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December 20, 2020

**BY ECF**

The Honorable Paul A. Engelmayer  
United States District Court Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

**Re: United States v. Justin Rivera; 19 Cr. 131 (PAE)**

Dear Judge Engelmayer:

We write in advance of tomorrow's conference to further update the Court regarding Justin Rivera's access to discovery at the Metropolitan Correctional Center ("MCC") and his access to counsel.

*i. Mr. Rivera's Access to His Laptop*

As we previously indicated, Mr. Rivera received his laptop on Tuesday, December 8, 2020, while in the Special Housing Unit ("SHU"). In the SHU, he was given his laptop each day for a minimum of 3 hours, in his cell, which he shared with another inmate. On Friday, December 11, 2020, Mr. Rivera was transferred to a unit. There, he requested access to the laptop and was informed by staff that they were unaware of Your Honor's Order. As such, Mr. Rivera was denied access to his laptop from December 11, 2020 until December 14, 2020.

In response to MCC's non-compliance, Your Honor ordered that general counsel, Nicole McFarland file a daily letter with the Court regarding Mr. Rivera's access to his laptop. Upon review of such letters, it is correct that Mr. Rivera did not agree to go to the law library to review discovery on his laptop on December 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup>. He did not do so because of increasing health and safety and privacy concerns, which he expressed to staff throughout the week.

On Monday, December 14, 2020, following the conference, he was told for the first time that he would not have access to the laptop in his cell, but rather in the law library. He was given odd looks from staff, who conveyed their disagreement with Mr. Rivera. One staff member told him he was "enemy #1" and that staff are "on" him

because he was provided a laptop and increased video calls. Unsettled by these comments and growing increasingly uncomfortable, he asked to leave the law library after about an hour and a half. He was also uncomfortable with having to be transported throughout the prison and having increased contact with staff and civilians outside of his unit because of the recent COVID-19 outbreak, which he also expressed repeatedly, including most recently in a memo on Friday, December 18, 2020.

In our discussions with the Government last week, we repeatedly requested that Mr. Rivera be able to review discovery on his laptop inside his cell for at least 3 hours per day, seven days per week. There, he can review discovery privately and in a safe manner. Despite permitting him to access his laptop in his cell while in the SHU, the MCC, without clear reason, refused to allow him to do so while on his unit. To create further confusion, the MCC, late in the week, decided to allow him access to his laptop in his cell on weekends, beginning on Friday afternoons and concluding Monday mornings, and holidays. Accordingly, any security reason cannot be the basis for MCC's disallowance of Mr. Rivera accessing his laptop on weekdays. Rather, such disallowance seems specifically targeted at Mr. Rivera.

We are deeply concerned by staff's reference to Mr. Rivera as "enemy #1" and that they are "on" him. Such comments make clear that Mr. Rivera is at risk of harm from staff. Further, they intensify the daily stress he is under. He is presently experiencing harsh conditions of confinement, with limited access to counsel and little communication with his family. We are also concerned with the present COVID-19 outbreak at the MCC and MCC's handling of it. Moving Mr. Rivera throughout the prison currently is unsafe.

We ask that the Court order that Mr. Rivera be given his laptop each weekday and on weekends while in his cell. We are uncertain as to measures this Court can take to promote Mr. Rivera's safety from staff other than to convey the message loud and clear to the MCC, which the Court has done in the past, that such conduct is inappropriate and unacceptable.

*ii. Mr. Rivera's Access to Counsel and Need for at Least 2 Two-Hour Additional Video Calls Per Week*

Prior to our conference on December 14, 2020, by letter dated December 13, 2020, we specifically requested that the Court order increased video calls, specifically, two 2-hour video calls per week (in addition to our existing weekly one 1-hour phone call and one 1-hour video call) as we are unable to meet with Mr. Rivera in person until the week of January 18<sup>th</sup>, 2021, per Chief Judge McMahon's December 1<sup>st</sup> Standing Order. Attached to our letter was a letter from Deirdre D. von Dornum, Attorney-in-Charge, at the Federal Defenders of New York. Ms. von Dornum explained that Federal Defenders is only responsible for scheduling and that the MCC permits only 35 hours each week of video calls. Further, Federal Defenders, because of increasing demand, has repeatedly requested that more video and phone call time be provided by the MCC. The MCC, despite the ability to do so, denied these requests citing staffing issues as the reason for

the inability to provide more hours.

The Court directed the parties to submit a joint proposed order for MCC to provide Mr. Rivera with 2 two-hour video conferences with counsel per week.<sup>1</sup> It is defense counsel's understanding that the Court specifically ordered that Mr. Rivera be provided with 2 two-hour slots. The Court also advised that we should include language regarding the fact that Mr. Rivera's trial is scheduled to begin on February 16, 2020, and that his current counsel was appointed recently, during the COVID-19 pandemic.

