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App. No: _____

In the

Supreme Court of the United States

_____

GHISLAINE MAXWELL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

_____

CERTIFICATE OF SERVICE

_____

Undersigned counsel, pursuant to 28 U.S.C. § 1746, declares that on the 15th day of January 2025, a copy of the Petitioner's Application for Extension of Time to File Certiorari Petition was served by U.S. mail upon the upon the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001.

/s/ David Oscar Markus
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Miami, Florida
January 15, 2025

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App. No: 24A709

In the
Supreme Court of the United States

GHISLAINE MAXWELL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S AMENDED APPLICATION TO EXTEND TIME TO FILE PETITION FOR A WRIT OF CERTIORARI

To the Honorable Sonia Sotomayor, as Circuit Justice for the United States Court of Appeals for the Second Circuit:

1. Petitioner Ghislaine Maxwell respectfully requests that the time to file a Petition for a Writ of Certiorari in this case be extended for forty five days to April 10, 2025. The court of appeals issued the Order denying the Petition for Rehearing/Rehearing En Banc on November 25, 2024. Absent an extension of time, the petition would be due on Monday, February 24, 2025. Petitioner is filing this Application at least ten days before the due date. *See* S.Ct. R. 13-5. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

2. Petitioner seeks review of the opinion of the United States Court of Appeals for the Second Circuit based on substantial questions relating to that court's resolution of petitioner's appeal. Specifically, the Second Circuit's opinion acknowledged that it

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deepened a circuit split on whether a plea agreement is binding on federal prosecutors in districts other than the one in which it is entered. *See United States v. Maxwell*, 118 F. 4th 256 n.11 (2nd Cir. 2024) ("recogniz[ing] that circuits have been split on this issue").

3. Undersinged counsel was just retained yesterday, on January 14, 2024. Due to case-related and other reasons, additional time is necessary and warranted for counsel to research the decisional conflicts, and prepare a clear, concise, and comprehensive petition for certiorari for the Court's review. The press of other matters makes the submission of the petition difficult absent an extension, especially because Petitioner engaged undersigned counsel just this week to represent her in the Supreme Court. For example, Counsel is scheduled to commence a multi-defendant trial on March 3, 2025, *United States v. Diego Sanudo Sanchez Chocron,* Southern District of Florida, case number 24-cr-20155-RAR(s). In addition, counsel is due to file a reply brief in this Court in *Elizabeth Peters Young v. United States*, case number 24-571, shortly after the Goverment files its response on January 22, 2025.

Therefore, because of the importance of this issue, and the need to draft a meaningful petition on such short notice, undersigned counsel is respectfully requesting an additional 45 days in the matter to file until April 10, 2025.

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Conclusion

For the foregoing reasons, the time to file a Petition for a Writ of Certiorari in this matter should be extended forty five days to and including April 10, 2025.

Respectfully submitted,

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January 2025

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No. 24-___

GHISLAINE MAXWELL, AKA SEALED DEFENDANT 1,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

AFFIDAVIT OF SERVICE

I HEREBY CERTIFY that on April 10, 2025, three (3) copies of the PETITION FOR WRIT OF CERTIORARI in the above-captioned case were served, as required by U.S. Supreme Court Rule 29.5(c), on the following:

D. JOHN SAUER
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Sworn to and subscribed before me this 10th day of April 2025.

AZA SALINDER DONNER
NOTARY PUBLIC
District of Columbia

My commission expires April 30, 2029.

AZA SALINDER DONNER NOTARY PUBLIC DISTRICT OF COLUMBIA Exp. - 04/30/2029

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No. 24-___

IN THE

Supreme Court of the United States

GHISLAINE MAXWELL, AKA SEALED DEFENDANT 1,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the document contains 4,956 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Sworn to and subscribed before me this 10th day of April 2025.

AZA SALINDER DONNER
NOTARY PUBLIC
District of Columbia
My commission expires April 30, 2029.

AZA SALINDER DONNER NOTARY Exp. - 04/30/2029 PUBLIC DISTRICT OF COLUMBIA

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No. 24-____

IN THE

Supreme Court of the United States

GHISLAINE MAXWELL, AKA SEALED DEFENDANT 1,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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April 10, 2025

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QUESTION PRESENTED

This Court long has recognized that "when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *Santobello v. New York*, 404 U.S. 257 (1971). And, of course, it is well settled that plea agreements and non-prosecution agreements are interpreted using ordinary principles of contract construction, requiring that the plain language of the agreement must govern interpretation and that ambiguities must be resolved against the Government. Nevertheless, Circuits are split on whether promises in a plea agreement in one district on behalf of the "United States" or the "Government" binds the Government in other districts.

The question presented here is:

Under *Santobello* and common principles of contract interpretation, does a promise on behalf of the "United States" or the "Government" that is made by a United States Attorney in one district bind federal prosecutors in other districts?

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PARTIES TO THE PROCEEDING

Petitioner Ghislaine Maxwell was the Defendant in the district court and the Appellant in the Second Circuit. Respondent is the United States.

RELATED PROCEEDINGS

This case arises from the following proceedings:

- *United States v. Maxwell,* 118 F.4th 256 (2d Cir. 2024), *reh'g denied*, November 25, 2024. Judgment entered September 17, 2024.
- *United States v. Maxwell,* 534 F. Supp. 3d 299 (S.D.N.Y. 2021).

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PETITION FOR WRIT OF CERTIORARI

Ghislaine Maxwell respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The opinion of the Second Circuit (App.1) is reported at *United States v. Maxwell,* 118 F.4th 256 (2d Cir. 2024). The Second Circuit's order denying Maxwell's petition for rehearing *en banc* (App.92) is not published in the Federal Reporter. The district court's order denying Maxwell's motion to dismiss (App.52) is available at *United States v. Maxwell,* 534 F. Supp. 3d 299 (S.D.N.Y. 2021).

JURISDICTION

The Second Circuit issued its opinion on September 17, 2024. Maxwell's motion for *en banc* review was denied on November 25, 2024. This Court has jurisdiction under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

There are no pertinent constitutional or statutory provisions involved in the matter at issue in this case.

STATEMENT OF THE CASE

Despite the existence of a non-prosecution agreement promising in plain language that the United States would not prosecute any co-conspirator of Jeffrey Epstein, the United States in fact prosecuted Ghislaine Maxwell as a co-conspirator of Jeffrey Epstein.

Only because the United States did so in the Second Circuit and not elsewhere, her motion to dismiss the

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indictment was denied, her trial proceeded, and she is now serving a 20 year sentence. In light of the disparity in how the circuit courts interpret the enforceability of a promise made by the "United States," Maxwell's motion to dismiss would have been granted if she had been charged in at least four other circuits (plus the Eleventh, where Epstein's agreement was entered into). This inconsistency in the law by which the same promise by the United States means different things in different places should be addressed by this Court.

PROCEDURAL BACKGROUND

A. Entry of the Non-Prosecution Agreement.

In September 2007, after an extended period of negotiation with high-level representatives of the United States that included Main Justice, Jeffrey Epstein entered into a non-prosecution and plea agreement ("NPA") with the United States Attorney's Office for the Southern District of Florida. (App.24-38). In return for pleading guilty to state charges in Florida, receiving and serving an eighteen-month sentence, and consenting to jurisdiction and liability for civil suits under 18 U.S.C. § 2255, the United States agreed not to prosecute Epstein in the Southern District of Florida for the offenses from 2001-2007 then under investigation. In addition, after lengthy negotiations, the United States agreed that "[i]n consideration of Epstein's agreement to plead guilty and provide compensation in the manner described above, if Epstein successfully fulfills all of the terms of this agreement, the United States also agrees that it will not institute any criminal charges against any potential co-conspirators of Epstein, including but not limited to [four named individuals]." (App.30-31).

