U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
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April 5, 2021

BY ECF

The Honorable Alison J. Nathan
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *United States v. Ghislaine Maxwell*, S2 20 Cr. 330 (AJN)

Dear Judge Nathan:

The Government respectfully submits this letter in connection with the Court's Order of March 24, 2021, regarding the defendant's application for an order authorizing a subpoena pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure for records from Boies Schiller Flexner LLP ("BSF"). For the reasons set forth herein, the Government respectfully requests that the Court (1) direct the defendant to provide the Government with a copy of the proposed subpoena to BSF and notice of all existing and future applications for subpoenas under Rule 17(c) returnable in advance of trial, and (2) direct that any productions made in response to Rule 17(c) subpoenas be produced to the opposing party and marked confidential under the protective order.

I. Background

As the Court is aware, the Government has produced to the defendant more than 2.7 million pages of discovery pursuant to the Government's various discovery obligations, including Rule 16. The parties are also in discussions about the timing of further productions by the Government, including material provided pursuant to 18 U.S.C. § 3500 and *Giglio* material.

Those obligations, and not Rule 17 subpoenas, provide the avenue through which defendants in criminal cases obtain discovery. As the Supreme Court has explained, "[i]t was not intended by Rule 16 to give a limited right of discovery, and then by Rule 17 to give a right of discovery in the broadest terms." *Bowman Dairy Co. v. United States*, 341 U.S. 214, 220 (1951); *see also United States v. Purin*, 486 F.2d 1363, 1368 (2d Cir. 1973) ("A subpoena duces tecum in a criminal case is not intended as a means of discovery."). Unlike the rules of civil procedure—permitting the issuance of subpoenas to seek production of documents or materials which, although themselves not admissible, may lead to admissible evidence—the criminal rules do not authorize the issuance of such broad pretrial subpoenas under Rule 17. *See United States v. Cherry*, 876 F. Supp. 547, 552 (S.D.N.Y. 1995); *United States v. Gross*, 24 F.R.D. 138, 141 (S.D.N.Y. 1959) (Rule 17(c) cannot be used "to obtain leads as to the existence of additional documentary evidence or to seek information relating to the defendant's case. This type of discovery, permissible under the Federal Rules of Civil Procedure, has not been authorized for criminal trials.").

The purpose of Rule 17(c) is to "expedite the trial by providing a time and place before trial for the inspection of" specific materials that the parties intend to offer into evidence. *See United States v. Tagliaferro*, No. 19 Cr. 472 (PAC), 2021 WL 980004, at *2 (S.D.N.Y. Mar. 16, 2021) (citing *Bowman Dairy Co.*, 341 U.S. at 220 (1951)); *see also United States v. Ulbricht*, 858 F.3d 71, 109 (2d Cir. 2017) (explaining that the rule "allows parties to subpoena documents and objects to be introduced at criminal trials"), *abrogated on other grounds as recognized by United States v. Chambers*, 751 F. App'x 44, 46 & n.1 (2d Cir. 2018) (summary order). Accordingly, the Supreme Court has explained that, to require production of materials pursuant to Rule 17(c), the party seeking production must show that:

> (1) that the documents are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial by exercise

> of due diligence; (3) that the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the application is made in good faith and is not intended as a general "fishing expedition."

United States v. Nixon, 418 U.S. 683, 699-700 (1974) (footnote omitted); *see United States v. Skelos*, 988 F.3d 645, 661 (2d Cir. 2021) (affirming a decision to quash subpoenas through application of *Nixon*); *United States v. Pena*, No. 15 Cr. 551 (AJN), 2016 WL 8735699, at *1-*2 (S.D.N.Y. Feb. 12, 2016) (applying *Nixon*, rather than the "more liberal standard" of *United States v. Tucker*, 249 F.R.D. 58 (S.D.N.Y. 2008), to the propriety of a Rule 17(c) subpoena).

