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): 21-770/21-58 Caption [use short title]

Motion for: Pretrial Release

Set forth below precise, complete statement of relief sought:

Ghislaine Maxwell requests that this Court set reasonable bail or in the alternative, remand for an evidentiary hearing.

United States of America v. Ghislaine Maxwell

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

☐ Plaintiff ☐ Defendant

☑ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: David Oscar Markus **OPPOSING ATTORNEY:** Won. S. Shin, AUSA

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

Markus/Moss PLLC
40 NW Third Street, PH 1, Miami, FL 33128
(305)379-6667; dmarkus@markuslaw.com

United States Attorney's Office, So. Dist. of NY
1 St. Andrew's Plaza, New York, New York 10007
(212)637-2226

Court- Judge/ Agency appealed from: Alison J. Nathan, Southern District of New York

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
☑ Yes ☐ No (explain):

Opposing counsel's position on motion:
☐ Unopposed ☑ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:
☑ Yes ☐ No ☐ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUCTIONS PENDING APPEAL:

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

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

Requested return date and explanation of emergency:

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

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

Signature of Moving Attorney:

/s/ David Oscar Markus **Date:** 04/01/2021 Service by: ☑ CM/ECF ☐ Other [Attach proof of service]

No. 21-770 & 21-58

In the

United States Court of Appeals for the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

v.

GHISLAINE MAXWELL,

Appellant.

On Appeal from the United States District Court
for the Southern District of New York, 20-CR-330 (AJN)

Appellant Ghislaine Maxwell's Motion for Pretrial Release

David Oscar Markus
MARKUS/MOSS PLLC
40 N.W. Third Street
Penthouse One
Miami, Florida 33128
Tel: (305) 379-6667
markuslaw.com

Appellant Ghislaine Maxwell's Motion for Pretrial Release

Ghislaine Maxwell has a Constitutional right to be able to prepare effectively for trial. The conditions of her pretrial detention deprive her of that right. For over 280 days, she has been held in the equivalent of solitary confinement, in deteriorating health and mental condition from lack of sleep because she is intentionally awakened every 15 minutes by lights shined directly into her small cell, inadequate food, the constant glare of neon light, and intrusive searches, including having hands forced into her mouth in a squalid facility where COVID has run rampant. The medical literature is unanimous that such conditions produce mental deterioration, which prevents her from effective participation in trial preparation.

Worse, even if Ms. Maxwell were able to be fully alert and mentally acute, she must review over 2,500,000 prosecution pages on a gutted computer, which does not have the ability to search, edit, or print. Because of the pandemic, in-person lawyer visits are risky, so Ms. Maxwell sees her trial lawyers over a video screen, where she can review one page of the discovery at a time that is projected on a wall three feet away.

These conditions would support a complaint for cruel and unusual punishment for a convicted felon. Ms. Maxwell is not one. She is innocent unless and until she is proven guilty beyond a reasonable doubt – an event which is highly unlikely given the lack of evidence against her.

Despite the district court's exhortations regarding the strength of the evidence against Ms. Maxwell, the truth is that the government's so-called "evidence," though voluminous, is palpably weak. It consists of anonymous, untested hearsay accusations about events that are alleged to have occurred decades ago, accusations which only surfaced when the government faced public outrage over the inexplicable death of Jeffrey Epstein, while in their custody.

The "Epstein Effect" clouded the judgment of the prosecutors into charging Ms. Maxwell because it needed a scapegoat, the Bureau of Prisons into putting Ms. Maxwell on suicide watch because Epstein died on their watch, the media into an absolute frenzy, and many other fair-minded people into viewing Ms. Maxwell as guilty even though no **evidence** has been presented against her.

Notwithstanding the cries of the mob, Ms. Maxwell is presumed innocent and is entitled to defend herself. Accordingly, Ms. Maxwell moves this Court for her immediate release. Fed. R. App. P. 9; 18 U.S.C. §§3142 and 3145.