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This co-conspirator clause, containing no geographic limitation on where in the United States it could be enforced, was actively negotiated at the same time as the terms of Epstein's protection for his own criminal prosecution, which was expressly limited to a bar on prosecutions in the Southern District of Florida only (App.26). A previous version of the co-conspirator language limited it to the Southern District of Florida before it was amended to refer more broadly to the "United States," and the co-conspirator clause was relocated in the document. (App.95, 108-126). The NPA also contained an express recitation that it was not binding on the State Attorney's office in Florida (App.30), but it contained no such recitation setting forth that it was not binding on other United States Attorney's offices.

Relying on the NPA, Epstein pleaded guilty in Florida state court on June 30, 2008, and fulfilled all his obligations under the NPA.

B. Criminal Proceedings in the District Court.

In July 2019, Epstein was indicted in the Southern District of New York on charges of sex trafficking and conspiracy related to conduct in Florida and New York between 2003 and 2005. The NPA did not pose an impediment to this indictment because Epstein's protection therein had been limited to charges brought in the Southern District of Florida. Epstein died while incarcerated on August 10, 2019.

One year later, after Epstein died in jail, Ghislaine Maxwell was indicted in the Southern District of New York for her alleged actions as a co-conspirator of Epstein, on charges that were the same as had been brought against Epstein. Initially, Maxwell was charged with crimes in the 1994 to 1997 timeframe,

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presumably in an effort to circumvent the time frame covered by the NPA.

On March 29, 2021, the government added in its superseding indictment an alleged sex trafficking offense (Count Six) related to conduct and offenses wholly within the timeframe and subject matter covered by the NPA. The sole complainant to the allegations in Count Six had been presented to the Grand Jury in the Southern District of Florida and her evidence formed the basis of a conspiracy charge and a sex trafficking charge in a proposed indictment of Epstein that was dropped pursuant to the terms of the NPA. Thus, the complainant's allegations were part of those for which Epstein pleaded guilty and paid restitution, in exchange (in part) for his co-conspirators to be immune from prosecution.

Maxwell moved to dismiss based on the express plain language of the NPA which precluded charges by the United States against any co-conspirator of Epstein:

> In consideration of Epstein's agreement to plead guilty and to provide compensation in the manner described above, if Epstein successfully fulfills all the terms and conditions of this agreement, the *United States* also agrees that it will not institute any criminal charges against any potential co-conspirators of Epstein, including but not limited to [four named individuals]…

(App.30-31) (emphasis added). Alternatively, Maxwell sought discovery and a hearing to establish affirmative evidence of intent to bind the United States as a whole.

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Maxwell's motion was denied without a hearing. Although the district court did not order discovery, it did order the government to disclose to Maxwell "any evidence supporting a defense under the NPA." The government responded that its review "did not include search terms relevant to the NPA, and the Government has not searched [the SDFL prosecutor's] inbox for communications relating to the NPA." It also stated that it did not intend to request or review emails for any other USAO-SDFL or Department of Justice attorney or otherwise perform a comprehensive review of the internal e-mails of that prosecutor's office from its wholly separate investigation, including by asking for any other material gathered by OPR as part of its investigation.

The District Court found that Maxwell was a beneficiary of the NPA and had standing to enforce its terms, but concluded that the NPA did not grant immunity to Maxwell in the Southern District of New York. The case proceeded to trial and the jury found Maxwell guilty on, *inter alia*, Count Six. (App.39). She was sentenced to a 240 month (20 year) term of incarceration. (App.41).

In 2019, the Department of Justice Office of Professional Responsibility ("OPR") issued a lengthy report on its extensive investigation into whether the federal government's 2007-08 resolution of the federal investigation of Epstein through the NPA was improper. *See* Appendix F, Excerpts of the Department of Justice Office of Professional Responsibility Report (App.93). OPR's investigation overlapped the prosecutions of Epstein and Maxwell in the Southern District of New York. The OPR report did not contain a finding as to whether the co-conspirator clause of the NPA bound districts other than the Southern District of

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Florida, but it reported that "witnesses" (none of whom were on the defense side) stated that the clause provided transactional immunity and that it "found no policy prohibiting a U.S. Attorney from declining to prosecute third parties or providing transactional immunity." (App.128-129).

C. The Second Circuit's Decision.

On appeal, Maxwell argued that the NPA barred her prosecution in the Southern District of New York by its express language. The Second Circuit disagreed, affirming the district court's opinion that under *United States v. Annabi*, 771 F.2d. 670, 672 (2d Cir. 1985), the co-conspirator clause in the NPA did not preclude Maxwell's prosecution in the Southern District of New York notwithstanding that the clause expressly stated that the "United States" is barred from such a prosecution. *United States v. Maxwell,* 118 F.4th 256 (2d. Cir. 2024). The court applied *Annabi* even though the NPA had been negotiated in the Eleventh Circuit where no similar precedent exists or applies. The parties certainly expected that the law of the Eleventh Circuit, where the NPA was entered into, would apply.

Nevertheless, quoting *Annabi,* the Second Circuit held that "[a] plea agreement binds only the office of the United States Attorney for the district in which the plea is entered unless it affirmatively appears that the agreement contemplates a broader restriction." *Id.* at 263. The court found that neither the text of the NPA nor the "negotiation history" showed that the co-conspirator clause was "meant to" bind other districts, even though the clause contains no limiting language and even though government witnesses told OPR that the clause was, in fact, meant to provide transactional immunity. (App.128).

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Maxwell moved for rehearing *en banc*, which was denied. (App.92).

REASONS FOR GRANTING THE PETITION

This case is the perfect vehicle for resolving an acknowledged circuit split over the proper application of this Court's precedent regarding an important issue of federal criminal law. Despite the fact that the term "United States" has a widely accepted meaning in perhaps every other context, when this term is used in a plea agreement, it means something different in New Jersey than it does across the river in New York City. A criminal defendant who, after receiving a promise that he will not be prosecuted again by the United States, pleads guilty to resolve all criminal liability, is not in fact resolving all criminal liability because the United States remains free to prosecute him anew so long as it does so in the Second or Seventh Circuits.

This Court should resolve this conflict, ensuring that plea agreements are enforced consistently throughout the United States so that when the United States makes a promise in a plea agreement, it is held to that promise.

I. The circuits are split as to whether a promise on behalf of the "United States" or the "Government" by a United States Attorney's office in one district is binding upon United States Attorney's offices in other districts.

In *Santobello v. New York*, 404 U.S. 257 (1971), this Court held that a prosecutor's promise in a plea agreement binds other prosecutors, even those who might have been unaware of the promise. 404 U.S. at 262. "Th[e] circumstances will vary, but a constant

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factor is that, when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *Id.* And in *Giglio v. United States*, this Court found that "the prosecutor's office is an entity and as such it is the spokesman for the Government. A promise made by one attorney must be attributed, for these purposes, to the Government." *Giglio v. United States*, 405 U.S. 150, 154 (1972).

Yet despite this binding precedent, the Second Circuit refuses to hold its United States prosecutors to the promises that other United States prosecutors have made on behalf of the United States, instead clinging to the position that a plea agreement binds only the district in which it was entered unless it expressly states otherwise, even if the promise is made on behalf of the "United States." (App.8-12). The Seventh Circuit similarly applies a narrow interpretation of who is bound by a pledge on behalf of the "United States" or the "Government." This policy jeopardizes the integrity of the plea negotiation process nationwide, which is "an essential component of the administration of justice" that "presuppose[s] fairness in securing agreement between an accused and a prosecutor." *Santobello,* 404 U.S. at 261.

The Second and Seventh Circuit's policy is squarely in conflict with that of the Third, Fourth, Eighth and Ninth Circuits, creating a circuit split with nationwide ramifications pursuant to which the same plea agreement can receive a different interpretation throughout the country on one of its most fundamental aspects (a defendant's potential future criminal liability). This case provides an ideal opportunity to resolve this

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circuit split regarding an important issue of federal criminal law.

A. The Third, Fourth, Eighth and Ninth Circuits have faithfully applied *Santobello*'s instruction that promises in plea agreements must be binding on the government, applying basic principles of contract law to find that obligations entered into on behalf of the "United States" or the "Government" apply to the federal government throughout the nation.