The *Nixon* test is demanding. The defendant must establish that the defense's "application is made in good faith and is not intended as a general 'fishing expedition.'" *Nixon*, 418 U.S. at 700; *United States v. Yian*, No. 94 Cr. 719 (DLC), 1995 WL 614563, at *2 (S.D.N.Y. Oct. 19, 1995) (quashing subpoena that "call[s] for the production of the entire investigative file and is accurately described as a fishing expedition"); *United States v. Cuthbertson*, 630 F.2d 139, 144 (3d Cir. 1980) ("[T]est for enforcement is whether the subpoena constitutes a good faith effort to obtain *identified evidence* rather than a general 'fishing expedition' that attempts to use the rule as a discovery device." (emphasis added)). Indeed, because the Rule poses such a risk of abuse and misuse, courts are stringent in holding those seeking to obtain documents to Rule 17(c) to their burden of demonstrating that the documents sought are (1) relevant, (2) admissible, (3) specifically identified, and (4) not otherwise procurable, and it is "insufficient" for a party to show only that the subpoenaed documents "are *potentially* relevant or *may* be admissible," *United States v. RW Prof'l Leasing Servs. Corp.*, 228 F.R.D. 158, 162 (E.D.N.Y 2005) (emphasis added). "[A] mere hope that the documents, if produced, may contain evidence favorable to the defendant's case will not suffice. Rule 17(c) requires a showing that the materials sought are *currently admissible* in

evidence; it cannot be used as a device to gain understanding or explanation." *United States v. Rich*, No. 83 Cr. 579 (SWK), 1984 WL 845, at *3 (S.D.N.Y. Sept. 7, 1984) (internal quotation marks omitted) (emphasis added). Accordingly, subpoenas that call for "any" and "all" records "do not evince specificity" and "read[] like a discovery request, which is not permitted under Rule 17(c)." *Tagliaferro*, 2021 WL 980004 at *3; *see Pena*, 2016 WL 8735699, at *3. And "[g]enerally the need for evidence to impeach witnesses is insufficient to require its production in advance of trial." *Nixon*, 418 U.S. at 701 (citations omitted); *see* Fed. R. Crim. P. 17(h) ("No party may subpoena a statement of a witness or of a prospective witness under this rule.").

If a subpoena calls for "personal or confidential information about a victim," the subpoena may be served "only by court order" following "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). After a subpoena issues, "[t]he court may direct the witness to produce the designated items in court before trial or before they are to be offered in evidence." Fed. R. Crim. P. 17(c)(1). "When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them." *Id.*

II. The Court Should Direct the Defendant to Provide Notice of Prior and Future Applications Under Rule 17(c) to the Government

The Government has legitimate and cognizable interests in Rule 17(c) subpoenas issued by the defense. In particular, courts have routinely found that the Government has standing to move to quash Rule 17(c) subpoenas that target information about anticipated Government witnesses "based on the Government's 'interest in preventing any undue lengthening of the trial, any undue harassment of the witness and his family, and any prejudicial over-emphasis on the witness's credibility.'" *United States v. Ray*, -- F.R.D. --, No. 20 Cr. 110 (LJL), 2020 WL 6939677, at *7 (S.D.N.Y. Nov. 25, 2020) (alterations omitted) (quoting *United States v. Giampa*, No. 92 Cr. 437 (PKL), 1992 WL 296440, at *1 (S.D.N.Y. Oct. 7, 1992)); *see United States v. Bergstein*, No. 16

