discrepancy or dispute or whether there are certain ones that the court will find are relevant to sentencing or whether we should go through each in detail.

THE COURT: I am prepared to -- what I typically do is go through each one so that if there is a correction to the report that is being requested to be made, whether it's

material to sentencing or not, I am prepared to address it.

So I believe the first -- what I see as your first continued objection is to paragraph 22.

MR. EVERDELL: I'm just getting my submissions.

Yes, that's correct, your Honor.

THE COURT: I overrule the objection. I do credit Juan Alessi's testimony that the defendant identified and targeted Virginia after seeing her in the Mar-a-Lago parking lot. The defendant also worked with Epstein to identify and target Jane.

Paragraph three I see three objections to this paragraph. Is that a continuing objection, Mr. Everdell?

MR. EVERDELL: Paragraph three, your Honor?

THE COURT: 23. I apologize.

MR. EVERDELL: Yes, your Honor.

THE COURT: I overrule the objection. The first objection is regarding the conclusion that Ms. Maxwell was the author of the essay in the paragraph. I overrule the objection because a reasonable inference supported by the trial evidence is that the defendant authored the essay. Metadata indicated that the computer was registered to "GMax" and the document was saved under the user name "Ghislaine."

The second objection is to the assertion that Epstein transferred Ms. Maxwell approximately $23 million during the conspiracy. I overrule that objection. Bank statements

admitted at trial showed that accounts under Epstein's name wired approximately $23 million over two occasions during the conspiracy to accounts of "Ghislaine Maxwell." The defendant's assertion that Epstein's accountant may have had access to and control over these accounts does not undermine the reasonable inference that the defendant controlled the funds in accounts bearing her name, so that is established by a preponderance.

As to the third objection that there's no evidence in the record that Epstein bought the defendant her New York City townhouse, I overrule that objection because I credit Kate's testimony that the defendant told her that Epstein bought the defendant her New York townhouse.

Paragraph 25 is an objection to the characterization of the Palm Beach residence being operated through a culture of silence.

You'll let me know if you're not maintaining an objection.

MR. EVERDELL: Yes. I think that the default is we are, your Honor.

THE COURT: Understood.

I overrule this objection. Evidence at trial indicates that this was the case. For example, the household manual instructed employees to "see nothing, hear nothing, say nothing." I credit Mr. Alessi's testimony that he understood this instruction to be a kind of warning that he was supposed

to be blind, deaf and dumb, and to say nothing of Epstein's and Ms. Maxwell's lives.

Paragraph 26, there's an objection to the characterization concerning the defendant's identification and isolation of minor girls as inconsistent with the trial evidence. I overrule this objection for the same reasons as articulated with respect to paragraph 22. In addition, the trial evidence established that the defendant and Epstein isolated girls by spending time with them alone away from their families. For example, Annie's testimony regarding the trip to New Mexico. Jane's testimony that she would spend time at the Palm Beach residence alone with Epstein and the defendant.

Paragraphs 27 and 28 the defendant makes two objections: First, to the assertion that the defendant and Epstein developed a scheme that created a "constant stream of girls who recruited each other." And, second, she objects to the assertion that she encouraged minor girls to bring other minor girls to provide Epstein with sexualized massages.

Again, based on the trial testimony and evidence, I overrule the objection. It supported the information in these paragraphs. The evidence indicated the scheme started with the defendant's recruitment of Virginia. Virginia then enlisted Carolyn in addition to at least two other girls. Carolyn in turn recruited at least three friends, and those friends then brought more girls.

Carolyn credibly testified that she was paid twice as much when she brought friends to the massages. Based on the defendant's control of household and Carolyn's testimony that the defendant on occasion paid her directly, I find it more probable than not by a preponderance of the evidence that Virginia was also paid more as encouragement to recruit additional girls.

Paragraph 9, there's an objection to the inclusion of Kate in this paragraph. It argues that her name should be deleted because Kate is not a victim of the crimes charged in the indictment.

MR. EVERDELL: Your Honor, I'm sorry to interrupt. I think you said paragraph 9.

THE COURT: I did. I'm sorry. I'm skipping the first number for some reason. 29. Thank you, Mr. Everdell.

I overrule this objection because the paragraph doesn't assert that Kate was a statutory victim as we've discussed throughout trial and the government didn't contend that Kate was a victim of the crimes charged in the indictment, and that paragraph doesn't assert that she was.

Paragraphs 30 to 38, there's objection throughout these to the characterization of the defendant having groomed Jane. I overrule these objections. I think the government is right here that the objection is conflating grooming with enticement to travel for purposes of sexual contact. Jane's

credible trial testimony established that the defendant took steps to make Jane comfortable and encouraged her to engage in illegal sex acts with Epstein.

Paragraphs 39 to 45 which describe specific conduct involving Kate, I think the specific request here -- well, first, was that it should be removed from the PSR because Kate was not a victim of the crimes charged in the indictment, and then, alternatively, that it be moved to a different paragraph with a heading offense behavior not part of relevant conduct. I don't see that this is necessary. I overrule the objection. Conduct involving Kate may be considered at sentencing her testimony revealed additional details of the defendant's method of identifying and introducing to Epstein young girls for sexualized massages. Her testimony also established the defendant's knowledge of the sexualized nature of massages with Epstein.

Paragraph 43, the defendant contends this paragraph should include a sentence that Kate was above the age of consent at all times. I think the paragraph says that Kate was age 17 or above at all relevant times, and I have no objection to including that she was above the age of consent at all times based on the trial evidence, so I will make that change to paragraph 43 of the PSR.

Paragraph 54, the defendant objects that there's no evidence that Epstein paid for Annie's trip to Thailand. That

objection is overruled. Annie testified to this fact at trial, and I credit this testimony.

Paragraph 5 -- sorry -- did it again. 55, defendant makes three objections to the paragraph. I overrule the objections. The record supports that the defendant personally recruited Virginia to provide Epstein with sexualized massages when she was a minor. Jane and Kate's testimony established that the defendant was aware that the massages were sexualized. I credit Mr. Alessi's testimony that the defendant approached Virginia, and that Virginia visited the residence -- approached Virginia for the first time, and that Virginia visited the residence later that day. Flight records and credible witness testimony established that this meeting occurred before Virginia was 18. In addition, when Virginia brought Carolyn to the residence, the defendant greeted them and instructed Virginia to show Carolyn -- quoting from the trial record -- "what to do." Carolyn then witnessed Virginia give Epstein a sexualized massage involving sexual intercourse. Finally, as I explained in my resolution to paragraphs 27 and 28, I do conclude that there is a sufficient basis to find by a preponderance of the evidence that the defendant used monetary incentives to encourage Virginia to recruit Carolyn.

Paragraph 58, the defendant objects to the assertion that Carolyn was 14 years old when Virginia brought her to Epstein's residence, claiming that Carolyn's recollection is

inconsistent and unreliable. I overrule this objection. Carolyn testified at trial that Virginia first brought her to Epstein's residence when she was 14 years old. I found Carolyn to be credible and credit her testimony. I'm not persuaded by the arguments to the contrary. Moreover, @Sean's credible testimony corroborated Carolyn's recollection.

Paragraph 59, the defendant makes two objections. Same objection to Carolyn being 14. For the reasons I've stated, that's overruled. She objects to Carolyn's assertion that she visited Epstein's residence more than a hundred times. I overrule that objection. Again, I credit Carolyn's testimony. She testified that she went to the house "over 100 times." I reject the suggestion that this is improbable based on Epstein's travel schedule.

Paragraphs 61 and 62 again object to Carolyn's age, and I overrule for the same reasons.

Paragraph 64, three objections. First, the defendant objects to Carolyn's assertion that she visited the Palm Beach residence over a hundred times and her assertion that she was 14. For the reasons I've given, I overrule those objections. She objects to the assertion that Carolyn stopped performing sexualized massages in 2001 when she was 18 years old and argues that the evidence indicates she was 17 years old. We're going to take up the issue of this timing question with respect to the issue of which Guidelines Manual controls. So I'll skip

that for now.

Paragraph 72, defendant objects to the assertion that Epstein briefly penetrated Carolyn's vagina with his penis because her trial testimony the defense claims is contradicted by a 2009 deposition testimony. I overrule this objection. Again, I credit Carolyn's testimony. Carolyn plainly testified to this at trial.

Paragraph 74, the defendant again objects to the assertion as to the age and timing. Again, we'll pick up on that issue when we discuss the appropriate guideline manual.

Paragraphs 75 and 76 the defendant objects to the inclusion of these paragraphs in the presentence report because the perjury counts have not been presented to a jury, and so she contends have no bearing on the sentence in this case. I do overrule this objection. A sentencing court's discretion is largely unlimited as to the kind of information it may consider. It's free to consider evidence of uncharged crimes, dropped counts of an indictment, criminal activity resulting in acquittal in determining sentence. *United States v. Bennett*, 839 F.3d 153 (2d Cir. 2016). I may consider the information as long as the information is reliable and accurate. For the following reasons, I do conclude the information underlying the severed perjury charges is reliable. The defendant testified under oath in 2016 that she was not aware of Epstein's scheme to recruit underage girls for sexual massages and other than

Virginia, was unaware if she had interacted with anyone under the age of 18 at Epstein's properties. She never gave Annie Farmer a massage. She was unaware whether Epstein possessed sex toys. She was unaware that he was engaging in sexual activity with anyone other than her in the 1990s and 2000s. She never gave Epstein a massage. The credible testimony and evidence admitted at trial disproves these assertions which were made under oath.

Paragraph 79, the defendant objects to the characterization of the offense conduct as contrary to the trial record. Here, defense hasn't provided any reason specifying this, and I don't see one. So based on the written objection, it's overruled.

Paragraph 81, the defendant objects to the assertion that Ms. Maxwell had direct responsibility for any sexualized massages that several women or any other people that Carolyn may have brought to Epstein's residence may have performed, and she contends there's no record that she interfaced with these individuals. I am prepared to overrule that objection.

The paragraph makes clear that these individuals did not interact directly with Ms. Maxwell. Nevertheless, for the reasons explained a little while ago in overruling the objections to paragraphs 27 and 28, I do conclude that the evidence at trial established that the defendant's recruitment of Virginia set the recruitment scheme in motion that resulted

in the abuse of these individuals.

Paragraph 82, the objection is to the assertion that the records recovered from the Palm Beach residence during the 2005 search reveal that additional minors provided Epstein with sexualized massages between 2001 and 2004. Again, I overrule the objection. The trial record including message pads, phone book entries, and testimony of witnesses establishes by a preponderance that the information contained in this paragraph is accurate.

Paragraph 83, so there was a revision here. I'm not sure if there is a continuing objection, Mr. Everdell. The previous objection was to the assertion that the defendant is responsible for the victimization of untold number of other victims. The probation department adopted the government's suggestion, revised the paragraph to assert that the defendant is responsible for the victimization of additional minor victims. To the extent there is a continuing objection, I overrule it for the reasons stated regarding paragraphs 27 and 28.

Paragraph 85 is an objection to the inclusion of Kate's victim impact statement and her status under the CVRA. We have litigated the question of Kate's ability to make a statement here. I believe that defense's ultimate position was that with the requested redactions, there were no objections to her making a statement. Do I have that right?

MR. EVERDELL: That's correct, your Honor.

THE COURT: So I did reject the request for redactions for the reasons explained in my order. And as I explained in overruling the objection to paragraphs 39 to 45, Kate's testimony and her statement are relevant to sentencing which I've indicated she may give. And with that, there's objections pertaining to fine and assets and the like. I think we can turn to those when we get to the fine. Mr. Everdell, okay with that?

MR. EVERDELL: Yes, your Honor. So we'll delay the offense level calculation objections and the ones related to the financial penalties for now?

THE COURT: Yes, precisely, and we'll pick those up. I think otherwise that's it for what I understand to be continuing objections after probation responded to your requests and assertions. Agree with that, Mr. Everdell?

MR. EVERDELL: Your Honor, the only one that I would highlight is there was an objection, I believe it's framed according to paragraph 173, which deals with the financial penalties. The government made in their response some representations that we take issue with, but if you're planning on covering that later, we can reserve that till later because it does deal with the financial penalties.

THE COURT: Yes, I have objections to 172, 178, 192 and 193.

MR. EVERDELL: I guess in the final version, it probably pertains to 172.

THE COURT: Thank you.

And with that, no further factual objections that need resolution, Mr. Everdell?

MR. EVERDELL: Other than the ones we've just discussed, no, your Honor.

THE COURT: Ms. Moe?

MS. MOE: No, your Honor. Thank you.

THE COURT: So, with those rulings, hearing no further objections, with those rulings, I otherwise adopt the factual recitations set forth in the PSR. As in all cases, the PSR is sealed and made a part of the record in this matter. If an appeal is taken, counsel on appeal may have access to the PSR without further application to this court.

We'll turn now to the guideline calculation. As counsel is aware, I am no longer required to follow the United States Sentencing Guidelines, but I am still required to consider the applicable guidelines in imposing sentence and must therefore accurately calculate the Sentencing Guideline range. The parties dispute multiple aspects of the guideline calculation.

Just to outline the relevant overall calculations, the defense contends that the correct guideline calculation is 51 to 63 months' imprisonment. The government contends that the

correct calculation is 360 to 660 months' imprisonment and argues that a guideline sentence is warranted.

The probation department has calculated the range at 292 to 365 months' imprisonment, but recommends a downward variance to a term of 240 months' imprisonment.

Counsel, I have reviewed your written arguments carefully. I have a few questions I want to ask, but I don't need to hear repetition of your written arguments, but I would be happy to give you an opportunity to add anything beyond your submission if you'd like to make any additional arguments.

I'll hear from you now, Mr. Everdell.

MR. EVERDELL: Thank you, your Honor.

I will largely rely on my written submissions. I just would like to amplify one or two things.

Your Honor, our initial argument, of course, is that the Court must resolve who is to make the determination about which book like -- when the offense conduct ended, which determines guidelines book applies: the 2003 or 2004 guidelines. We argue that that is a jury determination because the issue implicates the *Ex Post Facto* Clause. So the 2003 guidelines must apply because the jury was never asked to make that factual determination.

I know your Honor is familiar with the arguments we raised. I would just point out that the government in their response really did not engage with our arguments about the

issue of the *Ex Post Facto Clause* being implicated. They want to cast this as purely a Sixth Amendment issue and cited cases along the *Apprendi* lines. But this is an ex post facto issue properly framed. This decision of when the offense conduct ended implicates whether or not an ex post facto violation will occur if the later guidelines is applied.

Under the cases that we've cited, your Honor, we think that that is an issue for the jury to decide, and it is not really in the *Apprendi* line of cases. It is focused on ex post facto law. I just, for example, highlight for your Honor the *Tykarsky* opinion that we cited for the Court. That is not an *Apprendi* decision. That is not a Sixth Amendment decision. In that case, there was an increase in the mandatory minimum that took effect potentially after the offense conduct ended. It's interesting that at the time the law was that you could do that, a judge could make a finding and increase it as long as it didn't increase beyond the statutory maximum, so there was no *Apprendi* issue there. That decision later got overruled by the Supreme Court, but at the time of *Tykarsky*, it clearly wasn't a Sixth Amendment *Apprendi* issue. They resolved that issue on an ex post facto basis. This decision about whether or not the offense conduct ended at a certain time, if it triggers an increase that implicates the ex post facto clause is a decision for the jury to make. The government has not responded to that argument, and we think that that is a

persuasive -- along with the other sources and opinions we've cited, it's persuasive authority for the fact this is a jury decision, not a Court determination.

THE COURT: Are you leaving that argument?

MR. EVERDELL: Yes, your Honor.

THE COURT: We'll do a little back-and-forth so I have everybody's arguments in mind. Thank you.

Go ahead, Ms. Moe.

MS. MOE: Thank you, your Honor.

The government is confident the 2004 Manual applies in this case. I believe we did engage with the ex post facto issue thoroughly in our brief. The question is whether the factual record at trial establishes that the offense continued throughout the duration of 2004, which it emphatically did. The testimony of a crime victim who testified at this trial establishes that the offense conduct went past November 1, 2004.

THE COURT: So I think the framing of the question here is very important and its technical -- this whole discussion is very technical. It seems to me the question is can the government point to a preponderance of the evidence that conspiratorial conduct took place in this very small time window, basically November and December 2004. That is what's in issue, and the question is what the trial record establishes with respect to that two-month window.

To some extent, the government points, I think, to post conspiracy conduct, and that concerns me. And so I would like to ask you to draw my attention to what in the trial record specifically speaks to November and December of 2004.

MS. MOE: Yes, your Honor.

As a threshold matter, the government's understanding that the case law is that the question is what is the end date of the conspiracy. In other words, if the conspirators are taking actions periodically over time, the question is what is the last date of the conspiracy? What does the trial evidence establish about the final date? And here the trial evidence was that the conspiracy was ongoing through all of 2004 and into 2005.

THE COURT: But to make that point, I think you're relying on post conspiracy evidence.

MS. MOE: No, your Honor. We're relying on evidence that exceeds the date in the indictment, but it --

THE COURT: It exceeds also the date of Carolyn's 18th birthday. And so it's not just what the indictment charges --

MS. MOE: Yes, your Honor.

THE COURT: -- but by a conspiracy that is dependent here on Carolyn being under 18 for its continuation. And so that's why I see what you're pointing to as post conspiracy, not only because it goes past what the indictment charged, but because I think legally you're pointing to non-conspiracy

evidence.

MS. MOE: No, your Honor. I think our point is that the conspiracy was still live at the end of 2004, and we know that because in fact the conspiracy was still ongoing beyond that, and I don't mean to be --

THE COURT: But, see, just in that sentence, the conspiracy was going on beyond that, what you point to, I think -- and tell me if I should look at something else, but what you point to to make that argument is definitionally non-conspiracy conduct.

MS. MOE: No, your Honor, in part because -- well, to step back and discuss the framing of the issue. The question is whether a conspiracy was still ongoing throughout 2004. And the key thought tells us it's the defendant's burden to show that she withdraw from the conspiracy if it was ongoing. The question is in framing it, when did this conspiracy end. We know that it was still live as of the end of 2004, in fact, because, among other reasons, Carolyn testified that she was continually going to Epstein's house through age 17 and through age 18, which would have been throughout the duration of 2004 and 2005.

The government is not required to show that any conspirator took an action in between those specific dates because the question is when did the conspiracy terminate? Was it still live at the end of 2004? And the evidence here shows

that it certainly was. The message pads show that Carolyn was still going to the house. Her testimony establishes that she was still going to the house throughout that time period. We do not agree that we're required to show that any conspirator took a specific act in that exact window but just that the conspiracy was still live, and the fact that there were additional acts ratifying membership of the conspiracy throughout 2004 and into 2005 satisfies that burden.

THE COURT: Again, just to make sure I'm not missing anything you want to point to, the into 2005 is pointing to post conspiracy conduct.

MS. MOE: Post indictment conduct, your Honor.

THE COURT: Post indictment. Is it in some way not post conspiracy?

MS. MOE: Well, your Honor, again, the question before the Court, according to the application is when the did offense end.

THE COURT: Ms. Moe, I do understand you're framing that question. I'm asking record evidence question. Is there something you're pointing to for your statement, the post 2005 which consists of conspiratorial conduct?

MS. MOE: I think separate from the 2005 evidence, we would point to in the fall of 2004, a message from Carolyn in November of 2004 showing that she was contacting the house to make a scheduled appointment.

THE COURT: It's not dated November 2004; am I right? It's on a page that has dates surrounding it of December, November.

MS. MOE: Yes, your Honor, all of the dates surrounding the message would be after November 1, 2004. The neighboring dates are November 13. There's a date in December. And I think looking at the message pads as a whole, it tells us they're dated essentially sequentially.

THE COURT: Is there any way to tell -- again, this is very technical -- if it's October and November?

MS. MOE: Your Honor, I'd be happy to take a look at physical book. I just have the sheet in front of me to see the page before and after, if the Court would like to examine it. Our view is the combination of the message itself and the neighboring dates tell us it's November of 2004. In addition, as we noted in our brief, the defendant was still traveling with Epstein during this exact same time period. Again, it's the defendant's burden to establish withdrawal from an ongoing conspiracy, which they've not attempted to do, nor could they. We think that the message pads, the flight records, the fact that the testimony of a crime victim Carolyn was that the conspiracy was ongoing more than meets this burden.

THE COURT: Okay.

MR. EVERDELL: Your Honor, if I could just respond to that. I do pick up on what the Court is saying, and we agree

with the point, which is we're focusing on the record evidence. The conspiracy as charged requires there be to be a minor involved. Carolyn is not a minor in 2005. Her birthday is January -- I don't know if I can say that, I'm sorry, but you understand it's at the beginning.

THE COURT: It's early.

MR. EVERDELL: It's early. So as of 2005, she is not a minor any more. So if we're looking to the end date of the conspiracy that's charged in the indictment, that does not exist in 2005, and Carolyn is not a minor in 2005, that evidence can't be used to support the end date of the conspiracy that is charged.

So what we're really talking about is one message pad that is undated, unverified, and not even in evidence. It's not even properly authenticated. I would also point out -- it's not reliable, your Honor. But I would also point out that I think we did have testimony that there were multiple message pads going on at any one time. The surrounding message pads are not a perfect indicator of when that message would have been taken if it's undated. It could have been weeks, months afterwards that someone decided to use that message pad to take that message instead of another of message pad that was ongoing at the same time. So there is no reliable credible evidence that's the date of that message pad.

And so, your Honor, we cited a number of cases in our

submission about the Court has to consider the weight and reliability of the evidence when determining a factor -- a sentencing factor that is going to increase the guidelines, especially by the amount that this is going to increase it by. And this one uncorroborated, unadmitted, unreliable message pad is not sufficient for that purpose. So if we're relying on a factual record argument, there is not enough of evidence in the record to support that the conspiracy ended in November or December of 2004. Therefore, the 2003 guidelines must apply.

THE COURT: Okay. I have a question about the leadership enhancement, as I said, but anything else you want to raise that you didn't have the opportunity to raise in your papers, Mr. Everdell?

MR. EVERDELL: Your Honor, just one point about that same book issue. I think there was a section of the government's brief where they were trying to show -- this was the point about the Court's discretion. We argued the Court has discretion to sentence as if it were the 2003 guidelines. I realize that might not be where the Court is headed, but I would point out --

THE COURT: You mean as a variance argument.

MR. EVERDELL: Exactly. In that section, the government made reference to an argument that the defendant was receiving money into the 2007 time period. I believe they pointed to $7 million. I think that is an extreme stretch,

your Honor. If the Court remembers the record evidence, there was some evidence of money moving, but it was to buy a helicopter that was not for her. We heard testimony from Larry Visoski that he often kept assets of cars in his name for Mr. Epstein. That doesn't make Larry Visoski a participant in the criminal endeavors. I think it's a stretch for the government to point to that as some sort of evidence of continued involvement or continued profit after the end date of the conspiracy. I just wanted to make that one point, your Honor.

THE COURT: Anything on that, Ms. Moe?

MS. MOE: Your Honor, with respect to the financial transaction, we offered that along with other evidence to refute the claim that the defendant had moved on, which, as we noted, is an expression that has no legal meaning. And so contrary to the assertion that the defendant had moved on and was no longer associated with Epstein, the trial evidence established that she remained a close associate for many years, and that is the purpose for which we offered that evidence.

THE COURT: Understood. Thank you.

I do want to address -- do you have other -- I want to ask about 3(b)(1).

MR. EVERDELL: Yes, your Honor.

THE COURT: I think it's for the government. So as I see the question here, the guidelines require me to find that

the defendant was an organizer or leader, and that the criminal activity either involved five or more participants or was otherwise extensive. The guidelines defines a participant as a person who is criminally responsible for the commission of the offense but need not have been convicted.

So I think my question for the government is, you're asking the Court to look to as a criminally responsible -- a person who is criminally responsible for the commission of the offense over whom Ms. Maxwell exercised supervisory or leadership role.

MS. MOE: Yes, your Honor. As we noted in our briefing, our view is that the trial evidence establishes that the defendant had a supervisory role over Sarah Kellen. Here, we're not required to establish that there were five or more participants; that is, people who were criminally responsible for the charged conduct, but rather that it was extensive, and that the defendant supervised at least one other person. That's the text of the commentary, although as we noted, the Second Circuit in applying this factor hasn't really engaged with that from what we can tell, but on the factual question of the trial record and whether it establishes the defendant supervised another participant, it absolutely does.

THE COURT: And the government is pointing to Sarah Kellen for that conclusion, which you agree, there has to be one criminally responsible participant who we can point to.

MS. MOE: Yes, your Honor. Looking at the text of the application note -- again, it's unclear from some case law on this, but under the text of the application note, if we're looking to one criminal participant, we would direct the Court's attention to Sarah Kellen.

THE COURT: And the leadership over her as opposed to Epstein being the leader over her or them being -- Kellen sort of replacing the defendant's role, could you focus my mind on what specifically you point to to show supervision and leadership by Ms. Maxwell over Ms. Kellen.

MS. MOE: Yes, your Honor.

The trial evidence was that Sarah Kellen became an assistant, and that she worked for both Maxwell and Epstein. Essentially, when you look at defendant's role in earlier years, she was doing things like calling victims and arranging for massage appointments. As the scheme shifted, they brought in another member of the scheme beneath them in the structure and hierarchy of the scheme. The defendant remained a close associate. She was often traveling with them, often traveling with Kellen together. So as Kellen took on some of the tasks that were then delegated to a lower member of the conspiracy, the defendant was higher up in the leadership structure.

There wasn't direct evidence about, you know, the defendant directly instructing Kellen to make a certain phone call, and we acknowledge that, but we think the inference is

very clear that when you have two knowing conspirators, Maxwell and Epstein, and they bring in a much younger woman as an assistant and have her take on some of those roles while the defendant remains a lady of the house in the hierarchy of the structure to whom a person like Sarah Kellen would report, that she has leadership of that person; that she is directing that person; that she has control. Even the simple task of directing her to take on some of those responsibilities, which, of course, to transition parts of that role she would have to do would qualify for leadership.

THE COURT: And there's clear time overlap in the role?

MS. MOE: Yes, your Honor. As we noted in our brief, the flight records reflect that the defendant continued flying on Epstein's private jet at the same time that Sarah Kellen was also traveling, and that there was an overlap in the years of the time period where they were all close associates of Jeffrey Epstein and the scheme was ongoing.

THE COURT: Go ahead.

MR. EVERDELL: Yes. Your Honor, before I address the Sarah Kellen point, I would just make the point that the government seems to argue that there is some case law that is not clear that you don't have to necessarily show that they're supervising another criminal participant. That's just wrong. All those cases that the government cites, the issue has

already been decided or conceded by the defendant. The court found they were leader or the defendant didn't contest that, so the issue was only about whether the criminal activity was otherwise extensive. So that is not -- that is clear under Second Circuit law, that they have to supervise another criminal participant, and it's clear from the guidelines too, as the government concedes.

Let's just talk a bit about Sarah Kellen. I don't think it is a fair inference to say from the trial record that Ms. Maxwell was supervising Sarah Kellen. In fact, the inference is exactly the opposite. And you can rely on Carolyn's testimony alone for that; that she herself testified that there was a clear break between when she says that Ms. Maxwell was calling her to schedule for massage appointments versus when Sarah Kellen took over and scheduled for massage appointments. They did not overlap. There was a break. That is corroborated by Juan Alessi no less, who said the same thing. He said Sarah Kellen came at the end of my employment, to his recollection, and as soon as she got there, she took over the responsibility of scheduling the massage appointments. Again, a clear break.

What the record shows is that there was a replacement. Sarah Kellen replaced Ms. Maxwell, at least according to the trial testimony; not that there was some sort of ongoing supervision by Ms. Maxwell over Sarah Kellen. It couldn't be

clearer, your Honor, this notion that she was somehow -- Sarah Kellen was an assistant of both Epstein and Maxwell is again belied by the trial record.

If you look at Larry Visoski's testimony, which I believe is what the government is relying on there, he originally testified, oh, I think she was an assistant for both. But on cross-examination, he conceded that he really didn't know what her role was, and his best recollection was that she was an assistant for Epstein.

And again, just look again at Cimberly Espinosa's testimony who was the actual assistant for Ms. Maxwell, and she says unequivocally, "I was her assistant. Kellen was Epstein's assistant." So there is no fair inference that Ms. Maxwell was supervising Sarah Kellen. The inference is exactly the opposite, and it can't provide a basis for that leadership enhancement.

THE COURT: All right. Anything further on the enhancements for the government's objection?

MS. MOE: Your Honor, just very briefly with respect to the leadership question, I just want to direct the Court's attention, we noted this on page 27 of our brief, but the testimony at trial was that Carolyn recalled that even after Sarah Kellen took over calling to schedule massages, Maxwell was still present inside the Palm Beach residence when Carolyn arrived for massage appointments.

With respect to the testimony of the pilots who testified, whether they -- whether an employee was paid by Maxwell or Epstein or technically reported to one, according to their job descriptions, is not the question here. The fact that pilots based on their observation thought at one point that Kellen reported to Maxwell proves the point that she had supervisory authority over Kellen and exercised it, whether in the chain of command or on their formal employment paperwork, she was just an employee for one or the other, it makes no difference. There was an overlap here. They had different roles in the conspiracy, and the defendant had a supervisory roll over Kellen.

MR. EVERDELL: Your Honor, just to that point. Being present does not mean that you're a supervisor. That's way too far a stretch. So the fact that there was testimony she was present still in the house while Kellen was making the calls and scheduling the massage appointments means nothing in terms of supervisory authority.

THE COURT: Thank you. Other enhancements before the government's objection is to be addressed.

MS. MOE: No, your Honor. Thank you.

MR. EVERDELL: Your Honor, I assume you don't want to hear or have any questions about the five-point enhancement for repeated and dangerous sex offenders.

THE COURT: I believe I have what I need, but as I

said, I don't need repetition of the arguments in the papers, but if there is any additional points you want to make, you're welcome to.

MR. EVERDELL: Your Honor, just one point. I will be brief. The government in its papers makes the argument that the background commentary can't be relied upon as authoritative because it is not explanatory or interpretative of what the guideline is. I think that is incorrect.

It is not simply a recitation of what Congress was considering. That first sentence or two which talks about how this guideline can only be applied to offenders who represent a continuing danger to the community is interpretative of what the guideline is. The title of the guideline is repeat and dangerous sex offenders. That explanatory commentary explains how to interpret what dangerous means. It means someone who is continuously dangerous to the community, not someone who's never been accused of a crime in the 18 plus years since the crime in this case, and has never been accused of re-offending. So I don't agree with that point. This is authoritative guidance from the Sentencing Commission, and the Court should consider it as such. Thank you.

THE COURT: Ms. Moe, do you want to respond?

MS. MOE: No, your Honor. We rest on our briefing on this issue, but thank you.

THE COURT: Thank you. Anything else?

MR. EVERDELL: No, your Honor. We rest on the papers.

THE COURT: I thank you counsel for your thorough briefing. I am prepared to rule.

The defendant raises four objections to the calculation of the guideline range contained in the PSR. As we discussed, first, she argues I must apply the 2003 guidelines rather than the 2004 guidelines. Beyond that, she objects to the application of three sentencing enhancements. The government's sole objection to the calculation of the guidelines is that Virginia Roberts and Melissa should be considered victims. So I will address the defense objections and then the government's objections.

I begin by determining which of the Guideline manuals apply. Generally, a sentencing court applies the version of the guidelines in effect on the date that the defendant is sentenced. 18 U.S.C. Section 3553(a)(4)(A)(ii). But the *Ex Post Facto* Clause is violated if a defendant is sentenced under Guidelines issued after she's committed her offense and the new Guidelines provide a higher sentencing range than the version in place at the time of the offense. That's the principle of a case called *Peugh v. United States*, 569 U.S. 530 (2013). In that case, a sentencing court must -- in the case of a higher range at the time of sentencing than in place at the time of the offense, in that case the sentencing court must apply the guidelines in effect when the offense was committed.

United States v. Guerrero, 910 F.3d 72 (2d Cir. 2018). Here, the parties and the probation department agree that applying the current Guidelines would result in a significantly longer sentence than the application of the guidelines in place when the defendant committed her offense, whether that is the 2003 or 2004 guidelines.

The controlling date for ex post facto purposes is the last date of the offense of conviction. The 2004 Guidelines became effective on November 1, 2004. So I must determine if the last date of the offense was after November 1, 2004.

Because it seeks an increased punishment, the government bears the burden of persuasion. The government charged a decade-long conspiracy of sexual abuse that the indictment alleged ended in 2004. It's proof at trial that the conspiracy continued in 2004 related to Carolyn. And the charged conspiracy had to end no later than very early 2005 because that's when Carolyn turned 18 and can no longer be deemed a victim of the federal sex-trafficking offense charged which proscribes conduct with respect to individuals under the age of 18. So the government purports to carry its burden on this issue based on portions of Carolyn's testimony and some message pads regarding what occurred in 2004 and 2005.

Let me state clearly, I found, as I said repeatedly in my factual conclusions on the PSR objections, I found Carolyn to be a credible witness, as did the jury. The question before

me is specific and highly technical. Does the preponderance of the evidence demonstrate that the offense to sex traffic Carolyn continued after November 1, 2004 before she turned 18 in early 2005? In other words, does a preponderance of the evidence establish that acts in furtherance of the conspiracy to traffic Carolyn occurred in either November or December 2004? Although Carolyn testified regarding contact earlier in 2004 and after she turned 18 in 2005, there is no evidence, either in the form of testimony or documentary evidence, including the message pads, that demonstrates by a preponderance of the evidence conspiratorial conduct during those last two months of 2004 before Carolyn turned 18 in 2005.

In those portions of Carolyn's testimony cited by the government, Carolyn stated that she was 18 years old the last time she went to Epstein's house, which would have been in 2005. As Carolyn further explained, she returned more than four or five times to Epstein after she gave birth to her son in March of 2004, and that testimony is supported by message pads entered at trial that show Carolyn called Epstein several times in the summer of 2004: Once in late April or early May again on July 6, and again on July 30. When she did return to Epstein, Carolyn testified Epstein asked if she had younger friends, and she explained during her testimony that at 18 years old, she was too old for him. Carolyn wasn't asked, and her testimony doesn't specifically address, whether she went to

Epstein's house after November 2004 before she turned 18. Message pads entered at trial show contact only before November 1.

The government's reliance on two additional pads that were not entered into evidence doesn't change my analysis. The first message GX-4B, it's undated, and the context does not give sufficient confidence that it came after November 1. The other message pad is dated March 1, 2005, which falls outside the scope of the conspiracy alleged in the indictment, and after Carolyn turned 18. Because I cannot on this record find by a preponderance of the evidence that the offense continued during that two-month window after November 1, 2004, and before early 2005, I must apply the 2003 guidelines. Because I find that the date of the offense was not after November 1, 2004, I do not address the defendant's alternative argument that a jury must decide if the 2004 Guidelines apply.

Within the Guidelines themselves, the defendant objects to the application of three enhancements in the PSR. She takes issue first with 4B1.5(b). The enhancement statements that the offense level is increased by five if: One, the offense of conviction is a covered sex crime; two, 4B1.5(a) for prior convictions does not apply; three, the defendant engaged in a pattern of activity involving prohibited sexual conduct. All three requirements are met: The defendant was convicted of a covered sex crime; she was not previously

convicted of a sex crime; and I readily find she engaged in a pattern of activity involving prohibited sexual conduct. Specifically, the Guidelines define a pattern of such activity as the defendant engaging in prohibited sexual conduct with a minor on at least two separate occasions.

The defendant doesn't contest any of these enumerated requirements. Rather, she argues that I may apply this enhancement only if I further find that the defendant poses a continuing danger to the public. Here, the defense draws this requirement from background commentary by the Sentencing Commission and a few statements made by members of the Congress who of emphasized high recidivism rates in enhancing sentences for sex offenders.

I overrule this objection because it lacks any basis in the Guidelines. As with all interpretive matters, I start with the text of the Guidelines. If the text is unambiguous, I apply it as written and do not resort to background commentary. *United States v. Sash*, 396 F.3d 515 (2d Cir. 2005). Commentary cited by the defendant simply provides policy rationale for a particular enhancement. It does not purport to interpret the Guidelines and so is not binding. Nor can scattered legislative history override the clear text of the Guidelines, especially when that history amounts to only a few short floor statements which are "among the least illuminating forms of legislative history." *NLRB v. SW General, Inc.* 137, S. Ct. 929

(2017).

Moreover, the defendant fails to prove that 4B1.5(b) was enacted only to prevent future danger to the public. Background commentary explains that aside from recidivism, Congress "directed the Commission to ensure lengthy incarceration for offenders who engage in a pattern of activity involving the sexual abuse or exploitation of minors." That's 4B1.5 comment background.

Further, the legislative history quoted by the defendant says that Congress increased Guidelines sentences for sexual abuse of minors "to address the egregiousness of these crimes." And, in fact, the defendant's brief cites that I believe at 12. Thus, I find no basis for a requirement that I must first find the defendant to be a public danger before applying the enhancement. The defendant's remaining argument that applying this enhancement would result in an excessive sentence is appropriately considered as part of the defendant's request for a downward variance.

Next the defendant objects to the application 3B1.1(a), which we've discussed, which adds four offense levels for her leadership role in a criminal activity. "a court must make two specific factual findings before it can properly enhance a defendant's offense level under 3B1.1(a): (i) that the defendant was an organizer or leader; and (ii) that the criminal activity involved five or more participants or was

otherwise extensive." Quoting from *United States v. Patasnik*, 89 F.3d 63 (2d Cir. 1996). The Guidelines define a participant as a person who is criminally responsible for the commission of the offense, but need not have been convicted. That's Section 3B1.1, comment note 1. And in assessing whether criminal activity is extensive, all persons involved during the course of the entire offense are to be considered, including persons who provided services unknowingly. Comment note 3.

The defendant argues that she did not lead another criminal participant. I overrule this objection because I do conclude that the government has proved by a preponderance that the defendant supervised Sarah Kellen, who was a knowing participant in the criminal conspiracy.

Larry Visoski and David Rodgers both testified for that at least part of the time period at issue Sarah Kellen acted as a personal assistant to the defendant. I credit that testimony which is corroborated by further testimony that the defendant was Epstein's number two and the lady of the house. At some point, Kellen took over some of the defendants duties. But even after that time, the defendant retained her leadership position, as evidenced by Carolyn's testimony, by flight records in evidence, and the household manual in evidence. I do conclude by a preponderance of the evidence that the defendant led a criminally responsible participant.

I further find that the defendant's criminal activity

was extensive. Whether criminal activity is extensive is based primarily on the number of people involved, criminally and noncriminally, rather than on other possible indicators of the extensiveness of the activity. District courts must determine the number of knowing participants in the criminal activity, the number of unknowing participants whose activities were organized or led by the defendant with specific criminal intent, and the extent to which the services of the unknowing participants were peculiar and necessary to the criminal scheme. For example, a taxi driver that drives a defendant to a crime scene would not count. That is an example from a case called *Carrozzella*, 105 F.3d at 804.

At all relevant times, the conspiracy proved at trial included at least two knowing participants: Epstein and the defendant. Beginning in 2002, Sarah Kellen joined, and beginning in approximately 2001, additional minor victims were recruited through Virginia and Carolyn. Additionally, trial evidence established that services were unknowingly provided by various Epstein employees. For example, I credit Juan Alessi's testimony that following the defendant's instructions, he scheduled massage appointments, set up the massage table for appointments, cleaned up after sexualized massages, and on at least one occasion drove Virginia to an appointment.

Additionally, both Visoski and Rodgers were employed as Epstein's pilots over the same time period as the counts of

conviction. Visoski testified that Maxwell partially owned the jet, and both pilots testified that she would tell them when to fly Epstein or schedule flights for herself. The evidence at trial demonstrates that Epstein and the defendant had the pilots fly victims of the conspiracy. Across the timeframe of all counts of conviction, Alessi, Visoski and Rodgers provided personalized services that were peculiarly tailored to the defendant's offenses and were not fungible services generally available to the public. Again, I'm citing from the *Carrozzella* case, 105 F.3d at 804.

In addition to these unknowing participants that testified at trial, I find by a preponderance of the evidence that there were other unknowing persons led by Maxwell. As Epstein's number one, Ms. Maxwell managed Epstein's numerous households and interviewed, hired and oversaw the household staff. The defendant had her own personal assistants, like Sarah Kellen and another individual. From the record, I can't determine the precise number of these other individuals that unknowingly assisted Epstein and the defendant in their criminal activity, but I find an adequate basis in the record that the number is sufficient to make the activity extensive within the meaning of 3B1.1(a) from 1994 to 2004. See *United States v. Archer*, 671 F.3d 149 (2d Cir. 2011).

Last, the defendant objects to enhancement 2G1.1(b)(4)(B). That provision increases the offense level by

two if a participant unduly influenced a minor to engage in a commercial sex act. In defining the enhancement, the Commission instructs courts to closely consider the facts of the case to determine whether a participant's influence over the minor compromised the voluntariness of the minor's behavior. 2G1.1, comment note 7. And if the participant is at least ten years older than the minor, there is a rebuttable presumption that the participant unduly influenced the minor to engage in a commercial sex act. I overrule the defendant's objection.

The defendant first says the undue influence enhancement would punish her for the same harm already counted in her base offense level. Impermissible double counting occurs when a guideline enhancement is applied to reflect the kind of harm that's already fully accounted for elsewhere in the Guidelines but does not occur if the enhancement aims at differing harms emanating from the same conduct or reflects different facets of the defendant's conduct. *United States v. Watkins*, 667 F.3d 254 (2d Cir. 2012). There isn't double counting here. The 2G1.1(a) base offense level reflects the aggregating factor that the victim of the defendant's sex offense was a minor. The enhancement, by contrast, reflects the use of undue influence to engage in a commercial sex act. I'll cite a few cases that stand for that proposition, including *United States v. Kohlmeier*, 858 F. App'x, 444 (2d

Cir. 2021) (summary order). Similar conclusion, *United States v. Smith*, a Ninth Circuit case from 2013, 719 F.3d 1120. That case explains 2G1.3(a) base offense level and the undue influence enhancement "serve unique purposes under the Guidelines."

The defense argues that because the enhancement applies only if undue influence was exerted with the aim of a commercial sex act, it does not apply here. But the jury in Count Six did convict the defendant of sex trafficking Carolyn to participate in commercial sex acts. The Court finds that Virginia Roberts, who brought Carolyn and Melissa who was brought by Carolyn similarly were paid. The remaining victims, including Jane and Annie, also testified that they received money and gifts during their abuse which satisfies the enhancement.

The defendant argues Carolyn was not unduly influenced to sexually massage Epstein. I find this argument meritless. The age gap between Carolyn and Epstein and the defendant far exceeded ten years, and the defendant does not rebut the resulting presumption of undue influence. 2G1.1, comment note 7. Carolyn testified she was paid to give Epstein sexualized massages, and she needed the money for her drug addiction. Later, Carolyn returned to Epstein because she needed the money for herself and her newborn son. Plainly, taking advantage of a victim's financial need is a form of undue influence. I'll

cite some cases for that proposition. *Watkins* 667 F.3d at 265; *United States v. Streb*, 36 F.4th 782. That's and Eighth Circuit case from 2022. Courts have repeatedly concluded that a minor can be the victim of undue influence even if the minor initiates a sexual meeting. See, for example, *United States v. Lay*, 583 F.3d 436 (6h Cir. 2009). I therefore overrule the defendant's objection.

I next turn to the government's only objection to the PSR Guideline calculation. I do find that Virginia Roberts and Melissa were minor victims of sex offenses -- they were trafficked and abused by the defendant and Epstein during the charged period. The Guidelines require that each minor victim be considered a separate count of conviction. 2G1.1.(d)1. Probation department excluded Virginia and Melissa from this provision only because they were not named in the indictment. This is an incorrect basis for excluding them from the calculation. Relying on commentary by the Commission, the Second Circuit has instructed "that conduct against victims other than those charged in the indictment may constitute relevant conduct, and, if such conduct qualifies, should be treated for sentencing purposes as though it occurred in a separate count of conviction." I United States V. Wernick, 691, F.3d 108 (2d Cir. 2012) (citing 2G1.1 comment note 4). I therefore consider Virginia and Melissa as two additional groups of victims and assign each a unit under Section 3D1.4.

Having resolved the parties' objections, I will calculate the Guideline range. As explained, I will use the 2003 Guidelines manual. Following Section 2G1.1(d)(1), each victim is considered a separate count of conviction. In addition to the three victims for which an offense level was calculated in the PSR -- Jane, Annie, and Carolyn -- I calculate offense levels, for Virginia and Melissa, coming to a total of 5 groups.

For all groups, the base offense level is 19. That's Sections 2G1.1(a) and 2X1.1(a).

For Jane and Carolyn, because they were older than 12 but were not yet 16 when abuse began, the offense level is enhanced by 2. 2G1.1(b)(2)(B).

The offense level for Jane and Carolyn is further enhanced by 2 because they were unduly influenced into a commercial sex act. 2G1.1(b)(4)(B).

For Annie, Virginia, and Melissa, who were at least 16, the offense level is increased by 2 because they were unduly influenced into a commercial act. 2G1.1.(b)(4)(B).

The offense level for all groups are also enhanced by 4 points because of the supervisory role in an extensive criminal activity. 3B1.1(a).

This brings the total offense level for Jane's and Carolyn's groups to 27. And Annie's, Virginia's and Melissa's groups each to 25.

Because there are multiple counts, all within at least four offense levels of each other, I determine 5 units under 3D1.4(a). And under 3D1.4, 5 units increases the total offense level of the group with the highest total offense level by 5 from 27 to 32.

Last, because the defendant engaged in a pattern of activity involving prohibited sexual conduct, the total offense level is increased by 5 from 32 to 37. 4B1.5(b)(1).

In conclusion, I find the correct total offense level under the 2003 Guidelines is 37.

No party disputes the defendant's Criminal History Category of I.

Under the 2003 Guidelines, a Criminal History Category of I and total offense level of 37, produces a guideline range of 210 to 262 months' imprisonment.

The range for the fine, again, under the 2003 manual is $20,000 to $200,000 for each count. That's 5E1.2(c)(3).

The range for supervised release is three years to life. 5D1.2(a)(1) and (c) and 18 U.S.C. 3583(k), although I believe there is a -- yeah, I think that's supervised release.

I don't want to hear repeated objections, but any objections based on anything I said that is new?

MS. MOE: Yes, your Honor. With respect to the unit analysis, we wanted to note that under 3D1.4, a total of 5 units adds 4 levels, not 5 levels. I think the next layer on

the table is more than 5, as 5 levels. And, thus, the total number would be 36.

THE COURT: I presume you agree with that, Mr. Everdell?

MR. EVERDELL: Yes, your Honor.

THE COURT: Under the 2003 manual -- I see. The highest total offense level, increase by 4 from 32 to 36.

MS. MOE: Yes, your Honor. Thank you.

THE COURT: Thank you, Ms. Moe. And that produces a guideline range 188 to 235.

MS. MOE: Yes, your Honor.

MR. EVERDELL: We agree with that, your Honor.

THE COURT: Thank you. Same question to you, Mr. Everdell. Preserving your objections, of course, but anything new based on what I said?