Following the conference, we drafted a proposed order and shared it with the Government. After a discussion between the Government and MCC, we were informed by the Government that the MCC refused to accommodate our request of two 2-hour video calls. Instead, we were told that the MCC was only going to provide one 4-hour session. Further, per an email from Ms. McFarland, we were told the schedule of such sessions: Friday, December 18, 2020, from 5:45 p.m. to 9:45 p.m.<sup>2</sup>, Wednesday, December 23, 2020, from 5:45 p.m. to 9:45 p.m. and December 31, 2020, from 5:45 p.m. to 9:45 p.m., and each Friday in 2021 from 5:45 p.m. to 9:45 p.m. We immediately contacted the Government and made repeated requests for two 2-hour video calls. We explained to the Government that meetings in shorter blocks of time are far more effective because of the diminishing returns in longer meetings. Further, shorter meetings on more days gives us time to digest the material we learn, review additional records and discovery which is still being produced by the Government and ensure continuous and ongoing communications with Mr. Rivera as we proceed to trial. Additionally, shorter meetings also ensure that Mr. Rivera's meal and recreational time is not infringed upon by our calls. Lastly, we also informed the Government, that, as parents of young children, Friday evenings are particularly difficult for us to have video calls with Mr. Rivera. The Government spoke again with the MCC about our concerns, and the MCC refused to modify the above schedule.

The necessity of increased video calls is because of MCC's continued inability to responsibly manage COVID-19. Because of such failures, we cannot meet with Mr. Rivera in person. As we stated at the last conference, we are willing to be cooperative and flexible in the scheduling of additional video conferences. We have expressed the same to the Government. However, the MCC is not doing so. The MCC, once again, is choosing to only promote Mr. Rivera's access to discovery and counsel, when ordered by the Court and on their terms, without collaboration with us. Accordingly, we need the Court's intervention and ask that the MCC be ordered to provide at least 2 two-hour additional video calls on days and times agreed to by counsel.

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<sup>1</sup> Immediately following the conference, we ordered a copy of the transcript. We have not received the transcript as of this writing.

<sup>2</sup> Ms. Louis-Jeune and I adjusted our personal and professional schedules and had a video call with Mr. Rivera on Friday, December 18, 2020, from 5:45 p.m. to 9:45 p.m. We also spoke with Mr. Rivera for 30 minutes in a video call on December 17<sup>th</sup> (the video call was shortened from 1 hour to 30 minutes) and our weekly 1-hour phone call on December 15<sup>th</sup> was canceled. This week and the following week, due to the holidays, we will again have limited access to Mr. Rivera.

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Mr. Rivera's struggles with the MCC concerning receiving and now accessing his laptop, and access to counsel, along with his conditions of confinement and reference as "enemy #1," are even more troubling considering the accommodations that have been made to defendant, Ghislaine Maxwell, a white affluent woman who is detained at the Metropolitan Detention Center ("MDC"). As reported by the Government in their recent opposition to Ms. Maxwell's renewed bail application, her access to discovery and access to counsel is strikingly different and far superior to what is in place for Mr. Rivera. As described by the Government, Ms. Maxwell "*currently has thirteen hours per day, seven days per week to review electronic discovery ... during that time, [she] has access to email with defense counsel, calls with defense counsel, and when visiting is available depending on pandemic-related conditions, the defendant has access to legal visits. Due to the recently implemented lockdown at the MDC, visitation is not currently available, but MDC legal counsel is arranging for the defendant to receive a VTC call with legal counsel three hours per day every weekday, starting this Friday. Defense counsel will be able to schedule legal calls on weekends as needed.*" *United States v. Ghislaine Maxwell*, 20 Cr. 330 (AJN), Gov't Opp at 29-30, ECF Docket Entry #100 (emphasis added). Further, Ms. Maxwell is released from her isolation cell for thirteen hours per day, has her own shower, has exclusive use of two different computers, has her own phone to use, and has her own television ... Additionally, psychology and medical staff check on the defendant daily, MDC legal staff are highly attuned to any complaints the defendant has raised, and following initial complaints about the defendant's diet early in her incarceration, the MDC has ensured that the defendant receives three full meals per day and has access to commissary from which she can supplement her diet." *Id.*, at 31-30.

Mr. Rivera, and any other inmate, should be treated the same as Ms. Maxwell. He, and his counsel, should not be treated any differently because of difference in race, gender or class. But, that is exactly what is happening here. Ms. Maxwell can review discovery in her cell seven days per week. She also has access to counsel seven days per week, and 3 hours per weekday of video calls with counsel. Mr. Rivera should be afforded the same, and without repercussion or retribution from staff.

Thank you again and in advance for your assistance in resolving these issues and concerns.

Respectfully submitted,

/s/

Anthony Cecutti  
Jennifer Louis-Jeune