Cr. 746 (PKC), 2017 WL 6887596, at *2-*3 (S.D.N.Y. Dec. 28, 2017) ("Preventing the undue harassment of a cooperating witness is a legitimate governmental interest giving rise to standing in this context."); *cf. United States v. Nachamie*, 91 F. Supp. 2d 552, 558-60 (S.D.N.Y. 2000) (concluding that the Government failed to establish a legitimate interest where, among other things, none of the subpoenaed entities had been "publicly identified by the Government as trial witnesses, or as particularly vulnerable witnesses"). That is particularly true where the subpoena at issue seeks material that the defendants would be entitled to, if at all, as *Giglio* or 3500 material given that the Government has a cognizable interest in "controlling the timing of disclosures as to" witnesses who are expected to testify at trial, and for whom the Government has various disclosure obligations. *United States v. Cole*, No. 19 Cr. 869 (ER), 2021 WL 912425, at *2 (S.D.N.Y. Mar. 10, 2021); *see Bergstein*, 2017 WL 6887596, at *3. Finally, the Government has standing to challenge subpoenas that call for its own communications. *See United States v. Carton*, 17 Cr. 680 (CM), 2018 WL 5818107, at *3 (S.D.N.Y. Oct. 19, 2018) (quashing a subpoena for communications with the Government).[1]

The only way for the Government to vindicate those interests is with notice so that the Government may, as appropriate, have an opportunity to quash the subpoenas. There is no avenue, after a subpoena is issued and fulfilled, for the Government to protect its interests in the timing of disclosures about victims or the disclosure of the Government's own communications. That is particularly important given that a subpoena recipient may lack sufficient knowledge about the

[1] The Government also has standing to challenge a Rule 17(c) subpoena at the request of a victim, witness or third-party impacted by the subpoena. *See Ray*, 2020 WL 6939677, at *7 ("Courts have acknowledged that the Government has standing to challenge Rule 17(c) subpoenas directed to a non-party when the non-party authorizes the Government to assert his or her right by request or by indicating its joinder in a motion to quash." (internal quotation marks and alteration omitted)).

case or motivation to move to quash an otherwise improper subpoena.[2] Accordingly, the Government respectfully requests notice of all subpoenas with pretrial return dates issued or sought to be issued under Rule 17(c).[3]

While, as the Court noted in its Order, Rule 17(c) subpoenas are frequently issued *ex parte* in this district, the issue is rarely litigated. *See, e.g.*, *United States v. States v. Wey*, 252 F. Supp. 3d 237, 243 (S.D.N.Y. 2017) (noting, without extended discussion, that subpoena had issued upon *ex parte* application); *United States v. Earls*, No. 03 Cr.0364 (NRB), 2004 WL 350725, at *6 (S.D.N.Y. Feb. 25, 2004) (noting that the defendant may seek subpoenas *ex parte*). When courts have considered the issue, however, many have directed that the parties should give each other notice of Rule 17(c) subpoenas unless a party can justify proceeding *ex parte*. *See United States v. Skelos*, No. 15 Cr. 317 (KMW), 2018 WL 2254538, at *8 (S.D.N.Y. May 17, 2018) (explaining that courts have permitted *ex parte* requests "where a reason existed for doing so," and requiring notice "[t]o further reduce the risk that trial will be delayed, unless a party has a compelling reason for proceeding *ex parte* with a subpoena request"), *aff'd*, 988 F.3d 645 (2d Cir. 2021); *United States v. St. Lawrence*, 16 Cr. 259 (CS), Dkt. No. 66 at 6 (S.D.N.Y. Dec. 22, 2016) (requiring motions for Rule 17(c) subpoenas and permitting *ex parte* applications "if the movant can articulate a reason why it should be"); *United States v. Boyle*, No. 08 Cr. 523 (CM), 2009 WL 484436, at *3 (S.D.N.Y. Feb. 24, 2009) (requiring noticed motions for Rule 17(c) subpoenas to "assur[e] that such subpoenas are not abused or used for impermissible discovery," and permitting *ex parte* applications "where a

[2] For example, a financial institution may lack sufficient knowledge about the case or motivation to expend the resources to move to quash what appears to be a routine subpoena that broadly seeks financial records for a Government cooperator or lay witness to be used for impeachment purposes, notwithstanding the fact that such a subpoena may run afoul of the *Nixon* standard.