MR. EVERDELL: Yes, your Honor. I don't think because the government's response was the one added their request to add Virginia and Melissa as separate groups, so we do object to that. I know the Court has already ruled on that. We don't think the record is adequate to make them separate offense groups. I understand the Court has already ruled on that, but we would like to preserve that objection.

THE COURT: Understood. Thank you.

Do you want to respond, Ms. Moe?

MS. MOE: Your Honor, I think the Court's rulings

addressing the factual objections speak directly to this issue. The record at trial amply established that Melissa and Virginia were victims of this conspiracy, and that the defendant had been involved with recruiting Virginia, who in turn recruited Carolyn, who in turn recruited Melissa.

With respect to Melissa in particular, we would not that, like Virginia, her name appears in the defendant's little black book, noting that she's a friend of Carolyn's. For all those reasons, and the reasons in our brief, we think the trial record amply establishes that they were both victims of the conspiracy.

THE COURT: I agree with that, and for the reasons indicated, do -- I agree with the government's objection to the probation calculation for that reason.

I think that means we don't need to resolve the factual objections that pertain to Carolyn's age. As I said, I credit Carolyn's testimony. The objections I would overrule because I think she accurately testified regarding her age both in 2004 and 2005, but it doesn't answer the question, as I see it, the legal question as to establishment of acts conspiratorial conduct in the relevant two-month period.

With respect to fines, Mr. Everdell, what is now paragraph 172 of the revised report, the defendant objects to the inclusion a $10 million bequest from Epstein being included in her assets for purposes of determining her ability to pay a

fine. I can't quite tell from the papers whether -- I know you say the bequest is likely to be contested. What is the current status of the bequest?

MR. EVERDELL: Your Honor, my understanding is that the document says what it says, and the estate is undergoing bankruptcy proceedings. I don't believe there is any -- this issue has been addressed because I think the estate is still dealing with victims' claims and other claims against the estate. But because it's in bankruptcy, I assume that this will be contested, and we don't know if there will be any money left at the end of that proceeding to honor the bequest. So that's one of the many reasons why I think this is such a tenuous asset that it shouldn't be considered for purposes of fines.

THE COURT: It's listed as an asset in the financial affidavit, is it not?

MR. EVERDELL: It is, your Honor, because we felt we wanted to fully disclose everything we know about, and we do know about simply because we were produced that document. We didn't know about it before. We knew about it because we got it in discovery, and we saw it was there, so we felt in good faith, we had to list it or at least disclose it, but I don't think it should be considered for purposes of fine.

THE COURT: Ms. Moe, do you want to respond to that?

MS. MOE: Your Honor, I don't have additional

information about the status of the estate. With respect to whether this information should be in the PSR, I think the Court is exactly right. This is listed on an asset on her balance sheet. Whether she ultimately recovers that amount or not, it's listed in the same way that liabilities are listed even though it may be uncertain as to how those are resolved. So I don't think the objection is founded.

THE COURT: Yes, I'm going to overrule this objection to the PSR paragraph. It is included as an asset in Ms. Maxwell's financial aid affidavit. The uncertain assertion that she may lose the asset is not a basis to exclude it from a considered asset for purposes of determining a fine.

Paragraph 178, the assertion here is that she is unable to pay a fine.

Do I have that right, Mr. Everdell?

MR. EVERDELL: Yes, your Honor.

THE COURT: I overrule the objection. Section 5E1.2(a) of the Guidelines requires the Court to impose a fine in all cases except where the defendant establishes that she is unable to pay and is not likely to become able to pay any fine. The defendant has failed to establish this. As I just noted, there is a $10 million bequest from Epstein this is in addition to other assets noted in the PSR.

I will say the assets and finances have been a moving target. In July 2020, Ms. Maxwell reported $3.8 million in

assets, and then reported $22 million in assets in support of the December 2020 bail application. The claim now of an inability to pay the fine, as I understand it, at the same time in which the defense has not provided documentation of her marriage or the purported pending divorce settlement. So I am unpersuaded based on the balance of facts that the defendant is indigent, and I do intend to impose a fine.

I will address restitution at the end. I understand the government is not seeking restitution. So we will pick that up at the end.

All right. With that, I'm going to take a break, and then I will come back and hear from -- just fill a few formalities. Neither of the papers make an argument for formal downward departures, as I understood them. In any event, I've considered whether there's an appropriate basis for departure from the advisory range within the Guideline system and do not find any grounds warranting departure under the Guidelines.

When we return with the Guideline calculation complete, I will hear from the parties as to what they contend a reasonable sentence is for Ms. Maxwell, taking into account the 3553(a) factors.

It's 12:30, which is a shocking fact to me. I suppose we should take a 30-minute break so that everyone can get lunch, as I imagine we still have a fair amount of matters to discuss and time to get through. So we'll take a 30-minute

break.

Ms. Moe

MS. MOE: With respect to the sequence of events, just so victims are aware, would the Court prefer to hear from victims before the Court hears from the parties or after? We defer to the Court, but it would be helpful to know for the victims.

THE COURT: I was anticipating government, victim statements, defense counsel and then Ms. Maxwell if she wishes to make a statement. My staff did provide counsel for the victims making statements an order in which they're speaking.

MS. MOE: Thank you, your Honor.

THE COURT: Any objection to that ordering, Ms. Moe?

MS. MOE: No, your Honor. Thank you.

THE COURT: Ms. Sternheim?

MS. STERNHEIM: I'm on now. No. Thank you.

THE COURT: I'll see you at 1:00. Thank you.

(Luncheon recess taken)

(Continued on next page)

AFTERNOON SESSION

1:10 p.m.

THE COURT: As I indicated, I'll hear first from the government as to what a reasonable sentence is under the 3553(a) factors.

Ms. Moe, when you're ready.

MS. MOE: Thank you, your Honor. May I take the podium?

THE COURT: You may. Thank you.

MS. MOE: Your Honor, Ghislaine first met Jane at summer camp in August of 1994. Jane was 14 years old. What Maxwell did in the years that followed to Jane and Kate and Annie and Virginia and Carolyn and Melissa, was almost unspeakable, but the truth came out in this case; and while many years have past, their pain is palpable, it's real, and it matters.

Today we ask the Court to impose an above-guideline sentence of multiple decades in prison, a sentence that holds Maxwell accountable for the essential role she played in an extensive and disturbing child exploitation scheme.

Maxwell trapped young girls in a horrifying nightmare. Her victims were vulnerable kids who found themselves alone in giant mansions where they were sexually exploited by adults they thought would help them. These girls were just kids. They were just finding their way in the world, trying to figure

out who they were and who they might be some day when they grew up. These kids had hopes and dreams for their future and the defendant used those dreams as her tool to abuse them.

We ask the Court to take an unflinching look at the defendant's actions and consider what that tells you about who she really is. What kind of person persuades young girls to massage the feet of a middle-aged man? What kind of person gets a 16-year-old girl all alone at a ranch in the middle of nowhere and tells her to take off her clothes and get on a massage table so that she can grope that girl's chest? What kind of person teaches a 14-year-old girl how a middle-aged man likes his penis to be touched? What kind of person sees a 17-year-old girl on the street and pulls over so that she can persuade that girl to come to a house of horrors where that young girl will be trafficked for sex? What kind of person flies around on a plane with underage girls so that when her boyfriend travels, he always has a young girl to touch? What kind of person would use their privilege, their power in this world to intentionally prey on the vulnerable, young girls from struggling families: Girls without fathers, girls who needed help. These are the actions of a person who was indifferent to the suffering of other human beings.

The defendant's actions were not a one-time mistake; not at all. Maxwell was an adult woman, and she made the choice, week in, week out for years to commit crimes with

Jeffrey Epstein, to be his right hand, to make his crimes possible. Those choices were hers, and they have to have serious consequences.

What's more, her actions portrayed a disturbing view of the world we live in. To Maxwell there were two kinds of people in this world: The people who really mattered and the people who were disposable. Maxwell wanted to make sure that she stayed among the people who she thought mattered. She wanted to live a luxurious lifestyle jet-setting around the world. She took millions of dollars from Epstein over the years and that's because they were predators together, they were partners in crime together, and they molested kids together.

The defendant's actions had serious consequences for her victims. These girls, now women, are strong. They have shown the world what true bravery really is. But when the defendant preyed on them, they were just kids, and they'll carry with them for their entire lives the trauma of what they've experienced. What is truly remarkable about this case, your Honor, is that we don't have to speculate about the lasting irreparable harm that the defendant's actions have had. You have seen for yourself the devastating effects of the defendant's crimes and how much her actions have affected her victims even years later.

The defendant has shown absolutely no remorse for her

crimes. She has not owned up to the truth. She has lied repeatedly. She has been dishonest with the Court, and she has made misrepresentations when it suits her. Your Honor, we recognize that the Court has calculated the guidelines to be 188 to 235 months. That is far below the sentence that the government believes is appropriate in this case. We recognize that there are a small number of cases where the Court imposes an above-guideline sentence. This is that case, your Honor.

In the almost 20 years since the 2003 manual was enacted, our Sentencing Commission, our Congress, and our country have all recognized just how serious sex crimes against children are. Our country now recognizes how woefully inadequate the 2003 guidelines were, and the Supreme Court has expressly held that sentencing courts can vary upwards for exactly that reason. Again, this is that case. This is exactly that case. This is the time to impose an above-guideline sentence. A guideline sentence in this case would create unwarranted sentencing disparities with individuals being sentenced today for sex-trafficking offenses. This case calls out for an above-guideline sentence because of the breathtaking scope of the defendant's conduct, the length of her crimes, the number of victims, the vulnerability of her victims, the sophistication of the defendant's predatory conduct and the degree to which she psychologically manipulated her victims. Her conduct was shockingly predatory, and it

calls out for an above-guideline sentence.

We ask the Court to impose an above-guideline sentence, a sentence that sends a message that those who would conspire with sexual predators would be held responsible for their significant role in these crimes. We ask the Court to send a message that nobody is above the law, and nobody is too rich or powerful to be held accountable. We ask the Court to send a message that it is never too late for justice.

Your Honor, you should not hesitate to hold the defendant accountable for the full measure of her crimes. She deserves to spend decades in prison for her crimes. Thank you.

THE COURT: Thank you, Ms. Moe.

And I will ask that the individuals who are making statements come to the podium.

Ms. Farmer is first. You're welcome to remove the mask when you get there, Ms. Farmer, if you'd like.

MS. FARMER: Judge Nathan: For a long time I wanted to erase from my mind the crimes that Ghislaine Maxwell and Jeffrey Epstein committed against me and pretend they hadn't happened. It was the type of dark memory that feels safest to keep locked away. But I've had to acknowledge the long-lasting effects. One of the most painful and ongoing impacts of Maxwell's and Epstein's abuse was a loss of trust in myself, my perceptions and my instincts. When predators groom and then abuse or exploit you, they are in a sense training you to

distrust yourself. When a boundary is crossed or an expectation violated, you tell yourself, "Someone who cares about me to do all these nice things surely wouldn't also be trying to harm me." This pattern of thinking is insidious, so these seeds of self-doubt took root even as I learned my sister had also been harmed by them and came to find out years later that many others had been exploited.

THE COURT: Just a request to slow down.

MS. FARMER: For years these memories triggered significant self-recrimination, minimization and guilt. I blame myself for believing these predators actually wanted to help me. I felt tremendous survivor guilt when I heard about what other girls and young women had experienced at hands of Maxwell and Epstein. I saw about how my sister's concern about me weighed on her and felt guilty about this as well.

This toxic combination of being sexually exposed and exploited, feeling confused and naïve and blaming myself all resulted in significant shame; that sickening feeling that makes you want to disappear. It was not constant but would come in waves, similar to the waves that anxiety would also show up. When I think back, I see a slide-show of moments when these feelings would surface and overwhelm me. There are too many of these moments to name and though I have come a long way in my path of healing, I know that these feelings will continue to be triggered at times.

The ripple effects of trauma are undeniable. When one person is abused, many others are also harmed. In addition to the way I was impacted as an individual, there was the pain I experienced as a sister due to how Maria was abused by Maxwell and Epstein and the harm caused to the rest of my family due to these events. My sister Maria's abuse, the sexual assault, Maxwell's threats that stole her sense of safety and her career, the way they used her to get to me had devastating effects on her. As my family watched her grow more isolated and more physically ill from the stress of all of it, we all felt powerless. It was heartbreaking and infuriating, and we later learned how often this pattern was repeated. A young person on the path of pursuing her dreams was pulled in by Maxwell, was abused and exploited, and then had to try and piece together a life in the aftermath of this trauma that left them feeling distrustful and fearful. Most of these individuals had families who also were negatively impacted as they witnessed and felt the systemic effects of their loved one's losses and struggles. The number of people harmed is impossible to measure. Maxwell had many opportunities to come clean but instead continued to make choices that caused more harm.

When my sister and I first spoke out to the media about what happened to us, Maxwell lied about us and threatened Maria, thus helping shut down investigations into their

behavior so they could together continue to harm children and young women. After this attempt to alert people to Epstein and Maxwell's abusive behavior, I avoided being public about it for two decades. My shame told me I should hide this fact because it was embarrassing. Later as I pursued my profession as a psychologist, I feared it could potentially ruin my career. I worried clients would not want to work with me if I was associated with this story, wrongly labeled as one of child prostitution. I feared being on Epstein's and Maxwell's radar as a problem because of their previous lies and threats.

Once arrested, Maxwell faced another choice. She could admit her participation in this scheme, acknowledge the harm caused or even provide information that could have helped hold others accountable. Instead, she chose again to lie about her behavior, causing additional harm to all of those she victimized.

Judge Nathan, I hope when you consider the appropriate prison sentence for the role Maxwell played in this sex-trafficking operation, you take into account the ongoing suffering of the many women whom she abused and exploited as we will continue to live with the memories of the way she harmed us. I hope you weigh the systemic effects of the crimes she perpetrated, the ways that our family members, romantic partners and friends have been hurt through our suffering. I ask you to bear in mind how Maxwell's unwillingness to

acknowledge her crimes, her lack of remorse and her repeated lies about her victims created the need for many of us to engage in a long fight for justice that has felt like a black hole sucking in our precious time, energy and well-being for much too long now, things that cannot be replaced. Thank you.

THE COURT: Thank you, Ms. Farmer.

Kate may make a statement now.

MS. MOE: Your Honor, before Kate speaks, I just wanted to confirm that the Court's anonymity order, in particular with respect to sketch artists, is in effect.

THE COURT: Yes. Consistent with the Court's prior anonymity and pseudonym order, we will refer to this witness as Kate only, and the sketch artists shall not draw an exact image of Kate so that she can remain anonymous.

Thank you, Ms. Moe.

Kate, you may proceed.

KATE: Good afternoon, your Honor. Thank you for hearing me. I believe you've already seen my victim impact statement, so I have something else to say.

At a time when women's rights have so callously been discarded, as the mother a young daughter, I fear for the safety and freedom of my child. Today offers hope that change is possible. Our voices may not have been heard before, but we united to bring justice to a common enemy. If we cannot stop women who have been raped from being forced to bear the

children of their rapists, then we must take a stand on zero tolerance to those who abuse their power to groom and traffic and rape the vulnerable.

How you do anything is how you do everything. Every single person should have equal value. Every single person should have an equal right to be protected. Every single child must have their innocence defended. No person should be shielded from the consequences of their actions no matter their status or class. Ghislaine's lack of remorse and her blatant refusal to take responsibility for her crimes towards us is the final insult.

Having a difficult childhood is irrelevant to the choices she made to traffic and supply women/children to Jeffrey Epstein and other powerful men. Despite the atrocities perpetrated on me, I have never recruited a child or any person to be sexually abused. Someone being a hard worker does not excuse sex trafficking of minors. Someone starting a non-profit does not excuse sex trafficking of minors. Someone who had it difficult or even an abusive father does not excuse sex trafficking of minors. Losing money and prestige does not excuse sex trafficking of minors. The lack of remorse or responsibility taken by Ghislaine for how she ruined the lives of countless women and children is exactly how we can tell that she doesn't think what she did is wrong. She is not sorry, and she would do it again.

I have known Ghislaine for many years now, and I have seen her be kind and generous to me and many others until she doesn't get what she wants from that person, and then I have seen her stop at nothing to enforce her will -- a manipulative cruel and merciless person who only uses kindness to manipulate and generosity to seek recognition.

Today for the first time I stand with my sisters, bonded by a trauma that I wish on no one, to draw a line and to set a precedent to say enough is enough; to say no with a chorus of voices that you cannot ignore. May that chorus ring through the ears of people still being victimized and give them strength. May it echo in the ears of perpetrators to remind them that there are those of us who will never stop until we stop them.

Today is not a happy day. I take no pleasure in being part of a world where this is necessary, but I am proud to stand shoulder to shoulder with these brave women and do what is necessary to stop Ghislaine, to hold her accountable, and for the first time in my life not to feel afraid. I could not have done this alone, and I thank those who walked alongside me and those who carried me. Today I can look at Ghislaine and tell her that I became what I am today in spite of her and her efforts to make me feel powerless and insignificant, and I will pass that empowerment on to my daughter that she may never consider being silent when faced with injustice because she

will feel all of us standing behind her. Thank you.

THE COURT: Thank you.

I will hear the statement from counsel for Virginia Roberts.

VIRGINIA ROBERTS COUNSEL: Good afternoon, your Honor.

May it please the Court, this statement I am reading on behalf of my client, Virginia Giuffre, is written to Ghislaine Maxwell.

Ghislaine: 22 years ago in the summer of 2000, you spotted me at Mar-a-Lago in Florida, and you made a choice: You chose to follow me and procure me for Epstein. Just hours later, you and he abused me together for the first time. Together you damaged me physically, mentally, sexually and emotionally. Together you did unthinkable things that still have a corrosive impact on me to this day.

I want to be clear about one thing: Without question, Jeffrey Epstein was a terrible pedophile, but I never would have met Jeffrey Epstein if not for you. For me, and for so many others, you opened the door to hell, and then, Ghislaine, like a wolf in sheep's clothing, you used your femininity to betray us and you led us all through it. When you did that, you changed the course of our lives forever. You joked that you were like a new mother to us. As a woman, I think you understood the damage that you were causing, the price you were making us victims pay. You could have put an end to the rapes,

the molestation, the sickening manipulation that you arranged, witnessed and even took part in. You could have called the authorities, and reported that you were part of something awful.

I was young and naïve when we met, but you knew that. In fact, you were counting on it. My life as a young person was just beginning. You robbed me of that by exploiting my hopes and ambitions. Ghislaine, the pain you have caused me is almost indescribable. Because of your choices and the world you brought me into, I don't sleep. Nightmares wake me at all hours. In those dreams, I relive the awful things that you and others did to me and the things that you forced me to do. Those memories will never go away.

I have trouble meeting new people without questioning if somehow they're going to hurt me too. There is not a day that doesn't go by that I don't ask why. Why did you enjoy hurting us so much? I worry every single day and night that you will get away with it and evade being punished. I will worry about that until you're brought to justice. And what should that justice look like? Ghislaine, you deserve to spend the rest of your life in prison in a jail cell. You deserve to be trapped in a cage forever just like you trapped your victims. But I want you to know that while you tried to break me, you did not succeed. Despite you, I've grown into a woman who tries to do good in the world; a woman who on her best days

feels like she's making a difference.

My promise to you is as follows: As long as you and perpetrators like you continue to prey on the vulnerable, I will not stop standing up and speaking out. Together with so many others you abused, we will do all we can to keep predators from stealing the innocence of children. I will never give up. I will never go away. If you ever get out of prison, I will be here watching you and making sure you never hurt anyone else again. Thank you.

THE COURT: Thank you, counsel.

And I do have the written submissions submitted in accordance with the Court's order from Ms. Bryant, Ms. Maria Farmer and Ms. Helm, who I understand was not able to be present. And so I'll hear from Ms. Ransome. Please tell me how tell me how to say your name correctly.

MS. RANSOME: Ransome.

THE COURT: Thank you.

MS. RANSOME: Your Honor, it's been a long journey to bring Maxwell to justice. Although I have physically escaped the hideous trap set by Epstein, Maxwell and other co-conspirators, I continue now, 17 years later, to suffer from the horrific trauma it has caused.

I came to New York at the age of 22 hoping to attend New York's FIT and work in the fashion industry. Soon after arriving, I made met an Epstein-Maxwell recruiter named Natalya

Malyshev. She described him as a kind philanthropist who could help me get into FIT and provide much needed support.

Over the next seven to eight months, I became against my will nothing more than a sex toy for the entertainment of Epstein, Maxwell and others. I was subjected to sexual predation multiple times per day, both in his New York mansion and on his private island in the U.S. Virgin Islands. On one of the visits to the island, the sexual demands, degradation and humiliation became so horrific that I tried to escape by attempting to jump off a cliff into shark-infested waters.

Epstein and Maxwell were masters at finding young, vulnerable girls and young women to exploit. Upon targeting a vulnerable girl/young woman, they would ingratiate themselves to her, giving her compliments and small gifts, telling her how special she was. Soon after lulling me and others into a false sense of security and comfort, they pounced, ensnaring us in the upside-down, twisted world of rape, rape, rape. Like Hotel California, you can check into the Epstein-Maxwell dungeon of sexual hell, but you could never leave.

The manipulation, intimidation and emotional abuse used to control the victims took many forms. In my case, Epstein and Maxwell used my dysfunctional family history, naivete, visa status, lack of education and desire to go to FIT to manipulate, scare and ensnare me. They told me that I was exceptionally intelligent and that I had real potential to be

someone and something in life one day.

Epstein's and Maxwell's strong ties to FIT could make this happen. With their help, my admission was almost assured, but there was always a but. First I had to write my application, which I did. But Maxwell had to review it and conveniently always found fault. Then another but, I needed to lose 30 pounds because I was a piglet. Maxwell's numerous degrading descriptions of me. Epstein and Maxwell put me on a strict Atkins diet while simultaneously sending me to a psychiatrist who prescribed antidepressants that caused weight gain. It was a classic no-win situation, and they knew it: Precisely what human traffickers seek. I never lost the weight, my application was never good enough, and it never got submitted.

I thank the almighty God that in 2007, I managed to escape the horror by fleeing to the U.K. Since then, I have been coping as best as I can and frequently experience flashbacks and wake up in a cold sweat from nightmares from reliving the awful experience. I'm hypervigilant. I do not trust people easily. I experience dramatic mood changes. I will sometimes start crying uncontrollably for reasons I cannot always comprehend. I worked hard with several mental health professionals. They have diagnosed me with extreme symptoms of anxiety, depression, low self-esteem, PTSD and tendency to self-harm.

Despite my earnest effort I have not realized life's true potential professionally, nor entered any healthy personal relationships. I have never married, and I do not have children, something I always wished for when I was a little girl. I shy away from meeting new people and have difficulty making new friends because I fear they too could be associated with Epstein and Maxwell and their enablers and co-conspirators.

To this day I attend meetings to treat alcoholism, but I have had numerous relapses, and I cannot always control that. I know that only by the grace of God do I continue to live. I have attempted suicide twice since the abuse -- both near fatal.

Last year, I traveled to New York to attend Maxwell's trial. It was therapeutic to hear the testimony of the four brave victim-witnesses, whose experience paralleled my own, to know that I was not alone, and that our story was finally being told for the world to hear.

I am grateful the jury believed the victims and returned a guilty verdict, but a question still tears at my soul. After all of this, how can this five-star general of this enormous sex-trafficking conspiracy involving hundreds, if not thousands, of vulnerable girls and young women over three decades continue to maintain her innocence? Reflecting on it, I know the answer to my questions.

Maxwell is today the same woman I met almost 20 years ago, incapable of compassion and human common decency. Because of her wealth, her social status and connections, she believes herself beyond reproach and above the law. Sentencing her to the rest of her life in prison will not change her, but it will give the other survivors and I a slight sense of justice and help us as we continue to work to recover from the sex-trafficking hell she perpetrated.

She will never ever hurt another young woman or child again in this lifetime, and for that I am sure.

To Ghislaine, I say, you broke me in unfathomable ways, but you did not break my spirit, nor did you dampen my eternal flame that now burns brighter than ever before.

Thank you, your Honor.

THE COURT: Thank you, Ms. Ransome. I will hear the statement from Ms. Stein.

MS. STEIN: Good afternoon, your Honor.

THE COURT: Good afternoon.

MS. STEIN: I came to New York in 1991 at the age of 18 to attend FIT and immediately began to excel academically. In my sophomore year, I accepted a Christmastime internship at Henri Bendel New York. I performed well and was asked to stay on as a part-time employee.

In the fall semester of my senior year at FIT, Ghislaine Maxwell came into the store where she was a frequent

customer. Her usual salesperson wasn't there, so I helped her. Ghislaine was electrifying. We hit it off immediately. In this first meeting we spoke of our mutual love of fashion, of difficult fathers and formal upbringing, of boyfriends and of how we both saw New York as a chance to start over. She told me that her boss, who I later came to understand was Jeffrey Epstein, was close friends with Lex Wexner, the CEO and founder of The Limited, which owned Henri Bendel at the time.

When she completed her purchases, I offered to deliver them to her so she didn't have to carry them around all day. This was a courtesy I frequently extended to my high-end clients. Later that day, I called her office for delivery instructions and was told to bring them to a hotel close by to the store. When I arrived, the hotel concierge told me Ms. Maxwell was in the bar and wanted me to meet someone. It was Jeffrey Epstein. That night in the hotel was the first of many times they sexually assaulted me.

Afterwards I tried to pretend everything was normal. I returned to my classes at FIT and continued to work at Henri Bendel, but I started to crack. I failed a course that was necessary for my degree and had to retake it to get my diploma. Shortly after my first meeting with Epstein and Maxwell, I was offered a full-time position at Henri Bendel. It was a newly created position at the store, and it would have required me to leave FIT a semester short of completing my degree. I had

aspirations of going to law school, and I knew I could not do so without my undergraduate degree, so I declined it.

When Ghislaine found out, she flew into a rage. I didn't understand why until she told me that she and Epstein were responsible for giving me that opportunity and that in turning it down I was being ungrateful. I now know that this was their standard operating procedure. Give a gift or a favor and then demand sex in return. Nevertheless, I completed my course work, got my degree from FIT, at which point I left Henri Bendel and took a position at Bloomingdales. I wanted to leave Epstein and Maxwell and the abuse they perpetrated against me behind as I started my professional life. I never wanted to or expected to see them again.

One day in the fall of 1995, Maxwell showed up at Bloomingdales looking for me. When I asked her how she knew where I was, she said she asked my colleagues at Henri Bendel. She immediately began befriending me once again, asking me to go out socially. I tried to resist but eventually she wore me down, and I began spending time with them again. They made me feel like they were friends, contemporaries.

In one instance, they took me to Florida and insisted that I stay longer than planned which caused me to miss work and led to me being fired. Seizing on this new vulnerability they began trafficking me to their friends. By that time I was trapped. I was assaulted, raped and trafficked countless times

in New York and Florida during a three-year period. Things happened that were so traumatizing that to this day I am unable to speak about them. I don't even have the vocabulary to describe them. In the most literal sense of the word, Epstein and Maxwell terrified me. They told me that if I told anyone, no one would believe me; and if they did, they would kill me and the people closest to me. I believed them.

I was once bright, fun, outgoing and kind. I loved life and people genuinely enjoyed being around me. After meeting Jeffrey Epstein and Ghislaine Maxwell, it felt like someone shut off the lights to my soul. My secrets became too much for me to handle, and I began doing whatever I could to try to get away from Maxwell and Epstein. I changed jobs, apartments, cities and even states to try to get away. Everywhere I went, they found me.

In 1997 I moved to Philadelphia with the hopes of finally starting law school. They found me again, and it was more than I could take. I was hospitalized with a nervous breakdown. It would be the first of over two dozen hospitalizations in a decade following my involvement with Epstein and Maxwell.

In addition to my escalating mental health problems, I began to experience physical symptoms that doctors could never quite put their fingers on. I could no longer even pretend to be able to hold down a job or take care of myself in any

meaningful way, and I had to move back home once again. Emotionally, I had cracked and nobody thought I would ever get better, but I didn't give up. I was determined to do whatever I had to to prove everyone wrong. I wasn't crazy. I was hurt.

For over a decade and a half, I went to all kinds of medical specialists and was in and out of medical and psychiatric hospitals, having tests and procedures, even submitting to clinical trials and an experimental implantable medical device. Nothing helped.

Just as I began to repair the emotional damage, I was diagnosed with complex regional pain syndrome. CRPS is a rare neuro-inflammatory disorder characterized raised by intense relentless physical pain. Both CRPS and PTSD are psychophysical states in which the sympathetic nervous system is engaged and remains inappropriately hyperaroused. There is no cure. The mind and body are interconnected. Despite of this, I immersed myself this trauma therapy and repaired my emotional health. I began physical therapy and regained my physical mobility. I started to rebuild my life.

The arrest of Epstein in 2019 and Maxwell in 2020 helped me immensely. For the first time, I was finally able to disclose their abuse to friends and medical providers. 25 years after meeting them my experience was validated. I could finally see the possibility of closure. This past November and December I commuted almost every day from my home in

Philadelphia to attend Ghislaine Maxwell's trial in Manhattan. For weeks I sat in this courtroom anonymously, only revealing my identity the day before the verdict. I had to see justice myself.

At the age of 48, I feel as if I'm just starting my life. All those things I assumed I would have in life, the things that my siblings and my friends have achieved: A career, success, partner, family, a home, a legacy to be proud of leaving behind were jeopardized for more than two and a half decades. The only pronounced difference between my life experience and theirs is that one day when I was doing my job, I met Ghislaine Maxwell who fed me to Jeffrey Epstein.

(Continued on next page)

MS. STEIN: In more ways than one, they almost killed me, but I wasn't going to let them. Overcoming what happened to me became my decades-long, full-time career. In that, I have been successful.

For the past 25 years, Ghislaine Maxwell has been free to live a life of wealth and privilege that is almost incomprehensible. Meanwhile, I have had virtually none of the life experiences I might have had we never met. For over two and a half decades, I felt like I was in prison. She has had her life. It's time to have mine. She needs to be imprisoned so all of her victims can finally be free.

Thank you, your Honor

THE COURT: Thank you, Ms. Stein.

Ms. Sternheim?

MS. STERNHEIM: Thank you, Judge. Judge, I would like to stand at the podium.

THE COURT: Please.

Let me just note again that I did have the statements of the victims in the record. I thank them for making statements today and thank their counsel for working with them in conformity with my order.

MS. STERNHEIM: Your Honor, I would like to address the victims. I am going to try to turn around if the Court permits me.

THE COURT: As long as I can hear you and the court

reporters can hear you.

MS. STERNHEIM: I am going to speak as best as I can.

I want to acknowledge the courage that all of you have exhibited in coming forward at the trial and again today. Your statements are immensely powerful. We feel the pain. We can only hope that the end of this case and the sentence to be imposed will give you some solace and the sanctity that you have the ability to move forward and beyond all of this.

Judge Nathan, can you hear me? I didn't pull it out, I hope.

THE COURT: I can.

MS. STERNHEIM: Okay.

You have heard all of the trial testimony and you are fully familiar with the record. We will refrain from pointing out many statements that we disagree with by the government that we believe stretches the elasticity of the record well beyond what we believe is fair inference. But the purpose of today is not to take issue with the record; that will be addressed to the Court of Appeals.

The government asks the Court to sentence Ms. Maxwell above the more reasonable guideline range that the Court determined is applicable in this case and seeks a sentence of multiple decades in prison for a woman who is almost 61 years old and for almost the last 20 years has not engaged in any conduct similar to that which was the subject of the trial and

the conviction.

The government has asked for an immense sentence. We recognize that any sentence in this case is going to be significant and is going to be immensely punishing. The probation department, based on the original guidelines in the presentence report, recommended a downward variance to 20 years. That recommendation is now higher than the guideline range that is applicable in this case. But we ask the Court to consider the justification that probation articulated in the presentence report in fashioning a sentence that takes into consideration that a sentence lower than the guideline range is appropriate in this case.

The government's sentence asks for the outer limits, and although we still believe that even the recommendation is too high, a sentence within the guideline range now may be more reasonable, but it still does not take into consideration some of the various factors that we have brought to the Court's attention in our submission. Simply stated, based upon the conduct of conviction, the government's request is out of proportion. Jeffrey Epstein would have faced the same sentence, and he is clearly far more culpable than Ghislaine Maxwell.

THE COURT: You mean he would have faced the same guidelines.

MS. STERNHEIM: Yes, that is correct, Judge.

The sentencing submissions, which I know the Court has read——and I know the Court reads everything very critically and carefully——outlines and details our position, and I am not going to take the time to repeat those things unless the Court requests me to answer certain questions.

But in fashioning the appropriate sentence for this case and this defendant, the Court needs to take into consideration the various 3553(a) factors that the Court must take into consideration in every case regardless of what the crime of conviction is.

I know that what we heard today does not beg sympathy for Ms. Maxwell, but there are circumstances in her life that bear attention by the Court in imposing a reasonable sentence in this case. She has lived the entirety of her life under giant clouds that have cast very dark shadows. The tragic accident of her eldest brother within 72 hours of her birth on Christmas Day left him in a coma for seven years, until he died, an event that impacted her family to this day and overshadowed infant Ghislaine's entry into the world and her early childhood. Her narcissistic, brutish, and punitive father overwhelmed her adolescence and early adulthood. And the controlling, demanding, manipulative Jeffrey Epstein cast a deceptive shadow over Ghislaine's adulthood, the repercussions of which will plague her until her last breath. And like the past two years of intense presentence incarceration, which was

unusually harsh and punishing, she will remain in the shadow of prison bars until she can return to the sunlight of liberty.

As I said before, she is over 60 years old. She has no history of violence. She had no criminal history before or after the crimes of conviction, which ended some 20 years ago, and the Court needs to consider that there is an extensive period that has elapsed from the end of the charged conduct. She poses no danger to society or of recidivism. Her personal circumstances include many accomplishments and good deeds.

As I said, she has been subjected to extensive punishing conditions of presentence incarceration in solitary confinement. When she was moved within the last two months to general population, she began interacting with the inmates and assisting them in many, many ways. She began conducting English classes and GED tutoring, programs that were no longer being offered in the MDC and certainly had been suspended as a result of the ongoing pandemic. Her asset to the unit in general population is recited in the unsolicited letter submitted to the Court from one of her fellow unit inmates. But I have also been contacted personally by counsel for other inmates in Ms. Maxwell's unit, reporting to me that she is providing needed educational assistance that has not been ongoing for at least two years.

Ms. Maxwell is being sentenced for terrible conduct. There is no denying that. But she has the ability and the

desire to be law-abiding, which she has exhibited, and to do good. Before the charged offense and for the better part of the past 20 years, she has demonstrated that she is not a danger to anyone. A sentence below the applicable guidelines is sufficient, but not greater than necessary, punishment for Ghislaine Maxwell. The Court should not send her away for the rest of her life.

Thank you.

THE COURT: Thank you, Ms. Sternheim.

Ms. Maxwell, you have the right to make a statement. You are not obligated to do so, but if you would like to, you may do so now.

THE DEFENDANT: I would, your Honor.

MS. STERNHEIM: She would. Where would you like her to -- I'm sorry, Judge. Where would you like her to address the Court?

THE COURT: Are the marshals comfortable with the podium?

THE MARSHAL: Yes, your Honor.

THE COURT: You can go to the podium, Ms. Maxwell.

MS. STERNHEIM: Thank you very much.

And she may remove her mask?

THE COURT: Once you are at the podium, yes, you may remove your mask.

THE DEFENDANT: Thank you, your Honor.

Your Honor, it is hard for me to address the Court after listening to the pain and anguish expressed in the statements made here today. The terrible impact on the lives of so many women is difficult to hear and even more difficult to absorb, both in its scale and in its extent. I want to acknowledge their suffering and empathize. I empathize deeply with all of the victims in this case.

I also acknowledge that I have been convicted of helping Jeffrey Epstein commit these crimes. And despite the many helpful and positive things I have done in my life, and will continue to do, to assist others during my sentence, I know that my association with Epstein and this case will forever and permanently stain me.

It is the greatest regret of my life that I ever met Jeffrey Epstein. I have had plenty of time to think, having spent two years in solitary confinement. I believe that Jeffrey Epstein was a manipulative, cunning, and controlling man who lived a profoundly compartmentalized life and fooled all of those in his orbit.

Variously, his victims considered him as a godfather, a mentor, benefactor, friend, lover. It is absolutely unfathomable today to think that that is how he was viewed contemporaneously.

His impact on all those who were close to him has been devastating, and today those who knew him even briefly, or

never met him but were associated with someone who did, have lost relationships, have lost jobs, and have had their lives completely derailed.

Jeffrey Epstein should have been here before all of you. He should have stood before you all those years ago. He should have stood before you in 2005, again in 2009, and again in 2019, all of the many times he was accused, charged, and prosecuted.

But today it is not about Epstein ultimately. It is for me to be sentenced and for the victims to address me, and me alone, in this court.

To you, all the victims, those who came in court and to those outside, I am sorry for the pain that you experienced. I hope that my conviction, along with my harsh and unusual incarceration, brings you closure. I hope this brings the women who have suffered some measure -- I hope that this brings the women who have suffered some measure of peace and finality to help you put the experiences of those many years ago in a place that allows you to look forward and not back.

I also acknowledge the pain this case has brought to those that I love, the many I held and still hold close, which tortures me every single day, and the relationships that I have lost and will never be able to regain.

It is my sincerest wish to all those in this courtroom and to all those outside this courtroom that this day brings a

terrible chapter to the end, to an end. And to those of you who spoke here today and to those of you who did not, may this day help you travel from darkness into the light.

Thank you, your Honor.

THE COURT: Thank you, Ms. Maxwell.

Counsel, is there anything else -- I'm sorry, let me -- I do want to ask defense counsel, before I get there, if there are any objections to any of the conditions recommended by the Probation Department with respect to supervised release.

MS. STERNHEIM: No, Judge.

THE COURT: Okay. And I understand the government is not -- I just want to talk about restitution before I get to the statement of judgment.

Count Six is mandatory restitution, but the government's position is that no restitution should be ordered because all victims have been compensated.

MS. MOE: That is correct, your Honor.

THE COURT: Counsel, is there anything else I should consider or any reason why sentence should not be imposed at this time?

MS. MOE: No, your Honor. Thank you.

MS. STERNHEIM: No.

THE COURT: All right. Let me gather my thoughts for one moment.

(Pause)

THE COURT: Thank you for your patience.

As I have stated, the guideline range applicable to this case is 188 to 235 months' imprisonment.

Under the Supreme Court's decision in a case called *Booker* and related cases, the guideline range is only one factor that the Court must consider in deciding the appropriate sentence. I am also required to consider the other factors set forth in a provision called 18 U.S.C. 3553(a). These include the nature and circumstances of the offense, and the history and characteristics of the defendant; the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, to afford adequate deterrence to criminal conduct, to protect the public from further crimes of the defendant, to provide needed educational, vocational training, medical care, or other treatment. I am to take into account the kinds of sentences available, as I have said, the guideline range, any pertinent policy statement, the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, the need to provide restitution as appropriate under the law to any victims of the offense.

I am required to impose a sentence sufficient, but no greater than necessary, to comply with the purposes I have just described. I have given substantial thought and attention to

the appropriate sentence in this case in light of the 3553(a) factors and the appropriate purposes of sentencing as reflected in that statute.

The crimes for which I sentence Ms. Maxwell today are the crimes for which a jury convicted her of committing following trial. I do want to emphasize that today the sentence is based entirely on those crimes and the harm done to the victims of those charged and proved crimes. The evidence at trial established that Ms. Maxwell directly and repeatedly and over the course of many years participated in a horrific scheme to entice, transport, and traffic underage girls, some as young as 14, for sexual abuse by and with Jeffrey Epstein.

I will pause on those words for a moment, "by and with Epstein." It is important at the outset to emphasize that although Epstein was, of course, central to this criminal scheme, Ms. Maxwell is not being punished in place of Epstein or as a proxy for Epstein. Like every other participant in a multi-defendant case, Ms. Maxwell is being punished for the role that she played in the criminal conduct. As to that role, the trial evidence established that Ms. Maxwell was instrumental in the abuse of several underage girls and that she herself participated in some of the abuse, and it is her conduct for which she has been convicted in the court under the laws of this country and it is her conduct for which she must be held accountable.

Turning to that conduct, the punishment here must reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, and deter.

First, as to the seriousness, the defendant's conduct was, as aptly described by the probation department, heinous and predatory. Ms. Maxwell worked with Epstein to select young victims who were vulnerable. Once selected, Ms. Maxwell played a pivotal role in facilitating the abuse of the underaged girls through a series of deceptive tactics. A sophisticated adult woman, she provided an initial venire of responsibility and even safety. She befriended and developed relationships of trust. She then manipulated the victims and normalized sexual abuse through her involvement, encouragement, and instruction.

To give one example from trial, Jane testified that Ms. Maxwell cultivated a friendship with her, took her to movies and shopping. In an initial sexual interaction, while Jane was 14 years old, the defendant engaged in sexual conduct with Epstein while Jane was present. After that, the defendant instructed Jane, again, while she was only 14 years old, on how to massage Epstein, including instructions on how to touch his penis during massages. The abuse later escalated to Epstein using vibrators on Jane, penetrating her with his fingers. During some of the sexual abuse, the defendant would herself touch Jane's breasts.

Carolyn, the victim of the sex trafficking charge,

provides another example. She testified that she confided in the defendant that her mother was an alcohol and that she had been raped and molested by her grandfather starting at a very young age. The defendant, aware of this knowledge, used it to subject Carolyn to a continuing cycle of sexual abuse. The defendant wasn't an impassive observer, but herself touched Carolyn's breasts, again, at the time Carolyn was 14. For years, Carolyn was paid for the sexualized massages, including personally paid by the defendant.

Similar patterns of conduct were described by other witnesses. Indeed, the criminal conduct established at trial was extensive and it was far-reaching. Ms. Maxwell and Epstein victimized multiple underaged girls using this pattern, this playbook, over the span of many years and in a variety of locations. And the damage done to these young girls was incalculable. They did bravely testify at trial about what happened to them despite the extraordinary difficulty that entailed. They withstood cross-examination from zealous defense counsel and testified credibly at trial about the trauma that they had endured and the painful, horrific, and lasting impact of that trauma. They did so, they told me in their statements, in order to help ensure justice for themselves and others and to do what they could to try to prevent other girls from suffering in the future as they had suffered.

The sentence I impose must reflect the gravity of Ms. Maxwell's conduct, of Ms. Maxwell's offense, the pivotal role she played in facilitating the offense, and the significant and lasting harm it inflicted. So, too, must the sentence promote respect for the law, provide just punishment, and afford adequate deterrence.

As I have described, this scheme was long-lasting, it was far-reaching, it was horribly damaging to the victims. Just punishment and promotion of respect for the law, it demands a substantial sentence that meets the scope of the conduct and the scope of the harm.

Moreover, general deterrence is critically important to the sentence I will impose. A substantial sentence will send an unmistakable message that those who engage in and facilitate the sexual abuse and trafficking of underaged victims will be held accountable by the law.

As the probation department stated, a significant sentence should promote general deterrence against the exploitation and degradation of humans made possible by this offense, and I fully agree. But let me be clear that Ms. Maxwell is wealthy or that this case is high profile is not a basis for increasing punishment in any regard, but the rule of law demands, and this Court must ensure that, whether you are rich or poor, powerful or entirely unknown, nobody is above the law. That message serves the important interest in

deterrence and just punishment as well. All of these factors suggest that a very serious, a very significant sentence is necessary to achieve the purposes of punishment that I have just described.

Of course I must, and I do, take into account the history and characteristics of the defendant. Ms. Maxwell is over 60 years old. This is her first conviction. Neither in arguing for pretrial detention nor with respect to sentencing has the government contended that Ms. Maxwell represents a continuing danger to the public. As I explained, I do not need to find she is a continuing danger to apply 4B1.5(b), as her decade-long pattern of predatory activity amply justifies that enhancement and a substantial sentence, but her present lack of dangerousness is a factor in my consideration of a proper sentence.

Her sentencing submission letters and psychological report discuss the impacts of an overbearing and demanding father and the tragic death of her brother at the beginning of her life. The record indicates that she has engaged in some charitable works, including environmental conservation and health-related charitable organizing and giving. The set of letters I received from her family members and friends describe her as attentive and loving to her family and a loyal and generous friend. A letter from an inmate describes her tutoring of other inmates while incarcerated and Ms. Sternheim

represents that she has heard similarly from other defense counsel. I take all of these factors into account consistent with the 3553(a) statutory provision when deciding what sentence to impose.

Beyond these factors, much of the defense written submission, not the oral statement today, but much of the written submission focused on a series of complaints about Ms. Maxwell's pretrial detention. As I have said in many sentencing proceedings since the pandemic began, the conditions in the MDC have been extremely difficult for all inmates as a result. There have been extended periods of lockdown, health risks, and the lack of access to legal and social visits and programming and the like. Conditions at the MDC are, to put it mildly, not what they should be, and serving time during the pandemic has been more difficult than serving time before it. As I have in other sentencings, I take into account this in imposing an appropriate sentence. I also take into account that, as a high-profile defendant charged and convict of sex offenses against minors, Ms. Maxwell faces security risks and has endured additional isolation and surveillance beyond the typical pretrial detainee.

That said, I largely reject the defense's primary written contention that Ms. Maxwell has been singled out for uniquely harsh and punishing treatment. To the contrary, I agree with the government that many of the complaints have been

unfounded and exaggerated and that Ms. Maxwell's treatment at MDC was overall as good as or better than that of the typical pretrial detainee at the MDC during the pandemic.

I also reject the repeated allegations that Ms. Maxwell, who was provided extensive access to computers and legal materials, as well as to highly involved counsel, was in any way not able to prepare for trial or sentencing. I will say that I think a lack of full candor regarding treatment is consistent with a lack of candor to Pretrial Services and to the Court regarding finances, as well as the dishonesty that I have concluded occurred during the civil deposition that makes up the perjury counts. Overall, the behavior appears consistent with a pattern of deflection of blame.

I will note that I was -- I would emphasize that the sentencing submission talks about these complaints and blames others but did not express remorse or acceptance of responsibility. Ms. Sternheim and Ms. Maxwell today acknowledge the courage of the victims who testified and who spoke, talked about the pain and anguish that they have expressed, to some extent acknowledged the impact on them and their suffering, and I think that is important for the victims to hear. What there wasn't expressed was acceptance of responsibility. Now let me be clear. Ms. Maxwell is fully entitled to exercise her constitutional -- was fully entitled and is fully entitled to exercise her constitutional right to

go to trial. She has every right to appeal that verdict. But it is appropriate for this Court, in the face of genuine expressions of remorse and acceptance of responsibility, to decrease punishment because that's part of the message that's being sent by the law. It's appropriate to note and to take into account a lack of acceptance of responsibility, a lack of expression of remorse as to her own conduct. Today's sentence will attempt to acknowledge the harm that Ms. Maxwell caused and it will strongly and unequivocally condemn her criminal conduct.

I do conclude, consistent with the Probation Department recommendation, that a sentence of 240 months, which is slightly above the guideline range that I found, is both sufficient and necessary -- and no greater than necessary to meet the purposes of punishment that I have described.