* * *

ISSUES PRESENTED

1. Whether Ms. Maxwell can effectively prepare her defense where she is being subjected to horrific conditions of detention during a global pandemic, including:

    - not being able to regularly see her lawyers in person to prepare for trial;
    - being kept awake all night to make sure she does not commit suicide even though nothing suggests she is a suicide risk;
    - having her every movement videotaped on multiple cameras focused on her every move;
    - being stuck in *de facto* solitary confinement without safe, in person visitation;
    - being forced to review millions of pages of documents on a stripped down computer without adequate hardware or software such that Ms. Maxwell cannot open tens of thousands of pages of discovery and for those she can open, only has the ability to review them one page at a time and cannot search, edit, copy, or print;
    - having no writing surface in her solitary cell; and
    - not consistently provided edible food or drinkable water.

2. Whether the trial court erred by relying on the government's proffer — which was comprised of nothing but extremely old, anonymous, unconfronted, hearsay accusations — to refuse to set reasonable bail.

FACTS

Ghislaine Maxwell is a 59-year-old, law-abiding United States citizen with no criminal history. In July 2020, she was living peacefully in her New Hampshire home and was in contact, through her attorneys, with the U.S. Attorney's office in the Southern District New York, which had opened an investigation into her only after the death of Jeffrey Epstein. Instead of asking her to surrender, that office had her arrested by a SWAT team and other unnecessary but intentionally showy tactics. That same day, the acting U.S. Attorney held a press conference with large charts, pausing for pictures for the media,[1] before Ms. Maxwell had even appeared in the Southern District of New York.

Since her arrest, Ms. Maxwell has faced nightmarish conditions. *See, e.g.,* Ex.M. Though she is a model prisoner who poses no danger to society and has done literally nothing to prompt "special" treatment, she is kept in isolation – conditions fitting for Hannibal Lecter but not a 59-year old woman who poses no threat to anyone. She is subjected to multiple invasive searches every day. Her every movement is captured on multiple video cameras. She is deprived of any real sleep by having a

[1] The press conference is available online at https://tinyurl.com/bku2av7t

flashlight pointed into her cell every 15 minutes. For months, her food was microwaved with a plastic covering, which rendered it inedible after the plastic melted into the food.[2] The water is often cloudy and is not drinkable. Because of the pandemic, it is not safe to meet with her lawyers in person, so she cannot adequately prepare for trial. She is on suicide watch for no reason. She continues to lose weight, her hair, and her ability to concentrate.

It is obvious that the BOP is subjecting Ms. Maxwell to this behavior because of the death of Epstein (and subsequent fallout). But how is this permissible? Since when are the conditions for one inmate dictated by the fate of another? Perhaps never in the history of the U.S. Justice System has the public relations imperatives of the government permitted such wildly inappropriate and unconstitutional treatment of an innocent human being. It is impossible for Ms. Maxwell to participate effectively in the preparation of her defense under these conditions.

The charges related to three of the anonymous accusers in the operative indictment are 25 years old, alleging actions from 1994-1997,

[2] The prison has now promised to heat the food properly.

while the just added accuser involves allegations from 2001-04.[3] That the indictment exists at all is a function – solely – of the untimely death of Jeffrey Epstein and the media frenzy that followed. The indictment against Ms. Maxwell was brought only in the search for a scapegoat after the same U.S. Attorney's Office had to dismiss its case against Epstein because of his death at MCC. If there truly was any case against Ms. Maxwell, she would have been charged with Epstein in the SDNY in 2019. But she was not. She also was not charged – or even named – in the 2008 Epstein case in Florida. She would never be facing charges now if Epstein were alive.

Although there have been a number of orders related to bond in this case, the district court held only one detention hearing. At that hearing the government stated that Ms. Maxwell was a flight risk and that its case was strong. But it did not proffer any actual evidence in support of its contention, or the district court's conclusion, that the weight of the evidence against Maxwell was strong. Ex.A. Instead, it pointed again and again only to the fact that the grand jury returned an

[3] The government superceded the indictment on March 29, just months before the July trial, adding two counts involving a fourth anonymous accuser.

indictment (which is, of course, true in every criminal case) and to the nature of the charges in the abstract. The district court bought into the government's conclusory allegations, stating without support that: "[M]indful of the presumption of innocence, the Court remains of the view that in light of the **proffered strength** and nature of the Government's case, the weight of the evidence supports detention." (emphasis added).

The court fundamentally erred in relying on the government's empty assertions that its case is strong. There was no principled way for the court to reach such a conclusion without hearing any evidence and without knowing anything at all about the allegations, especially here where the case is so old and based on anonymous hearsay which the defense has never been able to confront. The government did not even proffer that these anonymous accusers even made their claims under oath. Prosecutors refuse to disclose their names, their statements, the specifics of their allegations, or anything about them.