[3] The Government is not seeking notice of subpoenas returnable at trial.

party can demonstrate" a basis (emphasis omitted)); *United States v. Weisman*, 01 Cr. 529 (BSJ), 2002 WL 1467845, at *1 (S.D.N.Y. July 8, 2002) (similar); *see also United States v. Fox*, 275 F. Supp. 2d 1006, 1012 & n.7 (D. Neb. 2003) (surveying the caselaw and adopting the "majority view" that Rule 17(c) "does not ordinarily permit the use of ex parte applications by the government or the defense for subpoenas seeking pretrial production of documents unless the sole purpose of seeking the documents is for use at trial," and even then, only if "there is a good trial-related reason" and generally requiring production in the presence of the opposing party); 2 Wright & Miller, Fed. Prac. & Procedure § 275 (4th ed.) ("It has been held, however, that *in limited circumstances*, both the government and a defendant may make an ex parte application for a pre-trial subpoena duces tecum" (emphasis added)). *But see Ray*, 2020 WL 6939677 at *8 ("Courts in this District have long followed the practice of permitting both the defense and the Government to submit ex parte applications for Rule 17(c) subpoenas."); *United States v. Reyes*, 162 F.R.D. 468, 470 (S.D.N.Y. 1995) (permitting *ex parte* applications because a party must "detail its trial strategy or witness list in order to convince a court that the subpoena satisfies the *Nixon* standards"). Notice of Rule 17(c) subpoenas is similarly appropriate in this case to prevent abuse and address objections expediently. And such a requirement is consistent with the plain language of Rule 17: while Rule 17(b) expressly provides for an *ex parte* procedure for indigent defendants seeking to subpoena a *witness* for trial, it makes no such provision for an application for the production of documents and objects pursuant to Rule 17(c).[4]

[4] In *Ray*, the Court concluded that Rule 17(c) is simply an extension of Rules 17(a) and (b)'s provisions of subpoenas to witnesses, which may issue without notice. *See* 2020 WL 6939677, at *8 (quoting *United States v. Florack*, 838 F. Supp. 77, 79 (W.D.N.Y. 1993)). However, Rule 17(c) subpoenas for records are quite unlike subpoenas for trial testimony: they can be made returnable before trial, and Rule 17(c)'s text provides that materials obtained pursuant to such a subpoena may be returnable to *the Court*, which may in turn "permit *the parties* and their attorneys to inspect all or part of them," and subjects the subpoenas to motions to quash. Fed. R. Crim. P. 17(c)(1)-(2)

Moreover, as the information currently available to the Government about the BSF subpoena makes plain, the Government's concerns are well founded. Indeed, the defendant has already sought issuance of a subpoena that appears to directly implicate the Government's interests by expressly and improperly seeking broad categories of victim information and communications with the Government. While the Government has not seen the subpoena to BSF, it also appears that the subpoena constitutes a fishing expedition for potential impeachment material, which plainly runs afoul of the *Nixon* test. (Letter from BSF to the Court at 2, Dkt. No. 191).[5] Insofar as the defendant is attempting to engage in such an improper expedition in this case—or even if the defendant is merely pushing the limits of a Rule 17 subpoena—the Government respectfully submits that it should be afforded the opportunity to bring its concerns to the Court's attention.

The Government recognizes that some information, such as portions of a defendant's explanation for why a particular request in a particular subpoena meets the *Nixon* standard, may reveal critical defense strategy meriting *ex parte* consideration by the Court. But the Government respectfully submits that interest can be served through specific defense requests tailored to the particular redaction or application at issue, rather than a default whereby the defendant is permitted to proceed entirely *ex parte* in seeking documents and materials pursuant to Rule 17(c).