I will now formally state the sentence I intend to impose. I will ask Ms. Maxwell and her counsel to please rise.

Ms. Maxwell, it is the judgment of this Court that you be sentenced to a period of 240 months, 20 years, to be followed by a period of five years' supervised release.

You may be seated.

To be precise, I am sentencing Ms. Maxwell to 60 months on Count Three, 120 months on Count Four, and 240 months on Count Six, all to run concurrently, for a total of 240 months' imprisonment. I am sentencing her to three years of

supervised release on Counts Three and Four and five years on Count Six, all to run concurrently, for a total of five years of supervised release.

Defense counsel indicated no objection to the conditions of supervised release indicated in the presentence report, and so I impose them precisely as stated in the presentence report, including the standard conditions, special conditions, and mandatory conditions of supervised release. Again, I am imposing them precisely as stated in the PSR.

I order Ms. Maxwell to pay a fine in the amount of $750,000. The maximum amount per count is $250,000, so that is $750,000 total. As I have indicated, I reject the contention that the defendant is unable to pay a fine. Ms. Maxwell has received a $10 million bequest from Epstein. This is in addition to her other assets. And the defendant, I conclude, is able to afford a substantial fine, and I conclude that the maximum amount per count is reasonable under all relevant circumstances in light of the counts of conviction.

The government has indicated that it is not seeking restitution nor forfeiture.

I am imposing a mandatory special assessment, as I must, of $100 per count, which is due immediately.

Does either counsel know of any legal reason, other than those already argued, why the sentence shall not be imposed as stated?

MS. MOE: No, your Honor.

MS. STERNHEIM: Your Honor, I would just like to make one statement, if I may. With regard to the fine, the Court indicated the bequest in the will. I just want the record to reflect that that is an unactualized bequest, as Ms. Maxwell has received nothing, and it is the expectation that she will receive nothing.

THE COURT: I understand. And to be clear, I am not finding and accept that she hasn't received anything, but there have only been nonspecific claims that she won't receive anything and there are additional assets that lead me to the conclusion that she is able to pay the fine.

MS. STERNHEIM: Thank you, Judge.

THE COURT: Thank you.

And just to confirm, Ms. Sternheim, any legal reason why the sentence should not be imposed as stated other than what already was argued?

MS. STERNHEIM: No, your Honor, but I do have requests for recommendation.

THE COURT: I will get there. Thank you.

The sentence as stated is imposed. I do find the sentence is sufficient but not greater than necessary to satisfy the sentencing purposes that I described earlier.

Ms. Maxwell, when you are released and on supervised release, you will have the guidance and support of the

probation department. I must caution you to comply strictly with all of your conditions of supervised release. If you are brought back before me for a violation of those conditions, I may sentence you to another term of imprisonment.

With that, Ms. Sternheim, requests regarding designation?

MS. STERNHEIM: Thank you, Judge.

We request that Ms. Maxwell be designated, based on a recommendation by the Court, to the BOP facility, the women's facility in Danbury, and also a recommendation that she be enrolled in the FIT program, which is the Female Integrated Treatment program, to address past familial and other trauma.

THE COURT: Okay.

MS. STERNHEIM: Thank you.

THE COURT: I recommend to the Bureau of Prisons consideration of placement in Danbury and consideration of eligibility for enrollment in the FIT program.

Ms. Moe, remaining counts and underlying indictments that need to be dismissed at this time?

MS. MOE: Yes, your Honor. The government moves to dismiss Counts Seven and Eight and any underlying indictments.

THE COURT: The motion is granted. Counts Seven and Eight are dismissed and any underlying indictments are dismissed.

Ms. Maxwell, I am required to inform you of your

appellate rights. You have the right to appeal your conviction and your sentence. The notice of appeal must be filed within 14 days of the judgment of conviction.

Other matters to take up counsel?

MS. MOE: Not from the government, your Honor. Thank you.

MS. STERNHEIM: No. Thank you.

THE COURT: Let me note, I will issue a housekeeping order posttrial to ensure complete docketing of all -- any outstanding materials and complete records, so please look for that. I will issue the judgment -- I should just say, Ms. Moe, the Court intends to indicate the end of the conspiracy date as the last date in the record, which I believe is in July of 2004, of acts in furtherance of the criminal conduct, and obviously the government took a different position with respect to that. But in light of the Court's finding, any objection to that?

MS. MOE: No, your Honor. We will review the exhibits. If that date is different from the sentencing transcript, we will submit a letter to the Court, but otherwise no objection, your Honor.

MS. STERNHEIM: No objection.

THE COURT: All right.

MS. MOE: With apologies, your Honor, with respect to the judgment, in light of the Court's decision to impose an

above-guidelines sentence and an above-guidelines fine, we would respectfully request that the Court address both the sentence and the fine in the Court's statement of reasons.

THE COURT: Yeah, I actually -- guideline range, let me just check. I meant to talk about that. I'm not sure it is an above-guidelines, but it may be since, as we know, I read over five to mean five. So maybe I got that wrong. Let me just check.

Oh, you are right. It is 20 to 200,000 for each count. Do I have that right?

MS. MOE: Yes, your Honor. Thank you.

THE COURT: All right. Thank you.

I want to thank counsel. As I indicated, I do thank the victims who made statements in writing or orally and their counsel who supported them in that endeavor. I thank counsel for Ms. Maxwell and counsel for the government.

We are adjourned.

oOo

Jeffrey and Ghislaine have been together, a couple, for the last 11 years. They are, contrary to what many people think, rarely apart – I almost always see them together

Ghislaine is highly intelligent, and great company with a ready smile and an infectious laugh who always puts one at ones ease, and always makes one feel welcome.

Jeffrey and Ghislaine share many mutual interests and they have a lot of fun together. They both have keen searching and inquisitive minds. She grew up amongst scientists and in an academic and business environment.

They share a love of travel and art. She speaks 5 languages. She enjoys spending time visiting auction houses (she says that is the best way to learn about art and antiques – your expected to look touch and ask questions)

Ghislaine also has her own interests and has her own business pursuits – she is independent and strong willed - something which Jeffrey loves about her - She is adventurous – she flies helicopters, she is athletic – she rides horses, plays tennis, skis and scuba dives. She is a serious photographer (she always has a camera in hand) who is collaborating with some of the leading people involved at the cutting edge of digital photography.

Jeffrey and Ghislaine compliment each other really well and I cannot imagine one without the other. On top of being great partners they are also the best of friends.

GOVERNMENT
EXHIBIT
422
S2 20 Cr. 330 (AJN)

22-1426

To Be Argued By:
MAURENE COMEY

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 22-1426

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. 22-1426

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 a judgment of conviction entered on June 29, 2022 in the United States District Court for the Southern District of New York, by the Honorable Alison J. Nathan, United States Circuit Judge, sitting by designation, following a four-and-a-half-week jury trial.

Superseding Indictment S2 20 Cr. 330 (AJN) (the "Indictment") was filed on March 29, 2021, in eight counts. Count One charged Maxwell with conspiracy to entice minors to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 371. Count Two charged

Maxwell with enticement of a minor, in violation of 18 U.S.C. §§ 2422 and 2. Count Three charged Maxwell with conspiracy to transport minors to engage in illegal sexual activity, in violation of 18 U.S.C. § 371. Count Four charged Maxwell with transportation of a minor with intent to engage in illegal sexual activity, in violation of 18 U.S.C. §§ 2423(a) and 2. Count Five charged Maxwell with sex trafficking conspiracy, in violation of 18 U.S.C. § 371. Count Six charged Maxwell with sex trafficking of a minor, in violation of 18 U.S.C. §§ 1591(a) & (b)(2) and 2. Counts Seven and Eight charged Maxwell with perjury, in violation of 18 U.S.C. § 1623.

Trial on Counts One through Six commenced on November 29, 2021, and ended on December 29, 2021, when the jury found Maxwell guilty on Counts One and Three through Six, and acquitted Maxwell on Count Two.

On June 29, 2022, Judge Nathan sentenced Maxwell to a term of 240 months' imprisonment, to be followed by five years' supervised release, and imposed a $750,000 fine and a $300 mandatory special assessment.

Maxwell is serving her sentence.

Statement of Facts

A. The Government's Case

The Government's evidence at trial established that over the course of a decade, Maxwell facilitated and participated in the sexual abuse of multiple young girls. From 1994 to 2004, Maxwell and Jeffrey Epstein

worked together to identify girls, groom them, and then entice them to travel and transport them to Epstein's properties in New York, Florida, New Mexico, and elsewhere. The girls—some of whom were as young as 14 years old—were then sexually abused, often under the guise of a "massage."

The evidence at trial included, among other things, the testimony of four women who described the sexual abuse they suffered at the hands of Maxwell and Epstein; the testimony of former employees of Epstein and Maxwell; the testimony of law enforcement officers; corroborating physical evidence, including photographs of and evidence recovered from searches of Epstein's residences and Maxwell and Epstein's black address book; and other corroborating records, such as flight logs of Epstein's private planes and FedEx records.

Beginning in approximately 1991, Maxwell had a close and intimate relationship with Epstein. (Tr.1494-96; GX-422).[1] Maxwell was Epstein's girlfriend for many years, until the early 2000s, after

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[1] "Tr." refers to the trial transcript; "GX" refers to a Government exhibit at trial; "Voir Dire Tr." refers to the voir dire transcript; "Br." refers to Maxwell's brief on appeal; "A." refers to the appendix filed with that brief; "SA" refers to the supplemental appendix filed with this brief; and "Dkt." refers to an entry on the District Court's docket for this case. Unless otherwise noted, quotations omit internal quotation marks, citations, alterations, and footnotes.

which Maxwell and Epstein remained close friends. (Tr.1494-96; GX-422). For over a decade, Maxwell traveled with Epstein, a multi-millionaire, on his private planes and mingled with rich and famous people, while enjoying a life of extraordinary luxury. (Tr.96-99, 233-34, 303-04, 1194). Maxwell and Epstein spent time together in Epstein's various properties, including his mansion on the Upper East Side in Manhattan, his villa in Palm Beach, his ranch in New Mexico, his apartment in Paris, and his private island in the U.S. Virgin Islands. (Tr.99). Maxwell also received a townhouse that Epstein bought for her in New York City, and Epstein transferred more than $23 million to Maxwell during the timeframe of the conspiracy. (Tr.1194, 1310-17).

In addition to her role as Epstein's girlfriend, Maxwell also supervised Epstein's households as "the lady of the house." (Tr.95, 783-84). When she took charge of Epstein's homes, she imposed strict rules for staff, some of which were included in a household manual dictating the operation of the Palm Beach residence. (Tr.807-08, 823-31).

To protect her criminal activities from exposure, Maxwell fostered a culture of silence at Epstein's homes. (Tr.784, 826). The household manual made clear that staff were to "see nothing, hear nothing, say nothing, except to answer a question directed at" that staff member. (Tr.826). Maxwell directed Juan Alessi, the former manager of Epstein's Palm Beach villa, to speak to Epstein only when spoken to and not to look Epstein in the eyes. (Tr.784).

This culture of silence provided cover for Maxwell and Epstein to sexually abuse young girls. In the early phase of the conspiracy, between 1994 and 2001, Maxwell and Epstein identified vulnerable girls, typically from single-mother households and difficult financial circumstances. (Tr.295, 1178, 2051-52). Maxwell and Epstein then isolated the girls, spending time with them away from their family and friends. (Tr.296-99, 1175-82, 2069-70, 2077-79). During that time, they groomed the girls through techniques such as giving them gifts, pretending to be friends, and building trust. (Tr.298-303, 348, 2079-81). Maxwell and Epstein then normalized sexual situations and sexual touching. (Tr.300-01, 2081-84). Finally, they transitioned to sexual abuse, often through the pretext of giving Epstein a massage. (Tr.306-15, 319-23, 1183-88, 2084-88).[2]

In the later phase of the scheme, from 2001 through 2004, Maxwell and Epstein developed a stream of girls who recruited each other to visit Epstein at his Palm Beach residence. (Tr.1518-25, 1543-46). Maxwell and Epstein paid young girls hundreds of dollars in cash in

---

[2] These techniques were the textbook methods of child predators. At trial, Dr. Lisa Rocchio, an expert in psychology with a specialized expertise in traumatic stress and interpersonal violence, explained that children are most frequently sexually abused through grooming and coercion in the context of a relationship. (Tr.713). Dr. Rocchio explained that abusers use a series of deceptive tactics to engage a child in sexual abuse. (Tr.715-20).

exchange for meeting Epstein to be sexually abused, under the pretext of giving Epstein a massage. (Tr.1518-25, 1540-41, 1544-46). Once a girl was introduced to these sexualized massages, she was offered more money if she brought other girls to engage in sexualized massages. (Tr.1544-45).

The trial evidence focused on six girls who suffered abusive sexual contact as a result of Maxwell's criminal actions: Jane, Kate, Annie, Carolyn, Virginia, and Melissa.

1. Sexual Abuse of Jane

Maxwell and Epstein met Jane in 1994 when she was just 14 years old at a summer camp for talented kids. (Tr.290-94). Jane was particularly vulnerable, as her father had just died (a fact that she told both Epstein and Maxwell), and her family was struggling financially. (Tr.293-94). Maxwell and Epstein cultivated a relationship with Jane, spending time with her at Epstein's Palm Beach home and taking her to the movies and shopping. (Tr.295-302, 348). Maxwell and Epstein gave Jane gifts, and Jane came to look up to Maxwell like an older sister figure. (Tr.298-301).

Maxwell and Epstein sexually abused Jane starting when she was 14 years old, and the sexual abuse continued for years. (Tr.306-15). When Jane was still only 14 years old, Maxwell and Epstein instructed Jane to follow them to Epstein's bedroom where Maxwell and Epstein fondled each other, casually giggling, while Epstein asked Jane to take her top off. (Tr.307). After this sexual interaction, Maxwell and Epstein taught Jane how Epstein liked to be massaged and

gave Jane instructions about touching Epstein's penis. (Tr.308-11). Jane was repeatedly sexually abused by Epstein between the ages of 14 and 16 years old, and Maxwell was frequently in the room when the abuse happened. (Tr.307-15). Over time, the abuse escalated, as Epstein used vibrators on Jane, put his fingers in Jane's vagina, and asked Jane to straddle his face. (Tr.319-20). Maxwell sometimes touched Jane, including on her breasts, during these incidents. (Tr.311). Jane also traveled with Maxwell (who assisted Jane in making travel arrangements) and Epstein to Epstein's townhouse in New York City and his ranch in New Mexico, where she was sexually abused. (Tr.316-24).

2. Sexual Abuse of Kate

Maxwell and Epstein's sexual abuse of Kate started in 1994, around the same time that Maxwell and Epstein started sexually abusing Jane. (Tr.1172, 1179-86). After Kate, then 17 years old, told Maxwell that she lived alone with her mother and had a difficult home life, Maxwell introduced Kate to Epstein in London. (Tr.1178-82). Maxwell delivered Kate to a naked Epstein in Maxwell's own home for massages and told Kate to "have a good time." (Tr.1182-89). During these massages, Epstein initiated sexual contact. (*Id.*).

Kate traveled to meet both Maxwell and Epstein in Palm Beach, the Virgin Islands, and New York City between the ages of 18 and 24. (Tr.1190-98). Epstein initiated sexual activity with Kate every time she visited him. (*Id.*). Maxwell brought up sexual topics with Kate, ranging from talking about how sexually demanding Epstein was to asking if Kate knew "anybody

who could come and give Jeffrey a blow job" to remarking that Epstein liked cute, young, pretty girls like Kate. (Tr.1191-93).

When Kate was approximately 18 years old, she visited Epstein and Maxwell in Palm Beach. (Tr.1199). Maxwell left a schoolgirl outfit for Kate and said it would be fun for Kate to wear for Epstein. (Tr.1200-01). Kate—alone in a place she had never previously visited—complied. (*Id.*). Epstein initiated sexual contact with Kate and engaged in a sex act with her. (Tr.1202). Later that day, Maxwell asked Kate if she had fun and told Kate that she was a "good girl" and "one of [Epstein's] favorites." (Tr.1202). Epstein engaged in unwanted sexual activity with Kate multiple times during that same trip. (*Id.*).

3. Sexual Abuse of Annie Farmer

Maxwell also took steps to normalize sexual contact with Annie Farmer, who was then 16 years old. Annie first met Epstein on a trip to New York, where she and her older sister visited Epstein's Manhattan townhouse, and during which Epstein began to groom Annie by stroking her hand and leg while watching a movie with her. (Tr.2056-61). In the spring of 1996, Annie's mother, at Epstein's request, agreed to send Annie to Epstein's ranch in New Mexico for a retreat for a group of students who were academically gifted. (Tr.2069-70, 2253-55). Annie felt more comfortable going once she understood that Maxwell, a grown woman in a romantic relationship with Epstein, would be there. (Tr.2077).

During the New Mexico trip, Maxwell took steps to normalize sexual contact under the ruse of massage. Maxwell instructed Annie to hold Epstein's foot and showed her how to give Epstein a foot massage. (Tr.2083-84). Maxwell then offered to give Annie a massage. (Tr.2084-85). After telling Annie to get undressed, Maxwell gave Annie a massage on a massage table while Annie was naked. (Tr.2085). During the massage, Maxwell directed Annie to roll over so that Annie was laying on her back. (*Id.*). After Annie complied and rolled to her back, Maxwell pulled the sheet down and exposed Annie's breasts. (*Id.*). Then, while Annie was naked, Maxwell rubbed Annie's breasts. (Tr.2085-86).

During this same New Mexico trip, Epstein later got into Annie's bed, cuddled with her, pressed his body into her, and rubbed against her. (Tr.2086-87, 2224). But when Annie managed to extricate herself from the situation by running to the bathroom, thereby denying Epstein further sexual contact, Maxwell seemed "very disinterested" in Annie for the remainder of the trip. (Tr.2086-88).

4. Sexual Abuse of Virginia Roberts

Beginning in or about the summer of 2000, Maxwell and Epstein entered a new phase of their scheme to sexually abuse teenage girls. That summer, Maxwell recruited a 17-year-old girl named Virginia Roberts from the parking lot of Mar-a-Lago to provide Epstein with massages. (Tr.840-46). Over the next several months, Virginia was paid to provide Epstein with sexualized massages at his Palm Beach residence, in

exchange for hundreds of dollars in cash for each massage. (Tr.840-46. 1518-24, 1742-46). Virginia also traveled with Epstein and Maxwell to other locations, including New York and the Virgin Islands, on Epstein's private plane. (Tr.1854-70). Virginia brought other teenage girls to Epstein's Palm Beach house. (Tr.845). One of those girls was a 14-year-old girl named Carolyn who Virginia introduced to Maxwell and Epstein at the Palm Beach villa in 2001. (Tr.1518-24).

5. Sexual Abuse of Carolyn

Carolyn met Maxwell the very first time she went to Epstein's house, and she interacted with Maxwell multiple times thereafter. (Tr.1520-21). On Carolyn's first visit to the house, Maxwell greeted Virginia, who introduced Carolyn to Maxwell. (*Id.*). Maxwell then told Virginia, "You can bring her upstairs and show her what to do," after which Virginia showed Carolyn how to perform a sexual massage on Epstein. (Tr.1521-23).

Thereafter, Carolyn performed over 100 paid sexualized massages for Epstein when she was between 14 and 18 years old. (Tr.1525). The vast majority involved the same course of abuse through which Epstein masturbated, touched Carolyn's breasts and buttocks, and directed Carolyn to touch his nipples. (Tr.1545-46). Epstein also attempted to touch Carolyn's vagina with a vibrator, brought other females into the room to engage in oral sex with Carolyn, and raped Carolyn by penetrating her vagina with his penis. (Tr.1545-47).

At first, Maxwell personally scheduled Carolyn's appointments with Epstein, including on phone calls

from New York, and sometimes sent a car to pick Carolyn up because she was too young to drive. (Tr.1524, 1527-32). Maxwell also engaged Carolyn in conversations during which Carolyn revealed that she had previously been sexually abused by a relative, that her parents were separated, and that her mother struggled with addiction. (Tr.1533-36). Maxwell invited Carolyn to travel with Maxwell and Epstein, but Carolyn responded that because she was only 14 years old, she would not be able to get permission to travel. (Tr.1534-35). Carolyn was paid several hundred dollars in one-hundred-dollar bills after each massage, and Carolyn also received gifts of lingerie from Epstein and Maxwell shipped from Manhattan to her home in Florida. (Tr.1540-42). Usually, the money was laid out on the table or by the sink in the bathroom, but Maxwell personally paid Carolyn after a few massages. (Tr.1540-41).

Maxwell saw Carolyn fully nude in the massage room on approximately three occasions when Carolyn had already undressed in preparation for the massage but before Epstein entered the room. (Tr.1536-38). On one such occasion, when Carolyn was 14 years old, Maxwell told Carolyn that she had a nice body and touched Carolyn's breasts. (*Id.*).

At some point, Epstein asked Carolyn if she had any young friends she could bring for massages. (Tr.1544). Carolyn ended up bringing multiple girls to Epstein for sexualized massages, including multiple minors. (Tr.1544-46, 1753-54). When Carolyn brought girls to massage Epstein, both the girl and Carolyn

would be paid hundreds of dollars in cash. (Tr.1544-45).

6. Sexual Abuse of Melissa

One of the minor girls Carolyn brought to provide paid sexualized massages to Epstein was a 16-year-old named Melissa. (Tr.1753, 1758-61). Melissa went to Epstein's residence to provide Epstein with massages on multiple occasions when she was under the age of 18. (*Id.*). When Melissa and Carolyn went to the Palm Beach house, they remained in the home for about an hour and then returned with hundreds of dollars in cash. (*Id.*).

B. The Defense Case, Verdict, and Sentencing

Maxwell called nine witnesses in her defense case, including former employees and associates, as well as an expert on memory. (Tr.2327-2531, 2595-2684).

On December 29, 2021, the jury found Maxwell guilty of Counts One, Three, Four, Five, and Six. (A.86).

On April 1, 2022, Judge Nathan denied Maxwell's motion for a new trial pursuant to Federal Rule of Criminal Procedure 33 based on a juror's provision of inaccurate information during jury selection, as discussed in greater deal in Point III, *infra*. (A.318-57). On April 29, 2022, Judge Nathan denied all but one of Maxwell's remaining post-trial motions. (A.358-402). Judge Nathan found that the three conspiracy counts (Counts One, Three, and Five) were multiplicitous and that she would, therefore, enter judgment on Count Three alone among the conspiracy counts. (*Id.* at 3).

On June 29, 2022, Judge Nathan sentenced Maxwell to 60 months' imprisonment on Count Three, 120 months' imprisonment on Count Four, and 240 months' imprisonment on Count Six, all to run concurrently, to be followed by five years' supervised release, and imposed a $750,000 fine and a $300 mandatory special assessment.

ARGUMENT

POINT I

The District Court Correctly Concluded That Jeffrey Epstein's Non-Prosecution Agreement Does Not Bar Maxwell's Prosecution in the Southern District of New York

In 2007, the U.S. Attorney's Office for the Southern District of Florida entered into a non-prosecution agreement with Jeffrey Epstein. Maxwell argues that this agreement, which neither she nor the U.S. Attorney's Office for the Southern District of New York signed, nevertheless bars her prosecution in the Southern District of New York in this case, and she twice sought dismissal of the charges in the Indictment on that ground. The District Court denied the motions to dismiss, correctly recognizing that Maxwell's argument is precluded by the text of the agreement and this Court's longstanding precedent. Accordingly, this Court should affirm the denial of the motions to dismiss.

A. Relevant Facts

In 2005, the Palm Beach Police Department in Florida opened an investigation into Epstein on the complaint of the parents of a fourteen-year-old girl. The Palm Beach Police ultimately brought the investigation to the Federal Bureau of Investigation in West Palm Beach, which in turned opened an investigation with the U.S. Attorney's Office for the Southern District of Florida ("USAO-SDFL"). (SA3). That investigation culminated in a draft sixty-page indictment proposing to charge Epstein for the sexual abuse of multiple victims. (SA3).

In 2007, the USAO-SDFL and Epstein entered into a non-prosecution agreement ("NPA"). (A.173). The agreement was signed "on the authority of R. Alexander Acosta, United States Attorney for the Southern District of Florida." (A.175). Under the terms of the NPA, Epstein agreed to plead guilty in a pending Florida state case and to receive a sentence of at least eighteen months' imprisonment and twelve months' community control. (A.176). He also consented to jurisdiction in the Southern District of Florida for civil suits involving victims specified by the USAO-SDFL, among other terms. (A.177). In exchange, USAO-SDFL agreed to defer "prosecution in this District." (A.175). Once Epstein completed his half of the bargain, the NPA provided that "no prosecution" for the offenses then under investigation by "the Federal Bureau of Investigation and the U.S. Attorney's Office . . . will be instituted in this District." (A.175).

The NPA also provided that, if Epstein complied with the agreement, "the United States also agrees

that it will not institute any criminal charges against any potential co-conspirators of Epstein, including but not limited to" four named individuals, none of whom was Maxwell. (A.178). Indeed, Maxwell was neither a party to the agreement nor involved in negotiating its terms. This provision "appears to have been added 'with little discussion or consideration by the prosecutors.'" (A.140 (citing SA195, 211)). The NPA continues that, "upon execution of this agreement, and a plea agreement with the State Attorney's Office, the federal Grand Jury investigation will be suspended." (A.178). The agreement was executed on September 24, 2007 (A.182), and Epstein pleaded guilty in state court on June 30, 2008 (SA137). In 2019, the Department of Justice Office of Professional Responsibility conducted an investigation into the negotiations around the NPA and issued a 290-page report containing detailed factual findings. (SA1-348).

After the U.S. Attorney's Office for the Southern District of New York ("USAO-SDNY") charged Maxwell in this case in the Southern District of New York, she twice moved to dismiss the charges on the ground that they were barred by the NPA. The District Court denied the motions, concluding that "the NPA does not bind the [USAO-SDNY]." (A.140-45, 189-92).

B. Applicable Law

This Court has long held that "[a] plea agreement binds only the office of the United States Attorney for the district in which the plea is entered unless it affirmatively appears that the agreement contemplates a broader restriction." *United States v. Annabi*, 771

F.2d 670, 672 (2d Cir. 1985); *accord, e.g.*, *United States v. Prisco*, 391 F. App'x 920, 921 (2d Cir. 2010); *United States v. Salameh*, 152 F.3d 88, 120 (2d Cir. 1998). The requisite affirmative appearance may be established by "an express statement" in the plea agreement, or it may be "inferred from the negotiations between defendant and prosecutor, as well as from statements at the plea colloquy." *United States v. Russo*, 801 F.2d 624, 626 (2d Cir. 1986).

This Court reviews de novo both the denial of a motion to dismiss an indictment and the interpretation of a plea agreement. *United States v. Montague*, 67 F.4th 520, 527 (2d Cir. 2023); *United States v. Padilla*, 186 F.3d 136, 139 (2d Cir. 1999). This Court reviews for abuse of discretion a district court's denial of an evidentiary hearing before ruling on a motion to dismiss. *United States v. Walters*, 910 F.3d 11, 22, 28 (2d Cir. 2018); *United States v. Greenberg*, 835 F.3d 295, 305 (2d Cir. 2016).

C. Discussion

The District Court correctly rejected Maxwell's argument that the NPA bars this prosecution. Maxwell has no right to invoke the protections of the NPA because she is neither a party to nor a third-party beneficiary of the agreement. But even if Maxwell had standing under the NPA, it would not bar this prosecution because it was plainly intended to bind only the USAO-SDFL. Thus, Judge Nathan rightly concluded that under longstanding Second Circuit precedent, the NPA does not bind USAO-SDNY. Accordingly, this

Court should affirm the denial of Maxwell's motions to dismiss.

1. Maxwell Is Not Entitled to Enforce the NPA

As an initial matter, Maxwell has no right to invoke the protections of the NPA. Maxwell was not a signatory to the agreement. While the third-party beneficiary doctrine is a tenet of contract law (Br.16), its application to plea agreements under federal law is a separate question because plea agreements differ from commercial contracts in meaningful respects. *United States v. Feldman*, 939 F.3d 182, 189 (2d Cir. 2019) ("We have long recognized that plea agreements are significantly different from commercial contracts."). It is doubtful that a third-party beneficiary can enforce a plea agreement. *See United States v. Lopez*, 944 F.2d 33, 37 (1st Cir. 1991) (observing that "we are unaware of authority" supporting application of "third party beneficiary principles . . . to a plea agreement in a criminal case"); *United States v. Mariamma Viju*, No. 15 Cr. 240, 2016 WL 107841, at *4 (N.D. Tex. Jan. 11, 2016) (explaining that "[t]he right to enforce a plea deal does not exist for its own sake; rather, it is a means to achieve fairness in plea bargaining," and "enforcement by third parties adds nothing to protecting the defendant's right").

In any event, even under the third-party beneficiary law on which Maxwell relies (Br.16), she would have to show that "the original parties intended the [agreement] to directly benefit [her] as [a] third part[y]." *United States v. Wilson*, 216 F.3d 645, 663 (7th Cir. 2000) (assuming without deciding that third

party could enforce immunity agreement); *see also United States v. Fla. W. Int'l Airways, Inc.*, 853 F. Supp. 2d 1209, 1228 (S.D. Fla. 2012) (third party must show that "a direct and primary object of the contracting parties was to confer a benefit on the third party" (quoting *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 982 (11th Cir. 2005))). Here, Maxwell has failed to make the requisite showing: she is not named in the provision naming four potential co-conspirator (A.178), and she has offered no evidence that the parties to the NPA intended to confer a benefit on her specifically. Accordingly, Maxwell may not enforce the NPA.

2. The NPA's Terms Bind Only the USAO-SDFL

Even if Maxwell had a right to invoke the NPA's protections, it would not bar the charges in this case. By its terms, the NPA only applies to prosecutions brought by the USAO-SDFL. The agreement was signed "on the authority of R. Alexander Acosta, United States Attorney for the Southern District of Florida." (A.175). And in exchange for Epstein's plea in state court, the USAO-SDFL agreed to defer "prosecution in this District"—that is, the Southern District of Florida. (A.175). The USAO-SDFL further promised that no prosecution by "the Federal Bureau of Investigation and the U.S. Attorney's Office . . . will be instituted in this District." (A.175). An agreement by the USAO-SDFL not to prosecute Epstein in the Southern District of Florida is an agreement intended to apply only to the USAO-SDFL and only in the Southern District of Florida. Moreover, the agreement was signed

by officials of the USAO-SDFL and by no other components of the Department of Justice. Accordingly, the plain terms of the NPA make clear that the agreement only binds the USAO-SDFL.

Maxwell's argument that the NPA binds the USAO-SDNY relies on a separate provision of the agreement, which says that "the United States also agrees that it will not institute any criminal charges against any potential co-conspirators of Epstein, including but not limited to" a list of four individuals that does not include the defendant (A.178). (Br.15, 33). But her argument that the term "United States" means the entire federal government requires the term to be read in isolation. As Judge Nathan explained, terms like "the United States" or "the government" are "common shorthand" for a single U.S. Attorney's Office, and "a plea agreement need not painstakingly spell out 'the Office of the United States Attorney for Such-and-Such District' in every instance to make clear that it applies only in the district where signed" (A.141). *See Salameh*, 152 F.3d at 120 ("The mere use of the term 'government' in the plea agreement does not create an affirmative appearance that the agreement contemplated barring districts other than the particular district entering into the agreement."); *United States v. Gonzalez*, 93 F. App'x 268, 270 (2d Cir. 2004) ("Although paragraph 12(b) uses the term 'United States' rather than the term 'government,' this is a distinction from our prior caselaw without a difference.").

Reading the NPA as a whole confirms that conclusion. The very next sentence of the agreement states

that "*the* federal Grand Jury investigation will be suspended." (A.178 (emphasis added)). The grand jury investigation is the one that USAO-SDFL agreed to defer in the same agreement (A.175), and not any potential federal grand jury investigations in other districts. Furthermore, the NPA elsewhere refers to the "United States" on occasions that could only mean the USAO-SDFL. For instance, the NPA commits the "United States"—that is, the USAO-SDFL—to providing Epstein with a list of victims. (A.177 ("The United States shall provide Epstein's attorneys with a list of individuals whom it has identified as victims . . . .")). Another provision states that the NPA will not be made part of the public record and commits "the United States"—again, the USAO-SDFL—to providing notice to Epstein if it receives a Freedom of Information Act request requiring disclosure of the agreement. (A.178). The mere fact that the co-conspirator provision of the NPA used the phrase "United States" rather than "U.S. Attorney's Office" is not evidence that the parties intended an unusually broad immunity provision. *See, e.g.*, *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 540 (2013) ("We are not aware, however, of any canon of interpretation that forbids interpreting different words used in different parts of the same statute to mean roughly the same thing."). As Judge Nathan concluded, given the repeated limitations of the commitments in the NPA to the USAO-SDFL, including the commitment not to prosecute Epstein, "[i]t is not plausible . . . that the parties intended to drastically expand the agreement's scope in the single sentence on

the prosecution of co-conspirators without clearly saying so." (A.142).[3]

Maxwell also points to the NPA provision stating that "Epstein seeks to resolve globally his state and federal criminal liability." (A.175). Based on that statement, Maxwell argues that Epstein's purpose in negotiating the NPA was to "obtain a global resolution that would, among other things, provide maximum protection for any alleged co-conspirators." (Br.34). But the cited provision only says that Epstein sought to resolve "his" liability, not anyone else's. Furthermore, under Maxwell's reading, Epstein bargained for a truly "global" resolution only for his co-conspirators, and limited his own "global" resolution expressly to the USAO-SDFL. There is no reason to believe that Epstein expressly sought and obtained *broader* immunity for his co-conspirators than he did for himself. (*See also* SA107 n.125 (observing that a supervisor at the USAO-SDFL "pointed out that the NPA was not a

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[3] Maxwell also relies on draft plea agreements which "expressly defined the term 'United States' as limited to" USAO-SDFL. Those plea agreements—which differed significantly from the NPA—also use both the terms "United States" and "United States Attorney's Office for the Southern District of Florida," including using the USAO-SDFL term expressly in the context of the co-conspirator provision. (*See, e.g.*, Dkt.142, Ex. F at 2). This point only highlights the parties' understanding at all times that their negotiations merely bound the USAO-SDFL, and not the entire federal government.

'global resolution' and other co-conspirators could have been prosecuted 'by any other [U.S. Attorney's] office in the country.' ")).

Lacking support in the text of the NPA itself, Maxwell attempts to show that the NPA applies here based on "the negotiations between defendant and prosecutor." *Russo*, 801 F.2d at 626. In particular, Maxwell claims that the negotiating history of the NPA shows that "[s]enior levels of Main Justice were directly involved in the negotiation and approval of the NPA, even to the extent that separate presentations were made to, and approval of the NPA was obtained from, the Office of the Deputy Attorney General." (Br.36). This assertion, however, mischaracterizes the record and further underscores the absence of any senior approvals in negotiating the NPA. The pages to which Maxwell cites describe activities *after the NPA was signed*, in which Justice Department officials in Washington refused to relieve Epstein of his obligations under the NPA. (Br.36 (citing SA120-23, 129-44); A.143 ("The OPR report reflects that the Office of the Deputy Attorney General reviewed the NPA, but only after it was signed when Epstein tried to get out of it.")). Even then, however, those officials did not "approve" the NPA. (SA121 (statement by the Assistant Attorney General that she "did not review or approve the agreement either before or after it was signed"), 129 ("The Department, however, only reviewed the issue of federal jurisdiction and never reviewed the NPA or any specific provisions.")). Maxwell also cobbles together instances in which the USAO-SDFL and the FBI in Florida enlisted the assistance of other components of the federal government or considered acting outside

Florida, such as the USAO-SDFL's "contact with witnesses in New York." (Br.38). These disparate and unconnected events do not show that the USAO-SDFL acted on behalf of the entire federal government when entering into the NPA, or that Epstein understood the USAO-SDFL to be doing so.

Maxwell also advances several arguments attempting to minimize or side-step this Court's precedent. For example, Maxwell argues that *Annabi* applies only if the charges in the indictment are "sufficiently distinct" from the counts resolved by the earlier agreement. (Br.30-33 (quoting 771 F.2d at 672)). Not so. The relevant portion of *Annabi* concerned an argument by the defendants that in seeking to have a plea agreement in the Eastern District of New York bar the pending charges in the Southern District of New York, they were "seeking only the same protection accorded by th[e Double Jeopardy] Clause." 771 F.2d at 672. This Court rejected that argument, reasoning that even if the Double Jeopardy Clause applied (notwithstanding that the defendants were "never in jeopardy" on those charges in the Eastern District), the defendants would not be entitled to relief because the pending charges "extended for an additional two years" and thus were "not the same as the charges that were dismissed." *Id.* Thus, *Annabi* did not hold that its rule—that "[a] plea agreement binds only the office of the United States Attorney for the district in which the plea is entered unless it affirmatively appears that the agreement contemplates a broader restriction," *id.*—applies only if the charges are sufficiently distinct. And as Judge Nathan recognized, "no subsequent Second Circuit case applying *Annabi* has so held." (A.191).

Next, Maxwell argues that this Court should disregard its own precedents and instead apply Eleventh Circuit law because "the NPA was negotiated in Florida, with Southern District of Florida prosecutors, in exchange for Epstein's agreement to plead guilty in Florida state court." (Br.25). But this Court has consistently applied *Annabi* even when considering plea agreements from out-of-Circuit districts. *Prisco*, 391 F. App'x at 921 (District of New Jersey); *United States v. Ashraf*, 320 F. App'x 26, 28 (2d Cir. 2009) (Eastern District of Virginia); *Gonzalez*, 93 F. App'x at 270 (District of New Mexico). *United States v. Brown*, No. 99-1230(L), 2002 WL 34244994, at *2 (2d Cir. 2004) (Southern District of Florida).[4] These decisions are consistent with choice-of-law principles in criminal cases, where "[t]he governing law is always that of the forum state, if the forum court has jurisdiction." American Conflicts Law 375 (5th ed. 2021); *see* 2 Attorney-Client Privilege in the United States § 12:10 ("Choice of law scholars have long recognized that criminal law is peculiarly local in nature, and it is settled that, in criminal prosecutions, the court will routinely apply the substantive law of the forum."); American Conflicts Law 390 ("[A]s a sort of corollary to the local nature of

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[4] While these are nonprecedential decisions, this Court does not lightly depart from prior panels' summary orders. *United States v. Payne*, 591 F.3d 46, 48 (2d Cir. 2010) ("[D]enying summary orders precedential effect does not mean that the court considers itself free to rule differently in similar cases.").

substantive criminal law," "[p]rocedures in criminal cases are always those of the forum.").[5]

In any event, Eleventh Circuit law would not support Maxwell's claim. Maxwell does not cite any Eleventh Circuit decisions addressing when one U.S. Attorney's Office is bound by a plea agreement with another U.S. Attorney's Office. But in an analogous context, the Eleventh Circuit held that a U.S. Attorney's promise made in a plea agreement—that a criminal defendant would not be deported—was unenforceable because the U.S. Attorney lacked authority to make that promise. *San Pedro v. United States*, 79 F.3d 1065, 1072 (11th Cir. 1996). If the Eleventh Circuit were to apply the reasoning of *San Pedro* to the issue in this case, it would likely reach the same result because a U.S. Attorney only has authority to act "within his district," 28 U.S.C. § 547, and must seek the

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[5] Maxwell cites a handful of district court cases that apply the exclusionary rule of a foreign circuit to prevent, in her words, "the Government from parachuting into a new circuit and prosecuting a case it would not otherwise have been able to bring." (Br.29). This "inter-circuit exclusionary rule," as Maxwell calls it, is hardly a settled doctrine. *See* American Conflicts Law 391-94 (discussing cases in both directions). In any event, the purpose of this putative rule is tied to its context: "to ensure that the proper level of deterrence is maintained in the locale where the violation occurred." (Br.29 (quoting *United States v. Restrepo*, 890 F. Supp. 180, 191 (E.D.N.Y. 1995)). That rationale is inapplicable here.

approval of each affected U.S. Attorney's Office before entering into any non-prosecution agreement that purports to bind another district. *See* Justice Manual § 9-27.641 ("No district or division shall make any agreement, including any agreement not to prosecute, which purports to bind any other district(s) or division without the approval of the United States Attorney(s) in each affected district and/or the appropriate Assistant Attorney General.").

Finally, Maxwell devotes much of her brief to criticizing *Annabi*. (*E.g.*, Br.18-23). But this Court's rule is sound, as it ensures that a criminal defendant (or even, as here, a co-conspirator) will not receive the windfall of immunity that was never intended by the parties to the original agreement, while leaving parties free to enter into legitimate multi-district resolutions if they wish. Nor has Maxwell's parade of horribles come to pass in the decades since *Annabi* was decided. Furthermore, the same rule has long been applied in the Seventh Circuit. *See Thompson v. United States*, 431 F. App'x 491, 493 (7th Cir. 2011); *United States v. Rourke*, 74 F.3d 802, 807 n.5 (7th Cir. 1996). In any event, this Court need not engage in a point-by-point analysis of the merits of *Annabi*, because it remains binding precedent. *See United States v. Wilkerson*, 361 F.3d 717, 732 (2d Cir. 2004) (Court is "bound by the decisions of prior panels until such time as they are overruled either by an en banc panel of our Court or by the Supreme Court").

Thus, Epstein's NPA with the USAO-SDFL does not bar this prosecution of Maxwell, and Judge Nathan correctly denied the motions to dismiss.[6]

3. The District Court Did Not Abuse Its Discretion in Declining to Conduct a Hearing

Finally, Maxwell argues that the District Court erred by denying her motions to dismiss without an evidentiary hearing. (Br.38-40). But as Judge Nathan explained, the cases cited by Maxwell in support of her request for a hearing "mostly involved oral agreements where there was no written record of the full set of terms reached by the parties," and all of which "involved defendants with first-hand knowledge of the negotiations. . . . This is no such case. The NPA's terms are clear." (A.145). Furthermore, Maxwell had "an unusually large amount of information about the NPA's negotiation history in the form of the OPR report yet

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[6] Even if the NPA were deemed to apply here, it would only cover Count Six, which concerns a victim known to USAO-SDFL and a statute mentioned in the NPA, and not Counts Three and Four, which concern different or additional victims and offenses over an expanded time period. Maxwell's suggestion that the co-conspirator provision "is not limited to any particular offense or any time period" (Br.40) is based on the premise that the USAO-SDFL immunized Maxwell for any and all crimes, past or future, and highlights the unreasonableness of reading the NPA to apply to other U.S. Attorney's Offices.

identifies no evidence that the Department of Justice made any promises not contained in the NPA." (A.142-43). Here, as below, Maxwell's further request for a hearing "rests on mere conjecture." (A.145). Judge Nathan did not abuse her discretion.

POINT II

The District Court Correctly Concluded that the Charges Were Timely

In 2003, Congress extended the statute of limitations for "offense[s] involving the sexual or physical abuse" of a minor to allow prosecution so long as the victim remains alive. 18 U.S.C. § 3283. Attempting to undermine the clear legislative intent, Maxwell argues that the amendment did not apply to her case because her crimes both pre-dated the amendment and did not involve sexual abuse. These arguments fly in the face of the statutory text, legislative history, this Court's own decisions, and the persuasive authority of other Circuits. The charges fell squarely within the amended statute of limitations, and this Court should affirm Judge Nathan's well-reasoned decisions denying Maxwell's motions to dismiss the charges as untimely.

A. Applicable Law

1. Standard of Review

This Court reviews *de novo* both the denial of a motion to dismiss an indictment and the application of a statute of limitations. *United States v. Sampson*, 898 F.3d 270, 276, 278 (2d Cir. 2018).

2. Statutes of Limitations for Offenses Against Children (18 U.S.C. § 3283) and Child Abduction and Sex Offenses (18 U.S.C. § 3299)

Most federal noncapital offenses carry a five-year statute of limitations. *See* 18 U.S.C. § 3282(a). In 1990, Congress enacted a provision titled, "Extension of Child Statute of Limitations," which provided that "[n]o statute of limitation that would otherwise preclude prosecution for an offense involving the sexual or physical abuse of a child under the age of 18 years shall preclude such a prosecution before the child reaches the age of 25 years." Crime Control Act of 1990, Pub. L. No. 101-647, tit. II, § 225(a), 104 Stat. 4789, 4798 (codified at 18 U.S.C. § 3509(k) (1990)). This provision "extended the federal criminal limitations period for child sex abuse offenses, making it easier to prosecute offenders who commit sex crimes that may be difficult to detect quickly." *Weingarten v. United States*, 865 F.3d 48, 54 (2d Cir. 2017). In 1994, Congress re-codified this provision, moving it to 18 U.S.C. § 3283 with identical language. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, tit. XXXIII, § 330018(a), 108 Stat. 1796, 2149 (codified at 18 U.S.C. § 3283 (1994)).

Within a decade, "Congress began to view even the extended statute of limitations period in the 1994 version of § 3283 as 'inadequate in many cases' because it released from criminal liability sex abusers whose crimes were not brought to the attention of federal authorities until after their victims turned twenty-five." *Weingarten*, 865 F.3d at 54 (citing H.R. Conf. Rep. No.

108–66, at 54 (2003)). Accordingly, in 2003, Congress enacted a provision titled, "No Statute of Limitations for Child Abduction and Sex Crimes," which amended Section 3283 to read: "No statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnaping, of a child under the age of 18 years shall preclude such prosecution during the life of the child." Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003 ("PROTECT Act"), Pub. L. No. 108-21, tit. II, § 202, 117 Stat. 650, 660 (codified at 18 U.S.C. § 3283 (2003)).

In 2006, Congress enacted a provision titled, "Longer Statute of Limitation for Human Trafficking-Related Offenses," and sub-titled "Modification of Statute Applicable to Offense Against Children," which further amended Section 3283 to its current form to permit the prosecution of such offenses during the lifetime of the victim or ten years after the offense, whichever is longer. Violence Against Women and Department of Justice Reauthorization Act of 2006, Pub. L. No. 109-162, tit. XI, § 1182(c), 119 Stat. 2960, 3126 (codified at 18 U.S.C. § 3283 (2006)).

Later in 2006, Congress enacted 18 U.S.C. § 3299 in a provision titled, "No Limitation for Prosecution of Felony Sex Offenses," which provides that "[n]otwithstanding any other law, an indictment may be found or an information instituted at any time without limitation for any offense under section 1201 involving a minor victim, and for any felony under chapter 109A, 110 (except for section 2257 and 2257A), or 117, or section 1591." Adam Walsh Child Protection and Safety

Act of 2006, Pub. L. No. 109-248, tit. II, § 211(1), 120 Stat. 587, 616 (codified at 18 U.S.C. § 3299 (2006)).