Third Circuit. In *United States v. Gebbie*, 294 F.3d 540 (3d Cir. 2002), the Third Circuit squarely addressed the question of "whether promises made on behalf of 'the Government' or 'the United States' by a United States Attorney to a defendant bind other United States Attorneys with respect to the same defendant." *Id.* at 546-47. After recognizing that the Second and Fourth Circuits "employ opposite default rules" from one another, *id.* at 547, the Third Circuit agreed with the Fourth Circuit and held that "when a United States Attorney negotiates and contracts on behalf of 'the United States' or 'the Government' in a plea agreement for specific crimes, that attorney speaks for and binds all of his or her fellow United States Attorneys with respect to those same crimes and those same defendants." *Id.* at 550. It went on to note that "United States Attorneys should not be viewed as sovereigns of autonomous fiefdoms. They represent the United States, and their promises on behalf of the Government must bind each other absent express contractual limitations or disavowals to the contrary." *Id.*

Fourth Circuit. The Fourth Circuit, in *United States v. Carter*, 454 F.2d 426 (4th Cir. 1972), was the

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first to hold that a promise on behalf of the United States in one district not to prosecute a defendant is binding upon U.S. Attorney's offices in other districts. *Id.* at 428. As that court noted, "[t]he United States government is the United States government throughout all of the states and districts. . . . A contrary result would constitute a strong deterrent to the willingness of defendants accused of multistate crimes to cooperating in speedy disposition of their cases and in apprehending and processing codefendants" *Id.* The Fourth Circuit concluded, "[a]t stake is the honor of the government[,] public confidence in the fair administration of justice, and the efficient administration of justice in a federal scheme of government." *Id.*

Eighth Circuit. The Eighth Circuit similarly found in *United States v. Van Thournout*, 100 F.3d 590 (8th Cir. 1996), that "absent an express limitation, any promises made by an Assistant United States Attorney in one district will bind an Assistant United States Attorney in another district." *Id.* at 594. Interpreting a plea agreement which provided that the "United States" would make certain recommendations regarding the defendant's sentence, the court held that this provision was binding on the U.S. Attorney's office in another district and that the terms of the agreement should be enforced. *See also Margalli-Olvera v. Immigration and Naturalization Service*, 43 F.3d 345, 352 (8th Cir. 1994) (finding that "the term 'United States' is a reference to the entire United States government and all the agencies hereof" in the context of determining that the INS is bound by promises made by the U.S. Attorney's office).

Ninth Circuit. In *Thomas v. Immigration and Naturalization Service*, 35 F.3d 1332 (9th Cir. 1994), the Ninth Circuit held that a promise made by the

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U.S. Attorney's Office on behalf of the "Government" (defined in that agreement to include its "departments, officers, agents, and agencies") binds not just the office of the U.S. Attorney but also the Immigration and Naturalization Service. 35 F.3d at 1337-38. Although the plea agreement in that case defined broadly that all governmental agencies would be bound, the Ninth Circuit cited approvingly to the broader proposition that "the United States government as a whole uses United States Attorneys as its authorized agents to negotiate plea bargains in criminal cases, so their authorized agreements bind the government as a whole." *Id.* at 1340. *See also United States v. Johnston*, 199 F.3d 1015, 1020-21 (9th Cir. 1999) (recognizing that although a plea agreement which specifically and expressly limits a non-prosecution promise to a particular U.S. attorney's office is enforceable only against that office, this is an exception to the general principle that a plea agreement is binding upon all districts).

B. The Second and the Seventh Circuits apply the opposite presumption. They refuse to enforce a promise made on behalf of the "United States" or "the Government" except against the particular United States Attorney's office which entered into the agreement, unless the agreement expressly reiterates that the term "United States" does in fact mean the entire country as a whole.

Second Circuit. In the decision below, in reliance on *Annabi*, 771 F.2d 670, the Second Circuit held that the government's promise that the "United States" would not prosecute any of the defendant's co-conspirators was only enforceable in the Southern

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District of Florida, and not in the Southern District of New York. *United States v. Maxwell*, 118 F.4th 256, 261 (2d Cir. 2024). The *Maxwell* court found that it must "affirmatively appear[] that the agreement contemplates a broader restriction" in order for the "United States" to mean the country as a whole, even if entered into in a district in which the term "United States" does, in fact, mean the country as a whole. *Id.* at 263.

Seventh Circuit. Although the Seventh Circuit has not considered the question presented in the specific context of the enforceability of a promise made in a plea agreement against a different U.S. Attorney's office, it has held in a related context that "[a] prosecutor's agreement will not bind more than the office of the United States Attorney unless the promise explicitly contemplates 'a broader restriction.'" *Thompson v. United States*, 431 F. App'x 491, 493 (7th Cir. 2011) (finding that a promise on behalf of the government by a prosecutor would not bind the INS). *See also United States v. McDowell*, No. 94-CR-787-1, 2006 WL 1896074 (N.D. Ill. 2006) (finding in the context of Rule 35(b) motions that "a United States Attorney has sole authority to bind his own office" only and lacks authority to compel a U.S. Attorney in another district to file a Rule 35(b) motion).

II. The Second Circuit's decision below is wrong and violates the principles set forth in this Court's prior opinions.

The opinion below, which is based on the Second Circuit's prior holding in *Annabi,* is wrongly decided and should not stand. Rather than the Second Circuit's default rule that a promise made on behalf of the United States does not bind the United States as a whole, the default rule should be that a promise

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made on behalf of the United States binds the entire United States unless it says so affirmatively (as, in fact, the agreement at issue here did for Epstein himself, but not for his co-conspirators). As set forth above, this is consistent with *Santobello* and *Giglio*, and with ordinary principles of contract interpretation. And it is the only principled way to interpret the plain language of this agreement, as well as the available information on the parties' intent.

A. Both *Annabi* and the opinion below were wrongly decided under *Santobello* and *Giglio*.

It is impossible to square the Second and Seventh Circuit's policies on plea agreement interpretation with this Court's holdings in *Santobello*. As this Court correctly determined in that case, "when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." 404 U.S. at 262.

There is perhaps no promise the government makes within a plea agreement that is more fundamental than the promise that by pleading guilty, the defendant is resolving his or her legal culpability for the conduct at issue, and that after accepting and serving the penalty contemplated in the agreement, he or she can move forward without fear of additional prosecution for that conduct. A defendant should be able to rely on a promise that the United States will not prosecute again, without being subject to a gotcha in some other jurisdiction that chooses to interpret that plain language promise in some other way. Only in this way can the pronouncement of *Giglio* be upheld, for "the prosecutor's office is an entity and as such it is the spokesman for the Government. A promise made

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by one attorney must be attributed, for these purposes, to the Government." *Giglio*, 405 U.S. at 154. *See also Commonwealth v. Cosby*, 666 Pa. 416, 481-82, 252 A.3d 1092, 1131 (Pa. 2021) (finding by the Pennsylvania Supreme Court that a promise made by a prior prosecutor was binding on a subsequent one because "[a]s prosecutors are vested with such 'tremendous' discretion and authority, our law has long recognized the special weight that must be accorded to their assurances.").

B. Ordinary principles of contract interpretation compel *Annabi* and *Maxwell* to be reversed.

A plea agreement is a contract and is to be interpreted according to ordinary contract principles. *See, e.g., United States v. Williams*, 102 F.3d 923, 927 (7th Cir. 1996); *United States v. Warner*, 820 F.3d 678, 683 (4th Cir. 2016); *Van Thournout*, 100 F.3d at 594. In fact, in interpreting plea agreements, these ordinary contract principles are to be employed even more strongly in favor of the defendant because they "are supplemented with a concern that the bargaining process not violate the defendant's right to fundamental fairness under the Due Process Clause." *Williams*, 102 F.3d at 927 (internal quotation omitted). *See also United States v. Jordan*, 509 F.3d 191, 195-96 (4th Cir. 2007); *Van Thournout*, 100 F.3d at 594. Pursuant to these standards of interpretation, words within a contract are to be afforded their ordinary meaning. And to the extent that there is an ambiguity, such an ambiguity is to be construed against the government.[1]

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[1] In addition, as discussed below as to the particular plea agreement at issue in this case, the contract interpretation principle known as *expressio unius est exclusio alterius* compels a

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As to the first and most basic of these principles, terms within a plea agreement are to be given their ordinary meaning. *See, e.g., Williams*, 102 F.3d at 927; *Margalli-Olvera*, 43 F.3d at 352; *United States v. Rubbo*, 396 F.3d 1330, 1334 (11th Cir. 2005). *See* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts at 69 (2012) ("The ordinary meaning rule is the most fundamental semantic rule of interpretation.") It should be beyond reasonable dispute that the ordinary meaning of the term "the United States" is the country as a whole. This leads to the presumption that if a plea agreement states that the "United States" cannot further prosecute an individual, this means that the United States cannot do so anywhere in the United States. If that is not what is intended, and the intent is to bind only a particular district, this can easily be achieved by using the ordinary descriptors for that district.