(emphasis added); *see United States v. Reyes*, 162 F.R.D. 468, 470 (S.D.N.Y. 1995) ("Rules 17(a) and 17(b), which govern the issuance of subpoenas returnable *at trial*, also do not provide guidance as to the proper procedure for obtaining a pretrial subpoena duces tecum."). These procedures are, at a bare minimum, in tension with proceeding *ex parte* or under the rules that govern subpoenas for trial testimony.

[5] The Government has also not seen any response filing by the defendant, which per the Court's March 24, 2021 Order was to be filed on or before April 2, 2021. To the extent the defendant did file such a response, it was neither docketed nor provided to the Government, and as such, the Government is unable to address herein any arguments made by the defendant about the BSF subpoena.

III. Any Records Obtained Pursuant to a Rule 17(c) Subpoena Should Be Marked Confidential Under the Protective Order and Produced to the Opposing Party

Additionally, and to the extent the defendant has issued or will issue other subpoenas *ex parte* pursuant to Rule 17(c), the responsive records should be produced to the Government and marked confidential pursuant to the protective order. *See* Fed. R. Crim. P. 17(c)(1).

First, materials gathered pursuant to a Rule 17(c) subpoena by either party should be promptly made available to their adversary. As noted above, the text of Rule 17(c) plainly provides that materials obtained pursuant to a subpoena may be returned *to the Court* which "may permit the parties and their attorneys to inspect all or part of them." Fed. R. Crim. P. 17(c)(1). Nowhere does the Rule provide for one party's ability to use a subpoena to secretively gather material in advance of trial, nor does it include a categorical exception due to concerns about defense or trial strategy. Indeed, because the purpose of Rule 17 is to obtain evidence for use *at trial*, and not to investigate for evidence or obtain impeachment material, disclosure of the fruits of a Rule 17(c) subpoena fits neatly with Rule 16's reciprocal obligations for disclosure of evidence that the defendant intends to introduce in her case-in-chief. *See* Fed. R. Crim. P. 16(b)(1)(A); *United States v. St. Lawrence*, 16 Cr. 259 (CS), Dkt. No. 66 at 6 (S.D.N.Y. Dec. 22, 2016) ("It seems to the Court that because Rule 17(c) subpoenas are intended to obtain specific materials that the party expects to offer into evidence, Rule 16 would oblige the party to make the materials available to the other side anyway.").[6]

By contrast, to the extent the defendant has improperly obtained information through a Rule 17(c) subpoena, the Government should have the opportunity to move to preclude its use at trial. In order to permit such a motion to be made in a timely manner—and so as to avoid the

[6] To the extent the Government makes use of Rule 17(c) subpoenas, it similarly will promptly produce all material received to the defendant.

unnecessary delay and disruption that will occur if the Government only learns of the existence of such material during trial—the Government seeks disclosure of any records obtained in response to such a subpoena. At a minimum, the Court should order production of subpoena returns directly to the Court, so it may screen out irrelevant or improper information and determine whether any materials should be made available to the Government as well as the defendant.

Second, the Court should direct that any material obtained pursuant to a Rule 17 subpoena be marked confidential and subject to the protective order. As noted above, the BSF subpoena appears to call for a substantial amount of sensitive personal information about victims. For instance, according to the letter from BSF, the subpoena to BSF requests the "original, complete copy" of a victim's diary. (Letter from BSF to the Court at 5, Dkt. No. 191). To the extent the defendant has obtained or will obtain sensitive information about victims or witnesses, it should be treated as "confidential" under the protective order much like other such information in this case.

IV. Conclusion

The Government respectfully requests that the Court order the defendant to provide notice to the Government of pending and future applications for Rule 17(c) subpoenas returnable in advance of trial, and for the Court to order that any records obtained in response to Rule 17(c) subpoenas be treated as confidential under the protective order and disclosed to the Government.

Respectfully submitted,

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April 6, 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, New York 10007

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

Dear Judge Nathan:

The Government respectfully submits this letter to provide an update regarding the defendant's conditions of confinement at the Metropolitan Detention Center ("MDC") pursuant to the Court's Order dated December 8, 2020. (Dkt. No. 92). This update is based on information provided to the Government by MDC legal counsel regarding the conditions of the defendant's confinement over the last two months.