3. Retroactivity under *Landgraf*

In *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), the Supreme Court set forth a two-part framework for determining whether a statute may be applied retroactively. At the first step, "if Congress expressly prescribed that a statute applies retroactively to antecedent conduct, the inquiry ends and the court enforces the statute as it is written, save for constitutional concerns." *Weingarten*, 865 F.3d at 54-55. If, however, the "statute is ambiguous or contains no express command regarding retroactivity," then the court must turn to the second step, where "a reviewing court must determine whether applying the statute to antecedent conduct would create presumptively impermissible retroactive effects." *Id.* at 55. "If it would, then the court shall not apply the statute retroactively absent clear congressional intent to the contrary." *Id.* "If it would not, then the court shall apply the statute to antecedent conduct." *Id.*

B. Discussion

1. There Was No Impermissible Retroactivity in Applying Section 3283 to Maxwell

Maxwell claims that the District Court erred by applying Section 3283's 2003 amendment to her three counts of conviction, *i.e.*, Counts Three, Four, and Six, because they involved conduct that pre-dated the amendment. As an initial matter, this argument ignores the fact that Counts Three and Six both charge

continuing offenses that continued into 2004, thus post-dating Section 3283's amendment. Moreover, under the *Landgraf* framework, the 2003 amendment properly applies to pre-enactment criminal conduct that still could have been timely prosecuted at the time of the enactment, as was the case here.

a. There Was No Retroactivity as to Counts Three and Six

As an initial matter, Counts Three and Six both charged conduct that continued through 2004, *i.e.*, *after* the 2003 amendment to Section 3283, and thus present no retroactivity concerns.

For conspiracy charges requiring proof of an overt act, including 18 U.S.C. § 371, the conspiracy statute at issue here, "[t]he statute of limitations runs from the date of the last overt act in furtherance of the conspiracy." *United States v. Monaco*, 194 F.3d 381, 387 n.2 (2d Cir. 1999); *accord United States v. Ben Zvi*, 242 F.3d 89, 97 (2d Cir. 2001). Similarly, for a continuing substantive offense, the statute of limitations only "begin[s] to run when the crime is complete," meaning when "the conduct has run its course." *United States v. Eppolito*, 543 F.3d 25, 46 (2d Cir. 2008).

Here, the Indictment alleged that the conspiracy charged in Count Three and the sex trafficking offense charged in Count Six continued through 2004. (A.127, 132; *see also* A.123-24, 131-32 (describing conduct through 2004 involving Victim-4)).[7] Thus, the statute

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[7] To the extent Maxwell's argument challenges the sufficiency of the evidence rather than the denial

of limitations for these two counts did not begin to run until 2004, well after Congress enacted the 2003 amendment to Section 3283. Maxwell's arguments about retroactivity are therefore inapplicable to Counts Three and Six.

b. Applying Section 3283 to Maxwell Complies with *Landgraf*

Furthermore, under the *Landgraf* framework, the 2003 amendment to Section 3283 properly applies to pre-enactment conduct for which the statute of limitations had not expired at the time the amendment was passed. Because the statute of limitations had not expired when Congress amended Section 3283 in 2003, that amendment extended the limitations period for prosecuting Maxwell, rendering the charges timely.

i. *Landgraf* Step One

At step one of the *Landgraf* analysis, the question is whether Congress has "expressly prescribed the statute's proper reach." *Landgraf*, 511 U.S. at 280. When evaluating Congress's intent at step one, this

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of the motions to dismiss, *see United States v. Rutigliano*, 790 F.3d 389, 400 (2d Cir. 2015), the evidence at trial established that Carolyn continued to visit Epstein's residence through 2004. (Tr.1525, 1548-49; GX-1B; GX-3D through K; *see also* SA406-07 (District Court summarizing such evidence at sentencing)).

Court has considered both statutory text and legislative history. *In re Enter. Mort. Acceptance Co. Sec. Litig. ("Enterprise")*, 391 F.3d 401, 406-08 (2d Cir. 2004). Here, the text and history of Section 3283 establish that Congress intended to extend the time to bring charges of child sexual abuse in cases where the limitations period had not yet expired.

Prior to 2003, any child sex abuse offense could be prosecuted until the victim reached the age of 25 years, at which point the statute of limitations then in effect would bar prosecution. In the 2003 amendment, which was titled, "No Statute of Limitations for Child Abduction and Sex Crimes," Pub. L. No. 108-21, § 202, 117 Stat. 660, Congress explicitly provided that "[n]o statute of limitations that would otherwise preclude prosecution for [such an offense] shall preclude such prosecution during the life of the child." 18 U.S.C. § 3283 (2003). The amendment draws no distinction between pre-enactment and post-enactment conduct. Instead, as Judge Nathan explained, by stating that "*no* statute of limitations that *would otherwise preclude* prosecution of these offenses will apply," the amendment's "plain language unambiguously requires that it apply to prosecutions for offenses committed before the date of enactment." (A.151). Thus, the breadth of the text shows that Congress intended "to extend the . . . statute of limitations," even for pre-enactment conduct. *United States v. Jeffries*, 405 F.3d 682, 684 (8th Cir. 2005) (reaching same conclusion as to § 3283's predecessor based on similar "title and . . . wording" of statute); *cf. Enterprise*, 391 F.3d at 407 (describing provision that "no limitation shall terminate the period within which suit may be filed" as example of statute

reflecting clear congressional intent to apply to pre-enactment conduct).[8]

Legislative history confirms this conclusion. In initially enacting a special statute of limitations for child sex abuse offenses, Congress sought to "mak[e] it easier to prosecute offenders who commit sex crimes that may be difficult to detect quickly." *Weingarten*, 865 F.3d at 54. But that limitations period proved to be "inadequate in many cases." H.R. Conf. Rep. No. 108-66, at 54. Tellingly, the conference report offered the example of a child rapist who "could not be prosecuted" because he was "identified . . . as the perpetrator one day after the victim turned 25." *Id.* Given that Congress bemoaned those offenders who escaped prosecution because the limitations period had expired, there is every reason to believe that it intended to preserve the ability to prosecute pre-enactment offenders whose limitations period had not yet expired. *See United States v. Sure Chief*, 438 F.3d 920, 924 (9th Cir. 2006) (concluding that in enacting the 2003 amendment,

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[8] Maxwell's only response regarding the statute's text is that the words "would" and "shall" are "forward-looking." (Br.54). But those words readily apply in describing the application of the 2003 amendment to pre-enactment conduct. Consider an offense committed against a 16-year-old in the year 2000. The statute of limitations then in effect indeed "would . . . preclude prosecution" nine years in the future, once the victim turned twenty-five. The 2003 amendment ensured that "[n]o" such "statute of limitations . . . shall preclude such prosecution during the life of the child."

"Congress evinced a clear intent to extend" the limitations period).

Maxwell notes that Congress "considered—and rejected—a retroactivity clause" before enacting the 2003 amendment. (Br.55). But as Judge Nathan recognized, "the legislative history makes clear that Congress abandoned the retroactivity provision . . . because it would have produced unconstitutional results." (A.152 (discussing co-sponsor remarks expressing concern that "the proposed retroactivity provision was 'of doubtful constitutionality' because it 'would have revived the government's authority to prosecute crimes that were previously time-barred'")).[9] Thus, the rejection of the retroactivity clause "shows only that Congress intended to limit the PROTECT Act to its constitutional applications, including past conduct—like Maxwell's—on which the statute of limitations had not yet expired." (*Id.*).

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[9] Maxwell contests this explanation of the retroactivity clause's rejection because *Stogner v. California*, 539 U.S. 607 (2003), had not yet been decided. (Br.56-57). But the co-sponsor could hardly have been clearer in expressing his constitutional doubts. And the co-sponsor did not need *Stogner* as a basis for his concern, as courts and Congress have long recognized the distinction between permissible extensions of unexpired statutes of limitations and impermissible extensions of expired statutes of limitations. *Stogner*, 539 U.S. at 616-18.

The reach of the 2003 amendment to Section 3283 is clear. Because Congress has expressly extended the statute of limitations to pre-enactment conduct, Judge Nathan correctly resolved this analysis at *Landgraf* step one. In the alternative, however, the statute is—at worst—ambiguous. If the Court takes that view, it should proceed to *Landgraf* step two, which examines the retroactive effects of the statute.

ii. *Landgraf* Step Two

As the Supreme Court explained in *Landgraf*, "[e]ven absent specific legislative authorization," applying a statute to pre-enactment conduct "is unquestionably proper in many situations." 511 U.S. at 273. "A statute does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment, or upsets expectations based in prior law." *Id.* at 269. Instead, the question is whether the statute "would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Id.* at 280. Importantly, "the fact that a new procedural rule was instituted after the conduct giving rise to the suit does not make application of the rule at trial retroactive," because parties have "diminished reliance interests in matters of procedure" and "[b]ecause rules of procedure regulate secondary rather than primary conduct." *Id.* at 275.

In *Vernon v. Cassadaga Valley Cent. School Dist.*, 49 F.3d 886 (2d Cir. 1995), this Court considered a new statute of limitations that shortened the time to file

certain discrimination claims, and held that applying the new statute in a case "filed after its enactment, but arising out of events that predate its enactment," is not impermissibly retroactive under *Landgraf*. *Id.* at 889-90. As the Court explained, "[t]he conduct to which the statute of limitations applies is not the primary conduct of the defendants, the alleged discrimination, but is instead the secondary conduct of the plaintiffs, the filing of their suit." *Id.* at 890. The 2003 amendment to Section 3283 likewise applies only to the secondary conduct of filing a criminal case; it does not apply to the primary conduct of Maxwell's child sexual abuse by, for example, modifying the elements of an offense to criminalize conduct that previously had not constituted a crime. *See id.* at 891 ("*Landgraf* and other cases countenance treating statutes of limitations differently from statutory provisions that affect substantive rights."). Thus, like the new statute in *Vernon*, the 2003 amendment "impaired no rights possessed by either party, increased neither party's liability, nor imposed any new duties with respect to past transactions." *Id.* at 890.

Enterprise does not alter this conclusion. There, this Court considered whether an amended statute of limitations operated to "revive already expired securities fraud claims." *Enterprise*, 391 F.3d at 405. While acknowledging that under *Vernon*, "retroactive application of a revised statute of limitations generally does not have an impermissible retroactive effect," the Court concluded that "the resurrection of previously time-barred claims has an impermissible retroactive effect." *Id.* at 409-10 (emphasis removed). *Enterprise* has no application here, as the limitations period for

the charges against Maxwell did not expire before the statute of limitations was extended. Thus, unlike *Enterprise*, where resurrection of expired claims would have "stripp[ed] [defendants] of a complete affirmative defense they previously possessed," *id.* at 410, here Maxwell never possessed that complete defense. Judge Nathan correctly concluded that the 2003 amendment accordingly "did not deprive [Maxwell] of any vested rights." (A.153).

To be sure, this Court has observed that there may be "colorable arguments" that "the logic of *Enterprise* extends to criminal cases where the defendant's statute of limitations defense had not vested when the limitations period was extended" because the extension "'increases the period of time during which a defendant can be sued,' thereby 'increasing a defendant's liability for past conduct.'" *Weingarten*, 865 F.3d at 57 (quoting *Enterprise*, 391 F.3d at 410); *see also United States v. Miller*, 911 F.3d 638, 644-46 (1st Cir. 2018) (discussing potential defense arguments). But such a claim runs headlong into "the vast weight of retroactivity decisions," which recognize that "revoking a vested statute of limitations defense is different from retroactively extending the filing period for a still-viable claim." *Weingarten*, 865 F.3d at 57 (collecting cases).

For example, "in the criminal context, there is a consensus that extending a limitations period before prosecution is time-barred does not run afoul of the Ex Post Facto Clause of the Constitution." *Cruz v. Maypa*, 773 F.3d 138, 145 (4th Cir. 2014); *see also Stogner*, 539 U.S. at 632 (holding that the *Ex Post Facto* Clause

"does not prevent the State from extending time limits for . . . prosecutions not yet time barred"). As this Court explained long ago, while it is "unfair and dishonest" for the government to "assure a man that he has become safe from its pursuit" but then "withdraw its assurance," it is permissible to extend a statute of limitations "while the chase is on." *Falter v. United States*, 23 F.2d 420, 426 (2d Cir. 1928) (L. Hand, J.). These ex post facto cases are particularly instructive here because "*Landgraf* and the *Ex Post Facto* Clause are informed by the same retroactivity concerns." *Cruz*, 773 F.3d at 145; *see also Landgraf*, 511 U.S. at 266 (citing the Ex Post Facto Clause as an "expression" of "the antiretroactivity principle" it was applying).

Thus, applying the Section 3283's 2003 amendment to Maxwell's unexpired charges is permissible under *Landgraf*. As the Tenth Circuit recently explained with respect to the very same statute of limitations at issue here:

> By extending the unexpired statute of limitations, Congress did not increase [defendant's] exposure to prosecution retroactively. It did not raise the penalty for the charged offense. It did not redefine the offense to make it easier to establish. It did not expose [defendant] to criminal prosecution anew. It merely altered the ongoing charging period for the conduct that had already exposed him to criminal prosecution. [Defendant] was subject to indictment in 2002, before the statutes of limitations were extended, and he

> remained subject to indictment in 2007, once the changes were made. A dead charge was not resurrected, and the underlying nature of [defendant's] potential criminal liability remained the same.

United States v. Piette, 45 F.4th 1142, 1161-62 (10th Cir. 2022). The decisions of other Courts of Appeals are in accord. *Sure Chief*, 438 F.3d at 922-25; *Jeffries*, 405 F.3d at 685.

Maxwell cites *United States v. Richardson*, 512 F.2d 105 (3d Cir. 1975), and two district court decisions that are bound to follow it. (Br.58-59). But *Richardson*, which was decided before *Landgraf*, is "inconsistent with *Landgraf*." *United States v. Nader*, 425 F. Supp. 3d 619, 630 (E.D. Va. 2019). Specifically, *Richardson* focused on whether Congress expressed a "clear intention" to overcome the presumption against retroactivity, 512 F.2d at 106, without engaging in *Landgraf*'s second step, *i.e.*, considering whether the statute "would have retroactive effect," *Landgraf*, 511 U.S. at 280. Moreover, unlike the 2003 amendment, the statute at issue in *Richardson* did not expressly provide that "[n]o statute of limitations that would otherwise preclude prosecution" of the relevant offense "shall preclude" prosecution under the terms of the amended statute.

In sum, the statute of limitations for the charges in the Indictment had not yet expired when the 2003 amendment to Section 3283 extended the limitations period, and Judge Nathan correctly determined that applying the 2003 amendment in this case does not create impermissible retroactive effects. Therefore,

step two of *Landgraf* is satisfied, and Section 3283 applies retroactively. *See Weingarten*, 865 F.3d at 55 ("If [a statute] would not [create impermissible retroactive effects], then the court shall apply the statute to antecedent conduct."). Accordingly, the charges were timely.[10]

2. Section 3283 Reaches Counts Three and Four

Maxwell separately argues that Section 3283 does not apply to Counts Three and Four because neither is an "offense involving the sexual or physical abuse . . . of a child." Maxwell contends that these counts, which charged her with transporting a minor with intent that the minor engage in illegal sexual activity and conspiracy to do the same, are not offenses involving the sexual abuse of a child because a completed sex act is not an essential element of either charge. But Maxwell does not dispute that the evidence at trial established that her commission of Counts Three and Four involved completed sex acts abusing one or more minor victims. Nor could she, as Jane testified that she was

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[10] As the Government argued below, and as Judge Nathan found, Count Six is also timely under 18 U.S.C. § 3299, which eliminated the statute of limitations for violations of 18 U.S.C. § 1591 in 2006, and which also applies retroactively under *Landgraf* for the same reasons discussed above with respect to Section 3283. (A.196 (concluding that, "like § 3283, § 3299 applies retroactively to offenses for which the previous limitations period has not yet run")).

in fact sexually abused when transported across state lines, including to New York, as a minor. Instead, Maxwell insists that Counts Three and Four do not involve sexual abuse of a child because a completed sex act is not *an element* of those crimes. This argument misreads the relevant statutes and legislative history, and runs contrary to the decisions of this Court and other Courts of Appeals.[11]

a. Counts Three and Four Are Offenses Involving the Sexual Abuse of a Child

Maxwell's entire argument is based on a mistaken premise: that the phrase "offense involving the sexual . . . abuse . . . of a child," 18 U.S.C. § 3283, only encompasses crimes in which "unlawful sexual activity actually took place." (Br.44). This flawed proposition ignores relevant statutory definitions, which make clear that Section 3283 reaches more broadly to include offenses in which there was no completed illegal sex act.

As described above, Section 3283 was originally codified at 18 U.S.C. § 3509(k). The definition of the term "sexual abuse" is located within that same section:

> For purposes of this section . . . the term 'sexual abuse' includes the employment, use, persuasion, inducement, enticement,

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[11] Maxwell raises no analogous argument with respect to Count Six, which charges sex trafficking of a minor, in violation of 18 U.S.C. § 1591.

> or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children.

18 U.S.C. § 3509(a)(8). The term "sexually explicit conduct" is in turn defined to mean, among other things, "sexual intercourse, including sexual contact"; and the term "sexual contact" means "the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person." *Id.* § 3509(a)(9)(A). Courts have looked to the definition of "sexual abuse" set forth in Section 3509(a) to determine whether the statute of limitations of Section 3283 applies to an offense. *United States v. Carpenter*, 680 F.3d 1101, 1103-04 (9th Cir. 2012) ("We join our sister circuits in looking to subsection 3509(a) for a definition of 'sexual abuse' under federal law, and find it the appropriate definition to use in applying section 3283's extended statute of limitations.").

The definition of "sexual abuse" includes not only actual "sexual contact," but also the "the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in," sexual contact. 18 U.S.C. § 3509(a). The breadth of this definition is underscored by Congress's use of the word "includes" in Section 3509(a)'s text, which is "significant because it makes clear that the examples enumerated in the text are intended to be

illustrative, not exhaustive." *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 162 (2012) (citing *Burgess v. United States*, 552 U.S. 124, 131 n.3 (2008)). And the text of Section 3283 goes even further beyond the definition provided in Section 3509 by covering any crime "involving" the sexual abuse of a child. Congress therefore did not require that a particular statute have actual sexual contact with a minor as an element of its offense, but rather swept broadly to cover any crime that in any way involves sexual abuse as broadly defined. Given this expansive language, sexual abuse "as defined here encompasses a wider set of behavior than just rape or other unwanted sexual touching." *United States v. Schneider*, 801 F.3d 186, 197 (3d Cir. 2015). Thus, courts throughout the country have concluded that Section 3283 applies to a variety of offenses that do not require "a sexual act between a defendant and a specific child," *United States v. Vickers*, No. 13 Cr. 128 (RJA), 2014 WL 1838255, at *11 (W.D.N.Y. May 8, 2014), or "physical contact with the victim," *Carpenter*, 680 F.3d at 1103; *accord United States v. Diehl*, 775 F.3d 714, 720 (5th Cir. 2015).

Section 3283's definition thus captures crimes of intent where a perpetrator seeks to have a minor engage in sexual contact even if such sexual contact does not occur. Transportation of a minor with intent to engage in an illegal sex act (as charged in Count Four) and conspiracy to commit the same (as charged in Count Three) fall comfortably within that definition. Even though a completed sex act is not required to commit those two crimes, Count Four has "sexual abuse" as an element because it requires the defendant to

"induce[]" a child to engage in illegal sexual activity by transporting the minor across state lines with intent that the child engage in an illegal sex act, 18 U.S.C. § 3509(a)(8), and Count Three, as a conspiracy to commit Count Four, is an "offense involving [such] sexual . . . abuse," *id.* § 3283. *See United States v. Sensi*, No. 08 Cr. 253 (WWE), 2010 WL 2351484, at *2-3 (D. Conn. June 7, 2010) (collecting cases interpreting the term "sexual abuse" to encompass "all crimes that would logically relate to the common understanding of sexual abuse even when found in chapters 110 ('Sexual Exploitation and Other Abuse of Children') and 117 ('Transportation of Illegal Sexual Activity and Related Crimes') of title 18"); *Schneider*, 801 F.3d at 196-97 (holding that Section 3283 applied to defendant convicted of traveling with the purpose of engaging in sex with a minor victim, in violation of 18 U.S.C. § 2423(b)).

Accordingly, even considering only the elements of the offenses, Counts Three and Four fall squarely within Section 3283's definition of an offense involving sexual abuse of a child.

b. Maxwell's Argument for Use of a Categorical Approach Lacks Merit

Because Counts Three and Four qualify as "offense[s] involving the sexual . . . abuse . . . of a child," 18 U.S.C. § 3283, even without resort to the facts of the case, the Court need not address Maxwell's claim that the categorical approach applies in this context. But the arguments Maxwell advances in support of her claim are meritless in any event.

Maxwell first relies on Section 3283's use of the phrase "offense involving" the sexual abuse of a child, which, she contends, "dictates" looking only to the elements of the offense. (Br.43). But as this Court has already recognized, Section 3283's text "reaches beyond the offense and its legal elements to the conduct 'involv[ed]' in the offense"—a "linguistic expansion" that shows Congress's intent for "courts to look beyond the bare legal charges in deciding whether § 3283 applied." *Weingarten*, 865 F.3d at 59-60; *see also Nijhawan v. Holder*, 557 U.S. 29, 32, 38 (2009) (holding that a statute that includes an "offense . . . involves" phrase is "consistent with a circumstance-specific approach"). Indeed, the Third Circuit has expressly rejected an "'essential ingredient' test" comparable to the categorical approach and instead applied case-specific analysis to determine that Section 3283 applied to travel with intent to commit an illegal sex act with a minor, in violation of 18 U.S.C. § 2423(b). *Schneider*, 801 F.3d at 196-97.

Maxwell also argues that "the clear weight of authority" holds that statutes employing similar language "should be read through a categorical rather than case-specific lens." (Br.44-45). But the decisions she cites involved statutes with *other* features favoring the categorical approach, which are notably absent here. Some cases involved statutes that defined a "crime of violence" as an offense that either "has as an element" the use of physical force or "by its nature" involves a substantial risk of force—language that invokes an elements-based approach. *United States v. Davis*, 139 S. Ct. 2319, 2328-29 (2019); *Leocal v. Ashcroft*, 543 U.S. 1, 7 (2004). Some cases concerned the

definition of an "aggravated felony" under federal immigration law, *Kawashima v. Holder*, 565 U.S. 478 (2012); *Leocal*, 543 U.S. at 7, a context in which the categorical approach traditionally applies because the inquiry is whether the alien's prior conviction meets the definition. *Weingarten*, 865 F.3d at 59. And *United States v. Morgan*, 393 F.3d 192 (D.C. Cir. 2004), is likewise distinguishable, as it "involved a venue statute presenting significantly different concerns" than those present here. (A.148).

Maxwell also relies on a trio of cases, chief among them *Bridges v. United States*, 346 U.S. 209 (1953). (Br.45-47). In *Bridges*, the Supreme Court "applied an 'essential ingredient' test to determine whether an offense qualified for a provision . . . that extended the criminal limitations period for certain fraud offenses." *Weingarten*, 865 F.3d at 59 n.10. But as this Court has explained, "*Bridges* is distinguishable" because the Supreme Court "there believed applying the restrictive 'essential ingredient' test to determine if an offense 'involv[ed] the defrauding of the United States' effectuated Congress's specific intent to limit the . . . extended limitations period to only a few offenses," while "Congress had the opposite intention for § 3283." *Id.* The other two cases, *United States v. Scharton*, 285 U.S. 518 (1932), and *United States v. Noveck*, 271 U.S. 201 (1926), are distinguishable on similar grounds. In any event, the "essential ingredient" test does not help Maxwell. As discussed above, an "offense involving the sexual . . . abuse . . . of a child," 18 U.S.C. § 3283, must be read in light of the definition of "sexual abuse" set forth in Section 3509(a), which encompasses a wide range of conduct that is not limited to actual sexual

contact with a child. Counts Three and Four each have an "essential ingredient" that fits within that broad definition. *See supra* Point II.B.2.a.

Finally, neither *Diehl* nor *United States v. Countentos*, 651 F.3d 809 (8th Cir. 2011), supports the use of a categorical approach. (Br.51-52). In each decision, the court concluded that Section 3283 applied to the subject offenses without considering the specific facts of the crime, but in neither case did the court consider whether a categorical approach was required—let alone hold that it was.

As noted above, it is undisputed that the evidence at trial established that Maxwell's commission of Counts Three and Four involved completed sex acts abusing one or more minor victims: Jane testified that she was in fact sexually abused when transported across state lines, including to New York, as a minor. Accordingly, Counts Three and Four qualify as offenses involving the sexual abuse of a child both by their statutory terms and based on the specific facts of this case.

POINT III

The District Court Did Not Abuse Its Discretion in Concluding that Juror 50 Could Be Fair and Impartial Notwithstanding His Inadvertent Mistakes on His Juror Questionnaire

Maxwell contends that she was denied her right to a fair and impartial jury because a juror failed to disclose during voir dire that he was sexually abused as a child, and therefore incorrectly answered three

questions on his written questionnaire. After an extensive hearing, Judge Nathan concluded that the juror's error was inadvertent, and in any event, she would not have struck the juror for cause had he answered those question accurately because he was not biased in any way against Maxwell and was qualified to serve as a juror. Judge Nathan therefore found that Maxwell failed to meet the high bar for a new trial and denied her motion. This Court should affirm that careful determination.

A. Relevant Facts

1. The Jury Selection Process

In November 2021, in advance of trial, 694 jurors completed a juror questionnaire approved by the District Court. (Dkt.529 at 2). The juror questionnaire was 29 pages and consisted of 51 questions, many of which contained subparts. (A.290-317). After the parties reviewed the questionnaires, 231 of the 694 proceeded to voir dire. (Dkt.529 at 2-4). The District Court then examined prospective jurors, asking them about questions in the jury questionnaire that prospective jurors had answered affirmatively. The District Court asked the prospective jurors whether the information or experiences resulting in the affirmative answer would interfere with their ability to be fair and impartial.

At the conclusion of voir dire, the District Court qualified 58 jurors. (Voir Dire Tr.717). Of the 58 individuals who were qualified to serve as jurors, eight individuals responded to Question 48 of the juror questionnaire that they themselves had been a victim of

sexual harassment, sexual abuse, or sexual assault, and that this experience would not affect their ability to serve fairly and impartially as a juror in the case.[12] (A.344-45; Voir Dire Tr.18, 52, 200, 207, 259, 293, 532, 538-39, 635). Each confirmed that he or she could be fair and impartial, and defense counsel did not move to strike any these jurors for cause based on their answer to Question 48. (A.345).

For instance, one juror said that she was "sexually molested by an uncle when she was 12 or 13," but that would not affect her ability to be fair and impartial in the case. (A.345). Another juror indicated that she had recently "reported that a friend was being coerced and sexually abused by a professor," but confirmed that experience would not "in any way interfere with her ability to be fair and impartial" in this case. (*Id.*). Neither the Government nor defense counsel challenged those jurors for cause.

The parties then exercised their peremptory strikes, and a jury was seated.

2. Juror 50

Juror 50 completed the questionnaire and was questioned by Judge Nathan during voir dire. In his questionnaire, Juror 50 repeatedly made clear that he could be fair and impartial. In response to Question 13,

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[12] Twelve of the 58 qualified prospective jurors indicated that a friend or family member had been a victim of sexual harassment, sexual abuse, or sexual assault.

he indicated that he could decide the case "based solely on the evidence or lack of evidence presented in Court, and not on the basis of conjecture, suspicion, bias, sympathy, or prejudice." (A.295). He also accepted the principle that the law provides that a defendant in a criminal case is presumed innocent and the Government is required to prove guilt beyond a reasonable doubt. (A.294). Juror 50 indicated that there was nothing about the nature of the case and the accusations as summarized in the questionnaire that might make it difficult for him to be fair and impartial. (A.308; *see also* A.310). He repeated these assurances at oral voir dire. (*See* Voir Dire Tr.128-34).

Juror 50 checked the "no" box in response to Question 48, which asked whether he or a friend or family member had ever been the victim of sexual harassment, sexual abuse, or sexual assault. (A.310). He also checked the "no" box in response to the question of whether he or any of his relatives or close friends had ever been a victim of a crime. (A.299).

Juror 50 was seated. Following the verdict, he discussed his experience as a juror during interviews with multiple journalists. During these interviews, Juror 50 stated that he was a survivor of childhood sexual abuse, which he did not disclose until high school, and that his experience of sexual abuse did not affect his ability to view Maxwell as innocent until proven guilty. (A.249). He also stated that he did not recall the details of the juror questionnaire, which he "flew through," but he believed he answered the questions honestly. (A.245, 262).

3. The Hearing

Following these reports, the Government filed a letter highlighting Juror 50's public statements and requesting that the District Court conduct a hearing. (Dkt.568). After briefing, Judge Nathan ordered a limited hearing focused on Juror 50's "potential failure to respond truthfully to questions during the jury selection process that asked for that material information." (A.240; SA350). Judge Nathan denied Maxwell's request to directly question Juror 50, which was "committed to [her] sound discretion," but permitted the parties to propose questions in advance of the hearing. (SA364 (quoting *United States v. Moten*, 582 F.2d 654, 667 (2d Cir. 1978)). The parties did so—and Maxwell submitted a letter renewing her request to question Juror 50 directly and proposing twenty-one pages of questions on topics including the nature and length of Juror 50's sexual abuse, the nature of the sexual abuse experienced by any of Juror 50's family or friends, his own employment responsibilities, the impact of his sexual abuse on his life and personal relationships, whether Juror 50 ever sought mental health counseling or spoke with a therapist, how he came to give media interviews, and whether he was attempting to be viewed as a "champion of victims of sexual abuse." (Dkt.636).

The District Court held a hearing on March 8, 2022, at which Juror 50 testified under a grant of immunity. Juror 50 testified that his answers to three questions were not accurate: Questions 25 (whether he or a close associate had been a victim of a crime), 48 (whether he or a friend or family member had been a victim of

sexual harassment or abuse), and 49 (whether he or a friend or family member had been accused of sexual harassment or abuse). He explained that, when he was nine or ten years old, he was sexually abused by a stepbrother, who he no longer considered part of the family, and the stepbrother's friend. He explained that he answered Question 49 "no" because he no longer considered the stepbrother part of his family, although he should have answered "yes." He also acknowledged that he should have answered "yes" to Question 25 because he was a crime victim, although he read the question at the time to inquire about robbery, mugging, or similar crimes. (A.267-68).

Juror 50 also testified that his failure to disclose this experience was an inadvertent mistake. He explained that he "completely skimmed way too fast" when completing the questionnaire. (A.270-71). He did so, he explained, in light of the context: he started the questionnaire after several hours' waiting in security lines and after technical issues with the instructions. He was preoccupied with his own recent romantic breakup and with disruptions in the jury room. And he rushed to complete his questionnaire because he thought it virtually impossible that he would be selected as a juror given the number of people completing the questionnaire. He did not generally think about his personal history of sexual abuse, and it did not occur to him while carelessly speeding through the questionnaire. (A.269-72).

At oral voir dire, Juror 50 had not been asked the questions Judge Nathan posed to prospective jurors who answered affirmatively to questions 25, 48, or 49,

and therefore was not asked any questions about sexual abuse. At the hearing, Judge Nathan examined Juror 50 in detail, and Juror 50 emphasized that his experiences did not affect his ability to be fair and impartial, his ability to fairly assess the credibility of victim-witnesses, or his ability to impartially judge Maxwell's guilt. (A.268, 270, 276-77).

4. The District Court's Decision

Judge Nathan denied Maxwell's motion for a new trial in a detailed written opinion. (A.318). First, Judge Nathan concluded that Juror 50's answers were not deliberately inaccurate, crediting Juror 50's testimony in light of his demeanor and consistent, logical answers to her questions. (A.333-35). Second, Judge Nathan concluded that she would not have granted a for-cause challenge to Juror 50 had he provided accurate information. At the hearing, Judge Nathan asked Juror 50 the questions she asked other jurors who indicated a personal experience with sexual assault or abuse. She concluded that "Juror 50's credible responses [to those questions] under oath at the hearing established that he would not have been struck for cause if he had provided accurate responses to the questionnaire." (A.340). As Judge Nathan explained, other jurors who answered the questions similarly were not even challenged for cause, and she would not have granted a challenge had one been made. (A.344-45). She also rejected the notion that mere similarities between Juror 50's life experiences and the issues at trial required her to excuse Juror 50 for cause. (A.346).

B. Applicable Law

Federal Rule of Criminal Procedure 33(a) permits a district court to "vacate any judgment and grant a new trial if the interest of justice so requires." As this Court has explained, "[t]he defendant bears the burden of proving that he is entitled to a new trial under Rule 33, and before ordering a new trial pursuant to Rule 33, a district court must find that there is a real concern that an innocent person may have been convicted." *United States v. McCourty*, 562 F.3d 458, 475 (2d Cir. 2009).

Post-verdict inquiries into juror conduct are strongly disfavored. Such inquiries "seriously disrupt the finality of the process." *Tanner v. United States*, 483 U.S. 107, 120-21 (1987). Permitting "post-verdict scrutiny of juror conduct" would undermine pillars that undergird the jury trial right, including "full and frank discussion in the jury room, jurors' willingness to return an unpopular verdict, and the community's trust in a system that relies on the decisions of laypeople." *Id.* Such inquiries may instead "lead to evil consequences: subjecting juries to harassment, inhibiting juryroom deliberation, burdening courts with meritless applications, increasing temptation for jury tampering and creating uncertainty in jury verdicts." *United States v. Ianniello*, 866 F.2d 540, 543 (2d Cir. 1989).

Accordingly, a defendant seeking Rule 33 relief based on alleged juror misrepresentations during voir dire must satisfy a stringent two-part test. First, a party must "demonstrate that a juror failed to answer honestly a material question on *voir dire*." *McDonough*

Power Equip., Inc. v. Greenwood, 464 U.S. 548, 556 (1984). Second, the party must show "that a correct response would have provided a valid basis for a challenge for cause." *Id.* To satisfy this prong, a court must determine whether, if the juror had answered truthfully, it would have granted a hypothetical strike for cause. *United States v. Stewart*, 433 F.3d 273, 304 (2d Cir. 2006).

A party may challenge a juror for cause based only on "narrowly specified, provable and legally cognizable bases." *United States v. Torres*, 128 F.3d 38, 43 (2d Cir. 1997). In the context of voir dire, challenges for cause generally fall into one of three "limited" categories: actual bias, implied bias, or inferable bias. *Id.* "Actual bias is bias in fact—the existence of a state of mind that leads to an inference that the person will not act with entire impartiality." *Id.* Implied bias, also called "presumed bias," is "bias conclusively presumed as a matter of law." *Id.* at 45. This Court has emphasized that this category is "narrow," and "reserved for 'exceptional situations,'" generally meaning circumstances in which jurors "are related to the parties" or "were victims of the alleged crime itself." *Id.* at 45-46. Finally, "[b]ias may be inferred when a juror discloses a fact that bespeaks a risk of partiality sufficiently significant to warrant granting the trial judge discretion to excuse the juror for cause, but not so great as to make mandatory a presumption of bias." *Id.* at 46-47.

Where there are concrete allegations of juror misconduct, a court may conduct a post-verdict hearing. *See United States v. Baker*, 899 F.3d 123, 130 (2d Cir. 2018). The inquiry "should be limited to only what is

absolutely necessary to determine the facts with precision." *Ianniello*, 866 F.2d at 544. "[T]he proper functioning of the jury system requires that the courts protect jurors from being harassed and beset by the defeated party in an effort to secure from them evidence of facts which might establish misconduct sufficient to set aside a verdict." *Moten*, 582 F.2d at 664. Accordingly, the district court "has the power and the duty to supervise and closely control such inquiries." *United States v. Calbas*, 821 F.2d 887, 896 (2d Cir. 1987). For example, the district court may choose to personally conduct the questioning of a juror in order to avoid intruding on the jury's deliberations. *See, e.g., Calbas*, 821 F.2d at 896. At such a hearing, and with limited exceptions, the juror "may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters." Fed. R. Evid. 606(b)(1).

This Court reviews the denial of a Rule 33 motion for abuse of discretion. *United States v. Archer*, 977 F.3d 181, 187 (2d Cir. 2020). A district court only abuses its discretion if its decision "rests on an error of law (such as application of the wrong legal principle) or a clearly erroneous factual finding" or "its decision . . . cannot be located within the range of permissible decisions." *Id.* This Court "has only on rare occasions overturned a verdict or remanded for an evidentiary hearing" based on the failure of a juror to disclose information during jury selection. *United States v. Teman*, 465 F. Supp. 3d 277, 330 (S.D.N.Y. 2020).

C. Discussion

Judge Nathan conducted a thorough inquiry and determined that Juror 50's inadvertent errors on the jury questionnaire did not undermine Maxwell's right to a fair trial. Maxwell does not meaningfully engage with Judge Nathan's careful opinion, instead suggesting that Juror 50's testimony at the hearing was "patently absurd." (Br.63). These conclusory arguments fall far short of establishing that Judge Nathan abused her discretion in finding that this case does not present the extraordinary circumstances that justify overturning a jury's verdict based on an error during *voir dire*.

Maxwell's claim fails at the first step of *McDonough* because Juror 50's errors were inadvertent. Juror 50 testified as much at the hearing, providing a detailed narrative of why his errors were a failure of diligence as he rushed through the questionnaire while distracted. (A.333-34). Judge Nathan credited this explanation in light of his demeanor, which she "closely observe[d]" as he testified, including during his answers to questions "he appeared not to expect." (A.333). She explained that his answers were "logical explanations and generally internally consistent," given in a "calm and straightforward manner." (*Id.*). Juror 50's explanations were consistent with "his sworn statements months earlier at oral *voir dire*" and his testimony that "his sexual abuse history was not salient or [a] front-of mind consideration." (*Id.*). Judge Nathan also noted that Juror 50's answers aligned with his incentives: by testifying under a grant of immunity, he could not be prosecuted for his false answers on the questionnaire, but he could be

prosecuted for false testimony at the hearing (*id.*), and had he hidden his sexual abuse in order to get on the jury, he would not have immediately disclosed it to the media after trial (A.335). To the contrary, in one video interview with the media, Juror 50 "appears genuinely and completely surprised to learn that the questionnaire" asked about his history of sexual abuse. (*Id.*).

Maxwell does not directly challenge Judge Nathan's factual findings on this point, much less demonstrate that they are clearly erroneous. Instead, relying on *United States v. Langford*, 990 F.2d 65, 68 (2d Cir. 1993), Maxwell argues that *McDonough*'s first step is satisfied by any falsehood, deliberate or otherwise. (Br.66).

This argument misses the mark. This prong requires a showing of deliberate dishonesty by the juror, rather than mere honest mistake. This Court has explained that, in *McDonough*, the Supreme Court "found that the juror's good faith failure to respond, though mistaken, did not satisfy even the first prong of the test." *United States v. Shaoul*, 41 F.3d 811, 815 (2d Cir. 1994). The defendant in *Shaoul* also relied on *Langford* to contend that a new trial was appropriate "even if he cannot establish the juror's dishonesty." *Id.* This Court rejected that argument, concluding that "[s]uch a contorted reading of *Langford* is incorrect, because it would eliminate the threshold requirement of the *McDonough* test: juror dishonesty." *Id.* And this Court concluded that the defendant failed to satisfy the first prong of the test because "defense counsel explicitly conceded the good faith of the juror." *Id.* at 816; *see United States v. McCoy*, 995 F.3d 32, 51 (2d Cir.

2021) (holding that district court "properly recognized that the initial question to be explored is whether the juror's nondisclosure was deliberate or inadvertent"), *vacated on other grounds*, 142 S. Ct. 2863 (2022), *reinstated*, 58 F.4th 72, 75 (2d Cir. 2023).

Maxwell's claim also fails at the second step of *McDonough*. The hearing established that Juror 50 harbored no bias, approached his jury service with an open mind, and was committed to deciding the case based on the evidence and the District Court's legal instructions. As Judge Nathan found, "Juror 50's credible responses [to questions asked of all jurors who indicated prior personal experience with sexual abuse] under oath at the hearing established that he would not have been struck for cause if he had provided accurate responses to the questionnaire." (A.340). If Juror 50 had accurately answered the questions relating to sexual abuse in the questionnaire, Judge Nathan would have asked Juror 50 follow-up questions during voir dire to determine if it would have granted a challenge for cause. Judge Nathan asked those questions at the hearing, and Juror 50's sworn responses made clear that he was a fair and impartial juror who did not harbor any bias and who would not have been excused for cause.

Nor was Juror 50 the subject of any bias, actual, implied, or inferred. After assessing Juror 50's demeanor, Judge Nathan found that he "repeatedly and credibly affirmed that his personal history of sexual abuse would not affect his ability to serve as a fair and impartial juror 'in any way'" (A.341-42), belying any suggestion that he was actually biased against

Maxwell. Judge Nathan also correctly rejected Maxwell's "central argument" that she should imply or infer bias "based on the purported similarities between [Juror 50's] personal history and the issues at trial." (A.342-43). Judge Nathan explained that she "need not imagine a wholly hypothetical universe" to reach that conclusion. (A.344). During *voir dire*, she asked "every follow-up question requested by the Defendant with regard to a juror's personal experience with sexual assault, abuse, or harassment; although, for a majority of these eight jurors, the Defendant did not propose any follow-up questions." (A.344-45). One prospective juror described her own childhood sexual abuse at an age closer to the victims in this case; another described a friend's recent coercive sexual abuse by a professor. (A.345). Maxwell did not even bring a for-cause challenge as to either. (*Id.*). Similarly, a for-cause challenge against Juror 50 would not have prevailed.

On appeal, Maxwell contends that, had Juror 50 answered the questionnaire accurately, it "clearly" would have provided a basis for a for-cause challenge." (Br.67). In particular, Maxwell challenges Judge Nathan's finding that Juror 50 was credible and unbiased, relying on a few isolated statements drawn from various parts of the hearing transcript and some of his post-verdict statements. (Br.71-72). As described above, Judge Nathan explained how Juror 50's explanation for his erroneous answers was plausible and consistent, and she found him credible after assessing his demeanor through challenging questioning. She also properly disregarded his post-verdict statements about the case, explaining that "[a] juror's view of a case and defendant would necessarily change after

reviewing thirteen days of evidence that persuaded twelve jurors of the Defendant's guilt." (A.352). Actual and inferred bias are both committed to the province of the trial judge, and Judge Nathan's findings that neither existed were not clearly erroneous. *See Torres*, 128 F.3d at 44 ("[A] finding of actual bias is based upon determinations of demeanor and credibility that are peculiarly within a trial judge's province."*); United States v. Greer*, 285 F.3d 158, 172 (2d Cir. 2002) ("[A] finding of inferred bias is, by definition, within the discretion of the trial court.").

Maxwell also argues that Judge Nathan should have implied bias, highlighting some similarities between Juror 50's sexual abuse and the sexual abuse discussed at trial. (Br.67). That falls far short of requiring the District Court to imply bias. First, as Judge Nathan explained, the law is not that "bias must be implied when a juror has a personal experience similar to the issues at trial." (A.349). Rather, this Court has "consistently refused to create a set of unreasonably constricting presumptions that jurors be excused for cause due to certain occupational or other special relationships which might bear directly or indirectly on the circumstances of a given case." (A.349 (quoting *Torres*, 128 F.3d at 46)). This case is not within one of the rare, extreme circumstances where a mandatory presumption of bias applies. *See, e.g.*, *Torres*, 128 F.3d at 45; *Greer*, 285 F.3d at 172. Second, although there are some similarities between Juror 50's childhood sexual abuse, there are also differences: Juror 50 was younger than the trial victims at the time of their abuse, he was abused by a family member, and he disclosed his abuse much earlier. (A.350). And critically,

Juror 50 credibly testified at the hearing that he was able to put aside his experience of sexual abuse and judge the evidence fairly. This is not the sort of "extreme situation that call[s] for mandatory removal." (A.349 (quoting *Torres*, 128 F.3d at 46)).

More generally, it is entirely appropriate for jurors to "rely on their common sense and life experiences to adjudge guilt." (A.352). These "very human elements . . . constitute one of the strengths of our jury system, and we cannot and should not excommunicate them from jury deliberations." (A.353 (quoting *United States ex rel. Owen v. McMann*, 435 F.2d 813, 818 (2d Cir. 1970)). On these facts, "[t]o imply or infer that Juror 50 was biased—simply because he was himself a victim of sexual abuse in a trial related to sexual abuse and sex trafficking, and despite his own credible testimony under the penalty of perjury, establishing that he could be an even-handed and impartial juror—would be tantamount to concluding that an individual with a history of sexual abuse can never serve as a fair and impartial juror in such a trial. That is not the law, nor should it be." (A.346-47).

Finally, Maxwell suggests that Judge Nathan abused her discretion by precluding defense counsel from questioning Juror 50, and precluding inquiry into Juror 50's "statements to journalists." (Br.70). As to the former, the manner in which the hearing proceeds is committed to a district court's "sound discretion," *Moten*, 582 F.2d at 666, including specifically the "extent to which the parties may participate in questioning the witnesses," *Iannielo*, 866 F.2d at 544. Judge Nathan reasonably decided to lead the questioning

herself, with repeated opportunities both before and during the hearing for counsel to suggest questions. And Judge Nathan's decision is reinforced by counsel's requests for "vexatious, intrusive, unjustified" subpoenas (SA365), and for questions that swept well beyond Juror 50's ability to be an impartial juror and instead probed deeply into "other aspects of his life" (Br.69).

As to Juror 50's "statements to journalists," it is not entirely clear which statements Maxwell thinks should have been part of the hearing. The hearing of course covered both the substance of his sexual abuse and the fact of his statements to journalists. (*See, e.g.*, A.275 (asking whether Juror 50 understood "from your interviews that the fact that you were abused would be a known fact in the world.")). It appears that, in Maxwell's view, Judge Nathan should have inquired into whether and how his sexual abuse affected the deliberations in the jury room. (Br.71 (suggesting that Juror 50 "operate[d] as an unsworn expert on the subject of traumatic memory")). Acknowledging Rule 606(b)'s prohibition on inquiry into jurors' deliberations and mental processes, Maxwell argues that the exception for "extraneous prejudicial information [that] was improperly brought to the jury's attention," Fed. R. Evid. 606(b)(2)(A), applies here. (Br.71). But Maxwell expressly waived this argument in the District Court, explaining that she "[d]oes not seek to impeach the verdict based on the content of deliberations" and "need not inquire into the content of deliberations to establish her jury bias claim." (Dkt.613 at 49-50). And in any event, the exception does not apply because the "experiences that jurors are understood to bring with them to the jury room" are "internal matters" that do

not constitute "extraneous" information. *Warger v. Shauers*, 574 U.S. 40, 51-52 (2014) (rejecting party's attempt to use the "extraneous" information exception to establish that a juror should have been excluded under *McDonough* based on his personal experiences).

POINT IV

The District Court's Response to a Jury Note Did Not Constructively Amend the Indictment

At all times the Government consistently argued that Maxwell enticed and transported Jane to New York with the intent that Jane engage in illegal sexual activity, and that Maxwell conspired to do so regarding Jane and the other victims. That is the issue Judge Nathan instructed the jury to resolve, and that is the criminal conduct charged in Counts Three and Four of the Indictment. Accordingly, no constructive amendment or variance occurred.