This case is anything but strong. Ms. Maxwell should be granted bail or, at the very least, the case should be remanded for an

evidentiary hearing to test whether the government's case even marginally supports detention.

PROCEDURAL HISTORY

A. The arrest and bail applications

Ghislaine Maxwell was arrested on July 2, 2020 and since that date has been detained in jaw-droppingly appalling conditions. The government claims that Ms. Maxwell was Jeffrey Epstein's "associate" and helped him "groom" minors for sex back in the 1990s and early 2000s. Doc. 187. The indictment does not name these accusers and the government has refused to disclose their names or the specific dates that Ms. Maxwell supposedly did anything criminal.

After her arrest, the government moved for detention. Ex.A. The defense responded. Ex.B. And the government replied. Ex.C. The trial judge held the arraignment and bond hearing over Zoom. Ex.D. The government did not call any of the accusers in the indictment or present any witnesses related to flight, danger, or the strength of its case. The government conceded that it was not asking for detention based on danger to the community. The court ordered Ms. Maxwell detained at the conclusion of the hearing. Ex.D.

The court said it was detaining Ms. Maxwell, in part, because the government proffered that its "witness testimony will be corroborated by significant contemporaneous documentary evidence." Ex.D at 82. The court also pointed to Ms. Maxwell's lack of "significant family ties" in the United States, her unclear financial picture, the "circumstances of her arrest," and that although she is a U.S. citizen, she is also a citizen of France and Britain. *Id.* at 82-87.

Ms. Maxwell filed a second motion for bail and addressed each of these concerns. Ex.E. For starters, the defense explained that none of anonymous accusers' testimony of abuse was corroborated and that it all related to Epstein, not Ms. Maxwell. In addition, Ms. Maxwell does have significant ties to the United States, her assets were thoroughly disclosed and vetted, and she is willing to waive extradition. The government responded. Ex.F. The defense replied. Ex.G. The judge again denied bail, relying, for the second time, on the "strong" evidence, even though **no** evidence was presented to the court to rely on.[4]

Ms. Maxwell filed a third motion for bail. Ex.I. In this application, she offered to renounce her foreign citizenship and also to have her

[4] Ms. Maxwell filed a notice of appeal from this Order, which is docketed in Case No. 21-58.

assets controlled and monitored by a former federal judge and former U.S. Attorney. She also cited the 12 pretrial motions she filed. "Without prejudicing the merits of any of those pending motions," the judge again denied Ms. Maxwell's motion for bail, relying in part on the "proffered strength and nature of the Government's case," even though, again, no evidence was actually submitted to or reviewed by the trial court. This appeal follows.

In each of her bail requests and in separate pleadings, Ms. Maxwell has documented the Kafkaesque conditions that she is forced to endure. *See, e.g.,* Ex.M.

B. The pretrial motions

Ms. Maxwell filed 12 substantial pretrial motions. Docs. 119-26; 133-48. These include motions to dismiss for violation of the statute of limitations (Docs. 143-44) and for pre-indictment delay (Docs. 137-38) because the conduct is so old. And to dismiss because the government violated the non-prosecution agreement it reached with Epstein that protected any alleged co-conspirator from prosecution. Docs 141-42. The government needed 212 pages to respond to these motions. These

motions are pending and raise significant legal bars to the prosecution of this matter.

C. *The proposed bail package*

Ghislaine Maxwell has proposed a significant, compelling, and unprecedented bail package, which gives up or puts at risk everything that she has – her British and French citizenship, all of her and her spouse's assets ($22.5 million),[5] her family's livelihood, and the financial security of her closest friends and family (totaling $5 million). A security company, which will monitor and secure Ms. Maxwell at her home, will also post an unprecedented $1 million bond. Ex.E, I.

Ms. Maxwell looks forward to confronting the accusers and clearing her name. She has no intention of fleeing and will be unable to do so if released on bond. This bail package demonstrates these facts in a real way, unlike the government's claims that the evidence against her is strong. Even though a guarantee of appearance is not necessary, the bail package in this case is as close to a guarantee as one can get. There is no legally permissible basis to deny bail.

[5] Her spouse would retain $400,000 for living and other expenses.