Second, the placement of language informs the intent of the parties. During the course of the NPA negotiations, the co-conspirator immunity clause was severed from Epstein's immunity clause and moved geographically to the end of the NPA after the 2255 section. This is significant because the 2255 sections "were not limited to any district." The 2255 section and the co-conspirator clause were negotiated in tandem and the 2255 language was accepted in return for the global immunity provided to the co-conspirators. The co-conspirator clause was subsequently severed from Epstein's restrictive language and moved geographically below the 2255 as a consequence. The NPA was identified as a hybrid agreement where one section referred to the district-specific language and

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finding that the NPA precludes Maxwell's prosecution in this case.

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the other was the more expansive global federal part of the NPA.

Third, as every circuit recognizes (including the Second and Seventh), it is a well- settled proposition that ambiguities in a plea agreement are to be resolved against the government. *See, e.g., In re Altro*, 180 F.3d 372, 375 (2d Cir. 1999); *United States v. Carmichael*, 216 F.3d 224 (2d Cir. 2000) ("[W]e 'construe plea agreements strictly against the Government.'") (internal citation omitted); *United States v. O'Doherty*, 64 F.3d 209, 217 (7th Cir. 2011); *United States v. Transfiguracion*, 442 F.3d 1222, 1229 (9th Cir. 2006). *Annabi, Thompson,* and the opinion below flip this guidepost on its head, holding that a promise of immunity from prosecution by "the United States" is to be construed *against the defendant*. 771 F.2d at 672; 431 Fed. Appx. 492 (App.8).

If it is not in fact clear on its face that the United States means the United States as a whole, at most the intent in using this term is ambiguous. Because such ambiguity is to be resolved in favor of the defendant and against the government, 180 F.3d at 375, the majority interpretation that the United States refers to the country as a whole is correct and the opinion below must be reversed.

C. The available evidence suggests that the NPA was meant to bind the Southern District of New York.

Despite the Second Circuit's conclusion below that the text and the negotiating history of this NPA suggest an intent to bind only the Southern District of Florida, (App.10), the opposite is true.

First, the contractual interpretation principle known as *expressio unius est exclusio alterius* compels the

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determination that the NPA precludes Maxwell's prosecution in New York. As the Second Circuit itself noted, although the co-conspirator clause at issue here is "silent" as to whether it intended to preclude co-conspirator prosecution outside the Southern District of Florida, it is *not* silent as to whether Epstein's future prosecution is limited to the Southern District of Florida. Instead, "the NPA makes clear that if Epstein fulfilled his obligations, he would no longer face charges *in that district.*" (App.9, emphasis in original). The use of narrowing terms as to Epstein's protections, not but not as to co-conspirator protections, demonstrates that the difference was intentional. *See* Scalia & Garner, Reading Law: The Interpretation of Legal Texts at 167 ("The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other."); *Id.* at 170 (("[A] material variation in terms suggests a variation in meaning."). This intent should have been recognized.

Second, the NPA was entered into after extensive negotiation. The language was hotly contested and subject to much revision back and forth, including specifically on the relevant language of the coconspirator clause. (App.95, 108-126). In one of the earlier drafts, the government proposed language that the co-conspirator protection would be limited to the Southern District of Florida. (App.117). Yet the final draft eliminated the limitation to the Southern District of Florida and referred only to the United States. (App.122-24). The OPR report found that government witnesses (who were the only witnesses OPR spoke to) believed the co-conspirator clause was intended to provide transactional immunity. (App.128-129). This understanding, supported by the NPA itself and the negotiation history contained in the one-sided

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OPR report, precludes application of *Annabi* in this case because the intent to bind the United States as a whole, and not just the Southern District of Florida, is clear.

Third, the Second Circuit misplaced its reliance on a selective reading of the Judiciary Act of 1789 and the United States Attorneys' Manual to conclude that United States Attorneys are "cabined to their specific district unless otherwise directed." 118 F.4th at 265. Yet the Second Circuit ignored the Manual's admonition that United States Attorneys who do not wish to bind other districts should explicitly limit the scope of a non-prosecution agreement to their districts. U.S. Dept. of Justice, Justice Manual (updated Feb. 2018), https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution. The existence of this provision reveals that AUSAs *can* bind other districts and that it is the obligation of the government to make explicit any limitation in the scope of immunity, and not the other way around.

Fourth, the recitals of the NPA reveal that the intent was for a broad, complete resolution of the matters addressed by the agreement. The NPA states that "Epstein seeks to resolve globally his state *and federal* criminal liability." (App.25). It also states that "the interests of the *United States*, the State of Florida, and the Defendant will be served" by the agreement. (App.25-26, emphasis added). The recitals do not refer to the specific interests of the Southern District of Florida at all.

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III. This case is an ideal vehicle for resolving the split over this important and recurring question.

This case is especially worthy of review because it cleanly presents the issue at hand, which is ripe for this Court's attention. In this case, the government made a written promise that Epstein's co-conspirators would not be prosecuted by the United States, and Maxwell was in fact prosecuted as a co-conspirator of Epstein by the United States. The *only* question is whether the government's promise that the "United States" would not prosecute her was enforceable against the U.S. Attorney's office in New York, or only against the Southern District of Florida. The circuit split on this issue is well developed and ripe for the Court's review.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

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April 10, 2025

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APPENDIX

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AUGUST TERM 2023

No. 22-1426-cr

UNITED STATES OF AMERICA,

Appellee,

v.

GHISLAINE MAXWELL, also known as
Sealed Defendant 1,

Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of New York

ARGUED: MARCH 12, 2024

DECIDED: SEPTEMBER 17, 2024

Before: CABRANES, WESLEY, and LOHIER, *Circuit Judges*.

Defendant Ghislaine Maxwell appeals her June 29, 2022, judgment of conviction in the United States District Court for the Southern District of New York (Alison J. Nathan, *Judge*). Maxwell was convicted of conspiracy to transport minors with intent to engage in criminal sexual activity in violation of 18 U.S.C. § 371; transportation of a minor with intent to engage in criminal sexual activity in violation of 18 U.S.C.

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§ 2423(a); and sex trafficking of a minor in violation of 18 U.S.C. § 1591(a) and (b)(2). She was principally sentenced to concurrent terms of imprisonment of 60 months, 120 months, and 240 months, respectively, to be followed by concurrent terms of supervised release.

On appeal, the questions presented are whether (1) Jeffrey Epstein's Non-Prosecution Agreement with the United States Attorney's Office for the Southern District of Florida barred Maxwell's prosecution by the United States Attorney's Office for the Southern District of New York; (2) a second superseding indictment of March 29, 2021, complied with the statute of limitations; (3) the District Court abused its discretion in denying Maxwell's Rule 33 motion for a new trial based on the claimed violation of her Sixth Amendment right to a fair and impartial jury; (4) the District Court's response to a jury note resulted in a constructive amendment of, or prejudicial variance from, the allegations in the second superseding indictment; and (5) Maxwell's sentence was procedurally reasonable.

Identifying no errors in the District Court's conduct of this complex case, we AFFIRM the District Court's June 29, 2022, judgment of conviction.