A. Relevant Facts

Counts Three and Four charged Maxwell with arranging for Jane's transportation to New York with the intent that Jane would engage in sex acts with Epstein, in violation of New York state law, and with a conspiracy to transport minors to New York for the same purpose. (A.127-30). At trial, the Government marshalled evidence that Maxwell transported Jane to New York, and aided and abetted Epstein in doing so, with the intent that Jane engage in sexual activity there. That evidence included detailed testimony from Jane about Epstein's New York residence (Tr.316-19)

and specific sexual acts that took place in New York while Jane was a minor (Tr.319-20).

The Government's summation similarly discussed these charges as encompassing conduct directed at New York. As to Count Four, the Government argued the evidence showed "Jane was transported *to New York*," and Maxwell was involved in making travel arrangements. (Tr.2891 (emphasis added)). The Government also clarified that "[t]he crime happened the moment [Maxwell, Epstein, and Jane] crossed state lines," and "to be very clear, when Epstein flew Jane *to New York* and Maxwell aided and abetted him, that's enough too." (*Id.* (emphasis added)). For the conspiracy counts, the Government referenced its earlier discussion of the elements of the substantive offenses. And the Government argued that, "even though Carolyn and Annie were not sexually abused *in New York* . . . that is what [Maxwell and Epstein] both intended." (Tr.2895 (emphasis added); *see* Tr.2895-96 (arguing that Maxwell "groomed Annie for abuse after she had already visited Epstein *in New York*." (emphasis added))).

The District Court's jury instructions also permitted the jury to determine only whether Maxwell had intended that Jane (for the substantive counts) or the conspiracy victims engage in sexual activity in New York. During trial, Judge Nathan granted defense requests for limiting instructions at the time evidence came in to make clear that the charges focused on the intent that sexual activity take place in New York. (Tr.1167-68 (Kate), 2048-49 (Annie)). At the conclusion of trial, Judge Nathan instructed the jury that Count

Four alleged that Maxwell knowingly transported Jane "with the intent that Jane engage in sexual activity for which any person can be charged with a criminal offense in violation of New York law." (Tr.3037; *see* Tr.3035 (second element of Count Four requires proof of an intent to violate "New York law as alleged in the indictment")). Judge Nathan also instructed the jury on one and only one predicate state offense: a violation of N.Y. Penal Law § 130.55. (Tr.3034, 3037). The instructions on Count Three incorporated this discussion of the elements of Count Four, and the only statute identified was N.Y. Penal Law § 130.55. (Tr.3049-50, 3056-57).

During deliberations, the jury sent the following note:

> Under Count Four, if the defendant aided in the transportation of Jane's return flight, but not the flight to New Mexico where/if the intent was for Jane to engage in sexual activity, can she be found guilty under the second element?

(Tr.3126). The note led to a lengthy discussion, at the conclusion of which Judge Nathan determined she should refer the jury back to the jury charge on the second element of Count Four because the jury note was otherwise "too difficult to parse factually and legally." (Tr.3126-40).

That night, Maxwell filed a letter seeking reconsideration of Judge Nathan's response and raising the possibility of a constructive amendment or prejudicial variance because, in her view, the note showed that

the jury might convict based on Jane's testimony that she was abused in New Mexico. (A.224-25). Maxwell asked Judge Nathan to instruct the jury as to the intent elements of Counts Two and Four, and add that "[a]n intent that Jane engage in sexual activity in any state other than New York cannot form the basis of these two elements of Counts Two and Four." (A.229).

Judge Nathan rejected Maxwell's request both because the jury did not inquire about Count Two and because the final sentence as "just wrong" in suggesting that an intent that Jane engage in sexual activity outside of New York "may have no relevance." (Tr.3149). As Judge Nathan explained, "This is the same discussion we've had a couple of times . . . . Sexual activity with respect to Jane in New Mexico under the age of 17 can be relevant to an intent to transport to New York to engage in sexual activity under the age of 17 . . . ." (Tr.3149-50). Judge Nathan repeated that she did "not know how to parse the jury's question exactly," but that her instruction directing the jury to the original charge included a reminder that "it's a violation of New York penal law that's charged and is the illegal sexual activity that they're considering." (Tr.3150). Judge Nathan also pointed out that Maxwell did not "seek to exclude" Jane's testimony about New Mexico, or "seek a limiting instruction with respect to that testimony." (Tr.3153). Judge Nathan added "I have no idea if that's what the jury is asking or many other plausible readings," noted that the defense had proposed an "incorrect" instruction, and concluded no more was required than sending the jury "back to the charge." (Tr.3154).

B. Applicable Law

"A constructive amendment occurs when the charge upon which the defendant is tried differs significantly from the charge upon which the grand jury voted." *United States v. Khalupsky*, 5 F.4th 279, 293 (2d Cir. 2021). "Not every alteration of an indictment, however, rises to the level of a constructive amendment." *United States v. Dove*, 884 F.3d 138, 146 (2d Cir. 2018). Instead, "[t]o prevail on a constructive amendment claim, a defendant must demonstrate that the terms of an indictment are in effect altered by the presentation of evidence and jury instructions which so modify *essential elements* of the offense that there is a substantial likelihood that the defendant may have been convicted of an offense other than that charged in the indictment." *United States v. D'Amelio*, 693 F.3d 412, 416 (2d Cir. 2012).

This Court has "consistently permitted significant flexibility in proof, provided that the defendant was given *notice* of the *core of criminality* to be proven at trial." *United States v. Lebedev*, 932 F.3d 40, 53 (2d Cir. 2019). The "core of criminality" is "the essence of a crime, in general terms," but not "the particulars of how a defendant effected the crime." *D'Amelio*, 693 F.3d at 418. There is no constructive amendment where the allegations in the indictment and the proof at trial both relate to a "single set of discrete facts," or form "part of a single course of conduct" with the same "ultimate purpose." *Id.* at 419-21.

"A variance occurs when the charging terms of the indictment are left unaltered, but the evidence offered at trial proves facts materially different from those

alleged in the indictment." *United States v. Banki*, 685 F.3d 99, 119 (2d Cir. 2012). Reversal due to a variance is appropriate only when the defendant can establish "that substantial prejudice occurred at trial as a result of the variance," a showing that cannot be made "where the pleading and the proof substantially correspond, where the variance is not of a character that could have misled the defendant at trial, and where the variance is not such as to deprive the accused of his right to be protected against another prosecution for the same offense." *Khalupsky*, 5 F.4th at 294. So long as a defendant receives notice of the Government's theory, the defendant cannot show prejudice. *See, e.g.*, *Banki*, 685 F.3d at 119.

This Court reviews claims of constructive amendment and prejudicial variance *de novo*. *Dove*, 884 F.3d at 146, 149.

C. Discussion

There is no likelihood—much less a substantial likelihood—that the jury convicted Maxwell solely because Jane was transported to New Mexico. At no point during the trial, including its summation, did the Government argue that the jury could convict on a theory that Maxwell intended Jane to be abused in New Mexico. Similarly, the District Court's charge required the jury to decide whether Maxwell intended to violate *New York* law. The trial contained no instructions describing for the jury any particular criminal statute in New Mexico, or any other basis by which a jury could convict based on conduct in New Mexico.

Maxwell's argument to the contrary rests entirely on her reading of the jury note. According to Maxwell, the note shows that the jury "decided that there was no corroborating evidence that Maxwell was present for, or helped to arrange, any of Jane's trips to New York, but that the flight logs did corroborate that Maxwell was present for Jane's trip to New Mexico." (Br.79). This reading, she claims, is buttressed by the fact that the jury acquitted on Count Two, which, in her telling, shows that the jury "determined that the only corroborating evidence linking Maxwell to the New Mexico trip was a flight log showing that she was present on the trip but said nothing about whether she 'persuaded, induced, enticed, or coerced' Jane to take the trip." (Br.79).

Judge Nathan correctly rejected this argument. Judge Nathan found that the original jury instructions and the Government's summation captured the core of criminality charged in the Indictment, focusing specifically on conduct directed at and sexual activity in New York. (A.382-85). Even if the note revealed that the jury were confused and wondered whether it could convict based on conduct in New Mexico, Judge Nathan's response ameliorated that confusion. As Judge Nathan explained, she sent the jury back to the instruction, which "accurately instructed that Count Four had to be predicated on finding a violation of New York Law." (A.387). That was sufficient. *See United States v. Rommy*, 506 F.3d 108, 126 (2d Cir. 2007) (court "enjoys considerable discretion" in "framing a response" to a jury note and "is only required to answer the particular inquiries posed"). As Judge Nathan explained, Maxwell failed to propose a better response,

requesting instead a series of instructions that were "unresponsive," "redundant," and "legally inaccurate." (A.388-89). *See Rommy*, 506 F.3d at 126 (court responding to jury note "is not required to reference specific arguments advanced or defenses raised by counsel in urging particular outcomes"). Judge Nathan's response to the jury note was sound and did not constructively amend the Indictment.

Maxwell's contrary view rests on extensive speculation about "which flights and evidence the jury was referencing in the note." (A.386). The trial included, among other evidence, testimony by Jane about "taking numerous flights both on Epstein's private plane and on commercial carriers." (A.386). Maxwell ignores that evidence, focusing on a specific trip referenced in the flight logs. (Br.78-79). Even if Maxwell correctly identified the flight at issue, it still betrayed no jury confusion. The origin of that trip was New York, and the jury's focus was on the "return flight"—which it could have inferred was a flight to New York, where Maxwell intended Jane to engage in sexual activity.

Her view also rests on adopting one specific reading of a note that, as Judge Nathan explained, was "decidedly ambiguous as to the precise legal question being asked" (A.386). *See Rommy*, 506 F.3d at 126 (district court "enjoys considerable discretion in construing the scope of a jury inquiry"). Maxwell herself initially understood the note to be about "aiding and abetting" liability, and whether sexual activity was a sufficiently "'significant or motivating purpose' for the travel." (A.387); *see United States v. Kim*, 471 F. App'x 82, 84 (2d Cir. 2012) (affirming jury instructions that

prostitution must be a "significant or motivating purpose" of the interstate transportation). Maxwell only came to the theory she now advances after a lengthy discussion spanning ten pages of the transcript. (A.387). And that reading is far from clear: the jury's question does not ask whether certain facts are sufficient for guilt; it asks whether Maxwell "can be found guilty" if a certain fact is true. Maxwell "can" be found guilty based in part on sexual activity occurring in New Mexico, which is probative of Maxwell's intent and role in transporting Jane. That is a perfectly sensible question for the jury to ask—indeed, it was repeatedly raised by defense counsel to Judge Nathan at trial. (*See, e.g.*, Tr.3149).

Setting aside the jury note, Maxwell's position requires the jury to have reached a series of odd conclusions. Jane testified at length about her travel to New York and the ensuing sexual abuse there. It would make little sense for the jury to reject that testimony, and then conclude that Maxwell arranged the unidentified commercial return flight Maxwell now emphasizes, for which there is no documentary evidence in the record, including no specific corroboration of Maxwell's role in arranging that flight. (*Compare* Br.79-80 ("[T]he jury likely believed that if they found Maxwell had some role in arranging Jane's return flight from New Mexico, after the sexual abuse had already taken place, they could convict her on the substantive transportation count . . . .") *with* Tr.3133 (defense argument that there is "no evidence" Maxwell arranged a return flight from New Mexico)). Maxwell suggests that the jury thought the flight records to be critical evidence, but the flight logs also demonstrate that Jane was

flown to New York on Epstein's private jet, corroborating her testimony on that point. (*See* Br.79 (citing GX-662-R at 44)). The same is true regarding Maxwell's comparison of Counts Two and Four: in Maxwell's view, the jury rejected nearly all of the evidence of Maxwell's enticement of Jane to New York for lack of corroboration, and then convicted her based on an unsupported speculative leap about arranging an unidentified return flight from New Mexico. That is not plausible, and it certainly is not a "substantially likely" conclusion that can be drawn from an inscrutable jury note.

For similar reasons, no variance occurred. As discussed above, the proof at trial corresponded to the allegations in the Indictment, namely, evidence and argument that Maxwell enticed and transported Jane to New York in order to facilitate sexual abuse there. Maxwell was also well aware that the Government's proof would include conduct in New Mexico. (*See* A.117, 121-22, 126). Maxwell therefore had "fair and adequate notice" that the conspiracies included conduct at Epstein's New Mexico home, which is all that is required. *United States v. Salmonese*, 352 F.3d 608, 622 (2d Cir. 2003). In any event, the Government produced on November 6, 2021—more than three weeks before trial—notes from an interview with Jane describing sexual abuse in New Mexico. That is sufficient. *See Lebedev*, 932 F.3d at 54 (rejecting a prejudice argument in part because "[t]he government disclosed the evidence and exhibits . . . four weeks prior to trial").

POINT V

The Sentence Was Procedurally Reasonable

A. Applicable Law

A district court commits procedural error if, among other things, it "makes a mistake in its Guidelines calculation" or "fails adequately to explain its chosen sentence." *United States v. Cavera*, 550 F.3d 180, 190 (2d Cir. 2008) (en banc). This Court reviews a district court's" application of the Guidelines *de novo*, while factual determinations underlying a district court's Guidelines calculation are reviewed for clear error." *United States v. Cramer*, 777 F.3d 597, 601 (2d Cir. 2015). In explaining the sentence, a district court must show that "it has considered the parties' arguments and that it has a reasoned basis for exercising its own legal decisionmaking authority." *Cavera*, 550 F.3d at 193.

B. Discussion

Maxwell argues that the District Court erred by applying a four-level leadership enhancement under § 3B1.1 of the Sentencing Guidelines. That enhancement applies when a defendant was an "organizer or leader of a criminal activity that was . . . otherwise extensive," which must include the defendant's leadership of at least one other criminal participant. U.S.S.G. § 3B1.1 & cmt. n.2. Maxwell contests only whether the evidence showed that she led another criminal participant. (Br.84-85).

On that point, Judge Nathan found that Maxwell led Sarah Kellen. Two witnesses, both pilots for Epstein, testified that Kellen was Maxwell's assistant. (A.417; *see* Tr.139-40, 1890). Judge Nathan found that testimony credible, in part because it was corroborated by other testimony that Maxwell was Epstein's "number two and the lady of the house" in Palm Beach where much of the abuse occurred and where Kellen worked. (A.417). The trial evidence showed that Kellen scheduled sexualized massages and took nude photographs of Carolyn. (PSR ¶ 66; Tr.1554-55). Even after Kellen took over some of Maxwell's duties, Maxwell continued to manage her by virtue of her position in the house, a fact corroborated by a household manual directing staff to tend to the specific needs of Epstein, Maxwell, and their guests, as well as flight records showing that Maxwell and Kellen flew together on Epstein's planes dozens of times. (A.417). The clear inference from this record is that Maxwell instructed Kellen regarding how to schedule massages and run the part of the scheme that Maxwell had previously handled, at which point Kellen switched to making calls to schedule appointments following Maxwell's directions. Maxwell argues that Judge Nathan erred because a defense witness testified that she, rather than Kellen, was Maxwell's assistant. (Br.85). That uncorroborated testimony is not enough to render Judge Nathan's finding clearly erroneous. Moreover, what matters is whether Maxwell exercised supervisory authority over Kellen, not whether Kellen or another individual was formally Maxwell's assistant.

Maxwell also argues that when imposing the 240-month sentence, which was above the Guidelines

range of 188 to 235 months' imprisonment, Judge Nathan "failed to provide reasons for its upward variance." (Br.84). Maxwell's one-sentence argument is so cursory and undeveloped that it should be deemed waived. *See United States v. Botti*, 711 F.3d 299, 313 (2d Cir. 2013) ("It is a settled appellate rule that issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived."). In any event, Judge Nathan engaged in a lengthy discussion of the sentencing factors when imposing sentence, including Maxwell's "pivotal role" in "heinous and predatory" sexual abuse of minor girls. (SA459). In describing the seriousness of the offense, Judge Nathan found Maxwell's crimes to be both "extensive" and far-reaching" and concluded that "the damage done to these young girls was incalculable," as a result of "the painful, horrific, and lasting impact of [the] trauma" they endured. (SA460). After an extensive discussion of Maxwell's horrifying crimes, Judge Nathan explained that this conduct "demands a substantial sentence that meets the scope of the conduct and the scope of the harm," and that the sentence must "send an unmistakable message" of general deterrence to "those who engage in and facilitate the sexual abuse and trafficking of underage victims" that "nobody is above the law." (SA461). Accordingly, Judge Nathan concluded that "a very serious, a very significant sentence is necessary to achieve the purposes of punishment" under 18 U.S.C. § 3553(a). (SA462). This discussion belies any claim that Judge Nathan inadequately explained the sentence.

CONCLUSION

The judgment of conviction should be affirmed.

Dated: New York, New York
June 29, 2023

Respectfully submitted,

DAMIAN WILLIAMS,
United States Attorney for the Southern District of New York, Attorney for the United States of America.

MAURENE COMEY,
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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 set by the Court in its order dated April 28, 2023. As measured by the word processing system used to prepare this brief, there are 19,291 words in this brief.

DAMIAN WILLIAMS,
United States Attorney for the Southern District of New York

By: WON S. SHIN,
Assistant United States Attorney

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ORAL ARGUMENT STATEMENT (Local Rule 34.1(a))

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Short Title of Case: United States v. Ghislaine Maxwell Docket No.: 22-1426

Name of Party: United States of America

Status of Party (e.g., appellant, cross-appellee, etc.): Appellee

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Name: Maurene Comey

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Filed by:

Print Name: Maurene Comey Date: June 30, 2023

Signature: /s/Maurene Comey

(Revised December 2011)

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ORAL ARGUMENT STATEMENT (Local Rule 34.1(a))

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Short Title of Case: United States v. Ghislaine Maxwell Docket No.: 22-1426

Name of Party: Ghislaine Maxwell

Status of Party (e.g., appellant, cross-appellee, etc.): Appellant

Check one of the three options below:

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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: Diana Fabi Samson

(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:

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Filed by:

Print Name: Diana Fabi Samson Date: 7/13/2023

Signature: /s/Diana Fabi Samson

(Revised December 2011)

22-1426-cr

United States Court of Appeals

for the

Second Circuit

UNITED STATES OF AMERICA,

Appellee,

– v. –

GHISLAINE MAXWELL, AKA Sealed Defendant 1,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF FOR DEFENDANT-APPELLANT

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PRELIMINARY STATEMENT IN REPLY

Ms. Maxwell relies on her arguments in her principal Appellant's Brief, Points II and IV, and supplements her arguments in Points I, III, and V herein.

Ms. Maxwell argues that she is a third-party beneficiary of the non-prosecution agreement (hereinafter, "NPA") and, as such, has standing to enforce the co-conspirator immunity provision which, by its terms, barred this prosecution. Alternatively, the District Court's reliance on *U.S. v. Annabi*, 771 F.2d 670 (2d Cir. 1985) to resolve perceived ambiguities was an error and the District Court should have ordered a hearing.

Ms. Maxwell further argues that the District Court's findings and conclusions concerning Juror 50 were an abuse of discretion in three respects: (1) Juror 50's explanations for his false answers to a juror questionnaire were incredible on their face; (2) Juror 50's concealed traumatic experience as a victim of childhood sexual abuse under circumstances analogous to the experiences of the Government witnesses, if known during *voir dire*, would have provided a valid basis for a challenge for cause; and (3) the Court abandoned its obligation to ascertain not merely the juror's credibility, but also the validity of a challenge for cause, when it unduly narrowed the scope of its examination of Juror 50 at the post-trial hearing.

Ms. Maxwell argues that the District Court's sentence was in error because (1) its four-point enhancement under USSG Section 3B1.1 lacked any support in the record that Ms. Maxwell supervised another criminal participant; and (2) its sentencing decision was predicated on a miscalculation of the applicable guideline range for incarceration and fines in the first instance and a subsequent failure to correct its error by either recalculating the sentence so as to comport with the proper guideline range or provide reasons for its upward departure. 18 U.S.C. Section 3553(c)(2).

The conviction must be reversed and the indictment dismissed or, in the alternative, the matter should be remanded for the appropriate hearings.

POINT I

(Point I in Appellant's Principal Brief)

MS. MAXWELL IS A THIRD-PARTY BENEFICIARY OF A NON-PROSECUTION AGREEMENT WHICH, BY ITS TERMS, BARRED THE USAO-SDNY FROM PROSECUTING MS. MAXWELL FOR THESE OFFENSES.

In this Circuit, while ordinarily any plea or non-prosecution agreement is confined to enforcement in the district of origin, under *U.S. v. Annabi*, *supra*., there is an exception wherein "it affirmatively appears that the agreement contemplates a broader restriction," as is the case here. *See Annabi* at 672. This exception dictates that the NPA be enforced to protect Ms. Maxwell as a third-party beneficiary to the agreement from prosecution for these offenses. *See U.S. v. Cambindo-Valencia*, 609

F.2d 603 (2nd Cir. 1979) (standing for the proposition that there can be a third-party beneficiary of a plea bargain of another). The NPA, together with the Justice Office of Professional Responsibility (hereinafter, "OPR"), establish that the immunity given Ms. Maxwell precluded the United States from prosecuting her in the Southern District of New York or elsewhere.

A. Ms. Maxwell has Standing to Enforce the Non-Prosecution Agreement as a Third-Party Beneficiary.

The District Court correctly found that Ms. Maxwell is a third-party beneficiary of the NPA, and, for that reason, has standing to enforce it.[1] As the Seventh Circuit has observed, plea agreements, like all "ordinary contracts," may be enforced by third parties "when the original parties intended the contract to directly benefit them as third parties." *U.S. v. Andreas*, 216 F.3d 645, 663 (7th Cir. 2000) (indicating that third-party beneficiary standing applies to "[i]mmunity agreements" and "plea bargains," but concluding on the facts presented, that defendants were not third-party beneficiaries). No circuit has held otherwise, and this Court should not create a split on this issue. The Seventh Circuit has been joined by numerous district courts in holding that an agreement promising immunity to a third party may be enforced by that party if that party is later prosecuted in breach of the agreement.

[1] In its brief, the Government fails to concede that the Court found that Maxwell was in fact a third-party beneficiary of the NPA.

See U.S. v. Stolt-Nielsen, 524 F.Supp.2d 609, 613-14, 620-23, 628 (E.D. Pa. 2007) (dismissing indictment against Stolt-Nielsen's "directors and/or officers," as they were "intended third-party beneficiaries of the [Conditional Leniency] Agreement" between the DOJ Antitrust Division and Stolt-Nielsen); *U.S. v. Florida West Int'l Airways, Inc.*, 853 F.Supp.2d 1209, 1228-32 (S.D. Fla. 2012) (dismissing indictment against employee of air cargo provider, as he had "third party beneficiary standing necessary to establish [his] immunity under the Plea Agreement" between the Government and his employer); *U.S. v. El-Sadig*, 133 F.Supp.2d 600 (N.D. Ohio 2001) ("[E]ven if the non-prosecution agreement was never directly communicated to Defendant El-Sadig, he can enforce the non-prosecution agreement as a third party beneficiary"); *U.S. v. CFW Const. Co., Imc.*, 583 F.Supp. 197 (D.S.C. 1984) ("[A]n intended third party beneficiary of a contract may enforce its provisions….Thus, if the Government, in negotiating the aforementioned plea agreements, 'promised' that there would be no prosecution against CFW…the promise must be enforced.").

This rule makes sense. "Plea agreements are interpreted in accordance with contract law principles," U.S. *v. Colon*, 220 F.3d 48, 51 (2d Cir. 2002) (citing *U.S. v. Altrom* 180 F.3d 372, 275 (2d Cir. 1999)), and it is hornbook contract law that an intended third-party beneficiary may enforce a contract. *See Subaru Distribs. Corp. v. Subaru of Am., Inc.*, 425 F.3d 119, 124 (2d Cir. 2005); *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 982 (11th Cir. 2005). There is no reason to treat plea or non-

prosecution agreements differently from other contracts. If anything, Second Circuit precedent strongly suggests that courts may depart from ordinary contract principles when construing plea agreements only when such departures cut *against* the Government. *See U.S. v. Riggi*, 649 F.3d 143 (2d Cir. 2011) ("[B]ecause plea agreements are unique contracts, we temper the application of ordinary contract principles with special due process concerns for fairness and the adequacy of procedural safeguards") (*quoting U.S. v. Woltmann*, 610 F.3d 37, 39-40 (2d Cir. 2010)); *In re Altro*, 180 F.3d 372, 375 (2d Cir. 1999) ("[P]lea agreements are unique contracts…[W]e hold the Government 'to the most meticulous standards of both promise and performance.'") (original ellipses omitted) (*quoting U.S. v. Lawlor*, 168 F.3d 633, 636 (2d Cir. 1999)). It would turn this doctrine on its head to deviate from ordinary contract principles in a manner that benefits the Government.

To the extent the Government argues that Ms. Maxwell is not a third-party beneficiary because the NPA did not mention her by name (Br. 18)[2], that argument should be rejected. As this Court has held, "an intention to benefit a third party may be gleaned from the contract as a whole and the party need not be named specifically as a beneficiary." *Owens*, 601 F.2d at 1250 (citing *Newin Corp. v. Hartford Accident*

[2] "Br." refers to the Government's brief; "A" refers to the appendix filed with Ms. Maxwell's brief; "SA" refers to the supplemental appendix filed with the Government's brief; and "Dkt" refers to an entry on the District Court's Docket for this case.

& Indemn. Co., 37 N.Y.2d 211, 219 (N.Y. 1975). And, as the court stated in *Florida West*, a plea agreement is enforceable by a third party as long as the "[a]greement evince[s] an intent to extend [immunity] to a definable class of third parties" and the third party seeking enforcement "fall[s] within this category of beneficiaries." 853 F.Supp.2d at 1228-29; *see id.* at 1214 (defendant, as a third-party beneficiary, could enforce a plea agreement between the Government and an air cargo company, which immunized unnamed "employees" of the company's subsidiaries); *see also Stolt-Nielsen*, 524 F.Supp.2d at 613, 620 (defendants, as third-party beneficiaries, could enforce an agreement between the Government and Stolt-Nielsen, which promised leniency to unnamed directors, officers, and employees).

Here, the NPA grants immunity to "any potential co-conspirators of Epstein, including but not limited to [four named individuals]." A178. As the District Court recognized, this is a definable class that includes Ms. Maxwell. A144[3] ("[T]he co-conspirator provision…cover[s] any involvement of Maxwell in offenses committed by Epstein from 2001 to 2007, other offenses that were the subject of the FBI and

[3] To the extent that the Government suggests that Ms. Maxwell is not a co-conspirator within the meaning of the NPA, the trial evidence demonstrated, according to the Government's main brief, that she was a member of the conspiracies charged in the indictment from 1994- 2004 in the SDNY and elsewhere. Moreover, there was significant overlap between the investigation in Florida and the trial. Specifically, investigators in Florida had interviewed Carolyn (SA86, SA72fn.72; SA193fn.241), Virginia Roberts (SA173fn.217, SA193fn.240, fn.241), and Annie Farmer (SA193fn.239).

U.S. Attorney's Office investigation, and any offenses that arose from the related grand jury investigation."); *cf. Florida West*, 853 F.Supp.2d at 1228-29.

B. The Co-Conspirators Provision of the Non-Prosecution Agreement Binds the USAO-SDNY and *Annabi* is not to the Contrary.

Embedded within *Annabi's* canon of construction that prosecutors in one district cannot bind prosecutors in another district, is a requirement that there must be a complete absence of language expressing a broader intention. Thus, if "it affirmatively appears that the agreement contemplates a broader restriction," *Annabi's* restrictive rule does not apply. *U.S. v. Russo*, 801 F.2d 624, 626 (2d Cir. 1986).

The language expressing a broader intention can be found in the NPA, which (1) explicitly states that "the United States also agrees that it will not institute any criminal charges against any potential co-conspirators of Epstein" (A178), (2) contains a structural separation of this clause from the more restrictive language used elsewhere, and (3) utilizes the expressed language that Epstein intended a "global" agreement. Obviously, an intent to limit the immunity afforded the co-conspirators easily could have been made explicit by the incorporation of limiting language. No such language was utilized and was, in fact, removed from the co-conspirator clause.

A promise to bind other districts can be inferred from negotiations between a defendant and a prosecutor. See *United States v. Alessi*, 554 F2d 1139,1153-4 (2d

Cir 1976). The OPR[4] (SA1-348) contains just such evidence of the negotiations between the Government and Epstein's counsel which, in corroborating an intent on the part of the parties to draft a co-conspirator clause that provided broader immunity, accords with the plain meaning of the NPA. This is so, notwithstanding that the OPR relies almost exclusively on the distant recollection of government employees whose judgment and professionalism were being questioned with little to no input from Epstein's attorneys as to who or what they intended or understood the co-conspirator clause of the NPA to cover. *See* SA166.

The Government questions why Epstein would have sought a broader grant of immunity for co-conspirators than for himself. Br.21. But the answer is provided in the OPR. The line prosecutor remembered that defense counsel told her that "Epstein wanted to make sure that he's the only one who takes the blame for what happened." SA193. Indeed, the Government believed that Epstein's conduct was his own "dirty little secret" and did not have any specific evidence against Ms. Maxwell even though they had interviewed Carolyn, the complainant in Count Six, and Annie Farmer, two of the four women who testified at trial (SA193), and had also

[4] The Department of Justice Office of Professional Responsibility investigated and issued a report on the NPA (SA1-348) on issues tangential to the instant appeal, but it provides a skeletal outline of the United States' negotiation with a multitude of Epstein's counsel. In particular, the investigation was focused on "whether any of the [Government actors were] influenced by corruption, bias, or other improper motive…to include terms in the NPA that were favorable to Epstein." SA166.

interviewed Virginia Roberts, who the Government elected not to call as a witness. And, of course, a broader immunity deal for co-conspirators accomplished what Epstein may not have been able to obtain more directly, namely co-conspirator immunity that would have insulated Epstein from criminal prosecutions elsewhere, where co-conspirators might otherwise have been forced to testify against him in return for leniency.

There is no question that the NPA did not contain standard federal plea agreement language. SA103 fn.120. The co-conspirator clause was, in the words of the Government, "unusual," even "very unusual" and "pretty weird." SA194, SA212 fn.258. Not surprisingly, the first iteration of this clause was proposed by the defense. SA95. It "preclude[d] the initiation of any and all criminal charges which might otherwise in the future be brought against [four named female assistants] or any employee of [a specific Epstein corporate entity] for any criminal charge that arises out of the ongoing federal investigation."[5] *Id.* This demonstrates that, from the beginning, the defense sought immunity for third parties beyond the SDFL. The Government responded with a draft proposal that resolved the federal criminal liability of any co-conspirators in the Southern District of Florida growing out of any criminal conduct by those persons known to the USAO as of the date of the

[5] Notably, even in this iteration, Ms. Maxwell would have been protected as she was Epstein's employee.

agreement. SA100, SA105 fn.122. However, that language, limiting co-conspirator immunity to the Southern District of Florida, was removed from the final signed NPA. SA166-167fn.237, fn.239, & fn.240. The intentional excision of this limiting language from the draft version of the co-conspirator clause establishes that that limitation was not intended to apply to the co-conspirator clause. Indeed, it is difficult to imagine any clearer evidence than the purposeful removal of that limiting language, especially as it is replaced by the term "United States." And to punctuate this point, the U.S. Attorney himself as part of a final review and edit of the NPA, instructed the line prosecutor to restore the reference to Epstein's desire to reach a global agreement of his State and Federal criminal liabilities. SA110.

The Government denies that Main Justice was involved in the plea negotiations. Br. 22. But the OPR demonstrates that Andrew C. Lourie, Deputy Assistant Attorney General for the Department's Criminal Division and Chief of Staff to Assistant Attorney General Alice Fisher, was actively participating in a critical phase of plea negotiations in September "from his new post at the Department in Washington, DC." SA101. After his transfer, he continued to be consulted on the negotiations and apprised of their status. He repeatedly rendered opinions, trying to close the deal involving a plea agreement and the NPA (SA106, 110). On September 24, 2007, Lourie, now stationed in Washington D.C. at Main

Justice, sent additional comments on the NPA 's final draft. SA110. That afternoon, the final version was circulated and signed.

C. The Court's Failure to Hold a Hearing on the Scope of the Non-Prosecution Agreement is an Error.

What is significant with regard to this issue is the lack of a sufficient record. Given that the District Court ignored the plain language of the co-conspirator clause together with the corroborating evidence from the OPR that establishes that that language was changed to remove rather than add words of limitation, the District Court's decision to apply *Annabi's* rule of construction without a hearing was an error. This is especially so because the OPR was lacking in relevant information from defense counsel as to their understanding of the agreement and, in the absence of such information, the District Court was obligated to resolve any ambiguities in favor of Ms. Maxwell.

The Government argues that, based upon *Annabi*, there is no need for a hearing. But, in fact, courts in this Circuit have routinely recognized the need for evidentiary hearings where the scope of an agreement is in dispute. The failure to hold a hearing precluded Ms. Maxwell from offering evidence as to the intent and understanding of defense counsel; as a result, the Court did not construe the NPA against the Government, as the law requires, but against Ms. Maxwell. *See United States v. Difeaux*, 163 F.3d 725, 728 (2d Cir. 1998). A reviewing court must read the

NPA's ambiguous provisions against the Government, which drafted the agreement and enjoys unequal bargaining power in the sentencing process. *See United States v. Aleman*, 286 F.3d 86, 89 (2d Cir. 2002); *United States v. Ready*, 82 F.3d 551, 558-59 (2d Cir. 1996); *See also Difeaux* at 728. In this instance, the District Court accepted the facts proffered by the U.S. Attorney's Office of the Southern District of New York and relied on *Annabi* to preclude any further inquiry, thereby eviscerating the exception in *U.S. v Russo, supra.*

Epstein performed under the NPA in response to the promise of the United States. The Government, having received the totality of the benefit of the bargained elements in the NPA, should be held to its terms. There is no remedy other than enforcement of the NPA according to its terms or, should the Court determine that such terms are ambiguous, the holding of a hearing. Should the hearing establish that Epstein understood the co-conspirator clause to be global, while the Government deemed its reach a mistake or the subject of regret, Epstein, now dead, cannot undo it. The Government, having removed limiting language in the NPA, cannot restrict the NPA in retrospect, as it had convinced the District Court.

POINT II

(Point IV in Appellant's Principal Brief)

THE DISTRICT COURT ERRED IN CREDITING A JUROR'S PATENTLY DISHONEST TESTIMONY OFFERED TO EXPLAIN FALSE ANSWERS TO MATERIAL QUESTIONS IN VOIR DIRE AND FURTHER ERRED IN CONCLUDING THAT HONEST ANSWERS TO THOSE SAME QUESTIONS WOULD HAVE NOT PROVIDED A VALID BASIS TO REMOVE THE JUROR FOR CAUSE.

Juror honesty is the bedrock of the criminal jury system. *McDonough Power Equipment v. Greenwood,* 464 U.S. 548 (1984). *Voir dire* examination serves to protect the right to a trial by an impartial jury. It is designed to expose biases both known and unknown. The trial judge has broad flexibility in responding to allegations of juror misconduct, particularly when the incidents relate to statements made by the jurors themselves, rather than to outside influences, and do not violate the sanctity of jury deliberations. *See* FRE 606(b)(1).

"A juror's dishonesty during *voir dire* undermines a defendant's right to a fair trial." *United States v. Daugerdas,* 867 F. Supp. 2d 445, 468 (S.D.N. Y. 2012) (*citing Clark v. United States,* 289 U.S. 1, 11(1933), vacated on other grounds sub nom. *United States v. Parse,* 789 F.3d 83 (2d Cir. 2015).

A. Juror 50 Concealed Material Information in *Voir Dire* by Giving False Answers on a Juror Questionnaire and Then Lied About it to the Court in a Post-Verdict Hearing.

Juror 50 was given a questionnaire to execute under oath. It contained a statement of the case, calling attention to the subject of sex trafficking of minors on

the fourth page of the document. It posed its questions in the form of "Have you or [anyone else]?" The juror gave the Court and counsel sworn false answers on his questionnaire relating to the most sensitive issues in the case. *U.S. v Langford,* 990 F.2d 65, 68 (2d Cir. 1993).

The court held a hearing narrowly confined to an inquiry about the juror's false answers on the questionnaire. A326. The juror, through counsel, invoked his Fifth Amendment privilege and was granted immunity by the Government to the extent he testified truthfully. Ironically, he testified that his false statements on the jury questionnaire were inadvertent. Hence, there was no reasonable basis upon which to invoke his Fifth Amendment privilege as he was not admitting to having made intentionally false statements, and his exposure to a perjury charge existed without an immunity deal. This immunity deal was a Potemkin village, providing only the veneer of credibility. The court repeatedly noted that the immunity deal provided Juror 50 "a strong incentive to testify truthfully" (A333, A336, A340), when in fact it provided only a strong incentive to offer testimony that would satisfy the Government's interest in preserving the verdict.

There can be no dispute that Juror 50's testimony established conclusively that he falsely answered three separate questions on the jury questionnaire – Questions 25, 48 and 49. A299, A310, A311. It is no coincidence that Juror 50 gave false answers to these questions and only these questions. These were the questions

that, had he answered truthfully, would have revealed his prior sexual abuse. Juror 50 testified that he inadvertently answered incorrectly all, and only, the questions that would have elicited information about his child sexual abuse.[6] In response to the Court's inquiry as to whether he could have been fair and impartial, he replied by rote in the affirmative. His answers and explanations were incredible, ever shifting, and even outright contradictory. He attributed his false answers to having simply misread questions because he was tired and distracted, but then claimed that one answer was predicated on his view that a stepbrother was not a family member, and another, on his view that he did not consider that his sexual assault made him a victim of a crime (A268) – an explanation that made sense only if he had actually read and understood the questions in the first instance.

Juror 50's testimony was incredible as a matter of law, but the Court found that the juror's false statements were an "inadvertent mistake." A340, 347. The Court refused to inquire as to the juror's post-trial activity that included multiple media interviews about the part his own experience as a victim of sexual abuse played in his role as a juror on this case. Nor would the Court inquire about Juror 50's statements concerning a second juror's undisclosed sexual abuse. Dkt. 613 at

[6] None of the 18 individuals selected for service as a deliberating or alternate juror answered "yes" when asked if they were a victim of sexual abuse, sexual assault, or sexual harassment. DKT. 613.

p28. Juror 50's pretrial selective false answers only to questions that would have elicited his child sexual abuse, his post-verdict activity, and his patently false and contradictory explanations in the post-verdict hearing should have disqualified him for service as a juror in this case.

B. Had Juror 50 Disclosed in *Voir Dire* his Traumatic Experience as a Victim of Child Sex Abuse, the Information Would Have Established a Valid Basis for a Cause Challenge

At the hearing, Juror 50 disclosed the facts of his sexual abuse, which significantly paralleled the abuse described by the Government's four key victim witnesses at trial. Like the four accusers, Juror 50 (i) was sexually abused as a minor; (ii) was abused on multiple occasions over the course of several years; and (iii) delayed reporting the abuse. A267-268. Like the four accusers, Juror 50 was abused by two people who were friends and who each had participated in the abuse. A267. Furthermore, Juror 50 was not abused by a stranger or sexually assaulted by someone he did not know. Like the four accusers, he was sexually abused by someone familiar to him, namely his stepbrother. These similarities are significant and contrast sharply with other jurors who answered "Yes" to Question 48 and were not struck for cause, but who disclosed incidents that were not directly analogous to the facts presented at trial. In this situation, where Juror 50 experienced the same traumatic childhood sexual abuse that the trial victims had experienced, with many of the same surrounding circumstances, he was not capable of setting his experiences aside and

impartially deciding the case solely on the evidence at trial. *See Daugerdas*, 867 F. Supp. 2d at 472 ("Courts imply bias 'when there are similarities between the personal experiences of the juror and the issues being litigated.'" (*quoting United States v. Sampson*, 820 F. Supp. 2d 151, 163-64 (D. Mass. 2011)); *Sampson* v. *U.S.* 724 F.3d 150, 167 (1st Cir 2013) ("It would be natural for a juror who had been the victim of [the same crime] to harbor bias against a defendant accused of such a crime."). Had this information come to light during *voir dire*, Juror 50 would have been struck for cause. *Sampson*, 724 F.3d at 167 (affirming grant of new trial when juror in a gunpoint bank robbery case did not disclose that she had been threatened by her husband with a gun); *State v. Ashfar*, 196 A.3d 93, 94-97 (N.H. 2018) (affirming grant of new trial when juror in child sexual assault case did not disclose that he was sexually assaulted by a babysitter when he was five or six years old); *U.S. v. Torres*, 128 F.3d 38, 47-48 (2d Cir. 1997*)* (affirming for cause strike of juror in a structuring case who did not disclose she had engaged in similar structuring activity herself); *Burton v. Johnson*, 948 F.2d 1150 1159 (10th Cir. 1991) (affirming grant of new trial when juror in murder case involving domestic violence did not disclose she was living in similarly abusive circumstances at the time of trial).

Inexplicably, the Court held that, based on the answers of the juror at the hearing, he would not have been excused for cause, even if he had disclosed his childhood abuse during *voir dire*. The Court's determination that it would not have

granted a challenge for cause of the juror had he given truthful answers, is an abuse of discretion. Demonstrated bias in the responses to questions in *voir dire* may result in a juror being excused for cause. The necessity of truthful answers by prospective jurors is obvious, if this process is to serve its purpose. The failure to provide truthful answers is itself a proper challenge for cause.

After the hearing, the court held that the juror was entitled to use his "life experiences" in deliberations, even though the life experiences mirrored testimony at trial and were particular to the charges against Maxwell. But "[w]hen a juror has life experiences that correspond with evidence presented during trial, that congruence raises obvious concerns about the juror's possible [implied or inferred] bias." *U.S. v. Torres*, 128 F.3d at 47-48; *see Burton v. Johnso*n, 948 F.2d 1150, 1158-59 (10th Cir. 1991). That bias went unexplored at the hearing resulting in the failure of the Court to take proper steps to screen the juror for bias after the verdict.

A conviction will only be reversed if the District Court abused its discretion by incorporating an error of law, or resting its decision on a clearly erroneous factual finding. Here, both the Court's finding that Juror 50 was credible (a clearly erroneous factual finding), and its ruling that Juror 50's truthful answers during *voir dire* would not have established a valid basis for cause (an error of law), meet that standard for abuse of discretion.

C. The District Court Abused Its Discretion in Imposing Unreasonable Limitations on the Range of Questions it Agreed to Pose to Juror 50 at the Post-Verdict Hearing.

The Court's decision to narrow the scope of the hearing to questions relating only to the juror's false responses to the juror questionnaire, was an abuse of discretion because it deprived Ms. Maxwell of a full and fair opportunity to establish Juror 50's bias. For example, the court refused to ask Juror 50 why he disclosed to the jury that he was a victim of sexual assault. According to Juror 50, coming to a unanimous verdict "wasn't easy, to be honest." In fact, several jurors doubted the credibility of Jane and Carolyn. "When I shared that [I had been sexually abused]," recounted Juror 50, the jurors who had doubts "were able to sort of come around on, they were able to come around on the memory aspect of the sexual abuse." Dkt 613 at 14.

The standard of review applies to questions that the court decides to ask or to not ask a juror. This Court recently emphasized that a court's discretion is not boundless in this regard. *See U.S. v Nieves*, 58 F.4th 623, 626 (2d Cir. 2023). The discretion must be exercised consistent with 'the essential demands of fairness.'" *United States v. Barnes*, 604 F.2d 121, 137-38 (2d Cir. 1979) (footnote omitted), *quoting Aldridge v. United States*, 283 U.S. 308, 310 (1931); *see also United States v. Bright*, 2022 WL 53621, at *1 (2d Cir. Jan. 6, 2022) (summary order).

"[T]he defense deserves 'a full and fair opportunity to expose bias or prejudice on the part of veniremen.'" *United States v. Colombo,* 869 F2d 149, 151 (2d Cir. 1989) *quoting Barnes* 604 F2d at 139. *Nieves* at 632. *Nieves* stands for the proposition that there must be sufficient fact finding to allow for facts probative of the three forms of bias to reveal themselves. Otherwise, a violation of fundamental fairness arises if the *voir dire* is not adequate to identify unqualified jurors. Here, the inquiry by the Court at the post-verdict hearing failed to provide a full and fair opportunity to expose bias. While it need not give the defense lawyers the opportunity to question the juror, it must fulfill its constitutional duty to eliciting sufficient information to allow a determination of whether a challenge to the juror for cause should be made.

U.S. v. Greer, 285 F.3d 158, (2d Cir. 2002) set out the types of bias that produce proper cause challenges. Cause challenges are generally based on one of three species of bias: (1) actual bias, or "bias in fact"; (2) implied bias, or bias that is "presumed as a matter of law" where a typical person in the juror's position would be biased, irrespective of whether actual bias exists; and (3) inferable bias, which arises "when a juror discloses a fact that bespeaks a risk of partiality sufficiently significant to warrant granting the trial judge discretion to excuse the juror for cause, but not so great as to make mandatory a presumption of bias." 285 F.3d at 171-172.

All three forms of bias must be "grounded in facts developed at *voir dire*." *Torres*, 128 F.3d at 47.

The bias implied by the juror's false answers went unexplored. *Nieves* turned on the court's failure to explore juror bias related to gangs – a prejudice analogous to the systematic or pervasive bias in the community against accused sex traffickers and those who consort with them. Maxwell, tied to Epstein by media coverage, went to trial against a constant drumbeat of news and allegations concerning child molesters and sex trafficking. Far more pervasive than fear of gang violence was fear and revulsion as to child sex abuse and trafficking of which Epstein, and then Maxwell became the poster child. In the hearing, and despite defense suggested questions, the Court refused to explore Juror 50's child sexual abuse for bias.

To assess a challenge for cause as to this seated juror after trial the court should use the same standards for cause challenges at trial. To do otherwise would appear to shield the verdict rather than the defendant from improper juror bias. As in *Nieves*, the juror's omitted information related to a "material issue" that was at trial "the cornerstone of the government's theory." There was a strong likelihood that the material issue would skew deliberations considering the strong feelings that sex trafficking of minors engenders. *See Nieves*; see also *Barnes*, 604 F.2d at 137-139. The court deprived Maxwell unfairly of the opportunity post-trial to unearth a pervasive bias relevant to the issue pivotal to the case against her.

D. Juror 50's Actual, Implied, and Inferable Bias Was Established.

Maxwell does not seek a *per se* rule of exclusion of victims of child abuse in sex trafficking cases, although admittedly, it would be difficult to imagine how such a traumatic experience could fail to give rise to inferable bias. Certain life experiences create permanent biases. Nevertheless, it is this juror in this situation that the law would properly "cautiously incapacitate" because persons in such a situation would naturally feel prejudice. In his post-verdict interviews, Juror 50 admitted as much when he described how he identified with the Government witnesses through the lens of his own experience of child sexual abuse; convinced other jurors to credit the testimony of Government witnesses and discredit defense witnesses precisely because of his unique insight about memory for child sexual assault; and bonded so profoundly with the Government witnesses that he felt compelled to contact one after trial and to give interviews about his own experience. Suffice to say, this was not an example of an impartial juror using his "life experiences" in the performance of his civic duty, contrary to the Court's view. A352.

Juror 50 had no such relationships to the parties, counsel, or the very crime itself. But his omissions during *voir dire* presented the sort of "extreme situation" that would qualify for presumptive bias. *Torres* at 46. The average person, victimized by sexual abuse, would be biased when he speaks about his healing

process, his trauma and his need for therapy to "deal with the stress of the [Maxwell] case. A353-354.