STANDARD OF REVIEW

The question of whether a bail package will reasonably assure the defendant's presence is a mixed question of law and fact. *United States v. Horton*, 653 F. App'x 46, 47 (2d Cir. 2016). This Court reviews the district court's purely factual findings for clear error. *Id.* However, the district court's ultimate finding "may be subject to plenary review if it rests on a predicate finding which reflects a misperception of a legal rule applicable to the particular factor involved." *Id.* at 319–20 (quoting *United States v. Shakur*, 817 F.2d 189, 197 (2d Cir. 1987)). That is, "even if the court's finding of a historical fact relevant to that factor is not clearly erroneous, [the appellate court] may reverse if the court evinces a misunderstanding of the legal significance of that historical fact and if that misunderstanding infects the court's ultimate finding." *Shakur*, 817 F.2d at 197.

MEMORANDUM OF LAW

I. Ghislaine Maxwell should be released under §3142(i) because she cannot effectively prepare her defense under the horrific conditions she is facing.

Trying to defend against exceedingly old, anonymous allegations is hard enough. Doing so while in *de facto* solitary confinement without

the real ability to meet with your lawyers face-to-face while being kept up all night and being given inedible food makes it virtually impossible, and violates Ms. Maxwell's constitutional rights.

Section 3142(i) makes clear that defendants must have the ability to consult with counsel and effectively prepare for their defense. If this is not possible in custody, release is required. *United States v. Chandler*, 1:19-CR-867 (PAC), 2020 WL 1528120, at *2 (S.D.N.Y. Mar. 31, 2020) (extraordinary burdens imposed by the coronavirus pandemic, in conjunction with detainee's right to prepare for his defense, constituted compelling reason to order temporary release from Metropolitan Correction Center). The COVID epidemic is still raging and conditions at MDC are unsafe.[6]

Ms. Maxwell's continued detention would be wrong at any point in this nation's history, even when stealing a loaf of bread was a felony. It is especially unwarranted now. "The hazards of a pandemic are immediate and dire, and still the rights of criminal defendants who are

[6] Just for example, the air is not properly filtered in the small, enclosed attorney visit rooms at MDC and has been described as "a death trap" for lawyers and inmates. Ex.K, n.8. Even though the prison is technically open for legal visits, lawyers are understandably not willing to walk into a viral petri dish.

subject to the weight of federal power are always a special concern of the judiciary." *Chandler*, 2020 WL 1528120, at *2; *United States v. Stephens*, 447 F. Supp. 3d 65-67 (S.D.N.Y. 2020) (finding that "the obstacles the current public health crisis poses to the preparation of the Defendant's defense constitute a compelling reason under 18 U.S.C. § 3142(i)"); *United States v. Weigand*, 20-CR-188-1 (JSR), 2020 WL 5887602, at *2 (S.D.N.Y. Oct. 5, 2020) (holding that a wealthy defendant, who the government claimed was a flight risk, would be allowed to obtain his release pending trial during the coronavirus pandemic).

"The right to consult with legal counsel about being released on bond, entering a plea, negotiating and accepting a plea agreement, going to trial, testifying at trial, locating trial witnesses, and other decisions confronting the detained suspect, whose innocence is presumed, is a right inextricably linked to the legitimacy of our criminal justice system." *Fed. Defs. of N.Y. v. Fed. Bureau of Prisons*, 954 F.3d 118, 134 (2d Cir. 2020); *see also United States v. Salerno*, 481 U.S. 739, 755 (1987) ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.").

In *United States v. Clark*, 448 F. Supp. 3d 1152, 1155 (D. Kan. 2020), the court emphasized that "[m]ost courts addressing a motion for temporary release under §3142(i) have done so in the context of evaluating the necessity of the defendant assisting with preparing his or her defense ... This extends to the current COVID-19 pandemic [because of] the pandemic's impact on counsel's difficulties communicating with the defendant." *See, e.g., Stephens*, 447 F. Supp. 3d at 65-67 (finding "the obstacles the current public health crisis poses to the preparation of the Defendant's defense constitute a compelling reason under 18 U.S.C. § 3142(i)"); *United States v. Robertson*, 17-Cr-2949, Doc. 306 (D.N.M. February 6, 2021).[7]

The defendant in *Robertson* was charged with "frightening allegations" involving a shooting. He had previously violated bond. And he had a criminal record involving guns and drugs. But the court ordered him released because of his inability to prepare for trial while in custody during the pandemic:

> Mr. Robertson's release is necessary for the preparation of his trial defense under 18 U.S.C. § 3142(i). That section allows a judicial

[7] The 10th Circuit has stayed the *Robertson* order while it considers the government's appeal.

