



U.S. Department of Justice

United States Attorney
Southern District of New York



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BY ELECTRONIC MAIL

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Re: *United States v. Ghislaine Maxwell*, 20 Cr. 330 (AJN)

Dear Counsel:

We write in response to your letters dated September 21, 2020 and October 1, 2020 regarding the above-referenced case.

1. The Government Has Met Its Discovery Obligations

As an initial matter, you repeatedly assert that the Government “has not met its discovery obligations.” (Sept. 21, 2020 Ltr. at 4; Oct. 1, 2020 Ltr. at 1, 3). The Government respectfully disagrees. The deadline for the production of Rule 16 discovery set by the Court, including but not limited to “electronic materials” is November 9, 2020, which is more than a month away. (Dkt. 25). The deadline for “initial non-electronic discovery, generally to include search warrant applications and subpoena returns,” was due on August 21, 2020, and, as you are aware, the Government in fact made a substantial initial production before that deadline. (*Id.* (emphasis added)).

The Government has also made substantial efforts to ensure that copies of the discovery produced to defense counsel are also available to the defendant at the Metropolitan Detention

Center (“MDC”). And while there have been technical difficulties with certain of the productions made to the defendant, the Government understands that defense counsel is able to access all of the material, and, as detailed herein, we have worked promptly to address each concern you have raised with respect to productions made directly to the defendant. In sum, your claim that the Government has not met its discovery obligations because of the delay caused by your requests to reformat and return the discovery is simply inaccurate. The Government has met its discovery obligations and will continue to do so in the remaining month prior to the relevant discovery deadline.

In addition, as set forth below, the Government has conferred with MDC counsel regarding the various complaints you have raised in your September 21 and October 1 letters in order to accommodate your requests and in order to ensure that the defendant can timely review discovery.

2. The Government’s Extensive Efforts to Ensure the Defendant Can Review Discovery at MDC

The Government has taken considerable efforts to address the defendant’s complaints about her access to discovery in this case. As an initial matter, when making its productions, the Government had no reason to believe the defendant would be unable to review any of the discovery materials at the MDC. Indeed, the Government notes that it followed the same procedure in producing discovery to defense counsel as it did to the defendant. Nor could the Government possibly have anticipated which of the hundreds of thousands of files produced to date the defendant would be unable to view using the computer provided to her by the MDC. However, as soon as defense counsel notified the Government on August 27, 2020 that the defendant could not access a portion of the discovery materials, the Government worked with its paralegal and Information Technology staff to create new copies of the discovery materials you identified in a new format. Due to the volume of files requiring review and reprocessing, that process took several days. Once the files were reformatted, the Government loaded them onto a new drive, which it sent to the MDC on September 3, 2020.

Subsequently, your September 21, 2020 letter identified a portion of the Government’s first three productions that the defendant was unable to view at the MDC. The Government notes that even without being able to view those files, the defendant was still able to review tens of thousands of pages of discovery while awaiting correction of the technological problem, and the Government understands, as noted, that defense counsel has been able to view the entirety of the productions. Since learning from you that the defendant was experiencing difficulty viewing certain files, the Government has taken several steps to ensure that the defendant has access to every file.

First, the Government has worked with its paralegal and Information Technology staff to create new copies of the discovery materials you identified in your September 21, 2020 letter. That process involved converting certain files into new formats, changing the names of certain files, and providing software programs to help run certain files. Due to the extent of this review and reprocessing, these steps took several days. Once the files were reformatted, the Government loaded them onto a new drive, which it sent to the MDC on October 2, 2020. The cover letter accompanying that production included instructions for how the defendant may access the files she previously had difficulty viewing.

Second, the Government has asked MDC legal counsel to send an MDC Information Technology (“IT”) staff member to examine the computer the defendant is using to review her discovery at the MDC. The Government has asked that the IT staff member load any software necessary to view the files that the defendant has had difficulty accessing onto her MDC computer. The Government understands from MDC legal counsel that an IT staff member has completed such a review of the defendant’s computer at the MDC. Should the defendant have difficulty accessing files on the MDC computer in the future, she should alert MDC staff and request another review of the computer by IT staff.

The Government also asked MDC legal counsel to ensure that the defendant has a writing surface on which to take notes while reviewing discovery. MDC legal counsel has informed the Government that MDC staff has repositioned the items on the table at which the defendant reviews discovery such that she can use the table as a writing surface. MDC legal counsel has also informed the Government that the defendant has access to a privacy screen to use when reviewing discovery on the MDC computer. MDC legal counsel further noted that the defendant currently has more access to discovery than any other inmate in the facility.

Third, as a stopgap while completing the above processes, the Government reminded defense counsel that counsel is permitted to bring a laptop containing copies of any discovery materials produced to date into the MDC to review with the defendant. The Government understands from MDC legal counsel that that defense counsel is aware of this permission and has been able to visit the defendant in person at the MDC on multiple occasions.

Taken together, these steps should ensure that the defendant has access to the discovery productions made to date and with many months left to review those productions before trial. The Government will continue to work with defense counsel and the MDC to address any issues that may arise regarding the defendant’s access to discovery.

3. The Government’s Efforts to Ensure that the Defendant Can Review Highly Confidential Materials

Since receiving your request for your client to review Highly Confidential discovery material in the FBI’s possession, the Government has taken several steps to address your request. Due to the ongoing pandemic, the United States Marshals Service (“USMS”) will not produce a defendant from the MDC to the courthouse for any reason other than a court appearance. Accordingly, the Government cannot take the usual step of requesting the USMS to produce the defendant to a proffer room in the courthouse where she can review the Highly Confidential materials with defense counsel present.