ANDREW ROHRBACH, Assistant United States Attorney (Maurene Comey, Alison Moe, Lara Pomerantz, Won S. Shin, Assistant United States Attorneys, *on the brief*), *for* Damian Williams, United States Attorney for the Southern District of New York, New York, NY, *for Appellee*.

DIANA FABI SAMSON (Arthur L. Aidala, John M. Leventhal, *on the brief*), Aidala Bertuna & Kamins PC, New York, NY, *for Defendant-Appellant*.

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JOSÉ A. CABRANES, *Circuit Judge*:

Defendant Ghislaine Maxwell appeals her June 29, 2022, judgment of conviction in the United States District Court for the Southern District of New York (Alison J. Nathan, *Judge*). Maxwell was convicted of conspiracy to transport minors with intent to engage in criminal sexual activity in violation of 18 U.S.C. § 371; transportation of a minor with intent to engage in criminal sexual activity in violation of 18 U.S.C. § 2423(a); and sex trafficking of a minor in violation of 18 U.S.C. § 1591(a) and (b)(2). The District Court imposed concurrent terms of imprisonment of 60 months, 120 months, and 240 months, respectively, to be followed by concurrent terms of supervised release of three years, three years, and five years, respectively. The District Court also imposed a fine of $250,000 on each count for a total of $750,000.

On appeal, the questions presented are (1) whether Jeffrey Epstein's Non-Prosecution Agreement ("NPA") with the United States Attorney's Office for the Southern District of Florida ("USAO-SDFL") barred Maxwell's prosecution by the United States Attorney's Office for the Southern District of New York ("USAO-SDNY"); (2) whether Maxwell's second superseding indictment of March 29, 2021 (the "Indictment") complied with the statute of limitations; (3) whether the District Court abused its discretion in denying Maxwell's Rule 33 motion for a new trial based on the claimed violation of her Sixth Amendment right to a fair and impartial jury; (4) whether the District Court's response to a jury note resulted in a constructive amendment of, or prejudicial variance from, the allegations in the Indictment; and (5) whether Maxwell's sentence was procedurally reasonable.

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We hold that Epstein's NPA did not bar Maxwell's prosecution by USAO-SDNY as the NPA does not bind USAO-SDNY. We hold that Maxwell's Indictment complied with the statute of limitations as 18 U.S.C. § 3283 extended the time to bring charges of sexual abuse for offenses committed before the date of the statute's enactment. We further hold that the District Court did not abuse its discretion in denying Maxwell's Rule 33 motion for a new trial based on one juror's erroneous answers during *voir dire*. We also hold that the District Court's response to a jury note did not result in a constructive amendment of, or prejudicial variance from, the allegations in the Indictment. Lastly, we hold that Maxwell's sentence is procedurally reasonable.

Accordingly, we AFFIRM the District Court's June 29, 2022, judgment of conviction.

I. BACKGROUND[1]

Defendant Ghislaine Maxwell coordinated, facilitated, and contributed to Jeffrey Epstein's sexual abuse of women and underage girls. Starting in 1994, Maxwell groomed numerous young women to engage in sexual activity with Epstein by building friendships with these young women, gradually normalizing discussions of sexual topics and sexual abuse. Until about 2004, this pattern of sexual abuse continued as Maxwell provided Epstein access to underage girls in various locations in the United States.

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[1] Unless otherwise noted, the following facts are drawn from the evidence presented at trial and described in the light most favorable to the Government. *See United States v. Litwok*, 678 F.3d 208, 210-11 (2d Cir. 2012) ("Because this is an appeal from a judgment of conviction entered after a jury trial, the [ ] facts are drawn from the trial evidence and described in the light most favorable to the Government.").

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1. Epstein's Non-Prosecution Agreement

In September 2007, following state and federal investigations into allegations of Epstein's unlawful sexual activity, Epstein entered into an NPA with USAO-SDFL. In the NPA, Epstein agreed to plead guilty to one count of solicitation of prostitution, in violation of Florida Statutes § 796.07,[2] and to one count of solicitation of minors to engage in prostitution, in violation of Florida Statutes § 796.03.[3] He agreed to receive a sentence of eighteen months' imprisonment on the two charges. In consideration of Epstein's agreement, the NPA states that "the United States also agrees that it will not institute any criminal charges against any potential co-conspirators of Epstein, including but not limited to Sarah Kellen, Adriana Ross, Lesley Groff, or Nadia Marcinkova."[4]

2. Maxwell's Indictment and Trial-Related Proceedings

The Indictment filed against Maxwell contained eight counts, six of which proceeded to trial.[5] Prior to

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[2] Florida Statutes § 796.07 provides in relevant part:

> (2) It is unlawful:
>
> (f) To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.

[3] Florida Statutes § 796.03, which has since been repealed, provided in relevant part: "A person who procures for prostitution, or causes to be prostituted, any person who is under the age of 18 years commits a felony of the second degree."

[4] A-178.

[5] Count One charged Maxwell with conspiracy to entice minors to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 371. Count Two charged Maxwell with enticement of a minor to travel to engage in illegal sex acts, in violation of 18 U.S.C. §§ 2422 and 2. Count Three charged Maxwell with conspiracy to transport

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the commencement of trial, prospective jurors completed a lengthy questionnaire, with several questions raising issues relevant to the trial. Based on the completed questionnaires, the parties selected prospective jurors to proceed to in-person *voir dire*. The District Court ultimately empaneled a jury.

During the four-and-a-half-week jury trial, the Government presented evidence of the repeated sexual abuse of six girls. At the conclusion of trial, on December 29, 2021, the jury found Maxwell guilty on all but one count.[6]

Following the verdict, Juror 50 gave press interviews during which he stated that he was a survivor of child sexual abuse.[7] In his answers to the written jury questionnaire, however, Juror 50 answered "no" to three questions asking whether he or a friend or family member had ever been the victim of a crime; whether he or a friend or family member had ever been the victim of sexual harassment, sexual abuse, or sexual assault; and whether he or a friend or family member had ever been accused of sexual harassment,

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minors with intent to engage in criminal sexual activity, in violation of 18 U.S.C. § 371. Count Four charged Maxwell with transportation of a minor with intent to engage in criminal sexual activity, in violation of 18 U.S.C. §§ 2423(a) and 2. Count Five charged Maxwell with sex trafficking conspiracy, in violation of 18 U.S.C. § 371. Count Six charged Maxwell with sex trafficking of a minor, in violation of 18 U.S.C. §§ 1591(a), (b)(2), and 2. Counts Seven and Eight charged Maxwell with perjury, in violation of 18 U.S.C. § 1623. The perjury charges were severed from the remaining charges and ultimately dismissed at sentencing.

[6] The jury found Maxwell guilty on Counts One, Three, Four, Five, and Six. Maxwell was acquitted on Count Two.

[7] Consistent with a juror anonymity order entered for trial, the parties and the District Court referred to the jurors by pseudonym.

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sexual abuse, or sexual assault.[8] Upon learning of the interviews, the Government filed a letter on January 5, 2022, requesting a hearing; Maxwell then moved for a new trial under Federal Rule of Criminal Procedure 33. On March 8, 2022, the District Court held a hearing and Juror 50 testified—under grant of immunity—that his answers to three questions related to sexual abuse in the jury questionnaire were not accurate but that the answers were an inadvertent mistake and that his experiences did not affect his ability to be fair and impartial. Finding Juror 50's testimony to be credible, the District Court denied Maxwell's motion for a new trial in a written order.

Maxwell was subsequently sentenced to a term of 240 months' imprisonment to be followed by five years' supervised release, and the District Court imposed a $750,000 fine and a $300 mandatory special assessment. This appeal followed.

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[8] Question 2 asked "[h]ave you, or any of your relatives or close friends, ever been a victim of a crime?" Question 48 asked "[h]ave you or a friend or family member ever been the victim of sexual harassment, sexual abuse, or sexual assault? (This includes actual or attempted sexual assault or other unwanted sexual advance, including by a stranger, acquaintance, supervisor, teacher, or family member.)" Finally, Question 49 asked

> [h]ave you or a friend or family member ever been accused of sexual harassment, sexual abuse, or sexual assault? (This includes both formal accusations in a court of law or informal accusations in a social or work setting of actual or attempted sexual assault or other unwanted sexual advance, including by a stranger, acquaintance, supervisor, teacher, or family member.