> officer who issued an order of detention to, by subsequent order, "permit the temporary release of the person … to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason." § 3142(i).

The presumption of innocence should not be paid mere lip service, the court held, and being held without the ability to see counsel face-to-face was "no way to prepare for trial."

Ms. Maxwell presents a more compelling case than *Robertson* for temporary release under § 3142(i). Courts considering whether pretrial release is necessary have considered: "(1) [the] time and opportunity the defendant has to prepare for the trial and to participate in his defense; (2) the complexity of the case and volume of information; and (3) expense and inconvenience associated with preparing while incarcerated." *Robertson*, (citing *United States v. Boatwright*, 2020 WL 1639855, at *4 (D. Nev. Apr. 2, 2020) (unreported) (citations omitted).

Trial is set for July. There is precious little time left to prepare and participate in that preparation. The discovery involves millions of pages of documents. Ms. Maxwell cannot conduct searches of these documents; she cannot print them and spread them out on a desk for review; she cannot make notes on the documents; and she cannot move

the files around into a different order. She is stuck looking at one page at a time over a screen three feet away without a lawyer in the same room. These are textbook untenable conditions. *Stephens*, 447 F. Supp. 3d at 67 (explaining the importance of legal visits and ordering bail during pandemic); *Weigand*, 2020 WL 5887602, at *2 (ordering bail during pandemic because defendant needed ability to review the discovery in complex, document-heavy case). This is no way to prepare for a trial where the government will be asking for a sentence that will imprison her for the rest of her life. Ex.A

This Court has recognized that, after a relatively short time, pretrial detention turns into prohibited, unconstitutional punishment. *United States v. Jackson*, 823 F.2d 4, 7 (2d Cir. 1987) ("grave due process concerns" are implicated by a seven-month period of pretrial detention); *United States v. Melendez-Carrions*, 790 F.2d 984, 1008 (2d Cir. 1986) (Feinberg, J. concurring) ("[G]eneral requirements of due process compel us to draw the line [of permissible pretrial detention] well short of [] eight months."). Under the current conditions, it can hardly be disputed that Ms. Maxwell is being punished, which in itself

requires relief. Add to that the barriers she is facing to preparing her defense and this Court should order her release under 3142(i).

II. The trial court erred in relying on the government's proffer—which comprised nothing but old, anonymous, unconfronted, hearsay accusations—to refuse to set reasonable bail for Ghislaine Maxwell.

The government stressed the strength of its case in seeking detention, highlighting the "strength of the Government's evidence" on page 1 of its application for detention. Ex.A. For support, the government made the circular argument that the evidence is strong because of "the facts set forth in the Indictment." *Id.* at 5. It made the same argument in the reply. Ex.C at 4 (arguing the case is strong because "the superseding indictment makes plain" the allegations against Ms. Maxwell).

Of course, the Indictment is not evidence. *See United States v. Giampino*, 680 F.2d 898, 901 n. 3 (2d. Cir. 1982). Every circuit with published pattern instructions inform juries that they are not to consider the indictment as evidence. *See, e.g.*, Third Circuit ("An indictment is simply a description of the charge(s) against a defendant. It is an accusation only. An indictment is not evidence of anything, and you should not give any weight to the fact that (name) has been indicted

in making your decision in this case."); Fifth Circuit: ("The indictment … is only an accusation, nothing more. It is not proof of guilt or anything else. The defendant therefore starts out with a clean slate."); Sixth Circuit: ("The indictment … does not even raise any suspicion of guilt.").

The government did not provide one single document to the court to back up its claims that the accusers' allegations about events from 1994-97 were truthful. The government has refused to disclose even the names of these accusers. Contrary to its assertions to the lower court, its allegations are not corroborated. Ex.E at 30-33 ("[T]he discovery contains not a single contemporaneous email, text message, phone record, diary entry, police report, or recording that implicates Ms. Maxwell in the 1994-1997 conduct underlying the conspiracy charged in the indictment.").