The defendant continues to receive more time to review discovery than any other inmate at the MDC. Specifically, the defendant is permitted to review her discovery thirteen hours per day, seven days per week. During the entirety of that time, the defendant has access to both a desktop computer provided by the MDC and a laptop computer provided by the Government on which to review discovery. Also during those thirteen hours per day, the defendant may use the MDC desktop computer to send and receive emails with her attorneys.[1] This discovery review

[1] Per BOP policy, all inmate emails are routinely purged every six months. In response to complaints from the defendant and defense counsel regarding prematurely deleted emails, MDC staff examined the defendant's inmate email account. That examination revealed that the defendant had herself deleted some of her emails and had archived others. That examination revealed no evidence to suggest that MDC staff deleted any of the defendant's emails.

takes place in a day room that is separate from the defendant's isolation cell. Accordingly, the defendant is permitted out of her cell from 7am to 8pm every day. While in the day room, the defendant has exclusive access to the MDC desktop computer, the laptop, a television, a phone on which to place social or attorney calls, and a shower. The defendant is also permitted outdoor recreation every day, although she has the option of declining such recreation time if she wishes.

The defendant also has as much, if not more, time as any other MDC inmate to communicate with her attorneys. Currently, the defendant receives five hours of video-teleconference ("VTC") calls with her counsel every weekday, for a total of 25 hours of attorney VTC calls per week. At times, unexpected incidents, such as institution-wide lockdowns or short staffing, delay the defendant's arrival to her VTC call with counsel by up to 30 minutes. When such delay occurs, however, the MDC permits the defendant to make up for any missed time either by extending that day's VTC call or by permitting the defendant extra time on the next day's VTC call. All of these VTC calls take place in a room where the defendant is alone and where no MDC staff can hear her communications with counsel. During these VTC calls, MDC staff place a camera approximately 30 feet away from the door to the room where the defendant conducts the VTC calls. The camera has a full view of the door to the VTC room, but the camera cannot view either the defendant or her attorneys while the door is closed during VTC calls. The camera does not capture any sound from the defendant's VTC calls with her attorneys. In other words, the camera records who enters and exits the VTC room, but it does not record activity inside the VTC room. The defendant is also permitted to use the phone in the day room to place phone calls to her attorneys as needed.

In addition, defense counsel now have the option of meeting with the defendant in person at the MDC. On or about February 16, 2021, the MDC resumed in-person visitation. As a result,

in-person attorney visits are now available seven days per week. The MDC has placed HEPA air filters in its attorney visiting rooms to improve air quality during visits. Additionally, the defendant has received the COVID-19 vaccine and is now fully vaccinated. The Government understands that defense counsel have thus far declined to meet with the defendant in person and instead rely on VTC calls, email, and supplemental phone calls to communicate with their client. The option of in-person visits remains available seven days per week should defense counsel wish to meet with the defendant in person.

The defendant's legal mail is processed in the same manner as mail for all other inmates at the MDC. All inmate mail is sent to the MDC's mail room, where every piece of mail is processed before being provided to the inmate recipient. Due to the large number of MDC inmates and the volume of mail received at the MDC, this process can take multiple days. As noted above, however, the defendant is able to send and receive emails with defense counsel every day and has regular communication with counsel via VTC, which can be supplemented by phone calls.