As an alternative, the FBI has agreed to assign two agents to bring a secure laptop containing the Highly Confidential materials to the MDC, where defense counsel and the defendant may review the Highly Confidential materials together. So long as defense counsel submits to a search to ensure that no electronic devices or electronic storage media is being brought into the attorney visiting room, the agents will permit defense counsel and the defendant to review the computer alone while the agents wait outside the room. The FBI has loaded the secure laptop

with all of the approximately 43,500 images that were seized from Jeffrey Epstein's residences in New York and the Virgin Islands.¹ Accordingly, the FBI is prepared to facilitate the review of these items as soon as the MDC will permit such a visit. The FBI understands that defense counsel and the defendant may require multiple meetings to review all of the images and is accordingly prepared to bring the secure laptop to the MDC on multiple dates.

The Government has asked MDC legal counsel to authorize the FBI to bring the Highly Confidential materials into the facility for defense counsel and the defendant to review. In response, MDC legal counsel indicated that such visits require authorization from the Warden. The Government urged MDC legal counsel to approve the proposed visits as quickly as possible, and today, the Government learned that the Warden has approved this proposal. The FBI and MDC can accommodate a visit next week, and the Government will coordinate with defense counsel, the FBI, and the MDC to assist with scheduling this first and any subsequent visits.

Additionally, as the Government has repeatedly informed you, defense counsel may schedule a time to come to the FBI offices in Manhattan to review the above-referenced 43,500 images, as well as any other physical items referenced in the discovery productions. Those appointments can be made with much less notice because they do not require arranging the logistics of providing Highly Confidential images to an incarcerated defendant.

Finally, the Government is still processing the 40,000 of the above-referenced images that do not contain nudity for production to counsel and to the defendant at the MDC. Due to the volume of those images, that process has taken multiple weeks. The Government expects that the images will be ready to produce within approximately one week.

4. Conditions of Confinement

Since receiving your September 21, 2020 letter, the Government has consulted with MDC legal counsel regarding the defendant's conditions of confinement. As discussed on our September 22, 2020 call, immediately after receiving your letter, the Government contacted MDC legal counsel, and within approximately 24 hours, the Government had answers to several of the concerns raised in the letter, which the Government conveyed to you over the phone. Over the next two weeks, the Government awaited responses regarding the other complaints raised in your September 21, 2020 letter from the MDC. The Government has now received responses from MDC legal, which are incorporated herein.

First, MDC legal counsel indicated that the staff assigned to the defendant have worked to minimize the delays identified in your September 21, 2020 letter. As a result, the defendant should have up to thirteen hours per day of access to discovery, though she may also use that time for other activities, such as attorney visits, calls, recreation, and personal hygiene. That amount of time far exceeds the discovery access any other MDC inmate currently enjoys. MDC legal counsel

¹ Of those 43,500 images, approximately 3,500 contain nude or partially nude images, and approximately 40,000 do not contain nudity. Per your request, the FBI has loaded all 43,500 images together onto a laptop so that defense counsel and the defendant may review all of the seized images at the same time.

also confirmed that staff will not put their fingers into the defendant's mouth for any searches. The Government inquired of MDC legal counsel whether the defendant could be permitted to sleep in the rec room where her computer and shower are located instead of the isolation cell. In response, MDC legal counsel indicated that the defendant will be required to sleep in the isolation cell. According to MDC legal counsel, the Bureau of Prisons ("BOP") and MDC still feel that this is the most appropriate placement for the defendant, both for her safety and the security of the institution.

Second, the Government inquired of MDC legal counsel whether it would be possible to reduce the number of body scans conducted on the defendant. In response, MDC legal counsel indicated that the defendant will be required to undergo weekly body scans. According to MDC legal counsel, the BOP and MDC believe these scans are necessary for the security of the institution.

Third, MDC legal counsel has informed the Government that the defendant has the same access to commissary as any other inmate at the facility. As noted during our September 22, 2020 call, the defendant was provided with two different sizes of sports bras to choose from, and MDC legal counsel understands that at least one of those sizes was acceptable to the defendant.

Fourth, as referenced during our September 22, 2020 call, the Government has been assured by MDC legal counsel that the defendant is receiving three meals per day. According to MDC legal counsel, MDC staff now wait until later in the day to pick up the defendant's meals for each day, thereby ensuring that every portion of the meal (including side dishes and vegetables) is included. MDC legal counsel has also assured the Government that MDC staff keep the defendant's meals in a refrigerator to ensure that her food remains fresh. Additionally, if the defendant misses a meal due to a legal visit or other appointment, MDC staff will leave the meal for the defendant to eat upon her return. MDC legal counsel also noted that the defendant has purchased and received a number of supplemental food items from commissary, including, among other items, granola, mackerel, cheese, nutrition bars, soup, tortillas, crackers, honey buns, sausage, eggplant parmesan, and nuts. Further, MDC legal counsel has informed the Government that the defendant is seen by medical staff once per week. At those appointments, the defendant is weighed and told her weight.

Fifth, as noted during our September 22, 2020 call, MDC legal counsel has indicated that the defendant has received all mail that the MDC has received addressed to her and in compliance with BOP regulations. MDC legal counsel confirmed that letters sent on colored paper do not comply with BOP regulations and would be rejected. If a letter is rejected, the defendant will receive a notification of the rejection. MDC legal counsel further indicated that inmates are not permitted to receive care packages of food or other items from outside vendors, but the defendant can purchase legal pads and pens from commissary. MDC legal counsel further informed the Government that the MDC has not received any copies of *The New York Times* addressed to the defendant.

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In sum, the Government has met and will continue to meet its discovery obligations, and has worked expeditiously to address all of the concerns you have raised regarding the defendant's access to discovery and conditions of confinement. We remain available and willing to address any questions or concerns that may arise.

Very truly yours,

AUDREY STRAUSS
Acting United States Attorney

by:

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