In determining whether a juror should be excluded on the grounds of implied bias, a juror's statements in *voir dire* are completely irrelevant. The juror may declare that he feels no prejudice in the case. But the law cautiously incapacitates him from serving on the jury because, in general, persons in a similar situation would feel prejudice. *U.S. v Burr*, 25 Fed Cas. 49,50 (C.C. Va. 1807). It is called the average person test. *See U.S. v Haynes*, 398 F2d 980, 984 (2d Cir 1968); *Dennis v U.S.* 339 U.S. 162,176 (1950). Juror 50 fails that test.

Smith v. Phillips, 455 U.S. 209, 222 (1982) (O'Connor, J., concurring)), led this Court to caution that "automatically presumed bias deals mainly with jurors who are related to the parties or who were victims of the alleged crime itself." *Id.* (*quoting Torres*, 128 F.3d at 45). But this limited set of examples is not exclusive. And while sex abuse victims who timely disclose their victimization may not be presumed biased, jurors who do not disclose their victimization, thereby depriving the court and counsel of vital information as to challenges for cause or peremptory challenges create the extreme situation warned about by Justice O'Connor and the *Torres* court. See also *Nieves*.

This Court has also recognized a third form of partiality, known as inferable bias, applicable in "a few circumstances that involve no showing of actual bias, and that fall outside of the implied bias category, where a Court may, nevertheless, properly decide to excuse a juror." *Torres*, 128 F.3d at 46-47, *Daugerdas*, 867 F. Supp. 2d at 475.

Bias may be inferred when a juror discloses a fact that bespeaks a risk of partiality sufficiently significant to warrant granting the trial judge discretion to excuse the juror for cause, but not so great as to make a presumption of bias mandatory. *Torres* at 43, 47. In *Torres*, the Second Circuit declined to "consider the precise scope of a trial judge's discretion to infer bias." *Id.* The circumstances herein present a scenario in which bias is inferred from the non-disclosure of critical potentially disqualifying information at the time of *voir dire* because the risk of partiality is sufficiently significant to excuse a juror for cause based on non-disclosure. "Because [in such cases] the bias of a juror will rarely be admitted by the juror himself, partly because the juror may have an interest in concealing his own bias or partly because the juror may be unaware of it, [partiality] necessarily must be inferred from surrounding facts and circumstances." *McDonough*, 464 U.S. at 558 (Brennan, J., concurring).

Juror 50 claims not to have connected his history with the charges in the case despite the description in the questionnaire. The implausibility of the explanation

that he did not see that key questions related to sex abuse and his belief that they only applied to others and not to him beggars belief since the process was to determine if he was to be a qualified juror. The court, in accepting his answers, was credulous, willing to trust the juror's answers almost uncritically.

The Court also ignored existing authority for the proposition that a new trial may still be ordered, separate from the *McDonough* prongs if the defendant can show bias. *See, e.g., Jones v. Cooper*, 311 F.3d 306, 310 (4th Cir. 2002) A showing that a juror was actually biased, regardless of whether the juror was truthful or deceitful, can also entitle a defendant to a new trial."); *Skaggs v. Otis Elevator Co*., 164 F.3d 511, 516 (10th Cir. 1998) ("The advent of the [*McDonough*] test did not eliminate a litigant's broader historic right to prove actual or implied juror bias."). In *McDonough* itself, Justices Blackmun, Stevens, and O'Connor concurred separately "to clarify that juror partiality could still be proven by showing actual or implied bias." *McDonough*, 464 U.S. at 556.

While the *McDonough* Court highlighted the importance of the *voir dire* process as a guard against juror bias, it also noted that no trial is perfect, and that counsel has a responsibility to obtain relevant information from prospective jurors. 464 U.S. at 554-55. While the court unfairly limited the inquiry into Juror 50's bias, the record, nevertheless, amply demonstrates that Juror 50 gave intentionally false statements under oath in his juror questionnaire to conceal that he had experienced

childhood sexual abuse identical to that experienced by the victims in the case and lied to conceal his misconduct at the hearing. The Court abused its discretion in not granting Ms. Maxwell a new trial.

POINT III

(Point V in Appellant's Principal Brief)

THE DISTRICT COURT ERRED IN SENTENCING MS. MAXWELL

The Government defends the Court's decision to apply a four-level leadership enhancement under Section 3B1.1 of the Sentencing Guidelines. However, the trial evidence did not support a finding that Ms. Maxwell was an "organizer or leader of a criminal activity that was…otherwise extensive," because there was no evidence that she supervised another criminal participant. Specifically, the court's finding that Ms. Maxwell supervised Sarah Kellen, who the Government claimed was a criminal participant but chose not to indict, is unsupported by the record. *See* Br. 77. This error coupled with the Court's failure to provide reasons for its upward variance as required by 18 U.S.C. Section 3553(c)(2), requires that Ms. Maxwell be resentenced.

To qualify for an adjustment under this section, the defendant must have been the organizer, leader, manager, or supervisor of one or more other participants. See USSG Section 3B1.1, cmt. n.2. The Government at sentencing correctly conceded that there was no direct evidence that Maxwell supervised Kellen. A406. The two pilots did not know who Kellen worked for and waffled in their testimony. Tr. 204,

1892. But Kimberly Espinoza did. *Id.* In fact, according to Espinoza, by the time Kellen began working for Epstein in 2001-2002, Ms. Maxwell and Epstein "went their separate ways" (Tr. 2370) and Kellen sat in the office where Ms. Maxwell used to sit and managed Epstein's properties. Tr. 2337, 2370-71, 2375-6, 2382. Carolyn corroborates this fact when she testified that there was a clean break in time between when she dealt with Maxwell and when she dealt with Kellen. Tr. 1527. There is, quite simply, not a single witness that testified that Ms. Maxwell supervised Kellen in any capacity, much less in connection with anything of a criminal nature. Nor does the existence of an earlier version of the 2005 household manual, attested to by Juan Alessi (Tr. 808) or flight records support a finding that Ms. Maxwell supervised Sarah Kellen as a criminal participant. This is the thin gruel upon which the court based its finding (see A417) and it is simply not sufficient to support the enhancement even by a preponderance of the evidence.

CONCLUSION

For the reasons stated here and in Points I and II of Ms. Maxwell's Principal Brief, the Convictions should be reversed, and the Indictment, or a portion thereof, be dismissed and a new trial ordered on any remaining counts. Alternatively, for the reasons stated in Point I, the matter should be remanded to the District Court for a hearing. For the reasons stated in Points III (Point II herein) and IV of Ms. Maxwell's Principal Brief, the Convictions should be reversed, and the matter remanded for a

new trial. Alternatively, for the reasons stated in Point III of Ms. Maxwell's Principal Brief (Point II herein), the matter should be remanded to the District Court for a hearing. For the reasons stated in Point V of Ms. Maxwell's Principal Brief (Point III herein), the matter should be remanded to the District Court for resentencing.

Dated: New York, New York
July 27, 2023

Respectfully Submitted,

/s/Diana Fabi Samson

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CERTIFICATE OF COMPLIANCE

1. I certify that this document complies with Fed. R. App. P. Rule 32(a)(7) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 6,723 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using the Microsoft Word Office 365 word processing program in 14-point Times New Roman type.

Dated: New York, New York
July 27, 2023

Respectfully Submitted,

/s/Diana Fabi Samson

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Thurgood Marshall U.S. Courthouse
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DEBRA ANN LIVINGSTON
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: December 11, 2023
Docket #: 22-1426cr
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 212-857-8628.

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: February 06, 2024
Docket #: 22-1426cr
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 HEARING DATE

Argument Date/Time: Tuesday, March 12, 2024 at 10:00am
Location: Thurgood Marshall U.S. Courthouse, 40 Foley Square, New York, NY, 10007, 17th Floor, Room 1703

Time Allotment: 10 minutes per side

Counsel and non-incarcerated pro se litigants presenting oral argument must register with the courtroom deputy 30 minutes before argument.

The Court prefers to hold argument in person. However, argument may be held by Zoom, teleconference, or a combination of in-person and remote arguments, depending upon then current pandemic-related considerations. A party who has demonstrated good cause by motion and judges may participate remotely. If an argument is remote, the parties will receive instructions to access Zoom or the teleconference.

Individuals who arrive at the courthouse for argument must meet the health screening requirements and entrance protocols specified at the entrance to the building and should check the Court's website under Announcements for up to date information.

A motion or stipulation to withdraw with or without prejudice must be filed no later than 3 business days prior to the scheduled date of argument. The Court will consider the motion or stipulation at the time of argument, and counsel's appearance is required with counsel prepared to argue the merits of the case. If a stipulation to withdraw with prejudice is based on a final settlement of the case, the fully-executed settlement must be reported immediately to the Calendar Team, and a copy of it must be attached to the stipulation.

Inquiries regarding this case may be directed to 212-857-8595.

See page 2 for additional information.

Counsel must file the completed form in accordance with Local Rule 25.1 or 25.2. Pro Se parties must submit the form in paper.

Name of the Attorney/Pro Se presenting argument:
Firm Name (if applicable):
Current Telephone Number:

The above named attorney represents:
( ) Appellant/Petitioner ( ) Appellee-Respondent ( ) Intervenor

Date: _____ Signature: _____

NOTICE TO THE BAR

Recording of Argument. An audio recording of oral argument is available on the Court's website. In addition, a CD of an argument may be purchased for $34 per CD by written request to the Clerk. The request should include the case name, the docket number and the date or oral argument. CDs will be delivered by first class mail unless the request instructs to hold for pick-up or requests Federal Express Service, in which case a Federal Express account number and envelope must be provided.

Court Reporters. Parties may arrange - at their own expense - for an official court reporter to transcribe argument from a copy of the hearing tape or to attend and transcribe the hearing directly. A party must first obtain written consent from opposing counsel - or move the Court for permission - to have the court reporter attend and transcribe the hearing and must provide the calendar clerk written notice, including the name, address and telephone number of the attending reporter and, if applicable, the reporting firm at least one week prior to the hearing date.

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Rev. 10/2023

NOTICE OF APPEARANCE FOR SUBSTITUTE, ADDITIONAL, OR AMICUS COUNSEL

Short Title: United States v. Maxwell Docket No.: 22-1426

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

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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: Danielle Sassoon/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 12/03/2019 OR

☐ I applied for admission on .

Signature of Counsel: /s/ Andrew Rohrbach

Type or Print Name: Andrew Rohrbach

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: February 06, 2024
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DC Judge: Nathan

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See page 2 for additional information.

Counsel must file the completed form in accordance with Local Rule 25.1 or 25.2. Pro Se parties must submit the form in paper.

Name of the Attorney/Pro Se presenting argument: Andrew Rohrbach
Firm Name (if applicable): U.S. Attorney's Office - SDNY
Current Telephone Number: 212-637-1944

The above named attorney represents:
( ) Appellant/Petitioner (X) Appellee-Respondent ( ) Intervenor

Date: 2/22/2024 Signature: Andrew A. Rohrbach

NOTICE TO THE BAR

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Rev. 10/2023

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

Date: February 06, 2024
Docket #: 22-1426cr
Short Title: United States of America v. Maxwell

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

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

NOTICE OF HEARING DATE

Argument Date/Time: Tuesday, March 12, 2024 at 10:00am
Location: Thurgood Marshall U.S. Courthouse, 40 Foley Square, New York, NY, 10007, 17th Floor, Room 1703

Time Allotment: 10 minutes per side

Counsel and non-incarcerated pro se litigants presenting oral argument must register with the courtroom deputy 30 minutes before argument.

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Name of the Attorney/Pro Se presenting argument: Diana Fabi
Firm Name (if applicable): Aidala, Bertuna & Kamins, P.C.
Current Telephone Number: (212) 486-0011

The above named attorney represents:
(✓) Appellant/Petitioner ( ) Appellee-Respondent ( ) Intervenor

Date: February 23, 2024 Signature: [signature]

NOTICE TO THE BAR

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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: February 29, 2024
Docket #: 22-1426cr
Short Title: United States of America v. Maxwell

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

REVISED NOTICE OF HEARING DATE

Argument Date/Time: **Tuesday, March 12, 2024 at 2:00 p.m**
Location: Thurgood Marshall U.S. Courthouse, 40 Foley Square, New York, NY, 10007, 17th Floor, Room 1703

Time Allotment: 10 minutes per side

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Current Telephone Number:

The above named attorney represents:
( ) Appellant/Petitioner ( ) Appellee-Respondent ( ) Intervenor

Date: _____ Signature: _____

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Date: February 29, 2024
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Name of the Attorney/Pro Se presenting argument: Andrew Rohrbach
Firm Name (if applicable): U.S. Attorney's Office - SDNY
Current Telephone Number: (212) 637-1944

The above named attorney represents:
( ) Appellant/Petitioner (X) Appellee-Respondent ( ) Intervenor

Date: 3/10/2024 Signature: Andrew A. Rohrbach

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Rev. 10/2023

U.S. Department of Justice

United States Attorney
Southern District of New York

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

March 10, 2024

By CM/ECF

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, New York 10007

Re: *United States v. Ghislaine Maxwell*,
Docket No. 22-1426
Argument date: March 12, 2023

Dear Ms. Wolfe:

The Government respectfully submits this letter, pursuant to Federal Rule of Appellate Procedure 28(j), to inform this Court of *United States v. Watkins*, 940 F.3d 152 (2d Cir. 2019).

In *Watkins*, this Court explained that the portion of the Bail Reform Act, 18 U.S.C. § 3142(f)(1)(E), that required a detention hearing for "any felony . . . that involves a minor victim . . . ." permits a court to conduct a "conduct-specific inquiry in which the judicial officer may look beyond the elements of the charged offense to consider the actual conduct underlying the arrestee's charged offense." 940 F.3d at 165, 167. Because that phrase "refers to a 'minor victim,'" it "suggest[s] factual details surrounding the charged conduct." *Id.* at 166. The Court also noted the absence of a textual trigger for the categorical approach like "that has as an element." *Id.* at 166 n.70. The Court further explained that its conclusion was reinforced by legislative history, namely, the inclusion of Section 3142(f)(1)(E) in a statute intended to "afford minor victims of crime the greatest degree of protection." *Id.* at 166.

The Court contrasted Section 3142(f)(1)(E) with another portion of the Act that contains the word "involves" but requires use of the categorical approach, because that text "refers, variously, to a 'crime,' an 'offense,' and a 'felony,'" indicating an emphasis on the nature of the legal charge rather than "factual details." *Id.* (quoting 18 U.S.C. § 3182(f)(1) (discussing "a case that involves . . . a crime of violence . . ."); *see id.* at 162-65.

The same principles apply to the statute of limitations at issue here. (*See* Gov. Br. 42-49). That statute covers an "offense involving the sexual or physical abuse . . . of a child," 18 U.S.C. § 3283 (2003), which similarly "suggests factual details surrounding the charged conduct" and lacks language like "has as an element." And it is also part of a statute intended to afford broader protections for minor victims of crimes. *See, e.g.*, *Weingarten v. United States*, 865 F.3d 48, 54 (2d Cir. 2017).

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

By: /s/
Andrew Rohrbach
Maurene Comey
Lara Pomerantz
Hagan Scotten
Assistant United States Attorneys
Tel: (212) 637-1944

cc: Diana Fabi Samson, Esq. (via CM/ECF)

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

Date: February 29, 2024
Docket #: 22-1426cr
Short Title: United States of America v. Maxwell

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

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

REVISED NOTICE OF HEARING DATE

Argument Date/Time: **Tuesday, March 12, 2024 at 2:00 p.m**
Location: Thurgood Marshall U.S. Courthouse, 40 Foley Square, New York, NY, 10007, 17th Floor, Room 1703

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Name of the Attorney/Pro Se presenting argument: Diana Fabi
Firm Name (if applicable): Aidala, Bertuna + Kamins, P.C.
Current Telephone Number: 212-486-0011

The above named attorney represents:
(✓) Appellant/Petitioner ( ) Appellee-Respondent ( ) Intervenor

Date: March 11, 2024 Signature: D Fabi

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Rev. 10/2023

NOTICE OF APPEARANCE FOR SUBSTITUTE, ADDITIONAL, OR AMICUS COUNSEL

Short Title: United States v. Maxwell Docket No.: 22-1426

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

Name: Hagan Scotten

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

Address: 26 Federal Plaza, New York, NY 10278

Telephone: (212) 637-2410 Fax: (212) 637-2230

E-mail: hagan.scotten@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: Danielle R. Sassoon/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/ Hagan Scotten

Type or Print Name: Hagan Scotten

In the
United States Court of Appeals
for the Second Circuit

AUGUST TERM 2023

No. 22-1426-cr

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

ARGUED: MARCH 12, 2024
DECIDED: SEPTEMBER 17, 2024

Before: CABRANES, WESLEY, and LOHIER, *Circuit Judges*.

Defendant Ghislaine Maxwell appeals her June 29, 2022, judgment of conviction in the United States District Court for the Southern District of New York (Alison J. Nathan, *Judge*). Maxwell was convicted of conspiracy to transport minors with intent to engage in criminal sexual activity in violation of 18 U.S.C. § 371; transportation of a minor with intent to engage in criminal sexual activity in violation of 18 U.S.C. § 2423(a); and sex trafficking of a minor in violation of 18 U.S.C. § 1591(a) and (b)(2). She was principally sentenced to concurrent terms of imprisonment of 60 months, 120 months, and 240 months, respectively, to be followed by concurrent terms of supervised release.

On appeal, the questions presented are whether (1) Jeffrey Epstein's Non-Prosecution Agreement with the United States Attorney's Office for the Southern District of Florida barred Maxwell's prosecution by the United States Attorney's Office for the Southern District of New York; (2) a second superseding indictment of March 29, 2021, complied with the statute of limitations; (3) the District Court abused its discretion in denying Maxwell's Rule 33 motion for a new trial based on the claimed violation of her Sixth Amendment right to a fair and impartial jury; (4) the District Court's response to a jury note resulted in a constructive amendment of, or prejudicial variance from, the allegations in the second superseding indictment; and (5) Maxwell's sentence was procedurally reasonable.

Identifying no errors in the District Court's conduct of this complex case, we AFFIRM the District Court's June 29, 2022, judgment of conviction.

ANDREW ROHRBACH, Assistant United States Attorney (Maurene Comey, Alison Moe, Lara Pomerantz, Won S. Shin, Assistant United States Attorneys, *on the brief*), *for* Damian Williams, United States Attorney for the Southern District of New York, New York, NY, *for Appellee*.

DIANA FABI SAMSON (Arthur L. Aidala, John M. Leventhal, *on the brief*), Aidala Bertuna & Kamins PC, New York, NY, *for Defendant-Appellant*.

JOSÉ A. CABRANES, *Circuit Judge*:

Defendant Ghislaine Maxwell appeals her June 29, 2022, judgment of conviction in the United States District Court for the Southern District of New York (Alison J. Nathan, *Judge*). Maxwell was convicted of conspiracy to transport minors with intent to engage in criminal sexual activity in violation of 18 U.S.C. § 371; transportation of a minor with intent to engage in criminal sexual activity in violation of 18 U.S.C. § 2423(a); and sex trafficking of a minor in violation of 18 U.S.C. § 1591(a) and (b)(2). The District Court imposed concurrent terms of imprisonment of 60 months, 120 months, and 240 months, respectively, to be followed by concurrent terms of supervised release

of three years, three years, and five years, respectively. The District Court also imposed a fine of $250,000 on each count for a total of $750,000.

On appeal, the questions presented are (1) whether Jeffrey Epstein's Non-Prosecution Agreement ("NPA") with the United States Attorney's Office for the Southern District of Florida ("USAO-SDFL") barred Maxwell's prosecution by the United States Attorney's Office for the Southern District of New York ("USAO-SDNY"); (2) whether Maxwell's second superseding indictment of March 29, 2021 (the "Indictment") complied with the statute of limitations; (3) whether the District Court abused its discretion in denying Maxwell's Rule 33 motion for a new trial based on the claimed violation of her Sixth Amendment right to a fair and impartial jury; (4) whether the District Court's response to a jury note resulted in a constructive amendment of, or prejudicial variance from, the allegations in the Indictment; and (5) whether Maxwell's sentence was procedurally reasonable.

We hold that Epstein's NPA did not bar Maxwell's prosecution by USAO-SDNY as the NPA does not bind USAO-SDNY. We hold that Maxwell's Indictment complied with the statute of limitations as 18 U.S.C. § 3283 extended the time to bring charges of sexual abuse for offenses committed before the date of the statute's enactment. We further hold that the District Court did not abuse its discretion in denying Maxwell's Rule 33 motion for a new trial based on one juror's erroneous answers during *voir dire*. We also hold that the District Court's response to a jury note did not result in a constructive amendment of, or prejudicial variance from, the allegations in the

Indictment. Lastly, we hold that Maxwell's sentence is procedurally reasonable.

Accordingly, we **AFFIRM** the District Court's June 29, 2022, judgment of conviction.

I. BACKGROUND [1]

Defendant Ghislaine Maxwell coordinated, facilitated, and contributed to Jeffrey Epstein's sexual abuse of women and underage girls. Starting in 1994, Maxwell groomed numerous young women to engage in sexual activity with Epstein by building friendships with these young women, gradually normalizing discussions of sexual topics and sexual abuse. Until about 2004, this pattern of sexual abuse continued as Maxwell provided Epstein access to underage girls in various locations in the United States.

1. Epstein's Non-Prosecution Agreement

In September 2007, following state and federal investigations into allegations of Epstein's unlawful sexual activity, Epstein entered into an NPA with USAO-SDFL. In the NPA, Epstein agreed to plead guilty to one count of solicitation of prostitution, in violation of Florida

[1] Unless otherwise noted, the following facts are drawn from the evidence presented at trial and described in the light most favorable to the Government. *See United States v. Litwok*, 678 F.3d 208, 210-11 (2d Cir. 2012) ("Because this is an appeal from a judgment of conviction entered after a jury trial, the [ ] facts are drawn from the trial evidence and described in the light most favorable to the Government.").

Statutes § 796.07,[2] and to one count of solicitation of minors to engage in prostitution, in violation of Florida Statutes § 796.03.[3] He agreed to receive a sentence of eighteen months' imprisonment on the two charges. In consideration of Epstein's agreement, the NPA states that "the United States also agrees that it will not institute any criminal charges against any potential co-conspirators of Epstein, including but not limited to Sarah Kellen, Adriana Ross, Lesley Groff, or Nadia Marcinkova."[4]

2. Maxwell's Indictment and Trial-Related Proceedings

The Indictment filed against Maxwell contained eight counts, six of which proceeded to trial.[5] Prior to the commencement of trial,

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[2] Florida Statutes § 796.07 provides in relevant part:

> (2) It is unlawful:
>
> > (f) To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.

[3] Florida Statutes § 796.03, which has since been repealed, provided in relevant part: "A person who procures for prostitution, or causes to be prostituted, any person who is under the age of 18 years commits a felony of the second degree."

[4] A-178.

[5] Count One charged Maxwell with conspiracy to entice minors to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 371. Count Two charged Maxwell with enticement of a minor to travel to engage in illegal sex acts, in violation of 18 U.S.C. §§ 2422 and 2. Count Three charged Maxwell with conspiracy to transport minors with intent to engage in criminal sexual activity, in violation of 18 U.S.C. § 371. Count Four charged Maxwell with transportation of a minor with intent to engage in criminal sexual activity, in violation of 18 U.S.C. §§ 2423(a) and 2. Count Five charged Maxwell with sex trafficking conspiracy, in

prospective jurors completed a lengthy questionnaire, with several questions raising issues relevant to the trial. Based on the completed questionnaires, the parties selected prospective jurors to proceed to in-person *voir dire*. The District Court ultimately empaneled a jury.

During the four-and-a-half-week jury trial, the Government presented evidence of the repeated sexual abuse of six girls. At the conclusion of trial, on December 29, 2021, the jury found Maxwell guilty on all but one count.[6]

Following the verdict, Juror 50 gave press interviews during which he stated that he was a survivor of child sexual abuse.[7] In his answers to the written jury questionnaire, however, Juror 50 answered "no" to three questions asking whether he or a friend or family member had ever been the victim of a crime; whether he or a friend or family member had ever been the victim of sexual harassment, sexual abuse, or sexual assault; and whether he or a friend or family member had ever been accused of sexual harassment, sexual abuse, or sexual

---

violation of 18 U.S.C. § 371. Count Six charged Maxwell with sex trafficking of a minor, in violation of 18 U.S.C. §§ 1591(a), (b)(2), and 2. Counts Seven and Eight charged Maxwell with perjury, in violation of 18 U.S.C. § 1623. The perjury charges were severed from the remaining charges and ultimately dismissed at sentencing.

[6] The jury found Maxwell guilty on Counts One, Three, Four, Five, and Six. Maxwell was acquitted on Count Two.

[7] Consistent with a juror anonymity order entered for trial, the parties and the District Court referred to the jurors by pseudonym.

assault.[8] Upon learning of the interviews, the Government filed a letter on January 5, 2022, requesting a hearing; Maxwell then moved for a new trial under Federal Rule of Criminal Procedure 33. On March 8, 2022, the District Court held a hearing and Juror 50 testified—under grant of immunity—that his answers to three questions related to sexual abuse in the jury questionnaire were not accurate but that the answers were an inadvertent mistake and that his experiences did not affect his ability to be fair and impartial. Finding Juror 50's testimony to be credible, the District Court denied Maxwell's motion for a new trial in a written order.

Maxwell was subsequently sentenced to a term of 240 months' imprisonment to be followed by five years' supervised release, and the

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[8] Question 2 asked "[h]ave you, or any of your relatives or close friends, ever been a victim of a crime?" Question 48 asked "[h]ave you or a friend or family member ever been the victim of sexual harassment, sexual abuse, or sexual assault? (This includes actual or attempted sexual assault or other unwanted sexual advance, including by a stranger, acquaintance, supervisor, teacher, or family member.)" Finally, Question 49 asked

> [h]ave you or a friend or family member ever been accused of sexual harassment, sexual abuse, or sexual assault? (This includes both formal accusations in a court of law or informal accusations in a social or work setting of actual or attempted sexual assault or other unwanted sexual advance, including by a stranger, acquaintance, supervisor, teacher, or family member.

See A-299, A-310.

District Court imposed a $750,000 fine and a $300 mandatory special assessment. This appeal followed.

II. DISCUSSION

1. The NPA Between Epstein and USAO-SDFL Did Not Bar Maxwell's Prosecution by USAO-SDNY

Maxwell sought dismissal of the charges in the Indictment on the grounds that the NPA made between Epstein and USAO-SDFL immunized her from prosecution on all counts as a third-party beneficiary of the NPA. The District Court denied the motion, rejecting Maxwell's arguments. We agree. We review *de novo* the denial of a motion to dismiss an indictment.[9]

In arguing that the NPA barred her prosecution by USAO-SDNY, Maxwell cites the portion of the NPA in which "the United States [ ] agree[d] that it w[ould] not institute any criminal charges against any potential co-conspirators of Epstein."[10] We hold that the NPA with USAO-SDFL does not bind USAO-SDNY.

It is well established in our Circuit that "[a] plea agreement binds only the office of the United States Attorney for the district in which the plea is entered unless it affirmatively appears that the agreement

[9] *See, e.g.*, *United States v. Walters*, 910 F.3d 11, 22 (2d Cir. 2018).

[10] A-178.

contemplates a broader restriction."[11] And while Maxwell contends that we cannot apply *Annabi* to an agreement negotiated and executed outside of this Circuit, we have previously done just that.[12] Applying *Annabi*, we conclude that the NPA did not bar Maxwell's prosecution by USAO-SDNY. There is nothing in the NPA that affirmatively shows that the NPA was intended to bind multiple districts. Instead, where the NPA is not silent, the agreement's scope is *expressly limited* to the Southern District of Florida. The NPA makes clear that if Epstein fulfilled his obligations, he would no longer face charges *in that district*:

> After timely fulfilling all the terms and conditions of the Agreement, no prosecution for the offenses set out on pages 1 and 2 of this Agreement, nor any other offenses that have been the subject of the joint investigation by the Federal Bureau of Investigation and the United States Attorney's Office, nor any

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[11] *United States v. Annabi*, 771 F.2d 670, 672 (2d Cir. 1985). We recognize that circuits have been split on this issue for decades. *See United States v. Harvey*, 791 F.2d 294, 303 (4th Cir. 1986); *United States v. Gebbie*, 294 F.3d 540, 550 (3d Cir. 2002).

[12] *See, e.g.*, *United States v. Prisco*, 391 F. App'x 920, 921 (2d Cir. 2010) (summary order) (applying *Annabi* to plea agreement entered into in the District of New Jersey); *United States v. Gonzalez*, 93 F. App'x 268, 270 (2d Cir. 2004) (summary order) (same, to agreement entered into in the District of New Mexico). Nor does *Annabi*, as Maxwell contends, apply only where subsequent charges are "sufficiently distinct" from charges covered by an earlier agreement. In *Annabi*, this Court rejected an interpretation of a prior plea agreement that rested on the Double Jeopardy Clause, reasoning that even if the Double Jeopardy Clause applied, the subsequent charges were "sufficiently distinct" and therefore fell outside the Clause's protections. *Annabi*, 771 F.2d at 672. This Court did not, however, conclude that the rule of construction it announced depended on the similarities between earlier and subsequent charges.

> offenses that arose from the Federal Grand Jury investigation will be instituted *in this District*, and the charges against Epstein if any, will be dismissed.[13]

The only language in the NPA that speaks to the agreement's scope is limiting language.

The negotiation history of the NPA, just as the text, fails to show that the agreement was intended to bind other districts. Under our Court's precedent, the negotiation history of an NPA can support an inference that an NPA "affirmatively" binds other districts.[14] Yet, the actions of USAO-SDFL do not indicate that the NPA was intended to bind other districts.

The United States Attorney's Manual that was operable during the negotiations of the NPA required that:

> No district or division shall make any agreement, including any agreement not to prosecute, which purports to bind any other district(s) or division without the express written approval of

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[13] A-175 (emphasis added). The agreement's scope is also limited in an additional section:

> THEREFORE, on the authority of R. Alexander Acosta, United States Attorney for the Southern District of Florida, *prosecution in this District* for these offenses shall be deferred in favor of prosecution by the State of Florida, provided that Epstein abides by the following conditions and the requirements of this Agreement set forth below.

Id. (emphasis added).

[14] *See United States v. Russo*, 801 F.2d 624, 626 (2d Cir. 1986).

> the United States Attorney(s) in each affected district and/or the Assistant Attorney General of the Criminal Division.[15]

Nothing before us indicates that USAO-SDNY had been notified or had approved of Epstein's NPA with USAO-SDFL and intended to be bound by it. And the Assistant Attorney General for the Criminal Division stated in an interview with the Office of Professional Responsibility that she "played no role" in the NPA, either by reviewing or approving the agreement.

The history of the Office of the United States Attorney is instructive as to the scope of their actions and duties. The Judiciary Act of 1789 created the Office of the United States Attorney, along with the office of the Attorney General. More specifically, the Judiciary Act provided for the appointment, in each district, of a "person learned in the law to act as attorney for the United States *in such district*, who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute *in such district* all delinquents for crimes and offences, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned."[16] The Judiciary Act thus emphasized that U.S. Attorneys would enforce the law of the United States but did not determine that the actions of one U.S. Attorney could bind other districts, let alone the entire nation. In fact, the phrase "in such district," repeated twice, implies that the scope of

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[15] United States Attorney's Manual § 9-27.641 (2007).

[16] An Act to Establish the Judicial Courts of the United States, ch. 20, § 35, 1 Stat. 73, 92-93 (1789) (emphasis added).

the actions and the duties of the U.S. Attorneys would be limited to their own districts, absent any express exceptions.

Since 1789, while the number of federal districts has grown significantly, the duties of a U.S. Attorney and their scope remain largely unchanged. By statute, U.S. Attorneys, "within [their] district, shall (1) prosecute for all offenses against the United States; (2) prosecute or defend, for the Government, all civil actions, suits or proceedings in which the United States is concerned."[17] Again, the scope of the duties of a U.S. Attorney is cabined to their specific district unless otherwise directed.[18]

In short, *Annabi* controls the result here. Nothing in the text of the NPA or its negotiation history suggests that the NPA precluded USAO-SDNY from prosecuting Maxwell for the charges in the

[17] 28 U.S.C. § 547.

[18] This does not suggest that there are no instances in which a U.S. Attorney's powers do not extend beyond their districts. For instance, under 28 U.S.C. § 515 a U.S. Attorney can represent the Government or participate in proceedings in other districts, but only when specifically directed by the Attorney General:

> The Attorney General or any other officer of the Department of Justice, or any attorney specially appointed by the Attorney General under law, may, when specifically directed by the Attorney General, conduct any kind of legal proceeding . . . which United States attorneys are authorized by law to conduct, whether or not he is a resident of the district in which the proceeding is brought.

Indictment. The District Court therefore correctly denied Maxwell's motion without an evidentiary hearing.

2. The Indictment Is Timely

Maxwell argues that Counts Three and Four of the Indictment are untimely because they do not fall within the scope of offenses involving the sexual or physical abuse or kidnapping of a minor and thereby do not fall within the extended statute of limitations provided by § 3283.[19] Separately, Maxwell contends that the Government cannot apply the 2003 amendment to § 3283 that extended the statute of limitations to those offenses that were committed before the enactment into law of the provision. On both points, we disagree and hold that the District Court correctly denied Maxwell's motions to dismiss the charges as untimely. We review *de novo* the denial of a motion to dismiss an indictment and the application of a statute of limitations.[20]

First, Counts Three and Four of the Indictment are offenses involving the sexual abuse of minors. The District Court properly applied *Weingarten v. United States*.[21] In *Weingarten*, we explained that Congress intended courts to apply § 3283 using a case-specific

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[19] 18 U.S.C. § 3283 provides: "[n]o statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnaping, of a child under the age of 18 years shall preclude such prosecution during the life of the child, or for ten years after the offense, whichever is longer."

[20] *United States v. Sampson*, 898 F.3d 270, 276, 278 (2d Cir. 2018).

[21] 865 F.3d 48, 58-60 (2d Cir. 2017); *see also United States v. Maxwell*, 534 F. Supp. 3d 299, 313-14 (S.D.N.Y. 2021).

approach as opposed to a "categorical approach."[22] We see no reason to depart from our reasoning in *Weingarten*. Accordingly, the question presented here is whether the charged offenses involved the sexual abuse of a minor for the purposes of § 3283 based on the facts of the case. Jane, one of the women who testified at trial, gave evidence that she had been sexually abused when transported across state lines as a minor. Counts Three and Four thus qualify as offenses, and § 3283 applies to those offenses.

Second, Maxwell argues that Counts Three, Four, and Six of the Indictment are barred by the statute of limitations because the extended statute of limitations provided by the 2003 amendment to § 3283 does not apply to pre-enactment conduct. In *Landgraf v. USI Film Products*, the Supreme Court held that a court, in deciding whether a statute applies retroactively, must first "determine whether Congress has expressly prescribed the statute's proper reach."[23] If Congress has done so, "the inquiry ends, and the court enforces the

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[22] The "categorical approach" is a method of statutory interpretation that requires courts to look "only to the statutory definitions of the prior offenses, and not to the particular facts underlying those convictions" for sentencing and immigration purposes. *Taylor v. United States*, 495 U.S. 575, 600 (1990). We properly reasoned in *Weingarten* that § 3283 met none of the conditions listed by *Taylor* that might require application of the categorical approach. *See Weingarten*, 865 F.3d at 58-60. First, "[t]he language of § 3283[] . . . reaches beyond the offense and its legal elements to the conduct 'involv[ed]' in the offense." *Id.* at 59-60. Second, legislative history suggests that Congress intended § 3283 to be applied broadly. *Id.* at 60. Third, a case-specific approach would not produce practical difficulties or potential unfairness. *Id.*

[23] 511 U.S. 244, 280 (1994); *see also Weingarten*, 865 F.3d at 54-55.

statute as it is written."[24] If the statute "is ambiguous or contains no express command regarding retroactivity, a reviewing court must determine whether applying the statute to antecedent conduct would create presumptively impermissible retroactive effects."[25]

Here, the inquiry is straightforward. In 2003, Congress amended § 3283 to provide: "No statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnaping, of a child under the age of 18 years shall preclude such prosecution during the life of the child."[26] The text of § 3283—that *no* statute of limitations that would *otherwise* preclude prosecution of these offenses will apply—plainly requires that it prevent the application of any statute of limitations that would otherwise apply to past conduct.

The statutory text makes clear that Congress intended to extend the time to bring charges of sexual abuse for pre-enactment conduct as the prior statute of limitations was inadequate. This is enough to conclude that the PROTECT Act's amendment to § 3283 applies to Maxwell's conduct as charged in the Indictment.

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[24] *In re Enter. Mortg. Acceptance Co., LLC, Sec. Litig.*, 391 F.3d 401, 406 (2d Cir. 2004) (citing *Landgraf*, 511 U.S. at 280).

[25] *Weingarten*, 865 F.3d at 55 (citation and internal quotation marks omitted).

[26] PROTECT Act, Pub. L. No. 108-21, § 202, 117 Stat. 650, 660 (2003).

3. The District Court Did Not Abuse Its Discretion in Denying Maxwell's Motion for a New Trial

Maxwell contends that she was deprived of her constitutional right to a fair and impartial jury because Juror 50 failed to accurately respond to several questions related to his history of sexual abuse as part of the jury questionnaire during jury selection. Following a special evidentiary hearing, the District Court denied Maxwell's motion for a new trial.

We review a District Court's denial of a motion for a new trial for abuse of discretion.[27] We have been extremely reluctant to "haul jurors in after they have reached a verdict in order to probe for potential instances of bias, misconduct or extraneous influences."[28] While courts can "vacate any judgment and grant a new trial if the interest of justice so requires," Fed. R. Crim. P. 33(a), they should do so "sparingly" and only in "the most extraordinary circumstances."[29] A district court "has

[27] *See Rivas v. Brattesani*, 94 F.3d 802, 807 (2d Cir. 1996). "[W]e are mindful that a judge has not abused her discretion simply because she has made a different decision than we would have made in the first instance." *United States v. Ferguson*, 246 F.3d 129, 133 (2d Cir. 2001). We have repeatedly explained that the term of art "abuse of discretion" includes errors of law, a clearly erroneous assessment of the evidence, or "a decision that cannot be located within the range of permissible decisions." *In re Sims*, 534 F.3d 117, 132 (2d Cir. 2008) (citation and internal quotation marks omitted).

[28] *United States v. Moon*, 718 F.2d 1210, 1234 (2d Cir. 1983).

[29] *Ferguson*, 246 F.3d at 134.

broad discretion to decide Rule 33 motions based upon its evaluation of the proof produced" and is shown deference on appeal.[30]

A Rule 33 motion based on a juror's alleged erroneous response during *voir dire* is governed by *McDonough Power Equipment, Inc. v. Greenwood*.[31] Under *McDonough*, a party seeking a new trial "must first demonstrate that a juror failed to answer honestly a material question on *voir dire*, and then further show that a correct response would have provided a valid basis for a challenge for cause."[32]

The District Court applied the *McDonough* standard, found Juror 50's testimony credible, and determined that Juror 50's erroneous responses during *voir dire* were "not deliberately incorrect" and that "he would *not* have been struck for cause if he had provided accurate responses to the questionnaire."[33] In fact, as the District Court noted, Maxwell did not challenge the inclusion of other jurors who disclosed past experience with sexual abuse, assault, or harassment. This is

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[30] *United States v. Gambino*, 59 F.3d 353, 364 (2d Cir. 1995) (citation and internal quotation marks omitted).

[31] 464 U.S. 548 (1984).

[32] *Id.* at 556.

[33] A-340 (emphasis added). The Supreme Court reminds us that "[t]o invalidate the result of a [ ] trial because of a juror's mistaken, though honest response to a question, is to insist on something closer to perfection than our judicial system can be expected to give." *McDonough*, 464 U.S. at 555.

enough; the District Court did not abuse its discretion in denying Maxwell's motion for a new trial.[34]

4. The District Court's Response to a Jury Note Did Not Result in a Constructive Amendment of, or Prejudicial Variance from, the Allegations in the Indictment

During jury deliberations, the jury sent the following jury note regarding Count Four of the Indictment:

> Under Count Four (4), if the defendant aided in the transportation of Jane's return flight, but not the flight to New Mexico where/if the intent was for Jane to engage in sexual activity, can she be found guilty under the second element?[35]

The District Court determined that it would not respond to the note directly because it was difficult to "parse factually and legally" and instead referred the jury to the second element of Count Four.[36]

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[34] Nor did the District Court err in questioning Juror 50 rather than allowing the parties to do so. In conducting a hearing on potential juror misconduct, "[w]e leave it to the district court's discretion to decide the extent to which the parties may participate in questioning the witnesses, and whether to hold the hearing in camera." *United States v. Ianniello*, 866 F.2d 540, 544 (2d Cir. 1989). And while Maxwell contends that the District Court improperly limited questioning about Juror 50's role in deliberations, she both waived that argument below and fails to show here how any such questioning would not be foreclosed by Federal Rule of Evidence 606(b).

[35] A-238.

[36] A-207-221. The District Court's instruction on the second element of Count Four required the jury to find that "Maxwell knowingly transported Jane in interstate commerce with the

Maxwell subsequently filed a letter seeking reconsideration of the District Court's response, claiming that this response resulted in a constructive amendment or prejudicial variance. The District Court declined to reconsider its response and denied Maxwell's motion.

Maxwell appeals the District Court's denial and argues that the alleged constructive amendment is a *per se* violation of the Grand Jury Clause of the Fifth Amendment. Specifically, Maxwell argues that testimony about a witness's sexual abuse in New Mexico presented the jury with another basis for conviction, which is distinct from the charges in the Indictment. Similarly, Maxwell argues that this testimony resulted in a prejudicial variance from the Indictment. We disagree and affirm the District Court's denial.

We review the denial of a motion claiming constructive amendment or prejudicial variance *de novo*.[37] To satisfy the Fifth Amendment's Grand Jury Clause, "an indictment must contain the elements of the offense charged and fairly inform the defendant of the charge against which he must defend."[38] We have explained that to prevail on a constructive amendment claim, a defendant must demonstrate that "the terms of the indictment are in effect altered by the presentation of evidence and jury instructions which so modify essential elements of the offense charged that there is a substantial

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intent that Jane engage in sexual activity for which any person can be charged with a criminal offense in violation of New York law." A-205.

[37] *See United States v. Dove*, 884 F.3d 138, 146, 149 (2d Cir. 2018).

[38] *United States v. Khalupsky*, 5 F.4th 279, 293 (2d Cir. 2021).

likelihood that the defendant may have been convicted of an offense other than that charged in the indictment."[39] A constructive amendment requires reversal.[40]

We cannot conclude that a constructive amendment resulted from the evidence presented by the Government—namely, Jane's testimony—or that it can be implied from the jury note. We have permitted significant flexibility in proof as long as a defendant was "given notice of the core of criminality to be proven at trial."[41] In turn, "[t]he core of criminality of an offense involves the essence of a crime, in general terms; the particulars of how a defendant effected the crime falls outside that purview."[42]

We agree with the District Court that the jury instructions, the evidence presented at trial, and the Government's summation captured the core of criminality. As the District Court noted, while the jury note was ambiguous in one sense, it was clear that it referred to the second element of Count Four of the Indictment. Therefore, the District Court correctly directed the jury to that instruction, which "accurately instructed that Count Four had to be predicated on finding

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[39] *United States v. Mollica*, 849 F.2d 723, 729 (2d Cir. 1988).

[40] *See United States v. D'Amelio*, 683 F.3d 412, 417 (2d Cir. 2012).

[41] *United States v. Ionia Mgmt. S.A.*, 555 F.3d 303, 310 (2d Cir. 2009) (per curiam) (emphasis omitted).

[42] *D'Amelio*, 683 F.3d at 418 (internal quotation marks omitted).

a violation of New York law."[43] It is therefore not "uncertain whether [Maxwell] was convicted of conduct that was the subject of the grand jury's indictment."[44]

We also cannot conclude that the evidence at trial prejudicially varied from the Indictment. To allege a variance, a defendant "must establish that the evidence offered at trial differs materially from the evidence alleged in the indictment."[45] To prevail and win reversal, the defendant must further show "that substantial prejudice occurred at trial as a result" of the variance.[46] "A defendant cannot demonstrate that he has been prejudiced by a variance where the pleading and the proof substantially correspond, where the variance is not of a character that could have misled the defendant at the trial, and where the variance is not such as to deprive the accused of his right to be protected against another prosecution for the same offense."[47]

For reasons similar to the ones noted above in the context of the constructive amendment, the evidence at trial did not prove facts

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[43] A-387; *see United States v. Parker*, 903 F.2d 91, 101 (2d Cir. 1990) ("The trial judge is in the best position to sense whether the jury is able to proceed properly with its deliberations, and [ ] has considerable discretion in determining how to respond to communications indicating that the jury is experiencing confusion.")

[44] *United States v. Salmonese*, 352 F.3d 608, 620 (2d Cir. 2003).

[45] *Dove*, 884 F.3d at 149

[46] *Id.* (citation and internal quotation marks omitted).

[47] *Salmonese*, 352 F.3d at 621-22 (citation and internal quotation marks omitted); *see also Khalupsky*, 5 F.4th at 294.

"materially different" from the allegations in the Indictment.[48] The evidence indicated that Maxwell transported Jane to New York for sexual abuse and conspired to do the same. Maxwell knew that the evidence also included conduct in New Mexico.[49] Furthermore, Maxwell cannot demonstrate "substantial prejudice." Maxwell received—*over three weeks before trial*—notes of Jane's interview recording the abuse she suffered in New Mexico. This is enough to conclude that Maxwell was not "unfairly and substantially" prejudiced.[50]

5. Maxwell's Sentence Was Procedurally Reasonable

Lastly, Maxwell argues that her sentence was procedurally unreasonable because the District Court erred in applying a leadership sentencing enhancement under the Sentencing Guidelines and inadequately explained its above-Guidelines sentence.[51] We disagree.

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[48] *Dove*, 884 F.3d at 149.

[49] As the District Court found, "[t]he Indictment charged a scheme to sexually abuse underage girls in New York. In service of this scheme, the Indictment alleged that Epstein and the Defendant groomed the victims for abuse at various properties and in various states, including Epstein's ranch in New Mexico." A-393.

[50] *See United States v. Lebedev*, 932 F.3d 40, 54 (2d Cir. 2019) (concluding that a defendant was not "unfairly and substantially" prejudiced because "[t]he government disclosed the evidence and exhibits . . . four weeks prior to trial").

[51] At sentencing, the District Court calculated a Guidelines range of 188 to 235 months' imprisonment and sentenced Maxwell to a slightly above-Guidelines term of 240 months' imprisonment.