The government only made these allegations after Epstein's inexplicable death at MCC. Ms. Maxwell was not named in Epstein's indictment as a defendant or a co-conspirator. She was charged as a substitute for Epstein. Reverse engineering a charge many years later because of the main target's death is not the makings of a strong case.

Recognizing this weakness, the Government relies on the statutory maximum penalty to argue that the case is serious and that Ms. Maxwell poses a risk of flight. But the statutory maximum is hardly relevant to determine risk of flight. In the vast majority of federal cases, the statutory maximum penalties are sky-high and are not reflective of the real potential penalties. *See, e.g.*, 18 U.S.C. 1658(b) (statutory maximum of life imprisonment for turning off a light in a lighthouse to expose a ship to danger).

Even if there were evidence to back up the four anonymous accusers, the Second Circuit "require[s] more than evidence of the commission of a serious crime and the fact of a potential long sentence to support a finding of risk of flight." *United States v. Friedman*, 837 F.2d 48, 49-50 (2d. Cir. 1988) (district court's finding that defendant posed a risk of flight was clearly erroneous, despite potential for "long sentence of incarceration"); *Sabhnani*, 493 F.3d at 65, 76-77 (reversing detention order where defendants agreed to significant physical and financial restrictions, despite the fact that they faced a "lengthy term of incarceration").

This is why defendants charged under the same statute in the Southern District of New York are regularly granted bond. *United States v. Hussain*, 18-mj-08262-UA (S.D.N.Y. Oct. 2, 2018) (defendant charged with 18 U.S.C. 2422 violations granted $100,000 personal recognizance bond with home detention, electronic monitoring, and other conditions); *United States v. Buser*, 17-mj-07599-UA (S.D.N.Y. Oct. 19, 2017) (defendant charged with 18 U.S.C. 2422 and 2423 violations granted $100,000 personal recognizance bond, secured by $10,000 cash, with electronic monitoring and other conditions); *United States v. Acosta*, 16-mj-08569-UA (S.D.N.Y Mar. 29, 2016) (denying the Government's detention application after argument and granting defendant charged with 18 U.S.C. 2422 violations $100,000 personal recognizance bond with home detention, electronic monitoring, and other conditions); *United States v. McFadden*, 17-mj-04708-UA (S.D.N.Y. June 22, 2017) (defendant charged with 18 U.S.C. 2422 and 2423 violations granted $250,000 personal recognizance bond, secured by property, with home detention, electronic monitoring and other conditions).

The government shotguns manufactured assertions in support of the supposed flight risk. First, the ridiculous contention that she was hiding before her arrest. In fact, she was living in, and arrested in, her own home in New Hampshire. She was in touch with her lawyers and as the government has to concede, her lawyers were communicating with the government. Ex.D at 27. Despite plenty of opportunities, she had not left the United States since Epstein's arrest, and had been living in the United States for 30 years. She became a U.S. citizen. She lived and worked here for 30 years. The government knew exactly where she was. (FBI New York Assistant Director William Sweeney Jr.: "We'd been discretely keeping tabs on Maxwell's whereabouts as we worked this investigation.")

The fact that she was holed up in her home because she was being relentlessly harassed by the media is not evidence of hiding from the government. In fact, one sensational tabloid put a £10,000 bounty on her. "*Wanted: The Sun is offering a £10,000 reward for information on … Ghislaine Maxwell*," The Sun, November 20, 2019, available at: https://tinyurl.com/3vewtnx3. Anyone facing these unprecedented safety concerns from the media mob would try to keep a low profile. But a low

profile is not flight. Ms. Maxwell could have left the United States had she wanted to flee. She did not want to do that and she did not do that. Instead, she chose to stay here and fight the bogus charges against her. This factor weighs heavily in favor of bond.

The government's next argument is that she has foreign ties and significant assets. But Ms. Maxwell addressed those concerns by renouncing her British and French citizenship and by agreeing to have her and her spouse's assets (other than basic living expenses and legal fees) placed in a new account that will be monitored by a retired federal district judge and former U.S. Attorney who will have authority over them. Ex.I.

Even someone with the government's imagination can't conjure up anything else Ms. Maxwell could do to show that she is serious about staying here to fight the allegations against her. She will agree to whatever condition the court orders and she will take the extraordinary step of renouncing her foreign citizenship. The government cannot explain how Ms. Maxwell could flee. She will have no assets (other than living expenses). She will have no country that will protect her. Her family and friends will be at risk. She will be heavily and

constantly monitored. And of course, she is recognizable around the globe.