See A-299, A-310.

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II. DISCUSSION

1. The NPA Between Epstein and USAO-SDFL Did Not Bar Maxwell's Prosecution by USAO-SDNY

Maxwell sought dismissal of the charges in the Indictment on the grounds that the NPA made between Epstein and USAO-SDFL immunized her from prosecution on all counts as a third-party beneficiary of the NPA. The District Court denied the motion, rejecting Maxwell's arguments. We agree. We review *de novo* the denial of a motion to dismiss an indictment.[9]

In arguing that the NPA barred her prosecution by USAO-SDNY, Maxwell cites the portion of the NPA in which "the United States [ ] agree[d] that it w[ould] not institute any criminal charges against any potential co-conspirators of Epstein."[10] We hold that the NPA with USAO-SDFL does not bind USAO-SDNY.

It is well established in our Circuit that "[a] plea agreement binds only the office of the United States Attorney for the district in which the plea is entered unless it affirmatively appears that the agreement contemplates a broader restriction."[11] And while Maxwell contends that we cannot apply *Annabi* to an agreement negotiated and executed outside of this Circuit, we have previously done just that.[12] Applying *Annabi*, we

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[9] *See, e.g.*, *United States v. Walters*, 910 F.3d 11, 22 (2d Cir. 2018).

[10] A-178.

[11] *United States v. Annabi*, 771 F.2d 670, 672 (2d Cir. 1985). We recognize that circuits have been split on this issue for decades. *See United States v. Harvey*, 791 F.2d 294, 303 (4th Cir. 1986); *United States v. Gebbie*, 294 F.3d 540, 550 (3d Cir. 2002).

[12] *See, e.g.*, *United States v. Prisco*, 391 F. App'x 920, 921 (2d Cir. 2010) (summary order) (applying *Annabi* to plea agreement

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conclude that the NPA did not bar Maxwell's prosecution by USAO-SDNY. There is nothing in the NPA that affirmatively shows that the NPA was intended to bind multiple districts. Instead, where the NPA is not silent, the agreement's scope is *expressly limited* to the Southern District of Florida. The NPA makes clear that if Epstein fulfilled his obligations, he would no longer face charges *in that district*:

> After timely fulfilling all the terms and conditions of the Agreement, no prosecution for the offenses set out on pages 1 and 2 of this Agreement, nor any other offenses that have been the subject of the joint investigation by the Federal Bureau of Investigation and the United States Attorney's Office, nor any offenses that arose from the Federal Grand Jury investigation will be instituted *in this District*, and the charges against Epstein if any, will be dismissed.[13]

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entered into in the District of New Jersey); *United States v. Gonzalez*, 93 F. App'x 268, 270 (2d Cir. 2004) (summary order) (same, to agreement entered into in the District of New Mexico). Nor does *Annabi*, as Maxwell contends, apply only where subsequent charges are "sufficiently distinct" from charges covered by an earlier agreement. In *Annabi*, this Court rejected an interpretation of a prior plea agreement that rested on the Double Jeopardy Clause, reasoning that even if the Double Jeopardy Clause applied, the subsequent charges were "sufficiently distinct" and therefore fell outside the Clause's protections. *Annabi*, 771 F.2d at 672. This Court did not, however, conclude that the rule of construction it announced depended on the similarities between earlier and subsequent charges.

[13] A-175 (emphasis added). The agreement's scope is also limited in an additional section:

> THEREFORE, on the authority of R. Alexander Acosta, United States Attorney for the Southern District of

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The only language in the NPA that speaks to the agreement's scope is limiting language.

The negotiation history of the NPA, just as the text, fails to show that the agreement was intended to bind other districts. Under our Court's precedent, the negotiation history of an NPA can support an inference that an NPA "affirmatively" binds other districts.[14] Yet, the actions of USAO-SDFL do not indicate that the NPA was intended to bind other districts.

The United States Attorney's Manual that was operable during the negotiations of the NPA required that:

> No district or division shall make any agreement, including any agreement not to prosecute, which purports to bind any other district(s) or division without the express written approval of the United States Attorney(s) in each affected district and/or the Assistant Attorney General of the Criminal Division.[15]

Nothing before us indicates that USAO-SDNY had been notified or had approved of Epstein's NPA with USAO-SDFL and intended to be bound by it. And the Assistant Attorney General for the Criminal Division stated in an interview with the Office of Professional Responsibility that she "played no role" in the NPA, either by reviewing or approving the agreement.

Florida, *prosecution in this District* for these offenses shall be deferred in favor of prosecution by the State of Florida, provided that Epstein abides by the following conditions and the requirements of this Agreement set forth below.

Id. (emphasis added).

[14] *See United States v. Russo*, 801 F.2d 624, 626 (2d Cir. 1986).

[15] United States Attorney's Manual § 9-27.641 (2007).

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The history of the Office of the United States Attorney is instructive as to the scope of their actions and duties. The Judiciary Act of 1789 created the Office of the United States Attorney, along with the office of the Attorney General. More specifically, the Judiciary Act provided for the appointment, in each district, of a "person learned in the law to act as attorney for the United States *in such district*, who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute *in such district* all delinquents for crimes and offences, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned."[16] The Judiciary Act thus emphasized that U.S. Attorneys would enforce the law of the United States but did not determine that the actions of one U.S. Attorney could bind other districts, let alone the entire nation. In fact, the phrase "in such district," repeated twice, implies that the scope of the actions and the duties of the U.S. Attorneys would be limited to their own districts, absent any express exceptions.

Since 1789, while the number of federal districts has grown significantly, the duties of a U.S. Attorney and their scope remain largely unchanged. By statute, U.S. Attorneys, "within [their] district, shall (1) prosecute for all offenses against the United States; (2) prosecute or defend, for the Government, all civil actions, suits or proceedings in which the United States is concerned."[17] Again, the scope of the duties of a U.S. Attorney is

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[16] An Act to Establish the Judicial Courts of the United States, ch. 20, § 35, 1 Stat. 73, 92-93 (1789) (emphasis added).

[17] 28 U.S.C. § 547.

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cabined to their specific district unless otherwise directed.[18]

In short, *Annabi* controls the result here. Nothing in the text of the NPA or its negotiation history suggests that the NPA precluded USAO-SDNY from prosecuting Maxwell for the charges in the Indictment. The District Court therefore correctly denied Maxwell's motion without an evidentiary hearing.

2. The Indictment Is Timely

Maxwell argues that Counts Three and Four of the Indictment are untimely because they do not fall within the scope of offenses involving the sexual or physical abuse or kidnapping of a minor and thereby do not fall within the extended statute of limitations provided by § 3283.[19] Separately, Maxwell contends that the Government cannot apply the 2003 amendment to § 3283 that extended the statute of limitations to

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[18] This does not suggest that there are no instances in which a U.S. Attorney's powers do not extend beyond their districts. For instance, under 28 U.S.C. § 515 a U.S. Attorney can represent the Government or participate in proceedings in other districts, but only when specifically directed by the Attorney General:

> The Attorney General or any other officer of the Department of Justice, or any attorney specially appointed by the Attorney General under law, may, when specifically directed by the Attorney General, conduct any kind of legal proceeding . . . which United States attorneys are authorized by law to conduct, whether or not he is a resident of the district in which the proceeding is brought.

[19] 18 U.S.C. § 3283 provides: "[n]o statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnaping, of a child under the age of 18 years shall preclude such prosecution during the life of the child, or for ten years after the offense, whichever is longer."