We review a sentence for both procedural and substantive reasonableness, which "amounts to review for abuse of discretion."[52] We have explained that procedural error is found when a district court "fails to calculate (or improperly calculates) the Sentencing Guidelines range, treats the Sentencing Guidelines as mandatory, fails to consider the [Section] 3553(a) factors, selects a sentence based on clearly erroneous facts, or fails adequately to explain the chosen sentence."[53] The District Court did none of that. It is important to emphasize that the Sentencing Guidelines "are guidelines—that is, they are truly advisory."[54] A District Court is "generally free to impose sentences outside the recommended range" based on its own "informed and individualized judgment."[55]

With respect to the four-level leadership enhancement, the District Court found that Maxwell "supervised" Sarah Kellen in part because of testimony from two of Epstein's pilots who testified that Kellen was Maxwell's assistant. The District Court found that testimony credible, in part because it was corroborated by other testimony that Maxwell was Epstein's "number two and the lady of the house" in Palm Beach,

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[52] *United States v. Cavera*, 550 F.3d 180, 187 (2d Cir. 2008) (en banc). "Regardless of whether the sentence imposed is inside or outside the Guidelines range, the appellate court must review the sentence under an abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 51 (2007).

[53] *United States v. Robinson*, 702 F.3d 22, 38 (2d Cir. 2012).

[54] *Cavera*, 550 F.3d at 189.

[55] *Id.*

where much of the abuse occurred and where Kellen worked.[56] We therefore hold that the District Court did not err in applying the leadership enhancement.

With respect to the length of the sentence, the District Court properly discussed the sentencing factors when imposing the sentence, and described, at length, Maxwell's "pivotal role in facilitating the abuse of the underaged girls through a series of deceptive tactics."[57] The District Court recognized that the sentence "must reflect the gravity of Ms. Maxwell's conduct, of Ms. Maxwell's offense, the pivotal role she played in facilitating the offense, and the significant and lasting harm it inflicted."[58] And the District Court explained that "a very serious, a very significant sentence is necessary to achieve the purposes of punishment" under 18 U.S.C. § 3553(a). In sum, the District Court did not err by failing to adequately explain its sentence.

CONCLUSION

To summarize, we hold as follows:

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[56] A-417.

[57] SA-459.

[58] SA-461.

1. The District Court did not err in holding that Epstein's NPA with USAO-SDFL did not bar Maxwell's prosecution by USAO-SDNY.

2. The District Court did not err in holding that the Indictment was filed within the statute of limitations.

3. The District Court did not abuse its discretion in denying Maxwell's Rule 33 motion for a new trial.

4. The District Court's response to a jury note did not result in a constructive amendment of, or prejudicial variance from, the allegations in the Indictment.

5. The District Court's sentence was procedurally reasonable.

For the foregoing reasons, we **AFFIRM** the District Court's June 29, 2022, judgment of conviction.

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 17, 2024
Docket #: 22-1426cr
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
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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

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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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 212-857-8513.

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 17th day of September, two thousand twenty-four,

Before: José A. Cabranes,
Richard C. Wesley,
Raymond J. Lohier, Jr.,
Circuit Judges.

United States of America,

Appellee,

v.

Ghislaine Maxwell, AKA Sealed Defendant 1,

Defendant - Appellant.

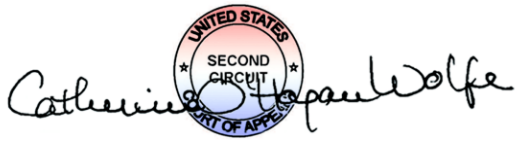
JUDGMENT

Docket No. 22-1426

The appeal in the above captioned case from a judgment of the United States District Court for the Southern District of New York was argued on the district court's record and the parties' briefs. Upon consideration thereof,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the district court's June 29, 2022, judgment of conviction is AFFIRMED.

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



22-1426-cr

United States Court of Appeals

for the

Second Circuit

UNITED STATES OF AMERICA,

Appellee,

– v. –

GHISLAINE MAXWELL, AKA Sealed Defendant 1,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PETITION FOR REHEARING EN BANC

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INTRODUCTION AND RULE 35(B)(1) STATEMENT

En Banc may be ordered when, as here, the panel decision was based on a decision of this Court that it was not permitted to overrule.[1] That decision, *United States v. Annabi*, 771 F.2d 670 (2d Cir. 1985) (*per curiam*), created a canon of construction for interpreting plea agreements that conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue and stands in tension with what the Supreme Court and this Circuit have written about plea and immunity agreements.

Annabi holds that "a plea agreement binds only the office of the United States Attorney for the district in which the plea is entered unless it affirmatively appears that the agreement contemplates a broader restriction." *Annabi* at 672. This default rule necessarily conflicts with the long-standing rule in this circuit (and others) that plea agreements are to be construed "strictly against the Government." *United States v. Padilla*, 186 F.3d 136, 140 (2d Cir. 1999) (quoting *United States v. Ready*, 82 F.3d 551, 558-59 (2d Cir. 1996). *United States v. Johnson*, 93 F.4th 605, 616-617 (2024). See also *United States v. Difeaux*, 163 F.3d 725, 728 (2d Cir. 1998) ("The reviewing court must … construe ambiguous

[1] A panel is bound by the decisions of prior panels until such time as they are overruled either by an en banc panel of our Court or by the Supreme Court *See United States v. Wilkerson*, 361 F.3d 717, 732 (2d Cir. 2004).

provisions against the government, which drafted the agreement and enjoys unequal bargaining power in the sentencing process.").

The Court should overrule *Annabi* because it is an outlier and incompatible with "fairness in securing agreement between an accused and a prosecutor." *See Santobello v. New York*, 404 U.S. 257, 261 (1971). Alternatively, the Court should limit *Annabi* as follows: *Annabi* should not apply (1) to plea agreements from other circuits that do not have such a rule; (2) to offenses based on the same conduct that was the subject of a non-prosecution or plea agreement; (3) where there are "affirmative indications" that the defendant reasonably understood the agreement to bind other districts; and (4) without discovery and an evidentiary hearing. Here, *Annabi* was applied to a plea that was negotiated and executed in the Eleventh Circuit (a circuit that does not follow *Annabi*); to an offense based on the same conduct that the "United States" had agreed not to prosecute; despite affirmative appearances of intent to bind other districts; and without discovery and a hearing.

ISSUE PRESENTED

Whether the canon of construction adopted by the Second Circuit in *Annabi,* whereby perceived ambiguities in the scope of immunity in a plea agreement are resolved in favor of the government, should be overruled or limited.

BACKGROUND

In September 2007, following state and federal investigations of alleged unlawful sexual activity, Jeffrey Epstein entered into a non-prosecution and plea agreement ("NPA") with the United States Attorney's Office for the Southern District of Florida ("USAO-SDFL"). A173-179.[2] In return for pleading guilty to state charges, receiving an eighteen-month sentence and consenting to jurisdiction and liability for civil suits under 18 U.S.C. Section 2255, irrespective of where those claims arose, the government agreed, *inter alia*, not to prosecute Epstein in the SDFL for the offenses from 2001-2007 then under investigation. In addition, "the United States also agree[d] that it will not institute any criminal charges against any potential co-conspirators of Epstein, including but not limited to [four named individuals]." A178. The co-conspirator clause was negotiated at the same time that the terms of Epstein's liability for civil claims without geographic

[2] Numerical references preceded by "A" and "SA" are to the appendices filed with Appellant's Brief and the Government's Brief, respectively.

limitation were negotiated. SA78. Relying on the NPA, Epstein pled guilty in state court on June 30, 2008, and fulfilled all his promises. SA137.

In July of 2019, Epstein was indicted in the SDNY on charges of sex trafficking and conspiracy related to conduct in Florida and New York between 2003 and 2005. He died by suicide on August 10, 2019. One year later, Maxwell was indicted. Initially, Maxwell was charged with crimes in the 1994 to 1997 timeframe, in an apparent effort to circumvent the time frame covered by the NPA. However, on March 29, 2021, the SDNY added in its superseding indictment, a sex trafficking offense (Count Six) related to conduct and offenses wholly within the timeframe and subject matter covered by the NPA and contained in the proposed indictment in SDFL that was resolved by the NPA. A114. Doc 293 at p10 as referenced in A45.

Maxwell moved to dismiss the indictment based on the clear language of the NPA. Alternatively, in the event that the court determined that the language of the NPA was ambiguous, Maxwell, who was not a party to the agreement, sought discovery and a hearing to establish affirmative evidence of intent to bind other districts consistent with the plain language in the co-conspirator clause. Her motion was denied without a hearing or discovery.[3] A145. The District Court found that

[3] While the District Court did not order discovery, it did order the government to disclose to Maxwell "any evidence supporting a defense under the NPA." A145. The government responded

while Maxwell was a beneficiary of the NPA and had standing to enforce its terms, the NPA did not grant immunity to Maxwell in the SDNY. The District Court based its decision on *Annabi*. The case proceeded to trial and the jury found Maxwell guilty on, *inter alia*, Count Six.

In 2019 the Department of Justice Office of Professional Responsibility investigated whether and to what extent prosecutors in the SDFL improperly resolved the federal investigation of Epstein in 2007-2008 by the very NPA at issue here. Their investigation overlapped the prosecutions of Epstein and Maxwell in the SDNY and did not involve interviewing any defense counsel. The OPR did not contain a finding as to whether the co-conspirator clause of the NPA bound other districts, although it stated that "witnesses" stated that the clause provided transactional immunity and "found no policy prohibiting a U.S. Attorney from declining to prosecute third parties or providing transactional immunity." SA165.

PANEL DECISION

On appeal, Maxwell argued, *inter alia*, that the NPA barred her prosecution in the SDNY by its express language. That language read

> In consideration of Epstein's agreement to plead guilty and to provide compensation in the manner described above, if Epstein successfully fulfills all the terms and conditions of this agreement, the *United States* also agrees that it will not institute any criminal charges against any

---

that its review "did not include search terms relevant to the NPA, and the Government has not searched [the SDFL prosecutor's] inbox for communications relating to the NPA."

> potential co-conspirators of Epstein, including but not limited to [four named individuals].

A178.

A unanimous panel of this Court applied the holding in *Annabi*, 771 F.2d. at 672, to the co-conspirator clause in the NPA to permit the prosecution of Maxwell, a beneficiary of that agreement, in the SDNY, notwithstanding that clause contained no limiting language. *U.S. v. Maxwell,* 118 F.4th 256 (2d. Cir. 2024). The Court, quoting *Annabi* held, that "[a] plea agreement binds only the office of the United States Attorney for the district in which the plea is entered unless it affirmatively appears that the agreement contemplates a broader restriction." *Id* at 263. The Court applied *Annabi* even though the NPA had been negotiated in the Eleventh Circuit where no such contrarian rule of construction exists and did so without benefit to Maxwell of discovery or an evidentiary hearing. The Court found that neither the plea agreement nor the "negotiation history" showed that the co-conspirator clause was "meant to" bind other districts. Yet the clause contained no limiting language and "several witnesses told OPR that they believed the government's agreement not to prosecute unidentified "potential co-conspirators" amounted to "transactional immunity" (SA165). Notably, Maxwell was denied both discovery and a hearing and was therefore left to rely on the NPA and the OPR which was based on documents that were not shared with Maxwell and an investigation that did not include

interviewing Epstein's lawyers. Notably, the prosecutors could not recall why the clause had been added, much less who it was meant to immunize. SA104-106.

The Court also relied on the United States Attorneys' Manual's directive that districts not bind other districts without the express written approval of the United States Attorneys in the affected districts and the Judiciary Act of 1789 to suggest that US Attorneys are "cabined to their specific district unless otherwise directed." 118 F.4th at 265. Notably, the Manual also contains an admonition that USAOs who do not wish to bind USAOs in other districts explicitly limit the scope of an NPA to their districts. Justice Manual 9-27-630. This admonition implicitly acknowledges that AUSAs can bind other districts and that it is the obligation of the government to make explicit any limitation in the scope of immunity.

ARGUMENT

EN BANC REVIEW IS NECESSARY TO DETERMINE WHETHER ANNABI'S CANON OF CONSTRUCTION FOR PLEA AGREEMENTS SHOULD BE OVERRULED OR LIMITED

The Panel based its decision on *Annabi*. *Annabi* should be overruled because its canon of construction for interpreting plea agreements conflicts with the authoritative decisions of other circuits that have addressed the issue and stands in tension with what the Supreme Court and this Circuit have written about plea and immunity agreements.

In *Annabi,* the defendants were charged under a three-count indictment in the EDNY with conspiring to import, importing, and possessing heroin with intent to distribute. *See* 771 F.2d at 671. After they pled guilty to the substantive importation charge (Count Two), the prosecutor represented to the court that "the only agreement that exists between defendants and the Government is that at the time of the imposition of sentence on Count Two, the Government would move to dismiss the two open remaining counts…" *Id*. Accordingly, the conspiracy and possession counts were dismissed. *See id.* Subsequently, the defendants were indicted in the SDNY with conspiracy to distribute heroin. *See id.* Whereas the dismissed EDNY charges had only alleged a conspiracy on or about a date in 1982, the new SDNY charges alleged criminal conduct extending from 1982 to 1985. The defendants argued that these new charges were barred by their plea agreement with the USAO-EDNY. *See id.* The District Court conducted an evidentiary hearing—obtaining testimony from both the prosecutor and the defense attorney from the EDNY proceedings—and concluded that the agreement was not meant to bind the USAO-SDNY. *See id.* The Second Circuit noted that this result was highly counterintuitive, acknowledging that "[a] plea agreement whereby a federal prosecutor agrees that 'the Government' will dismiss counts of an indictment…might be thought to bar the United States from reprosecuting the dismissed charges in any judicial district…." *Id.* at 672. Nevertheless, the Court declared, "the law has evolved to the contrary,"

adding, "[a] plea agreement binds only the office of the United States Attorney for the district in which the plea is entered unless it affirmatively appears that the agreement contemplates a broader restriction." *Id*. The Court concluded that, because the conspiracy alleged in the SDNY indictment "extended for an additional two years" beyond the date of the conspiracy alleged in the EDNY indictment, "the new charges are sufficiently distinct at least to warrant application of [this] rule concerning construction of plea agreements." *Id.*

Annabi has been sharply criticized. One circuit said it was "unable to discern a sound basis for the [*Annabi*] rule," adding that the decision "really has no analytically sound foundation." *U.S. v. Gebbie*, 294 F.3d 540, 547 (3d Cir. 2002). *Annabi* cited three prior cases from this Circuit in support of the rule. 771 F.2d at 672 (citing *U.S. v. Abbamonte*, 759 F.2d 1065 (2d Cir. 1985); *U.S. v. Alessi*, 544 F.2d 1139 (2d Cir. 1976); and *U.S. v. Papa*, 533 F.2d 815 (2d Cir. 1976)). But, as *Gebbie* explained, *Annabi* misread this Court's precedent and fashioned an "illogical" rule out of whole cloth:

> The first case cited in *Annabi* is *Abbamonte*, but *Abbamonte* merely relies upon the other two cases cited in *Annabi*—*Alessi* and *Papa* …
>
> The court in *Alessi* relies upon *Papa*, which is a related case. …
>
> ***Papa*, however, provides no support for the rule the Second Circuit follows**. … Although *Papa* held that the plea agreement did not bind other districts *because the evidence revealed an intent to bind only one district*, the Second Circuit apparently has broadly interpreted this case as meaning that plea agreements do not bind other districts absent an

> affirmative appearance of doing so. *Papa* does not explain or attempt to rationalize the rule that has evolved.

294 F.3d at 547-48 (*brackets and italics in original; bold added*).

Annabi stands in tension with what the United States Supreme Court has written about plea and immunity agreements. In *Santobello*, 404 U.S. 257 (1971)—the seminal case on plea bargaining—the Supreme Court held that one prosecutor's promise in a plea agreement would bind other prosecutors, even those who might have been unaware of the promise. As *Santobello* explained, "[t]he staff lawyers in a prosecutor's office have the burden of 'letting the left hand know what the right hand is doing' or has done." 404 U.S. at 262. And in *Giglio v. United States*, the Supreme Court held that an AUSA had a duty under *Brady* to disclose a promise of immunity that another AUSA had made to a testifying witness, even though the first AUSA had been falsely assured that no such promise was made. *See* 405 U.S. 150, 154 (1972) ("The prosecutor's office is an entity and as such it is the spokesman for the Government. A promise made by one attorney must be attributed, for these purposes, to the Government") (citing Restatement (Second) of Agency § 272). These premises are inconsistent with the notion that a federal prosecutor in one district has no obligation to honor promises made by his or her counterpart in another.

Appellant is not aware of *any* published authority from another circuit that follows *Annabi* in holding that an ambiguous promise made in a plea agreement by

one USAO is presumed not to bind other USAOs.[4] To the contrary, the weight of authority holds that a representation by the United States Attorney or her agents will bind USAOs in other districts, if not the federal Government as a whole. *See Gebbie*, 294 F.3d at 550 ("[W]hen a United States Attorney negotiates and contracts on behalf of 'the United States' or 'the Government' in a plea agreement … that attorney speaks for and binds all of his or her fellow United States Attorneys with respect to those same crimes and those same defendants. … United States Attorneys should not be viewed as sovereigns of autonomous fiefdoms."); *U.S. v. Van Thournout*, 100 F.3d 590, 594 (8th Cir. 1996) ("Absent an express limitation, any promises made by an [AUSA] in one district will bind an [AUSA] in another district"); *Margalli-Olvera v. I.N.S.*, 43 F.3d 345, 353 (8th Cir. 1994) ("promises made by an [AUSA]" in a plea agreement "bind all agents of the United States government"); *Thomas v. I.N.S.*, 35 F.3d 1332 (9th Cir. 1994) (enforcing against the INS a cooperation agreement between defendant and an AUSA promising that "the government" would not oppose defendant's application for relief from deportation); *U.S. v. Levasseur*, 846 F.2d 786, 799 (1st Cir. 1988) (expressly declining to apply *Annabi* in the estoppel context, instead holding that "the representation of any [AUSA] may, in

[4] The Seventh Circuit held in *U.S. v. Rourke* that a plea agreement did not bind the Federal Aviation Administration. *See* 74 F.3d 802, 807 n.5 (7th Cir. 1996). But *Rourke* did not go as far as *Annabi* in ruling that a promise by one USAO is presumptively nonbinding on *other USAOs*. The Sixth Circuit in *U.S. v. Robinson* held, on the facts before it, that a plea agreement in the Eastern District of North Carolina was not binding in the Eastern District of Michigan, but explicitly declined to take a position on *Annabi*'s broader rule. *See* 924 F.2d 612, 613 (6th Cir. 1991).

appropriate circumstances, be invoked to estop the United States…"); *U.S. v. Harvey*, 791 F.2d 294, 303 (4th Cir. 1986) ("Whenever a United States Attorney negotiates and enters a plea agreement, it is the Government that 'agrees' to whatever is agreed to."); *U.S. v. Carter*, 454 F.2d 426 (4th Cir. 1972) (en banc) (vacating conviction where a plea "bargain was allegedly breached in a neighboring district," adding that "[t]he United States government is the United States government throughout all of the states and districts"); *Young v. U.S.*, 953 F.Supp.2d 1049, 1069 n.4 (D.S.D. 2013) (plea agreement between defendant and "the United States" in West Virginia would bind federal prosecutors in South Dakota); *Little v. U.S.*, Nos. 1:08-cr-59, 1:09-cv-822, 2010 WL 3942749, at *3 (S.D. Ohio Oct. 7, 2010) (plea agreement between defendant "and the United States of America," which was "silent as to the effect it may have with respect to other United States Attorneys," would be interpreted to "bind[] the United States Attorneys in all other districts").

Annabi is also out of step with the law of *this* Circuit. It is well-settled that "we determine whether a plea agreement has been breached by looking to the reasonable understanding of the parties and by resolving any ambiguities against the Government." *In re Altro*, 180 F.3d 372, 375 (2d Cir. 1999); *see also U.S. v. Carmichael*, 216 F.3d 224 (2d Cir. 2000) ("[W]e 'construe plea agreements strictly against the Government.'") (quoting *U.S. v. Ready*, 82 F.3d 551, 559 (2d Cir. 1996)). But *Annabi* flips this formulation on its head, holding that an ambiguous promise of

immunity by "the United States" is to be construed *against the defendant*—binding just one USAO rather than the Government as a whole, "unless it affirmatively appears that the agreement contemplates a broader restriction." 771 F.2d at 672. *Annabi* did not explain or acknowledge its departure from this longstanding doctrine.

This Court has been exceedingly reluctant, until now, to affirm a conviction on the force of *Annabi*'s reasoning. Previous decisions from this Court that cited *Annabi* have done so essentially in dictum (as in cases involving unambiguous plea agreements, which do not require resort to *Annabi*'s canon of construction),[5] or for points unrelated to whether an agreement with one USAO will bind another,[6] or—in one case—in an unpublished decision that provided too little information to clarify whether the plea agreement as a whole was ambiguous.[7]

Annabi's analytical faults support limiting application of the rule. *Cf. Egbert v. Boule*, 142 S.Ct. 1793, 1803 (2022) (where underlying precedent may have been

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[5] *See U.S. v. Prisco*, 391 F. App'x 920, 921 (2d Cir. Sept. 2, 2010) (agreement stated it was "limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities"); *U.S. v. Ashraf*, 320 F. App'x 26, 28 (2d Cir. Apr. 6, 2009) (agreement, "by its express terms, bound only the U.S. Attorney's Office for the Eastern District of Virginia"); *U.S. v. Gonzales*, 93 F. App'x 268, 271 (2d Cir. Mar. 24, 2004) (agreement "explicitly states that the agreement binds only the United States Attorney's Office for the District of New Mexico"); *U.S. v. Salameh*, 152 F.3d 88, 119, 120 (2d Cir. 1998) ("[T]his agreement is limited to the United States Attorney's Office for the Eastern District of New York and cannot bind other federal, state or local prosecuting authorities."); *U.S. v. Russo*, 801 F.2d 624, 626 (2d Cir. 1986) ("[W]e need not resolve the question whether the Southern District is bound by this particular plea agreement…."); *U.S. v. Persico*, 774 F.2d 30 (2d Cir. 1985), *aff'g* 620 F.Supp. 836, 846 (S.D.N.Y. 1985) ("Persico's plea agreement explicitly states that it 'is binding on the United States only in [the Eastern] district'") (brackets in original).

[6] *See U.S. v. Reiter*, 848 F.2d 336, 340 (2d Cir. 1988) (discussing double jeopardy issue); *U.S. v. Rivera*, 844 F.2d 916, 923 (2d Cir. 1988) (plea agreement and later charges arose in the same district, unlike *Annabi*); *U.S. v. Nersesian*, 824 F.2d 1294, 1321-22 (2d Cir. 1987) (case related to *Annabi* itself).

[7] *See U.S. v. Brown*, Nos. 99-1230(L), 99-1762, 2002 WL 34244994, at *2 (2d Cir. Apr. 26, 2002).

doctrinally flawed, expanding it into "new…context[s]" would be "a disfavored judicial activity") (quoting *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1857, 1859 (2017)). At minimum, *Annabi's* questionable doctrine should limited in four respects:

First, Annabi should not apply to pleas that originate outside the Second Circuit. Unlike the plea agreement in *Annabi*, the NPA originated in the Eleventh Circuit. Under textbook choice-of-law rules and principles of fairness, it would be unreasonable to graft a unique, pro-prosecution canon of construction, derived from the law of a foreign circuit—this circuit—onto a plea agreement negotiated with prosecutors in a circuit where the very opposite rule applies, i.e. that ambiguities in plea agreements are to be resolved against the government. Under Eleventh Circuit precedent, even if the reference to "the United States" were deemed ambiguous, the ambiguity "must be read against the government.'" *U.S. v. Jefferies*, 908 F.2d 1520, 1523 (11th Cir. 1990) (citing *In re Arnett*, 804 F.2d 1200, 1203 (11th Cir. 1986)); *see also Rowe v. Griffin*, 676 F.2d 524, 526 n.4 (11th Cir. 1982). And this result would bring the Eleventh Circuit in line with every circuit that has directly confronted this question (other than the Second Circuit). *See Gebbie*, 294 F.3d at 550; *Van Thournout*, 100 F.3d at 594; *Harvey*, 791 F.2d at 303.

Second, *Annabi* should only apply when "the new charges are sufficiently distinct" from the old ones. 771 F.2d at 672. And *Annabi* made clear that charges are "sufficiently distinct" when they cover a different or expanded period of time.

Id. Here, the USAO-SDNY charged Appellant under Count Six with conduct from 2001 through 2004 that falls entirely within the 2001-2007 offense period contemplated by the NPA.

Third, *Annabi* should apply only if there are no "affirmative" indications whatsoever that the plea agreement was intended to bind other USAOs. *See Annabi*, 771 F.2d at 671; *Alessi*, 544 F.2d at 1154; *Papa*, 533 F.2d at 823-25. That is not the case here. Appellant produced ample evidence that the NPA was intended to bind other USAOs. *See* Appellant's Principal Brief at 33-38. The investigation itself suggests it was meant to bind the SDNY, in particular, because the investigation was active in the SDNY at the time the NPA was negotiated. SA72, 84, 86, 127. *See* Doc 293 at 16. Defense counsel understood the plea agreement to provide "genuine finality." SA118. This reasonable understanding, supported by the NPA itself and the limited negotiation history contained in the one-sided OPR was sufficient to preclude application of *Annabi*.

Fourth, at most, *Annabi* should apply, if at all, only after the court permits discovery and conducts an evidentiary hearing. *See Annabi*, 771 F.2d at 671; *Papa*, 533 F.2d at 823. Here, appellant was denied discovery and an evidentiary hearing.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Petition be granted and that this Court vacate the Panel decision, overrule *Annabi* and dismiss the indictment or remand for an evidentiary hearing.

Dated: New York, New York
November 1, 2024

Respectfully Submitted,

By: /s/Diana Fabi Samson

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Fed. R. App. P. 40(b)(1), because, excluding the parts of the document exempted by Fed. R. App. P. 32(f): this document contains 3,889 words.

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Dated: New York, New York
November 1, 2024

ORDER

22-1426-cr
United States v. Maxwell

In the
United States Court of Appeals
for the Second Circuit

AUGUST TERM 2023

No. 22-1426-cr

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

ARGUED: MARCH 12, 2024
DECIDED: SEPTEMBER 17, 2024

Before: CABRANES, WESLEY, and LOHIER, *Circuit Judges*.

Defendant Ghislaine Maxwell appeals her June 29, 2022, judgment of conviction in the United States District Court for the Southern District of New York (Alison J. Nathan, *Judge*). Maxwell was convicted of conspiracy to transport minors with intent to engage in criminal sexual activity in violation of 18 U.S.C. § 371; transportation of a minor with intent to engage in criminal sexual activity in violation of 18 U.S.C. § 2423(a); and sex trafficking of a minor in violation of 18 U.S.C. § 1591(a) and (b)(2). She was principally sentenced to concurrent terms of imprisonment of 60 months, 120 months, and 240 months, respectively, to be followed by concurrent terms of supervised release.

On appeal, the questions presented are whether (1) Jeffrey Epstein's Non-Prosecution Agreement with the United States Attorney's Office for the Southern District of Florida barred Maxwell's prosecution by the United States Attorney's Office for the Southern District of New York; (2) a second superseding indictment of March 29, 2021, complied with the statute of limitations; (3) the District Court abused its discretion in denying Maxwell's Rule 33 motion for a new trial based on the claimed violation of her Sixth Amendment right to a fair and impartial jury; (4) the District Court's response to a jury note resulted in a constructive amendment of, or prejudicial variance from, the allegations in the second superseding indictment; and (5) Maxwell's sentence was procedurally reasonable.

Identifying no errors in the District Court's conduct of this complex case, we AFFIRM the District Court's June 29, 2022, judgment of conviction.

ANDREW ROHRBACH, Assistant United States Attorney (Maurene Comey, Alison Moe, Lara Pomerantz, Won S. Shin, Assistant United States Attorneys, *on the brief*), *for* Damian Williams, United States Attorney for the Southern District of New York, New York, NY, *for Appellee*.

DIANA FABI SAMSON (Arthur L. Aidala, John M. Leventhal, *on the brief*), Aidala Bertuna & Kamins PC, New York, NY, *for Defendant-Appellant*.

JOSÉ A. CABRANES, *Circuit Judge*:

Defendant Ghislaine Maxwell appeals her June 29, 2022, judgment of conviction in the United States District Court for the Southern District of New York (Alison J. Nathan, *Judge*). Maxwell was convicted of conspiracy to transport minors with intent to engage in criminal sexual activity in violation of 18 U.S.C. § 371; transportation of a minor with intent to engage in criminal sexual activity in violation of 18 U.S.C. § 2423(a); and sex trafficking of a minor in violation of 18 U.S.C. § 1591(a) and (b)(2). The District Court imposed concurrent terms of imprisonment of 60 months, 120 months, and 240 months, respectively, to be followed by concurrent terms of supervised release

of three years, three years, and five years, respectively. The District Court also imposed a fine of $250,000 on each count for a total of $750,000.

On appeal, the questions presented are (1) whether Jeffrey Epstein's Non-Prosecution Agreement ("NPA") with the United States Attorney's Office for the Southern District of Florida ("USAO-SDFL") barred Maxwell's prosecution by the United States Attorney's Office for the Southern District of New York ("USAO-SDNY"); (2) whether Maxwell's second superseding indictment of March 29, 2021 (the "Indictment") complied with the statute of limitations; (3) whether the District Court abused its discretion in denying Maxwell's Rule 33 motion for a new trial based on the claimed violation of her Sixth Amendment right to a fair and impartial jury; (4) whether the District Court's response to a jury note resulted in a constructive amendment of, or prejudicial variance from, the allegations in the Indictment; and (5) whether Maxwell's sentence was procedurally reasonable.

We hold that Epstein's NPA did not bar Maxwell's prosecution by USAO-SDNY as the NPA does not bind USAO-SDNY. We hold that Maxwell's Indictment complied with the statute of limitations as 18 U.S.C. § 3283 extended the time to bring charges of sexual abuse for offenses committed before the date of the statute's enactment. We further hold that the District Court did not abuse its discretion in denying Maxwell's Rule 33 motion for a new trial based on one juror's erroneous answers during *voir dire*. We also hold that the District Court's response to a jury note did not result in a constructive amendment of, or prejudicial variance from, the allegations in the

Indictment. Lastly, we hold that Maxwell's sentence is procedurally reasonable.

Accordingly, we **AFFIRM** the District Court's June 29, 2022, judgment of conviction.

I. BACKGROUND [1]

Defendant Ghislaine Maxwell coordinated, facilitated, and contributed to Jeffrey Epstein's sexual abuse of women and underage girls. Starting in 1994, Maxwell groomed numerous young women to engage in sexual activity with Epstein by building friendships with these young women, gradually normalizing discussions of sexual topics and sexual abuse. Until about 2004, this pattern of sexual abuse continued as Maxwell provided Epstein access to underage girls in various locations in the United States.

1. Epstein's Non-Prosecution Agreement

In September 2007, following state and federal investigations into allegations of Epstein's unlawful sexual activity, Epstein entered into an NPA with USAO-SDFL. In the NPA, Epstein agreed to plead guilty to one count of solicitation of prostitution, in violation of Florida

[1] Unless otherwise noted, the following facts are drawn from the evidence presented at trial and described in the light most favorable to the Government. *See United States v. Litwok*, 678 F.3d 208, 210-11 (2d Cir. 2012) ("Because this is an appeal from a judgment of conviction entered after a jury trial, the [ ] facts are drawn from the trial evidence and described in the light most favorable to the Government.").

Statutes § 796.07,[2] and to one count of solicitation of minors to engage in prostitution, in violation of Florida Statutes § 796.03.[3] He agreed to receive a sentence of eighteen months' imprisonment on the two charges. In consideration of Epstein's agreement, the NPA states that "the United States also agrees that it will not institute any criminal charges against any potential co-conspirators of Epstein, including but not limited to Sarah Kellen, Adriana Ross, Lesley Groff, or Nadia Marcinkova."[4]

2. Maxwell's Indictment and Trial-Related Proceedings

The Indictment filed against Maxwell contained eight counts, six of which proceeded to trial.[5] Prior to the commencement of trial,

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[2] Florida Statutes § 796.07 provides in relevant part:

> (2) It is unlawful:
>
> > (f) To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.

[3] Florida Statutes § 796.03, which has since been repealed, provided in relevant part: "A person who procures for prostitution, or causes to be prostituted, any person who is under the age of 18 years commits a felony of the second degree."

[4] A-178.

[5] Count One charged Maxwell with conspiracy to entice minors to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 371. Count Two charged Maxwell with enticement of a minor to travel to engage in illegal sex acts, in violation of 18 U.S.C. §§ 2422 and 2. Count Three charged Maxwell with conspiracy to transport minors with intent to engage in criminal sexual activity, in violation of 18 U.S.C. § 371. Count Four charged Maxwell with transportation of a minor with intent to engage in criminal sexual activity, in violation of 18 U.S.C. §§ 2423(a) and 2. Count Five charged Maxwell with sex trafficking conspiracy, in

prospective jurors completed a lengthy questionnaire, with several questions raising issues relevant to the trial. Based on the completed questionnaires, the parties selected prospective jurors to proceed to in-person *voir dire*. The District Court ultimately empaneled a jury.

During the four-and-a-half-week jury trial, the Government presented evidence of the repeated sexual abuse of six girls. At the conclusion of trial, on December 29, 2021, the jury found Maxwell guilty on all but one count.[6]

Following the verdict, Juror 50 gave press interviews during which he stated that he was a survivor of child sexual abuse.[7] In his answers to the written jury questionnaire, however, Juror 50 answered "no" to three questions asking whether he or a friend or family member had ever been the victim of a crime; whether he or a friend or family member had ever been the victim of sexual harassment, sexual abuse, or sexual assault; and whether he or a friend or family member had ever been accused of sexual harassment, sexual abuse, or sexual

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violation of 18 U.S.C. § 371. Count Six charged Maxwell with sex trafficking of a minor, in violation of 18 U.S.C. §§ 1591(a), (b)(2), and 2. Counts Seven and Eight charged Maxwell with perjury, in violation of 18 U.S.C. § 1623. The perjury charges were severed from the remaining charges and ultimately dismissed at sentencing.

[6] The jury found Maxwell guilty on Counts One, Three, Four, Five, and Six. Maxwell was acquitted on Count Two.

[7] Consistent with a juror anonymity order entered for trial, the parties and the District Court referred to the jurors by pseudonym.

assault.[8] Upon learning of the interviews, the Government filed a letter on January 5, 2022, requesting a hearing; Maxwell then moved for a new trial under Federal Rule of Criminal Procedure 33. On March 8, 2022, the District Court held a hearing and Juror 50 testified—under grant of immunity—that his answers to three questions related to sexual abuse in the jury questionnaire were not accurate but that the answers were an inadvertent mistake and that his experiences did not affect his ability to be fair and impartial. Finding Juror 50's testimony to be credible, the District Court denied Maxwell's motion for a new trial in a written order.

Maxwell was subsequently sentenced to a term of 240 months' imprisonment to be followed by five years' supervised release, and the

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[8] Question 2 asked "[h]ave you, or any of your relatives or close friends, ever been a victim of a crime?" Question 48 asked "[h]ave you or a friend or family member ever been the victim of sexual harassment, sexual abuse, or sexual assault? (This includes actual or attempted sexual assault or other unwanted sexual advance, including by a stranger, acquaintance, supervisor, teacher, or family member.)" Finally, Question 49 asked

> [h]ave you or a friend or family member ever been accused of sexual harassment, sexual abuse, or sexual assault? (This includes both formal accusations in a court of law or informal accusations in a social or work setting of actual or attempted sexual assault or other unwanted sexual advance, including by a stranger, acquaintance, supervisor, teacher, or family member.

See A-299, A-310.

District Court imposed a $750,000 fine and a $300 mandatory special assessment. This appeal followed.

II. DISCUSSION

1. The NPA Between Epstein and USAO-SDFL Did Not Bar Maxwell's Prosecution by USAO-SDNY

Maxwell sought dismissal of the charges in the Indictment on the grounds that the NPA made between Epstein and USAO-SDFL immunized her from prosecution on all counts as a third-party beneficiary of the NPA. The District Court denied the motion, rejecting Maxwell's arguments. We agree. We review *de novo* the denial of a motion to dismiss an indictment.[9]

In arguing that the NPA barred her prosecution by USAO-SDNY, Maxwell cites the portion of the NPA in which "the United States [ ] agree[d] that it w[ould] not institute any criminal charges against any potential co-conspirators of Epstein."[10] We hold that the NPA with USAO-SDFL does not bind USAO-SDNY.

It is well established in our Circuit that "[a] plea agreement binds only the office of the United States Attorney for the district in which the plea is entered unless it affirmatively appears that the agreement

[9] *See, e.g.*, *United States v. Walters*, 910 F.3d 11, 22 (2d Cir. 2018).

[10] A-178.

contemplates a broader restriction."[11] And while Maxwell contends that we cannot apply *Annabi* to an agreement negotiated and executed outside of this Circuit, we have previously done just that.[12] Applying *Annabi*, we conclude that the NPA did not bar Maxwell's prosecution by USAO-SDNY. There is nothing in the NPA that affirmatively shows that the NPA was intended to bind multiple districts. Instead, where the NPA is not silent, the agreement's scope is *expressly limited* to the Southern District of Florida. The NPA makes clear that if Epstein fulfilled his obligations, he would no longer face charges *in that district*:

> After timely fulfilling all the terms and conditions of the Agreement, no prosecution for the offenses set out on pages 1 and 2 of this Agreement, nor any other offenses that have been the subject of the joint investigation by the Federal Bureau of Investigation and the United States Attorney's Office, nor any

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[11] *United States v. Annabi*, 771 F.2d 670, 672 (2d Cir. 1985). We recognize that circuits have been split on this issue for decades. *See United States v. Harvey*, 791 F.2d 294, 303 (4th Cir. 1986); *United States v. Gebbie*, 294 F.3d 540, 550 (3d Cir. 2002).

[12] *See, e.g.*, *United States v. Prisco*, 391 F. App'x 920, 921 (2d Cir. 2010) (summary order) (applying *Annabi* to plea agreement entered into in the District of New Jersey); *United States v. Gonzalez*, 93 F. App'x 268, 270 (2d Cir. 2004) (summary order) (same, to agreement entered into in the District of New Mexico). Nor does *Annabi*, as Maxwell contends, apply only where subsequent charges are "sufficiently distinct" from charges covered by an earlier agreement. In *Annabi*, this Court rejected an interpretation of a prior plea agreement that rested on the Double Jeopardy Clause, reasoning that even if the Double Jeopardy Clause applied, the subsequent charges were "sufficiently distinct" and therefore fell outside the Clause's protections. *Annabi*, 771 F.2d at 672. This Court did not, however, conclude that the rule of construction it announced depended on the similarities between earlier and subsequent charges.

> offenses that arose from the Federal Grand Jury investigation will be instituted *in this District*, and the charges against Epstein if any, will be dismissed.[13]

The only language in the NPA that speaks to the agreement's scope is limiting language.

The negotiation history of the NPA, just as the text, fails to show that the agreement was intended to bind other districts. Under our Court's precedent, the negotiation history of an NPA can support an inference that an NPA "affirmatively" binds other districts.[14] Yet, the actions of USAO-SDFL do not indicate that the NPA was intended to bind other districts.

The United States Attorney's Manual that was operable during the negotiations of the NPA required that:

> No district or division shall make any agreement, including any agreement not to prosecute, which purports to bind any other district(s) or division without the express written approval of

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[13] A-175 (emphasis added). The agreement's scope is also limited in an additional section:

> THEREFORE, on the authority of R. Alexander Acosta, United States Attorney for the Southern District of Florida, *prosecution in this District* for these offenses shall be deferred in favor of prosecution by the State of Florida, provided that Epstein abides by the following conditions and the requirements of this Agreement set forth below.

Id. (emphasis added).

[14] *See United States v. Russo*, 801 F.2d 624, 626 (2d Cir. 1986).

> the United States Attorney(s) in each affected district and/or the Assistant Attorney General of the Criminal Division.[15]

Nothing before us indicates that USAO-SDNY had been notified or had approved of Epstein's NPA with USAO-SDFL and intended to be bound by it. And the Assistant Attorney General for the Criminal Division stated in an interview with the Office of Professional Responsibility that she "played no role" in the NPA, either by reviewing or approving the agreement.

The history of the Office of the United States Attorney is instructive as to the scope of their actions and duties. The Judiciary Act of 1789 created the Office of the United States Attorney, along with the office of the Attorney General. More specifically, the Judiciary Act provided for the appointment, in each district, of a "person learned in the law to act as attorney for the United States *in such district*, who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute *in such district* all delinquents for crimes and offences, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned."[16] The Judiciary Act thus emphasized that U.S. Attorneys would enforce the law of the United States but did not determine that the actions of one U.S. Attorney could bind other districts, let alone the entire nation. In fact, the phrase "in such district," repeated twice, implies that the scope of

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[15] United States Attorney's Manual § 9-27.641 (2007).

[16] An Act to Establish the Judicial Courts of the United States, ch. 20, § 35, 1 Stat. 73, 92-93 (1789) (emphasis added).

the actions and the duties of the U.S. Attorneys would be limited to their own districts, absent any express exceptions.

Since 1789, while the number of federal districts has grown significantly, the duties of a U.S. Attorney and their scope remain largely unchanged. By statute, U.S. Attorneys, "within [their] district, shall (1) prosecute for all offenses against the United States; (2) prosecute or defend, for the Government, all civil actions, suits or proceedings in which the United States is concerned."[17] Again, the scope of the duties of a U.S. Attorney is cabined to their specific district unless otherwise directed.[18]

In short, *Annabi* controls the result here. Nothing in the text of the NPA or its negotiation history suggests that the NPA precluded USAO-SDNY from prosecuting Maxwell for the charges in the

[17] 28 U.S.C. § 547.

[18] This does not suggest that there are no instances in which a U.S. Attorney's powers do not extend beyond their districts. For instance, under 28 U.S.C. § 515 a U.S. Attorney can represent the Government or participate in proceedings in other districts, but only when specifically directed by the Attorney General:

> The Attorney General or any other officer of the Department of Justice, or any attorney specially appointed by the Attorney General under law, may, when specifically directed by the Attorney General, conduct any kind of legal proceeding . . . which United States attorneys are authorized by law to conduct, whether or not he is a resident of the district in which the proceeding is brought.

Indictment. The District Court therefore correctly denied Maxwell's motion without an evidentiary hearing.

2. The Indictment Is Timely

Maxwell argues that Counts Three and Four of the Indictment are untimely because they do not fall within the scope of offenses involving the sexual or physical abuse or kidnapping of a minor and thereby do not fall within the extended statute of limitations provided by § 3283.[19] Separately, Maxwell contends that the Government cannot apply the 2003 amendment to § 3283 that extended the statute of limitations to those offenses that were committed before the enactment into law of the provision. On both points, we disagree and hold that the District Court correctly denied Maxwell's motions to dismiss the charges as untimely. We review *de novo* the denial of a motion to dismiss an indictment and the application of a statute of limitations.[20]

First, Counts Three and Four of the Indictment are offenses involving the sexual abuse of minors. The District Court properly applied *Weingarten v. United States*.[21] In *Weingarten*, we explained that Congress intended courts to apply § 3283 using a case-specific

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[19] 18 U.S.C. § 3283 provides: "[n]o statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnaping, of a child under the age of 18 years shall preclude such prosecution during the life of the child, or for ten years after the offense, whichever is longer."

[20] *United States v. Sampson*, 898 F.3d 270, 276, 278 (2d Cir. 2018).

[21] 865 F.3d 48, 58-60 (2d Cir. 2017); *see also United States v. Maxwell*, 534 F. Supp. 3d 299, 313-14 (S.D.N.Y. 2021).

approach as opposed to a "categorical approach."[22] We see no reason to depart from our reasoning in *Weingarten*. Accordingly, the question presented here is whether the charged offenses involved the sexual abuse of a minor for the purposes of § 3283 based on the facts of the case. Jane, one of the women who testified at trial, gave evidence that she had been sexually abused when transported across state lines as a minor. Counts Three and Four thus qualify as offenses, and § 3283 applies to those offenses.

Second, Maxwell argues that Counts Three, Four, and Six of the Indictment are barred by the statute of limitations because the extended statute of limitations provided by the 2003 amendment to § 3283 does not apply to pre-enactment conduct. In *Landgraf v. USI Film Products*, the Supreme Court held that a court, in deciding whether a statute applies retroactively, must first "determine whether Congress has expressly prescribed the statute's proper reach."[23] If Congress has done so, "the inquiry ends, and the court enforces the

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[22] The "categorical approach" is a method of statutory interpretation that requires courts to look "only to the statutory definitions of the prior offenses, and not to the particular facts underlying those convictions" for sentencing and immigration purposes. *Taylor v. United States*, 495 U.S. 575, 600 (1990). We properly reasoned in *Weingarten* that § 3283 met none of the conditions listed by *Taylor* that might require application of the categorical approach. *See Weingarten*, 865 F.3d at 58-60. First, "[t]he language of § 3283[] . . . reaches beyond the offense and its legal elements to the conduct 'involv[ed]' in the offense." *Id.* at 59-60. Second, legislative history suggests that Congress intended § 3283 to be applied broadly. *Id.* at 60. Third, a case-specific approach would not produce practical difficulties or potential unfairness. *Id.*

[23] 511 U.S. 244, 280 (1994); *see also Weingarten*, 865 F.3d at 54-55.

statute as it is written."[24] If the statute "is ambiguous or contains no express command regarding retroactivity, a reviewing court must determine whether applying the statute to antecedent conduct would create presumptively impermissible retroactive effects."[25]

Here, the inquiry is straightforward. In 2003, Congress amended § 3283 to provide: "No statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnaping, of a child under the age of 18 years shall preclude such prosecution during the life of the child."[26] The text of § 3283—that *no* statute of limitations that would *otherwise* preclude prosecution of these offenses will apply—plainly requires that it prevent the application of any statute of limitations that would otherwise apply to past conduct.

The statutory text makes clear that Congress intended to extend the time to bring charges of sexual abuse for pre-enactment conduct as the prior statute of limitations was inadequate. This is enough to conclude that the PROTECT Act's amendment to § 3283 applies to Maxwell's conduct as charged in the Indictment.

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[24] *In re Enter. Mortg. Acceptance Co., LLC, Sec. Litig.*, 391 F.3d 401, 406 (2d Cir. 2004) (citing *Landgraf*, 511 U.S. at 280).

[25] *Weingarten*, 865 F.3d at 55 (citation and internal quotation marks omitted).

[26] PROTECT Act, Pub. L. No. 108-21, § 202, 117 Stat. 650, 660 (2003).

3. The District Court Did Not Abuse Its Discretion in Denying Maxwell's Motion for a New Trial

Maxwell contends that she was deprived of her constitutional right to a fair and impartial jury because Juror 50 failed to accurately respond to several questions related to his history of sexual abuse as part of the jury questionnaire during jury selection. Following a special evidentiary hearing, the District Court denied Maxwell's motion for a new trial.