Like any other inmate, the defendant is patted down by MDC staff whenever she is moved to a different part of the facility. Typically, these searches include at least two pat-down searches of the defendant per day: once when she is moved from her isolation cell to the day room each morning, and once when returns from the day room to her isolation cell each night. In addition, when the defendant elects to attend outdoor recreation, she is searched two additional times: once when she is moved to the recreation area, and once when she returns to the day room from the recreation area. MDC staff also conduct a body scan, which is a non-invasive machine scan, on the defendant once per week to check for any secreted contraband. Because those scans take place in a different part of the facility than the day room, the defendant is patted down two additional times when these weekly scans occur: once when she is moved to the scan area, and once when

she returns to the day room from the scan area. As part of every pat-down search, the defendant is required to remove her mask and open her mouth briefly so that MDC staff, who remain masked during the searches, can confirm she has not hidden contraband in her mouth.[2] These pat-down and mouth searches are consistent with MDC's policy that all inmates be searched whenever they move to a different location within the jail facility. In the absence of in-person visitation, the defendant has not been strip searched. If the defendant receives in-person visits, then she, like all other inmates, will be strip searched after any in-person visit.

In addition, MDC staff search the defendant's cell for contraband once per day. At night, MDC staff are required to confirm every fifteen minutes that the defendant is not in distress. To do so, every fifteen minutes, staff point a flashlight to the concrete ceiling of the defendant's cell to illuminate the cell sufficiently to confirm that the defendant is breathing. At night, MDC staff have observed that the defendant wears an eye mask when she sleeps, limiting the disturbance caused by the flashlight. Additionally, MDC staff have observed that the defendant regularly sleeps through these nighttime wellness checks. The MDC continues to be of the view that all of these searches are necessary for the safety of the institution and the defendant.

The Government also inquired regarding certain complaints defense counsel raised in February 2021 regarding the defendant's food, water, and physical wellbeing. In response, MDC

[2] Following defense counsel's complaint in its February 16, 2021 letter of an inappropriately conducted pat-down search, the MDC conducted an investigation and found that, contrary to the defendant's claim, the search in question was in fact recorded in full by a handheld camera. After reviewing the camera footage, the MDC concluded that the search was conducted appropriately and the defendant's complaint about that incident was unfounded. MDC legal counsel further confirmed that all pat-down searches of the defendant are video recorded. Following this incident, MDC staff directed the defendant to clean her cell because it had become very dirty. Among other things, MDC staff noted that the defendant frequently did not flush her toilet after using it, which caused the cell to smell. In addition, the defendant had not cleaned her cell in some time, causing the cell to become increasingly dirty. MDC staff directed the defendant to clean her cell in response to the smell and the dirtiness, not as retaliation for complaining about a particular search.

legal counsel informed the Government that the defendant's meals arrive in containers that are both microwavable and oven safe. Currently, the defendant's meals are heated in a thermal oven. The tap water available in the MDC is provided by New York City. As a result, on occasions when the City has conducted maintenance near the MDC, the water has been temporarily shut off. During those periods, MDC staff have provided all inmates, including the defendant, with bottled water. After the water is turned back on, the water is sometimes cloudy or brown and needs to run for several seconds before becoming clear. MDC staff have not observed any instance in which the water in the defendant's cell did not clear after being run for several seconds. MDC legal counsel emphasized that MDC staff, including the legal staff, drink the same tap water from the same water system as the defendant while in the institution.

MDC medical staff monitor the defendant daily and weigh the defendant at least once per week. During her time at the MDC, the defendant's weight has fluctuated between the 130s and the 140s. The defendant's lowest observed weight was 133 pounds in July of 2021. Since then, her weight has fluctuated but has never been lower than 134 pounds. Most recently, when the defendant was weighed last week, her weight was 137.5 pounds. The defendant is 5' 7", meaning that even her lowest weight of 133 pounds resulted in a BMI of 20.8, which is considered a normal weight for a person of the defendant's height. MDC staff have not observed the defendant experience any noticeable hair loss. As noted above, the defendant has received a COVID-19 vaccine and is now fully vaccinated. In short, MDC medical staff assess that the defendant is physically healthy.

Should the Court have any questions or require any additional details regarding this topic, the Government will promptly provide additional information.

Respectfully submitted,

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Cc: All Counsel of Record (By ECF)