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those offenses that were committed before the enactment into law of the provision. On both points, we disagree and hold that the District Court correctly denied Maxwell's motions to dismiss the charges as untimely. We review *de novo* the denial of a motion to dismiss an indictment and the application of a statute of limitations.[20]

First, Counts Three and Four of the Indictment are offenses involving the sexual abuse of minors. The District Court properly applied *Weingarten v. United States*.[21] In *Weingarten*, we explained that Congress intended courts to apply § 3283 using a case-specific approach as opposed to a "categorical approach."[22] We see no reason to depart from our reasoning in *Weingarten*. Accordingly, the question presented here is whether the charged offenses involved the sexual abuse of a minor for the purposes of § 3283 based on the facts of the case. Jane, one of the women who

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[20] *United States v. Sampson*, 898 F.3d 270, 276, 278 (2d Cir. 2018).

[21] 865 F.3d 48, 58-60 (2d Cir. 2017); *see also United States v. Maxwell*, 534 F. Supp. 3d 299, 313 14 (S.D.N.Y. 2021).

[22] The "categorical approach" is a method of statutory interpretation that requires courts to look "only to the statutory definitions of the prior offenses, and not to the particular facts underlying those convictions" for sentencing and immigration purposes. *Taylor v. United States*, 495 U.S. 575, 600 (1990). We properly reasoned in *Weingarten* that § 3283 met none of the conditions listed by *Taylor* that might require application of the categorical approach. *See Weingarten*, 865 F.3d at 58-60. First, "[t]he language of § 3283[] . . . reaches beyond the offense and its legal elements to the conduct 'involv[ed]' in the offense." *Id.* at 59-60. Second, legislative history suggests that Congress intended § 3283 to be applied broadly. *Id.* at 60. Third, a case-specific approach would not produce practical difficulties or potential unfairness. *Id.*

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testified at trial, gave evidence that she had been sexually abused when transported across state lines as a minor. Counts Three and Four thus qualify as offenses, and § 3283 applies to those offenses.

Second, Maxwell argues that Counts Three, Four, and Six of the Indictment are barred by the statute of limitations because the extended statute of limitations provided by the 2003 amendment to § 3283 does not apply to pre-enactment conduct. In *Landgraf v. USI Film Products*, the Supreme Court held that a court, in deciding whether a statute applies retroactively, must first "determine whether Congress has expressly prescribed the statute's proper reach."[23] If Congress has done so, "the inquiry ends, and the court enforces the statute as it is written."[24] If the statute "is ambiguous or contains no express command regarding retroactivity, a reviewing court must determine whether applying the statute to antecedent conduct would create presumptively impermissible retroactive effects."[25]

Here, the inquiry is straightforward. In 2003, Congress amended § 3283 to provide: "No statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnaping, of a child under the age of 18 years shall preclude such prosecution during the life of the child."[26] The text of § 3283—that *no* statute of

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[23] 511 U.S. 244, 280 (1994); *see also Weingarten*, 865 F.3d at 54-55.

[24] *In re Enter. Mortg. Acceptance Co., LLC, Sec. Litig.*, 391 F.3d 401, 406 (2d Cir. 2004) (citing *Landgraf*, 511 U.S. at 280).

[25] *Weingarten*, 865 F.3d at 55 (citation and internal quotation marks omitted).

[26] PROTECT Act, Pub. L. No. 108-21, § 202, 117 Stat. 650, 660 (2003).

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limitations that would *otherwise* preclude prosecution of these offenses will apply—plainly requires that it prevent the application of any statute of limitations that would otherwise apply to past conduct.

The statutory text makes clear that Congress intended to extend the time to bring charges of sexual abuse for pre-enactment conduct as the prior statute of limitations was inadequate. This is enough to conclude that the PROTECT Act's amendment to § 3283 applies to Maxwell's conduct as charged in the Indictment.

3. The District Court Did Not Abuse Its Discretion in Denying Maxwell's Motion for a New Trial

Maxwell contends that she was deprived of her constitutional right to a fair and impartial jury because Juror 50 failed to accurately respond to several questions related to his history of sexual abuse as part of the jury questionnaire during jury selection. Following a special evidentiary hearing, the District Court denied Maxwell's motion for a new trial.

We review a District Court's denial of a motion for a new trial for abuse of discretion.[27] We have been extremely reluctant to "haul jurors in after they have

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[27] *See Rivas v. Brattesani*, 94 F.3d 802, 807 (2d Cir. 1996). "[W]e are mindful that a judge has not abused her discretion simply because she has made a different decision than we would have made in the first instance." *United States v. Ferguson*, 246 F.3d 129, 133 (2d Cir. 2001). We have repeatedly explained that the term of art "abuse of discretion" includes errors of law, a clearly erroneous assessment of the evidence, or "a decision that cannot be located within the range of permissible decisions." *In re Sims*, 534 F.3d 117, 132 (2d Cir. 2008) (citation and internal quotation marks omitted).

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reached a verdict in order to probe for potential instances of bias, misconduct or extraneous influences."[28] While courts can "vacate any judgment and grant a new trial if the interest of justice so requires," Fed. R. Crim. P. 33(a), they should do so "sparingly" and only in "the most extraordinary circumstances."[29] A district court "has broad discretion to decide Rule 33 motions based upon its evaluation of the proof produced" and is shown deference on appeal.[30]

A Rule 33 motion based on a juror's alleged erroneous response during *voir dire* is governed by *McDonough Power Equipment, Inc. v. Greenwood*.[31] Under *McDonough*, a party seeking a new trial "must first demonstrate that a juror failed to answer honestly a material question on *voir dire*, and then further show that a correct response would have provided a valid basis for a challenge for cause."[32]

The District Court applied the *McDonough* standard, found Juror 50's testimony credible, and determined that Juror 50's erroneous responses during *voir dire* were "not deliberately incorrect" and that "he would *not* have been struck for cause if he had provided accurate responses to the questionnaire."[33] In

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[28] *United States v. Moon*, 718 F.2d 1210, 1234 (2d Cir. 1983).

[29] *Ferguson*, 246 F.3d at 134.

[30] *United States v. Gambino*, 59 F.3d 353, 364 (2d Cir. 1995) (citation and internal quotation marks omitted).

[31] 464 U.S. 548 (1984).

[32] *Id.* at 556.

[33] A-340 (emphasis added). The Supreme Court reminds us that "[t]o invalidate the result of a [ ] trial because of a juror's mistaken, though honest response to a question, is to insist on something closer to perfection than our judicial system can be expected to give." *McDonough*, 464 U.S. at 555.

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fact, as the District Court noted, Maxwell did not challenge the inclusion of other jurors who disclosed past experience with sexual abuse, assault, or harassment. This is enough; the District Court did not abuse its discretion in denying Maxwell's motion for a new trial.[34]

4. The District Court's Response to a Jury Note Did Not Result in a Constructive Amendment of, or Prejudicial Variance from, the Allegations in the Indictment

During jury deliberations, the jury sent the following jury note regarding Count Four of the Indictment:

> Under Count Four (4), if the defendant aided in the transportation of Jane's return flight, but not the flight to New Mexico where/if the intent was for Jane to engage in sexual activity, can she be found guilty under the second element?[35]

The District Court determined that it would not respond to the note directly because it was difficult to "parse factually and legally" and instead referred the

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[34] Nor did the District Court err in questioning Juror 50 rather than allowing the parties to do so. In conducting a hearing on potential juror misconduct, "[w]e leave it to the district court's discretion to decide the extent to which the parties may participate in questioning the witnesses, and whether to hold the hearing in camera." *United States v. Ianniello*, 866 F.2d 540, 544 (2d Cir. 1989). And while Maxwell contends that the District Court improperly limited questioning about Juror 50's role in deliberations, she both waived that argument below and fails to show here how any such questioning would not be foreclosed by Federal Rule of Evidence 606(b).

[35] A-238.

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jury to the second element of Count Four.[36] Maxwell subsequently filed a letter seeking reconsideration of the District Court's response, claiming that this response resulted in a constructive amendment or prejudicial variance. The District Court declined to reconsider its response and denied Maxwell's motion.