We review a District Court's denial of a motion for a new trial for abuse of discretion.[27] We have been extremely reluctant to "haul jurors in after they have reached a verdict in order to probe for potential instances of bias, misconduct or extraneous influences."[28] While courts can "vacate any judgment and grant a new trial if the interest of justice so requires," Fed. R. Crim. P. 33(a), they should do so "sparingly" and only in "the most extraordinary circumstances."[29] A district court "has

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[27] *See Rivas v. Brattesani*, 94 F.3d 802, 807 (2d Cir. 1996). "[W]e are mindful that a judge has not abused her discretion simply because she has made a different decision than we would have made in the first instance." *United States v. Ferguson*, 246 F.3d 129, 133 (2d Cir. 2001). We have repeatedly explained that the term of art "abuse of discretion" includes errors of law, a clearly erroneous assessment of the evidence, or "a decision that cannot be located within the range of permissible decisions." *In re Sims*, 534 F.3d 117, 132 (2d Cir. 2008) (citation and internal quotation marks omitted).

[28] *United States v. Moon*, 718 F.2d 1210, 1234 (2d Cir. 1983).

[29] *Ferguson*, 246 F.3d at 134.

broad discretion to decide Rule 33 motions based upon its evaluation of the proof produced" and is shown deference on appeal.[30]

A Rule 33 motion based on a juror's alleged erroneous response during *voir dire* is governed by *McDonough Power Equipment, Inc. v. Greenwood*.[31] Under *McDonough*, a party seeking a new trial "must first demonstrate that a juror failed to answer honestly a material question on *voir dire*, and then further show that a correct response would have provided a valid basis for a challenge for cause."[32]

The District Court applied the *McDonough* standard, found Juror 50's testimony credible, and determined that Juror 50's erroneous responses during *voir dire* were "not deliberately incorrect" and that "he would *not* have been struck for cause if he had provided accurate responses to the questionnaire."[33] In fact, as the District Court noted, Maxwell did not challenge the inclusion of other jurors who disclosed past experience with sexual abuse, assault, or harassment. This is

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[30] *United States v. Gambino*, 59 F.3d 353, 364 (2d Cir. 1995) (citation and internal quotation marks omitted).

[31] 464 U.S. 548 (1984).

[32] *Id.* at 556.

[33] A-340 (emphasis added). The Supreme Court reminds us that "[t]o invalidate the result of a [ ] trial because of a juror's mistaken, though honest response to a question, is to insist on something closer to perfection than our judicial system can be expected to give." *McDonough*, 464 U.S. at 555.

enough; the District Court did not abuse its discretion in denying Maxwell's motion for a new trial.[34]

4. The District Court's Response to a Jury Note Did Not Result in a Constructive Amendment of, or Prejudicial Variance from, the Allegations in the Indictment

During jury deliberations, the jury sent the following jury note regarding Count Four of the Indictment:

> Under Count Four (4), if the defendant aided in the transportation of Jane's return flight, but not the flight to New Mexico where/if the intent was for Jane to engage in sexual activity, can she be found guilty under the second element?[35]

The District Court determined that it would not respond to the note directly because it was difficult to "parse factually and legally" and instead referred the jury to the second element of Count Four.[36]

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[34] Nor did the District Court err in questioning Juror 50 rather than allowing the parties to do so. In conducting a hearing on potential juror misconduct, "[w]e leave it to the district court's discretion to decide the extent to which the parties may participate in questioning the witnesses, and whether to hold the hearing in camera." *United States v. Ianniello*, 866 F.2d 540, 544 (2d Cir. 1989). And while Maxwell contends that the District Court improperly limited questioning about Juror 50's role in deliberations, she both waived that argument below and fails to show here how any such questioning would not be foreclosed by Federal Rule of Evidence 606(b).

[35] A-238.

[36] A-207-221. The District Court's instruction on the second element of Count Four required the jury to find that "Maxwell knowingly transported Jane in interstate commerce with the

Maxwell subsequently filed a letter seeking reconsideration of the District Court's response, claiming that this response resulted in a constructive amendment or prejudicial variance. The District Court declined to reconsider its response and denied Maxwell's motion.

Maxwell appeals the District Court's denial and argues that the alleged constructive amendment is a *per se* violation of the Grand Jury Clause of the Fifth Amendment. Specifically, Maxwell argues that testimony about a witness's sexual abuse in New Mexico presented the jury with another basis for conviction, which is distinct from the charges in the Indictment. Similarly, Maxwell argues that this testimony resulted in a prejudicial variance from the Indictment. We disagree and affirm the District Court's denial.

We review the denial of a motion claiming constructive amendment or prejudicial variance *de novo*.[37] To satisfy the Fifth Amendment's Grand Jury Clause, "an indictment must contain the elements of the offense charged and fairly inform the defendant of the charge against which he must defend."[38] We have explained that to prevail on a constructive amendment claim, a defendant must demonstrate that "the terms of the indictment are in effect altered by the presentation of evidence and jury instructions which so modify essential elements of the offense charged that there is a substantial

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intent that Jane engage in sexual activity for which any person can be charged with a criminal offense in violation of New York law." A-205.

[37] *See United States v. Dove*, 884 F.3d 138, 146, 149 (2d Cir. 2018).

[38] *United States v. Khalupsky*, 5 F.4th 279, 293 (2d Cir. 2021).

likelihood that the defendant may have been convicted of an offense other than that charged in the indictment."[39] A constructive amendment requires reversal.[40]

We cannot conclude that a constructive amendment resulted from the evidence presented by the Government—namely, Jane's testimony—or that it can be implied from the jury note. We have permitted significant flexibility in proof as long as a defendant was "given notice of the core of criminality to be proven at trial."[41] In turn, "[t]he core of criminality of an offense involves the essence of a crime, in general terms; the particulars of how a defendant effected the crime falls outside that purview."[42]

We agree with the District Court that the jury instructions, the evidence presented at trial, and the Government's summation captured the core of criminality. As the District Court noted, while the jury note was ambiguous in one sense, it was clear that it referred to the second element of Count Four of the Indictment. Therefore, the District Court correctly directed the jury to that instruction, which "accurately instructed that Count Four had to be predicated on finding

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[39] *United States v. Mollica*, 849 F.2d 723, 729 (2d Cir. 1988).

[40] *See United States v. D'Amelio*, 683 F.3d 412, 417 (2d Cir. 2012).

[41] *United States v. Ionia Mgmt. S.A.*, 555 F.3d 303, 310 (2d Cir. 2009) (per curiam) (emphasis omitted).

[42] *D'Amelio*, 683 F.3d at 418 (internal quotation marks omitted).

a violation of New York law."[43] It is therefore not "uncertain whether [Maxwell] was convicted of conduct that was the subject of the grand jury's indictment."[44]

We also cannot conclude that the evidence at trial prejudicially varied from the Indictment. To allege a variance, a defendant "must establish that the evidence offered at trial differs materially from the evidence alleged in the indictment."[45] To prevail and win reversal, the defendant must further show "that substantial prejudice occurred at trial as a result" of the variance.[46] "A defendant cannot demonstrate that he has been prejudiced by a variance where the pleading and the proof substantially correspond, where the variance is not of a character that could have misled the defendant at the trial, and where the variance is not such as to deprive the accused of his right to be protected against another prosecution for the same offense."[47]

For reasons similar to the ones noted above in the context of the constructive amendment, the evidence at trial did not prove facts

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[43] A-387; *see United States v. Parker*, 903 F.2d 91, 101 (2d Cir. 1990) ("The trial judge is in the best position to sense whether the jury is able to proceed properly with its deliberations, and [ ] has considerable discretion in determining how to respond to communications indicating that the jury is experiencing confusion.")

[44] *United States v. Salmonese*, 352 F.3d 608, 620 (2d Cir. 2003).

[45] *Dove*, 884 F.3d at 149

[46] *Id.* (citation and internal quotation marks omitted).

[47] *Salmonese*, 352 F.3d at 621-22 (citation and internal quotation marks omitted); *see also Khalupsky*, 5 F.4th at 294.

"materially different" from the allegations in the Indictment.[48] The evidence indicated that Maxwell transported Jane to New York for sexual abuse and conspired to do the same. Maxwell knew that the evidence also included conduct in New Mexico.[49] Furthermore, Maxwell cannot demonstrate "substantial prejudice." Maxwell received—*over three weeks before trial*—notes of Jane's interview recording the abuse she suffered in New Mexico. This is enough to conclude that Maxwell was not "unfairly and substantially" prejudiced.[50]

5. Maxwell's Sentence Was Procedurally Reasonable

Lastly, Maxwell argues that her sentence was procedurally unreasonable because the District Court erred in applying a leadership sentencing enhancement under the Sentencing Guidelines and inadequately explained its above-Guidelines sentence.[51] We disagree.

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[48] *Dove*, 884 F.3d at 149.

[49] As the District Court found, "[t]he Indictment charged a scheme to sexually abuse underage girls in New York. In service of this scheme, the Indictment alleged that Epstein and the Defendant groomed the victims for abuse at various properties and in various states, including Epstein's ranch in New Mexico." A-393.

[50] *See United States v. Lebedev*, 932 F.3d 40, 54 (2d Cir. 2019) (concluding that a defendant was not "unfairly and substantially" prejudiced because "[t]he government disclosed the evidence and exhibits . . . four weeks prior to trial").

[51] At sentencing, the District Court calculated a Guidelines range of 188 to 235 months' imprisonment and sentenced Maxwell to a slightly above-Guidelines term of 240 months' imprisonment.

We review a sentence for both procedural and substantive reasonableness, which "amounts to review for abuse of discretion."[52] We have explained that procedural error is found when a district court "fails to calculate (or improperly calculates) the Sentencing Guidelines range, treats the Sentencing Guidelines as mandatory, fails to consider the [Section] 3553(a) factors, selects a sentence based on clearly erroneous facts, or fails adequately to explain the chosen sentence."[53] The District Court did none of that. It is important to emphasize that the Sentencing Guidelines "are guidelines—that is, they are truly advisory."[54] A District Court is "generally free to impose sentences outside the recommended range" based on its own "informed and individualized judgment."[55]

With respect to the four-level leadership enhancement, the District Court found that Maxwell "supervised" Sarah Kellen in part because of testimony from two of Epstein's pilots who testified that Kellen was Maxwell's assistant. The District Court found that testimony credible, in part because it was corroborated by other testimony that Maxwell was Epstein's "number two and the lady of the house" in Palm Beach,

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[52] *United States v. Cavera*, 550 F.3d 180, 187 (2d Cir. 2008) (en banc). "Regardless of whether the sentence imposed is inside or outside the Guidelines range, the appellate court must review the sentence under an abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 51 (2007).

[53] *United States v. Robinson*, 702 F.3d 22, 38 (2d Cir. 2012).

[54] *Cavera*, 550 F.3d at 189.

[55] *Id.*

where much of the abuse occurred and where Kellen worked.[56] We therefore hold that the District Court did not err in applying the leadership enhancement.

With respect to the length of the sentence, the District Court properly discussed the sentencing factors when imposing the sentence, and described, at length, Maxwell's "pivotal role in facilitating the abuse of the underaged girls through a series of deceptive tactics."[57] The District Court recognized that the sentence "must reflect the gravity of Ms. Maxwell's conduct, of Ms. Maxwell's offense, the pivotal role she played in facilitating the offense, and the significant and lasting harm it inflicted."[58] And the District Court explained that "a very serious, a very significant sentence is necessary to achieve the purposes of punishment" under 18 U.S.C. § 3553(a). In sum, the District Court did not err by failing to adequately explain its sentence.

CONCLUSION

To summarize, we hold as follows:

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[56] A-417.

[57] SA-459.

[58] SA-461.

1. The District Court did not err in holding that Epstein's NPA with USAO-SDFL did not bar Maxwell's prosecution by USAO-SDNY.

2. The District Court did not err in holding that the Indictment was filed within the statute of limitations.

3. The District Court did not abuse its discretion in denying Maxwell's Rule 33 motion for a new trial.

4. The District Court's response to a jury note did not result in a constructive amendment of, or prejudicial variance from, the allegations in the Indictment.

5. The District Court's sentence was procedurally reasonable.

For the foregoing reasons, we **AFFIRM** the District Court's June 29, 2022, judgment of conviction.

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 17, 2024
Docket #: 22-1426cr
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: September 17, 2024
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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

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 25th day of November, two thousand twenty-four.

United States of America,

Appellee,

v.

Ghislaine Maxwell, AKA Sealed Defendant 1,

Defendant - Appellant.

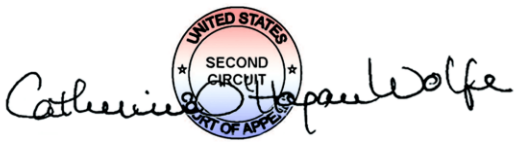
ORDER

Docket No: 22-1426

Appellant, Ghislaine Maxwell, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



MANDATE

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 17th day of September, two thousand twenty-four,

Before: José A. Cabranes,
Richard C. Wesley,
Raymond J. Lohier, Jr.,
Circuit Judges.

United States of America,

Appellee,

v.

Ghislaine Maxwell, AKA Sealed Defendant 1,

Defendant - Appellant.

JUDGMENT

Docket No. 22-1426

The appeal in the above captioned case from a judgment of the United States District Court for the Southern District of New York was argued on the district court's record and the parties' briefs. Upon consideration thereof,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the district court's June 29, 2022, judgment of conviction is AFFIRMED.

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

A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit

MANDATE ISSUED ON 12/02/2024

In the
United States Court of Appeals
for the Second Circuit

AUGUST TERM 2023

No. 22-1426-cr

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

ARGUED: MARCH 12, 2024
DECIDED: SEPTEMBER 17, 2024

Before: CABRANES, WESLEY, and LOHIER, *Circuit Judges*.

Defendant Ghislaine Maxwell appeals her June 29, 2022, judgment of conviction in the United States District Court for the Southern District of New York (Alison J. Nathan, *Judge*). Maxwell was convicted of conspiracy to transport minors with intent to engage in criminal sexual activity in violation of 18 U.S.C. § 371; transportation of a minor with intent to engage in criminal sexual activity in violation of 18 U.S.C. § 2423(a); and sex trafficking of a minor in violation of 18 U.S.C. § 1591(a) and (b)(2). She was principally sentenced to concurrent terms of imprisonment of 60 months, 120 months, and 240 months, respectively, to be followed by concurrent terms of supervised release.

On appeal, the questions presented are whether (1) Jeffrey Epstein's Non-Prosecution Agreement with the United States Attorney's Office for the Southern District of Florida barred Maxwell's prosecution by the United States Attorney's Office for the Southern District of New York; (2) a second superseding indictment of March 29, 2021, complied with the statute of limitations; (3) the District Court abused its discretion in denying Maxwell's Rule 33 motion for a new trial based on the claimed violation of her Sixth Amendment right to a fair and impartial jury; (4) the District Court's response to a jury note resulted in a constructive amendment of, or prejudicial variance from, the allegations in the second superseding indictment; and (5) Maxwell's sentence was procedurally reasonable.

Identifying no errors in the District Court's conduct of this complex case, we AFFIRM the District Court's June 29, 2022, judgment of conviction.

ANDREW ROHRBACH, Assistant United States Attorney (Maurene Comey, Alison Moe, Lara Pomerantz, Won S. Shin, Assistant United States Attorneys, *on the brief*), *for* Damian Williams, United States Attorney for the Southern District of New York, New York, NY, *for Appellee*.

DIANA FABI SAMSON (Arthur L. Aidala, John M. Leventhal, *on the brief*), Aidala Bertuna & Kamins PC, New York, NY, *for Defendant-Appellant*.

JOSÉ A. CABRANES, *Circuit Judge*:

Defendant Ghislaine Maxwell appeals her June 29, 2022, judgment of conviction in the United States District Court for the Southern District of New York (Alison J. Nathan, *Judge*). Maxwell was convicted of conspiracy to transport minors with intent to engage in criminal sexual activity in violation of 18 U.S.C. § 371; transportation of a minor with intent to engage in criminal sexual activity in violation of 18 U.S.C. § 2423(a); and sex trafficking of a minor in violation of 18 U.S.C. § 1591(a) and (b)(2). The District Court imposed concurrent terms of imprisonment of 60 months, 120 months, and 240 months, respectively, to be followed by concurrent terms of supervised release

of three years, three years, and five years, respectively. The District Court also imposed a fine of $250,000 on each count for a total of $750,000.

On appeal, the questions presented are (1) whether Jeffrey Epstein's Non-Prosecution Agreement ("NPA") with the United States Attorney's Office for the Southern District of Florida ("USAO-SDFL") barred Maxwell's prosecution by the United States Attorney's Office for the Southern District of New York ("USAO-SDNY"); (2) whether Maxwell's second superseding indictment of March 29, 2021 (the "Indictment") complied with the statute of limitations; (3) whether the District Court abused its discretion in denying Maxwell's Rule 33 motion for a new trial based on the claimed violation of her Sixth Amendment right to a fair and impartial jury; (4) whether the District Court's response to a jury note resulted in a constructive amendment of, or prejudicial variance from, the allegations in the Indictment; and (5) whether Maxwell's sentence was procedurally reasonable.

We hold that Epstein's NPA did not bar Maxwell's prosecution by USAO-SDNY as the NPA does not bind USAO-SDNY. We hold that Maxwell's Indictment complied with the statute of limitations as 18 U.S.C. § 3283 extended the time to bring charges of sexual abuse for offenses committed before the date of the statute's enactment. We further hold that the District Court did not abuse its discretion in denying Maxwell's Rule 33 motion for a new trial based on one juror's erroneous answers during *voir dire*. We also hold that the District Court's response to a jury note did not result in a constructive amendment of, or prejudicial variance from, the allegations in the

Indictment. Lastly, we hold that Maxwell's sentence is procedurally reasonable.

Accordingly, we **AFFIRM** the District Court's June 29, 2022, judgment of conviction.

I. BACKGROUND [1]

Defendant Ghislaine Maxwell coordinated, facilitated, and contributed to Jeffrey Epstein's sexual abuse of women and underage girls. Starting in 1994, Maxwell groomed numerous young women to engage in sexual activity with Epstein by building friendships with these young women, gradually normalizing discussions of sexual topics and sexual abuse. Until about 2004, this pattern of sexual abuse continued as Maxwell provided Epstein access to underage girls in various locations in the United States.

1. Epstein's Non-Prosecution Agreement

In September 2007, following state and federal investigations into allegations of Epstein's unlawful sexual activity, Epstein entered into an NPA with USAO-SDFL. In the NPA, Epstein agreed to plead guilty to one count of solicitation of prostitution, in violation of Florida

[1] Unless otherwise noted, the following facts are drawn from the evidence presented at trial and described in the light most favorable to the Government. *See United States v. Litwok*, 678 F.3d 208, 210-11 (2d Cir. 2012) ("Because this is an appeal from a judgment of conviction entered after a jury trial, the [ ] facts are drawn from the trial evidence and described in the light most favorable to the Government.").

Statutes § 796.07,[2] and to one count of solicitation of minors to engage in prostitution, in violation of Florida Statutes § 796.03.[3] He agreed to receive a sentence of eighteen months' imprisonment on the two charges. In consideration of Epstein's agreement, the NPA states that "the United States also agrees that it will not institute any criminal charges against any potential co-conspirators of Epstein, including but not limited to Sarah Kellen, Adriana Ross, Lesley Groff, or Nadia Marcinkova."[4]

2. Maxwell's Indictment and Trial-Related Proceedings

The Indictment filed against Maxwell contained eight counts, six of which proceeded to trial.[5] Prior to the commencement of trial,

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[2] Florida Statutes § 796.07 provides in relevant part:

> (2) It is unlawful:
>
> > (f) To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.

[3] Florida Statutes § 796.03, which has since been repealed, provided in relevant part: "A person who procures for prostitution, or causes to be prostituted, any person who is under the age of 18 years commits a felony of the second degree."

[4] A-178.

[5] Count One charged Maxwell with conspiracy to entice minors to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 371. Count Two charged Maxwell with enticement of a minor to travel to engage in illegal sex acts, in violation of 18 U.S.C. §§ 2422 and 2. Count Three charged Maxwell with conspiracy to transport minors with intent to engage in criminal sexual activity, in violation of 18 U.S.C. § 371. Count Four charged Maxwell with transportation of a minor with intent to engage in criminal sexual activity, in violation of 18 U.S.C. §§ 2423(a) and 2. Count Five charged Maxwell with sex trafficking conspiracy, in

prospective jurors completed a lengthy questionnaire, with several questions raising issues relevant to the trial. Based on the completed questionnaires, the parties selected prospective jurors to proceed to in-person *voir dire*. The District Court ultimately empaneled a jury.

During the four-and-a-half-week jury trial, the Government presented evidence of the repeated sexual abuse of six girls. At the conclusion of trial, on December 29, 2021, the jury found Maxwell guilty on all but one count.[6]

Following the verdict, Juror 50 gave press interviews during which he stated that he was a survivor of child sexual abuse.[7] In his answers to the written jury questionnaire, however, Juror 50 answered "no" to three questions asking whether he or a friend or family member had ever been the victim of a crime; whether he or a friend or family member had ever been the victim of sexual harassment, sexual abuse, or sexual assault; and whether he or a friend or family member had ever been accused of sexual harassment, sexual abuse, or sexual

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violation of 18 U.S.C. § 371. Count Six charged Maxwell with sex trafficking of a minor, in violation of 18 U.S.C. §§ 1591(a), (b)(2), and 2. Counts Seven and Eight charged Maxwell with perjury, in violation of 18 U.S.C. § 1623. The perjury charges were severed from the remaining charges and ultimately dismissed at sentencing.

[6] The jury found Maxwell guilty on Counts One, Three, Four, Five, and Six. Maxwell was acquitted on Count Two.

[7] Consistent with a juror anonymity order entered for trial, the parties and the District Court referred to the jurors by pseudonym.

assault.[8] Upon learning of the interviews, the Government filed a letter on January 5, 2022, requesting a hearing; Maxwell then moved for a new trial under Federal Rule of Criminal Procedure 33. On March 8, 2022, the District Court held a hearing and Juror 50 testified—under grant of immunity—that his answers to three questions related to sexual abuse in the jury questionnaire were not accurate but that the answers were an inadvertent mistake and that his experiences did not affect his ability to be fair and impartial. Finding Juror 50's testimony to be credible, the District Court denied Maxwell's motion for a new trial in a written order.

Maxwell was subsequently sentenced to a term of 240 months' imprisonment to be followed by five years' supervised release, and the

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[8] Question 2 asked "[h]ave you, or any of your relatives or close friends, ever been a victim of a crime?" Question 48 asked "[h]ave you or a friend or family member ever been the victim of sexual harassment, sexual abuse, or sexual assault? (This includes actual or attempted sexual assault or other unwanted sexual advance, including by a stranger, acquaintance, supervisor, teacher, or family member.)" Finally, Question 49 asked

> [h]ave you or a friend or family member ever been accused of sexual harassment, sexual abuse, or sexual assault? (This includes both formal accusations in a court of law or informal accusations in a social or work setting of actual or attempted sexual assault or other unwanted sexual advance, including by a stranger, acquaintance, supervisor, teacher, or family member.

See A-299, A-310.

District Court imposed a $750,000 fine and a $300 mandatory special assessment. This appeal followed.

II. DISCUSSION

1. The NPA Between Epstein and USAO-SDFL Did Not Bar Maxwell's Prosecution by USAO-SDNY

Maxwell sought dismissal of the charges in the Indictment on the grounds that the NPA made between Epstein and USAO-SDFL immunized her from prosecution on all counts as a third-party beneficiary of the NPA. The District Court denied the motion, rejecting Maxwell's arguments. We agree. We review *de novo* the denial of a motion to dismiss an indictment.[9]

In arguing that the NPA barred her prosecution by USAO-SDNY, Maxwell cites the portion of the NPA in which "the United States [ ] agree[d] that it w[ould] not institute any criminal charges against any potential co-conspirators of Epstein."[10] We hold that the NPA with USAO-SDFL does not bind USAO-SDNY.

It is well established in our Circuit that "[a] plea agreement binds only the office of the United States Attorney for the district in which the plea is entered unless it affirmatively appears that the agreement

[9] *See, e.g.*, *United States v. Walters*, 910 F.3d 11, 22 (2d Cir. 2018).

[10] A-178.

contemplates a broader restriction."[11] And while Maxwell contends that we cannot apply *Annabi* to an agreement negotiated and executed outside of this Circuit, we have previously done just that.[12] Applying *Annabi*, we conclude that the NPA did not bar Maxwell's prosecution by USAO-SDNY. There is nothing in the NPA that affirmatively shows that the NPA was intended to bind multiple districts. Instead, where the NPA is not silent, the agreement's scope is *expressly limited* to the Southern District of Florida. The NPA makes clear that if Epstein fulfilled his obligations, he would no longer face charges *in that district*:

> After timely fulfilling all the terms and conditions of the Agreement, no prosecution for the offenses set out on pages 1 and 2 of this Agreement, nor any other offenses that have been the subject of the joint investigation by the Federal Bureau of Investigation and the United States Attorney's Office, nor any

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[11] *United States v. Annabi*, 771 F.2d 670, 672 (2d Cir. 1985). We recognize that circuits have been split on this issue for decades. *See United States v. Harvey*, 791 F.2d 294, 303 (4th Cir. 1986); *United States v. Gebbie*, 294 F.3d 540, 550 (3d Cir. 2002).

[12] *See, e.g.*, *United States v. Prisco*, 391 F. App'x 920, 921 (2d Cir. 2010) (summary order) (applying *Annabi* to plea agreement entered into in the District of New Jersey); *United States v. Gonzalez*, 93 F. App'x 268, 270 (2d Cir. 2004) (summary order) (same, to agreement entered into in the District of New Mexico). Nor does *Annabi*, as Maxwell contends, apply only where subsequent charges are "sufficiently distinct" from charges covered by an earlier agreement. In *Annabi*, this Court rejected an interpretation of a prior plea agreement that rested on the Double Jeopardy Clause, reasoning that even if the Double Jeopardy Clause applied, the subsequent charges were "sufficiently distinct" and therefore fell outside the Clause's protections. *Annabi*, 771 F.2d at 672. This Court did not, however, conclude that the rule of construction it announced depended on the similarities between earlier and subsequent charges.

> offenses that arose from the Federal Grand Jury investigation will be instituted *in this District*, and the charges against Epstein if any, will be dismissed.[13]

The only language in the NPA that speaks to the agreement's scope is limiting language.

The negotiation history of the NPA, just as the text, fails to show that the agreement was intended to bind other districts. Under our Court's precedent, the negotiation history of an NPA can support an inference that an NPA "affirmatively" binds other districts.[14] Yet, the actions of USAO-SDFL do not indicate that the NPA was intended to bind other districts.

The United States Attorney's Manual that was operable during the negotiations of the NPA required that:

> No district or division shall make any agreement, including any agreement not to prosecute, which purports to bind any other district(s) or division without the express written approval of

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[13] A-175 (emphasis added). The agreement's scope is also limited in an additional section:

> THEREFORE, on the authority of R. Alexander Acosta, United States Attorney for the Southern District of Florida, *prosecution in this District* for these offenses shall be deferred in favor of prosecution by the State of Florida, provided that Epstein abides by the following conditions and the requirements of this Agreement set forth below.

Id. (emphasis added).

[14] *See United States v. Russo*, 801 F.2d 624, 626 (2d Cir. 1986).

> the United States Attorney(s) in each affected district and/or the Assistant Attorney General of the Criminal Division.[15]

Nothing before us indicates that USAO-SDNY had been notified or had approved of Epstein's NPA with USAO-SDFL and intended to be bound by it. And the Assistant Attorney General for the Criminal Division stated in an interview with the Office of Professional Responsibility that she "played no role" in the NPA, either by reviewing or approving the agreement.

The history of the Office of the United States Attorney is instructive as to the scope of their actions and duties. The Judiciary Act of 1789 created the Office of the United States Attorney, along with the office of the Attorney General. More specifically, the Judiciary Act provided for the appointment, in each district, of a "person learned in the law to act as attorney for the United States *in such district*, who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute *in such district* all delinquents for crimes and offences, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned."[16] The Judiciary Act thus emphasized that U.S. Attorneys would enforce the law of the United States but did not determine that the actions of one U.S. Attorney could bind other districts, let alone the entire nation. In fact, the phrase "in such district," repeated twice, implies that the scope of

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[15] United States Attorney's Manual § 9-27.641 (2007).

[16] An Act to Establish the Judicial Courts of the United States, ch. 20, § 35, 1 Stat. 73, 92-93 (1789) (emphasis added).

the actions and the duties of the U.S. Attorneys would be limited to their own districts, absent any express exceptions.

Since 1789, while the number of federal districts has grown significantly, the duties of a U.S. Attorney and their scope remain largely unchanged. By statute, U.S. Attorneys, "within [their] district, shall (1) prosecute for all offenses against the United States; (2) prosecute or defend, for the Government, all civil actions, suits or proceedings in which the United States is concerned."[17] Again, the scope of the duties of a U.S. Attorney is cabined to their specific district unless otherwise directed.[18]

In short, *Annabi* controls the result here. Nothing in the text of the NPA or its negotiation history suggests that the NPA precluded USAO-SDNY from prosecuting Maxwell for the charges in the

[17] 28 U.S.C. § 547.

[18] This does not suggest that there are no instances in which a U.S. Attorney's powers do not extend beyond their districts. For instance, under 28 U.S.C. § 515 a U.S. Attorney can represent the Government or participate in proceedings in other districts, but only when specifically directed by the Attorney General:

> The Attorney General or any other officer of the Department of Justice, or any attorney specially appointed by the Attorney General under law, may, when specifically directed by the Attorney General, conduct any kind of legal proceeding . . . which United States attorneys are authorized by law to conduct, whether or not he is a resident of the district in which the proceeding is brought.

Indictment. The District Court therefore correctly denied Maxwell's motion without an evidentiary hearing.

2. The Indictment Is Timely

Maxwell argues that Counts Three and Four of the Indictment are untimely because they do not fall within the scope of offenses involving the sexual or physical abuse or kidnapping of a minor and thereby do not fall within the extended statute of limitations provided by § 3283.[19] Separately, Maxwell contends that the Government cannot apply the 2003 amendment to § 3283 that extended the statute of limitations to those offenses that were committed before the enactment into law of the provision. On both points, we disagree and hold that the District Court correctly denied Maxwell's motions to dismiss the charges as untimely. We review *de novo* the denial of a motion to dismiss an indictment and the application of a statute of limitations.[20]

First, Counts Three and Four of the Indictment are offenses involving the sexual abuse of minors. The District Court properly applied *Weingarten v. United States*.[21] In *Weingarten*, we explained that Congress intended courts to apply § 3283 using a case-specific

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[19] 18 U.S.C. § 3283 provides: "[n]o statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnaping, of a child under the age of 18 years shall preclude such prosecution during the life of the child, or for ten years after the offense, whichever is longer."

[20] *United States v. Sampson*, 898 F.3d 270, 276, 278 (2d Cir. 2018).

[21] 865 F.3d 48, 58-60 (2d Cir. 2017); *see also United States v. Maxwell*, 534 F. Supp. 3d 299, 313-14 (S.D.N.Y. 2021).

approach as opposed to a "categorical approach."[22] We see no reason to depart from our reasoning in *Weingarten*. Accordingly, the question presented here is whether the charged offenses involved the sexual abuse of a minor for the purposes of § 3283 based on the facts of the case. Jane, one of the women who testified at trial, gave evidence that she had been sexually abused when transported across state lines as a minor. Counts Three and Four thus qualify as offenses, and § 3283 applies to those offenses.

Second, Maxwell argues that Counts Three, Four, and Six of the Indictment are barred by the statute of limitations because the extended statute of limitations provided by the 2003 amendment to § 3283 does not apply to pre-enactment conduct. In *Landgraf v. USI Film Products*, the Supreme Court held that a court, in deciding whether a statute applies retroactively, must first "determine whether Congress has expressly prescribed the statute's proper reach."[23] If Congress has done so, "the inquiry ends, and the court enforces the

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[22] The "categorical approach" is a method of statutory interpretation that requires courts to look "only to the statutory definitions of the prior offenses, and not to the particular facts underlying those convictions" for sentencing and immigration purposes. *Taylor v. United States*, 495 U.S. 575, 600 (1990). We properly reasoned in *Weingarten* that § 3283 met none of the conditions listed by *Taylor* that might require application of the categorical approach. *See Weingarten*, 865 F.3d at 58-60. First, "[t]he language of § 3283[] . . . reaches beyond the offense and its legal elements to the conduct 'involv[ed]' in the offense." *Id.* at 59-60. Second, legislative history suggests that Congress intended § 3283 to be applied broadly. *Id.* at 60. Third, a case-specific approach would not produce practical difficulties or potential unfairness. *Id.*

[23] 511 U.S. 244, 280 (1994); *see also Weingarten*, 865 F.3d at 54-55.

statute as it is written."[24] If the statute "is ambiguous or contains no express command regarding retroactivity, a reviewing court must determine whether applying the statute to antecedent conduct would create presumptively impermissible retroactive effects."[25]

Here, the inquiry is straightforward. In 2003, Congress amended § 3283 to provide: "No statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnaping, of a child under the age of 18 years shall preclude such prosecution during the life of the child."[26] The text of § 3283—that *no* statute of limitations that would *otherwise* preclude prosecution of these offenses will apply—plainly requires that it prevent the application of any statute of limitations that would otherwise apply to past conduct.

The statutory text makes clear that Congress intended to extend the time to bring charges of sexual abuse for pre-enactment conduct as the prior statute of limitations was inadequate. This is enough to conclude that the PROTECT Act's amendment to § 3283 applies to Maxwell's conduct as charged in the Indictment.

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[24] *In re Enter. Mortg. Acceptance Co., LLC, Sec. Litig.*, 391 F.3d 401, 406 (2d Cir. 2004) (citing *Landgraf*, 511 U.S. at 280).

[25] *Weingarten*, 865 F.3d at 55 (citation and internal quotation marks omitted).

[26] PROTECT Act, Pub. L. No. 108-21, § 202, 117 Stat. 650, 660 (2003).

3. The District Court Did Not Abuse Its Discretion in Denying Maxwell's Motion for a New Trial

Maxwell contends that she was deprived of her constitutional right to a fair and impartial jury because Juror 50 failed to accurately respond to several questions related to his history of sexual abuse as part of the jury questionnaire during jury selection. Following a special evidentiary hearing, the District Court denied Maxwell's motion for a new trial.

We review a District Court's denial of a motion for a new trial for abuse of discretion.[27] We have been extremely reluctant to "haul jurors in after they have reached a verdict in order to probe for potential instances of bias, misconduct or extraneous influences."[28] While courts can "vacate any judgment and grant a new trial if the interest of justice so requires," Fed. R. Crim. P. 33(a), they should do so "sparingly" and only in "the most extraordinary circumstances."[29] A district court "has

[27] *See Rivas v. Brattesani*, 94 F.3d 802, 807 (2d Cir. 1996). "[W]e are mindful that a judge has not abused her discretion simply because she has made a different decision than we would have made in the first instance." *United States v. Ferguson*, 246 F.3d 129, 133 (2d Cir. 2001). We have repeatedly explained that the term of art "abuse of discretion" includes errors of law, a clearly erroneous assessment of the evidence, or "a decision that cannot be located within the range of permissible decisions." *In re Sims*, 534 F.3d 117, 132 (2d Cir. 2008) (citation and internal quotation marks omitted).

[28] *United States v. Moon*, 718 F.2d 1210, 1234 (2d Cir. 1983).

[29] *Ferguson*, 246 F.3d at 134.

broad discretion to decide Rule 33 motions based upon its evaluation of the proof produced" and is shown deference on appeal.[30]

A Rule 33 motion based on a juror's alleged erroneous response during *voir dire* is governed by *McDonough Power Equipment, Inc. v. Greenwood*.[31] Under *McDonough*, a party seeking a new trial "must first demonstrate that a juror failed to answer honestly a material question on *voir dire*, and then further show that a correct response would have provided a valid basis for a challenge for cause."[32]

The District Court applied the *McDonough* standard, found Juror 50's testimony credible, and determined that Juror 50's erroneous responses during *voir dire* were "not deliberately incorrect" and that "he would *not* have been struck for cause if he had provided accurate responses to the questionnaire."[33] In fact, as the District Court noted, Maxwell did not challenge the inclusion of other jurors who disclosed past experience with sexual abuse, assault, or harassment. This is

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[30] *United States v. Gambino*, 59 F.3d 353, 364 (2d Cir. 1995) (citation and internal quotation marks omitted).

[31] 464 U.S. 548 (1984).

[32] *Id.* at 556.

[33] A-340 (emphasis added). The Supreme Court reminds us that "[t]o invalidate the result of a [ ] trial because of a juror's mistaken, though honest response to a question, is to insist on something closer to perfection than our judicial system can be expected to give." *McDonough*, 464 U.S. at 555.

enough; the District Court did not abuse its discretion in denying Maxwell's motion for a new trial.[34]

4. The District Court's Response to a Jury Note Did Not Result in a Constructive Amendment of, or Prejudicial Variance from, the Allegations in the Indictment

During jury deliberations, the jury sent the following jury note regarding Count Four of the Indictment:

> Under Count Four (4), if the defendant aided in the transportation of Jane's return flight, but not the flight to New Mexico where/if the intent was for Jane to engage in sexual activity, can she be found guilty under the second element?[35]

The District Court determined that it would not respond to the note directly because it was difficult to "parse factually and legally" and instead referred the jury to the second element of Count Four.[36]

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[34] Nor did the District Court err in questioning Juror 50 rather than allowing the parties to do so. In conducting a hearing on potential juror misconduct, "[w]e leave it to the district court's discretion to decide the extent to which the parties may participate in questioning the witnesses, and whether to hold the hearing in camera." *United States v. Ianniello*, 866 F.2d 540, 544 (2d Cir. 1989). And while Maxwell contends that the District Court improperly limited questioning about Juror 50's role in deliberations, she both waived that argument below and fails to show here how any such questioning would not be foreclosed by Federal Rule of Evidence 606(b).

[35] A-238.

[36] A-207-221. The District Court's instruction on the second element of Count Four required the jury to find that "Maxwell knowingly transported Jane in interstate commerce with the

Maxwell subsequently filed a letter seeking reconsideration of the District Court's response, claiming that this response resulted in a constructive amendment or prejudicial variance. The District Court declined to reconsider its response and denied Maxwell's motion.

Maxwell appeals the District Court's denial and argues that the alleged constructive amendment is a *per se* violation of the Grand Jury Clause of the Fifth Amendment. Specifically, Maxwell argues that testimony about a witness's sexual abuse in New Mexico presented the jury with another basis for conviction, which is distinct from the charges in the Indictment. Similarly, Maxwell argues that this testimony resulted in a prejudicial variance from the Indictment. We disagree and affirm the District Court's denial.

We review the denial of a motion claiming constructive amendment or prejudicial variance *de novo*.[37] To satisfy the Fifth Amendment's Grand Jury Clause, "an indictment must contain the elements of the offense charged and fairly inform the defendant of the charge against which he must defend."[38] We have explained that to prevail on a constructive amendment claim, a defendant must demonstrate that "the terms of the indictment are in effect altered by the presentation of evidence and jury instructions which so modify essential elements of the offense charged that there is a substantial

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intent that Jane engage in sexual activity for which any person can be charged with a criminal offense in violation of New York law." A-205.

[37] *See United States v. Dove*, 884 F.3d 138, 146, 149 (2d Cir. 2018).

[38] *United States v. Khalupsky*, 5 F.4th 279, 293 (2d Cir. 2021).

likelihood that the defendant may have been convicted of an offense other than that charged in the indictment."[39] A constructive amendment requires reversal.[40]

We cannot conclude that a constructive amendment resulted from the evidence presented by the Government—namely, Jane's testimony—or that it can be implied from the jury note. We have permitted significant flexibility in proof as long as a defendant was "given notice of the core of criminality to be proven at trial."[41] In turn, "[t]he core of criminality of an offense involves the essence of a crime, in general terms; the particulars of how a defendant effected the crime falls outside that purview."[42]

We agree with the District Court that the jury instructions, the evidence presented at trial, and the Government's summation captured the core of criminality. As the District Court noted, while the jury note was ambiguous in one sense, it was clear that it referred to the second element of Count Four of the Indictment. Therefore, the District Court correctly directed the jury to that instruction, which "accurately instructed that Count Four had to be predicated on finding

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[39] *United States v. Mollica*, 849 F.2d 723, 729 (2d Cir. 1988).

[40] *See United States v. D'Amelio*, 683 F.3d 412, 417 (2d Cir. 2012).

[41] *United States v. Ionia Mgmt. S.A.*, 555 F.3d 303, 310 (2d Cir. 2009) (per curiam) (emphasis omitted).

[42] *D'Amelio*, 683 F.3d at 418 (internal quotation marks omitted).

a violation of New York law."[43] It is therefore not "uncertain whether [Maxwell] was convicted of conduct that was the subject of the grand jury's indictment."[44]

We also cannot conclude that the evidence at trial prejudicially varied from the Indictment. To allege a variance, a defendant "must establish that the evidence offered at trial differs materially from the evidence alleged in the indictment."[45] To prevail and win reversal, the defendant must further show "that substantial prejudice occurred at trial as a result" of the variance.[46] "A defendant cannot demonstrate that he has been prejudiced by a variance where the pleading and the proof substantially correspond, where the variance is not of a character that could have misled the defendant at the trial, and where the variance is not such as to deprive the accused of his right to be protected against another prosecution for the same offense."[47]

For reasons similar to the ones noted above in the context of the constructive amendment, the evidence at trial did not prove facts

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[43] A-387; *see United States v. Parker*, 903 F.2d 91, 101 (2d Cir. 1990) ("The trial judge is in the best position to sense whether the jury is able to proceed properly with its deliberations, and [ ] has considerable discretion in determining how to respond to communications indicating that the jury is experiencing confusion.")

[44] *United States v. Salmonese*, 352 F.3d 608, 620 (2d Cir. 2003).

[45] *Dove*, 884 F.3d at 149

[46] *Id.* (citation and internal quotation marks omitted).

[47] *Salmonese*, 352 F.3d at 621-22 (citation and internal quotation marks omitted); *see also Khalupsky*, 5 F.4th at 294.

"materially different" from the allegations in the Indictment.[48] The evidence indicated that Maxwell transported Jane to New York for sexual abuse and conspired to do the same. Maxwell knew that the evidence also included conduct in New Mexico.[49] Furthermore, Maxwell cannot demonstrate "substantial prejudice." Maxwell received—*over three weeks before trial*—notes of Jane's interview recording the abuse she suffered in New Mexico. This is enough to conclude that Maxwell was not "unfairly and substantially" prejudiced.[50]

5. Maxwell's Sentence Was Procedurally Reasonable

Lastly, Maxwell argues that her sentence was procedurally unreasonable because the District Court erred in applying a leadership sentencing enhancement under the Sentencing Guidelines and inadequately explained its above-Guidelines sentence.[51] We disagree.

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[48] *Dove*, 884 F.3d at 149.

[49] As the District Court found, "[t]he Indictment charged a scheme to sexually abuse underage girls in New York. In service of this scheme, the Indictment alleged that Epstein and the Defendant groomed the victims for abuse at various properties and in various states, including Epstein's ranch in New Mexico." A-393.

[50] *See United States v. Lebedev*, 932 F.3d 40, 54 (2d Cir. 2019) (concluding that a defendant was not "unfairly and substantially" prejudiced because "[t]he government disclosed the evidence and exhibits . . . four weeks prior to trial").

[51] At sentencing, the District Court calculated a Guidelines range of 188 to 235 months' imprisonment and sentenced Maxwell to a slightly above-Guidelines term of 240 months' imprisonment.

We review a sentence for both procedural and substantive reasonableness, which "amounts to review for abuse of discretion."[52] We have explained that procedural error is found when a district court "fails to calculate (or improperly calculates) the Sentencing Guidelines range, treats the Sentencing Guidelines as mandatory, fails to consider the [Section] 3553(a) factors, selects a sentence based on clearly erroneous facts, or fails adequately to explain the chosen sentence."[53] The District Court did none of that. It is important to emphasize that the Sentencing Guidelines "are guidelines—that is, they are truly advisory."[54] A District Court is "generally free to impose sentences outside the recommended range" based on its own "informed and individualized judgment."[55]

With respect to the four-level leadership enhancement, the District Court found that Maxwell "supervised" Sarah Kellen in part because of testimony from two of Epstein's pilots who testified that Kellen was Maxwell's assistant. The District Court found that testimony credible, in part because it was corroborated by other testimony that Maxwell was Epstein's "number two and the lady of the house" in Palm Beach,

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[52] *United States v. Cavera*, 550 F.3d 180, 187 (2d Cir. 2008) (en banc). "Regardless of whether the sentence imposed is inside or outside the Guidelines range, the appellate court must review the sentence under an abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 51 (2007).

[53] *United States v. Robinson*, 702 F.3d 22, 38 (2d Cir. 2012).

[54] *Cavera*, 550 F.3d at 189.

[55] *Id.*

where much of the abuse occurred and where Kellen worked.[56] We therefore hold that the District Court did not err in applying the leadership enhancement.

With respect to the length of the sentence, the District Court properly discussed the sentencing factors when imposing the sentence, and described, at length, Maxwell's "pivotal role in facilitating the abuse of the underaged girls through a series of deceptive tactics."[57] The District Court recognized that the sentence "must reflect the gravity of Ms. Maxwell's conduct, of Ms. Maxwell's offense, the pivotal role she played in facilitating the offense, and the significant and lasting harm it inflicted."[58] And the District Court explained that "a very serious, a very significant sentence is necessary to achieve the purposes of punishment" under 18 U.S.C. § 3553(a). In sum, the District Court did not err by failing to adequately explain its sentence.

CONCLUSION

To summarize, we hold as follows:

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[56] A-417.

[57] SA-459.

[58] SA-461.

1. The District Court did not err in holding that Epstein's NPA with USAO-SDFL did not bar Maxwell's prosecution by USAO-SDNY.

2. The District Court did not err in holding that the Indictment was filed within the statute of limitations.

3. The District Court did not abuse its discretion in denying Maxwell's Rule 33 motion for a new trial.

4. The District Court's response to a jury note did not result in a constructive amendment of, or prejudicial variance from, the allegations in the Indictment.

5. The District Court's sentence was procedurally reasonable.

For the foregoing reasons, we **AFFIRM** the District Court's June 29, 2022, judgment of conviction.

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

January 21, 2025

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

Re: Ghislaine Maxwell
v. United States
Application No. 24A709
(Your No. 22-1426)

Dear Clerk:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Sotomayor, who on January 21, 2025, extended the time to and including April 10, 2025.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by

Katie Heidrick
Case Analyst

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

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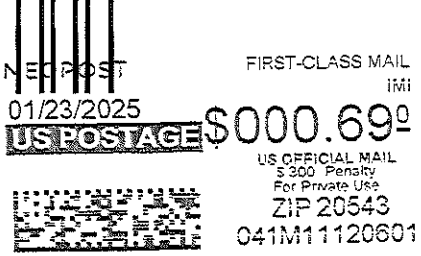

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Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

April 14, 2025

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

Re: Ghislaine Maxwell
v. United States
No. 24-1073
(Your No. 22-1426)

Dear Clerk:

The petition for a writ of certiorari in the above entitled case was filed on April 10, 2025 and placed on the docket April 14, 2025 as No. 24-1073.

Sincerely,

Scott S. Harris, Clerk

by

Katie Heidrick
Case Analyst