The truth is that wealthy men charged with similar or more serious offenses, many of whom have foreign ties, are routinely granted bail so that they can effectively prepare for trial. Bernie Madoff. Harvey Weinstein. Bill Cosby. John Gotti. Marc Dreier. Dominique Strauss-Kahn. Ali Sadr. Adnan Khashoggi. Mahender Sabhnani. The list goes on and on. In each case, the court set reasonable conditions of bond and the defendants appeared, despite similar arguments by the government that the defendant faced serious charges or that the evidence was strong or that he had foreign ties or that he had great wealth. Ms. Maxwell is entitled to the same opportunity as male defendants to prepare her defense.

Even putting aside the pandemic and the current conditions of Ms. Maxwell's confinement, pretrial detention "is an extraordinary remedy" that should be reserved for only a very "limited group of offenders." *United States v. Jackson*, 823 F.2d 4, 8 (2d Cir. 1987). For this reason, a judge may deny a defendant bail "only for the strongest of reasons." *Hung v. United States*, 439 U.S. 1326, 1329 (1978) (Brennan,

J.). The Constitution's "prohibitions on the deprivation of liberty without due process and of excessive bail require careful review of pretrial detention orders to ensure that the statutory mandate [of the Bail Reform Act] has been respected." *United States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985) (Kennedy, J.). Because the consequence of error – the unjust deprivation of liberty from an individual who is presumed innocent – is contrary to our Constitution, "doubts regarding the propriety of release should be resolved in favor of the defendant." *Id*.

Even where the government is able to prove that an accused is an actual flight risk, pretrial detention generally remains inappropriate. *United States v. Berrios-Berrios*, 791 F.2d 246, 251 (2d Cir. 1986) ("the *presumption* in favor of bail *still* applies where the defendant is found to be a risk of flight") (emphasis added). Where the only question is whether the defendant is a risk of flight, "the law still favors pre-trial release subject to the least restrictive further condition, or combination of conditions, that the court determines will reasonably assure the appearance of the person as required." *Sabhnani*, 493 F.3d at 75.

The Supreme Court has explained that when "the Government has admitted that its only interest is in preventing flight, bail must be set by a court at a sum designed to ensure that goal, and no more."

The government simply has not come close to satisfying its heavy burden of proving that "no conditions" exist that will reasonably assure Ms. Maxwell's presence. It has not articulated with any evidence, let alone specific and credible evidence, how Ms. Maxwell could manage to flee under the proposed bail conditions. Speculation is not permitted. *United States v. Bodmer*, No. 03-cr-947(SAS), 2004 WL 169790 (S.D.N.Y. Jan. 28, 2004) (where government's argument that no conditions could assure defendant's future presence was based, "in large part, on speculation," defendant was released to home confinement with GPS monitoring). We challenge the government to point to a high profile defendant who in the recent past has 1) fled and 2) gotten away with it.

The reality is that defendants with far greater likelihood of conviction than Ms. Maxwell are granted bond and appear in court. Ms. Maxwell should not be treated differently.

CONCLUSION

Ms. Maxwell faces old, anonymous accusations that have never been tested. In any other case, she would have been released long ago. But because of the "Epstein effect," she is being detained and in truly unacceptable conditions. All we are asking for is a chance to defend the case. We respectfully request that Ms. Maxwell be released on reasonable conditions of bail or that the case be remanded for an evidentiary hearing.

Respectfully submitted,

MARKUS/MOSS PLLC
40 N.W. Third Street
Penthouse One
Miami, Florida 33128
Tel: (305) 379-6667
Fax: (305) 379-6668
markuslaw.com

By: /s/ David Oscar Markus
DAVID OSCAR MARKUS
Florida Bar Number 119318
dmarkus@markuslaw.com

CERTIFICATE OF COMPLIANCE

I CERTIFY that this petition complies with the type-volume limitation of FED. R. APP. P. 27. According to Microsoft Word, the numbered pages of this petition contains 5,185 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 27(d)(2).

This petition complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 27 because it has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook 14-point font.

/s/ David Oscar Markus
David Oscar Markus

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing was e-filed this 1st day of April, 2021.

/s/ David Oscar Markus
David Oscar Markus