

Subject: Re: Disparities in Counsel and Discovery Access for Ghislaine Maxwell and Justin Rivera

Date: Thu, 31 Dec 2020 20:06:27 +0000

OK, and sorry again about the delay. That email was just hung in my outbox.

On Dec 31, 2020, at 3:00 PM, [REDACTED] (USANYS) <[REDACTED]> wrote:

Thanks [REDACTED]! We've incorporated your edits. As for your question about the "under investigation language," the investigation related to the contraband cellphone is a matter of public record. As for the [REDACTED], we've consulted with the MCC and softened that language to the effect that Rivera was in the SHU for a disciplinary issue, without referencing the specifics or the fact that [REDACTED].

Apologies – I looked at this as soon as you sent it, but apparently my outlook was frozen and it was hanging in cyberspace. I thought it looked good, although there were some typos which I fixed. I also had a couple of questions/comments in one of the declarations (attached).

From: [REDACTED] (USANYS) <[REDACTED]>
Sent: Thursday, December 31, 2020 12:19 PM
To: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>;
[REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>;
[REDACTED]) <[REDACTED]>; [REDACTED]) <[REDACTED]>; [REDACTED] (US
<[REDACTED]>
Cc: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS)
<[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS)

<REDACTED>; (USANYS) 1 <REDACTED>

Subject: RE: Disparities in Counsel and Discovery Access for Ghislaine Maxwell and Justin Rivera

Hi [REDACTED]: Please see our proposed letter, which I understand you would like to review, as well as declarations from associate wardens at the MDC and MCC. The GC and PC chiefs have signed off on these drafts.

With apologies for the time sensitivity, our contacts at MCC/MDC have asked to leave early today (before 1:30), and have asked us to finalize the declarations as soon as possible.

Best,

From: [REDACTED] (USANYS)

Sent: Wednesday, December 30, 2020 4:24 PM

To: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>
Cc: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS) 1 <[REDACTED]>

Subject: RE: Disparities in Counsel and Discovery Access for Ghislaine Maxwell and Justin Rivera

[REDACTED], who is the Associate Warden at the MCC. There's a possibility that there will be a very short declaration from someone at the MDC to discuss the specific accommodations for Maxwell. I am working through that with [REDACTED].

From: [REDACTED] (USANYS) <[REDACTED]>

Sent: Wednesday, December 30, 2020 2:45 PM

To: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS)
<[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS)
<[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] (USANYS)
<[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>
Cc: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS)
<[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS)
<[REDACTED]>; [REDACTED] (USANYS) 1 <[REDACTED]>

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Thanks. Who is signing the declaration for BOP?

From: [REDACTED] (USANYS) <[REDACTED]>

Sent: Wednesday, December 30, 2020 2:40 PM

To: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>
Cc: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>

Subject: RE: Disparities in Counsel and Discovery Access for Ghislaine Maxwell and Justin Rivera

[REDACTED]: We are in the process of finalizing our response to the Maxwell/Rivera issue. We intend to explain that the discovery and counsel access accommodations that have been provided to Maxwell and Rivera, respectively, result from the specific circumstances of their cases, the specific requests of their lawyers, and their individual housing circumstances. On all of these factors, there are several important differences, including:

- The Maxwell case has multiple times more discovery than the Rivera case. Hence, the need for such expanded discovery access is greater in the Maxwell case.
- At the MDC, Maxwell has a unique housing situation, as she is in protective custody outside the general population. She therefore has sole access to a room to use a computer and phone for approximately 13 hours a day. Rivera, by contrast, is housed in the general population.
- There are approximately 80 other inmates at the MCC in Rivera's unit that use the same VTC room for court appearances, probation interviews, and attorney meetings. By contrast, Maxwell shares access to the MDC VTC room with substantially fewer inmates. The MDC can therefore provide 15 hours of VTC meetings with her attorneys without compromising access for other MDC inmates. The same is not true for Rivera at the MCC.

Going forward, even though Rivera's counsel have asked (and the Court has ordered) that Rivera receive three hours of laptop access each day, the MCC is now leaving the laptop with him all day long, and only takes it back at night to charge it. Therefore, the MCC is now providing the same amount of electronic discovery access to Rivera that Maxwell receives at the MDC.

As for providing Rivera with up to 15 hours of VTC access, we will explain that doing so will compromise access for other inmates. If defense counsel expresses a need for additional time, the MCC will continue to find ways to accommodate those requests as best as they can.

Please let me know if you have any questions or would like to discuss this further.

Best,

From: [REDACTED], [REDACTED] (USANYS) <REDACTED>

Sent: Monday, December 21, 2020 4:42 PM

To: [REDACTED], [REDACTED] (USANYS) <REDACTED>; [REDACTED] (USANYS)

<REDACTED>; [REDACTED] (USANYS) <REDACTED>; [REDACTED] (USANYS)

<REDACTED>; [REDACTED] (USANYS) <REDACTED>; [REDACTED] (USANYS)

Cc: [REDACTED] (USANYS) <REDACTED>; [REDACTED] (USANYS)

<REDACTED>; [REDACTED] (USANYS) <REDACTED>; [REDACTED] (USANYS)

<REDACTED>; [REDACTED] (USANYS) 1 <REDACTED>

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Thanks, [REDACTED]. Can you keep me posted on what we think will be the substance of the draft declaration when you know (that is, before we are submitting anything on 12/31)? And how much of this is attributable to differences between MCC and MDC, as well as specific differences in their housing situations?

From: [REDACTED], [REDACTED] (USANYS) <REDACTED>

Sent: Monday, December 21, 2020 4:35 PM

To: [REDACTED], [REDACTED] (USANYS) <REDACTED>; [REDACTED] (USANYS) <REDACTED>; [REDACTED]

[REDACTED] (USANYS) <REDACTED>; [REDACTED] (USANYS) <REDACTED>; [REDACTED]

[REDACTED]) <[REDACTED]>; [REDACTED]) <[REDACTED]>; [REDACTED] (USANYS)
<[REDACTED]>
Cc: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS)
<[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS)
<[REDACTED]>; [REDACTED] (USANYS) 1 <[REDACTED]>

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All:

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

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

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

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

Judge Engelmayer asked us to submit a declaration, from an appropriate person at the BOP, explaining in more detail why the accommodations provided to Maxwell cannot be extended to Rivera. Based on the recent bail opposition in the *Maxwell* case, I believe the differences in counsel/discovery access are as follows:

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

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

Best,

[REDACTED]

[REDACTED] [REDACTED]
 Assistant United States Attorney
 United States Attorney's Office for the Southern District of New York
 One Saint Andrew's Plaza
 New York, NY 10007
 Tel: [REDACTED]
 [REDACTED]