Maxwell appeals the District Court's denial and argues that the alleged constructive amendment is a *per se* violation of the Grand Jury Clause of the Fifth Amendment. Specifically, Maxwell argues that testimony about a witness's sexual abuse in New Mexico presented the jury with another basis for conviction, which is distinct from the charges in the Indictment. Similarly, Maxwell argues that this testimony resulted in a prejudicial variance from the Indictment. We disagree and affirm the District Court's denial.

We review the denial of a motion claiming constructive amendment or prejudicial variance *de novo*.[37] To satisfy the Fifth Amendment's Grand Jury Clause, "an indictment must contain the elements of the offense charged and fairly inform the defendant of the charge against which he must defend."[38] We have explained that to prevail on a constructive amendment claim, a defendant must demonstrate that "the terms of the indictment are in effect altered by the presentation of evidence and jury instructions which so modify

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[36] A-207-221. The District Court's instruction on the second element of Count Four required the jury to find that "Maxwell knowingly transported Jane in interstate commerce with the intent that Jane engage in sexual activity for which any person can be charged with a criminal offense in violation of New York law." A-205.

[37] *See United States v. Dove*, 884 F.3d 138, 146, 149 (2d Cir. 2018).

[38] *United States v. Khalupsky*, 5 F.4th 279, 293 (2d Cir. 2021).

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essential elements of the offense charged that there is a substantial likelihood that the defendant may have been convicted of an offense other than that charged in the indictment."[39] A constructive amendment requires reversal.[40]

We cannot conclude that a constructive amendment resulted from the evidence presented by the Government—namely, Jane's testimony—or that it can be implied from the jury note. We have permitted significant flexibility in proof as long as a defendant was "given notice of the core of criminality to be proven at trial."[41] In turn, "[t]he core of criminality of an offense involves the essence of a crime, in general terms; the particulars of how a defendant effected the crime falls outside that purview."[42]

We agree with the District Court that the jury instructions, the evidence presented at trial, and the Government's summation captured the core of criminality. As the District Court noted, while the jury note was ambiguous in one sense, it was clear that it referred to the second element of Count Four of the Indictment. Therefore, the District Court correctly directed the jury to that instruction, which "accurately instructed that Count Four had to be predicated on finding a violation of New York law."[43] It is therefore

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[39] *United States v. Mollica*, 849 F.2d 723, 729 (2d Cir. 1988).

[40] *See United States v. D'Amelio*, 683 F.3d 412, 417 (2d Cir. 2012).

[41] *United States v. Ionia Mgmt. S.A.*, 555 F.3d 303, 310 (2d Cir. 2009) (per curiam) (emphasis omitted).

[42] *D'Amelio*, 683 F.3d at 418 (internal quotation marks omitted).

[43] A-387; *see United States v. Parker*, 903 F.2d 91, 101 (2d Cir. 1990) ("The trial judge is in the best position to sense whether the

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not "uncertain whether [Maxwell] was convicted of conduct that was the subject of the grand jury's indictment."[44]

We also cannot conclude that the evidence at trial prejudicially varied from the Indictment. To allege a variance, a defendant "must establish that the evidence offered at trial differs materially from the evidence alleged in the indictment."[45] To prevail and win reversal, the defendant must further show "that substantial prejudice occurred at trial as a result" of the variance.[46] "A defendant cannot demonstrate that he has been prejudiced by a variance where the pleading and the proof substantially correspond, where the variance is not of a character that could have misled the defendant at the trial, and where the variance is not such as to deprive the accused of his right to be protected against another prosecution for the same offense."[47]

For reasons similar to the ones noted above in the context of the constructive amendment, the evidence at trial did not prove facts "materially different" from the allegations in the Indictment.[48] The evidence indicated that Maxwell transported Jane to New York for sexual abuse and conspired to do the same. Maxwell knew that the evidence also included conduct

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jury is able to proceed properly with its deliberations, and [ ] has considerable discretion in determining how to respond to communications indicating that the jury is experiencing confusion.")

[44] *United States v. Salmonese*, 352 F.3d 608, 620 (2d Cir. 2003).

[45] *Dove*, 884 F.3d at 149

[46] *Id.* (citation and internal quotation marks omitted).

[47] *Salmonese*, 352 F.3d at 621-22 (citation and internal quotation marks omitted); *see also Khalupsky*, 5 F.4th at 294.

[48] *Dove*, 884 F.3d at 149.

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in New Mexico.[49] Furthermore, Maxwell cannot demonstrate "substantial prejudice." Maxwell received—*over three weeks before trial*—notes of Jane's interview recording the abuse she suffered in New Mexico. This is enough to conclude that Maxwell was not "unfairly and substantially" prejudiced.[50]

5. Maxwell's Sentence Was Procedurally Reasonable

Lastly, Maxwell argues that her sentence was procedurally unreasonable because the District Court erred in applying a leadership sentencing enhancement under the Sentencing Guidelines and inadequately explained its above-Guidelines sentence.[51] We disagree.

We review a sentence for both procedural and substantive reasonableness, which "amounts to review for abuse of discretion."[52] We have explained that

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[49] As the District Court found, "[t]he Indictment charged a scheme to sexually abuse underage girls in New York. In service of this scheme, the Indictment alleged that Epstein and the Defendant groomed the victims for abuse at various properties and in various states, including Epstein's ranch in New Mexico." A-393.

[50] *See United States v. Lebedev*, 932 F.3d 40, 54 (2d Cir. 2019) (concluding that a defendant was not "unfairly and substantially" prejudiced because "[t]he government disclosed the evidence and exhibits . . . four weeks prior to trial").

[51] At sentencing, the District Court calculated a Guidelines range of 188 to 235 months' imprisonment and sentenced Maxwell to a slightly above-Guidelines term of 240 months' imprisonment.

[52] *United States v. Cavera*, 550 F.3d 180, 187 (2d Cir. 2008) (en banc). "Regardless of whether the sentence imposed is inside or outside the Guidelines range, the appellate court must review the sentence under an abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 51 (2007).

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procedural error is found when a district court "fails to calculate (or improperly calculates) the Sentencing Guidelines range, treats the Sentencing Guidelines as mandatory, fails to consider the [Section] 3553(a) factors, selects a sentence based on clearly erroneous facts, or fails adequately to explain the chosen sentence."[53] The District Court did none of that. It is important to emphasize that the Sentencing Guidelines "are guidelines—that is, they are truly advisory."[54] A District Court is "generally free to impose sentences outside the recommended range" based on its own "informed and individualized judgment."[55]

With respect to the four-level leadership enhancement, the District Court found that Maxwell "supervised" Sarah Kellen in part because of testimony from two of Epstein's pilots who testified that Kellen was Maxwell's assistant. The District Court found that testimony credible, in part because it was corroborated by other testimony that Maxwell was Epstein's "number two and the lady of the house" in Palm Beach, where much of the abuse occurred and where Kellen worked.[56] We therefore hold that the District Court did not err in applying the leadership enhancement.

With respect to the length of the sentence, the District Court properly discussed the sentencing factors when imposing the sentence, and described, at length, Maxwell's "pivotal role in facilitating the abuse of the underaged girls through a series of deceptive

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[53] *United States v. Robinson*, 702 F.3d 22, 38 (2d Cir. 2012).

[54] *Cavera*, 550 F.3d at 189.

[55] *Id.*

[56] A-417.

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tactics."[57] The District Court recognized that the sentence "must reflect the gravity of Ms. Maxwell's conduct, of Ms. Maxwell's offense, the pivotal role she played in facilitating the offense, and the significant and lasting harm it inflicted."[58] And the District Court explained that "a very serious, a very significant sentence is necessary to achieve the purposes of punishment" under 18 U.S.C. § 3553(a). In sum, the District Court did not err by failing to adequately explain its sentence.

CONCLUSION

To summarize, we hold as follows:

1. The District Court did not err in holding that Epstein's NPA with USAO-SDFL did not bar Maxwell's prosecution by USAOSDNY.

2. The District Court did not err in holding that the Indictment was filed within the statute of limitations.

3. The District Court did not abuse its discretion in denying Maxwell's Rule 33 motion for a new trial.

4. The District Court's response to a jury note did not result in a constructive amendment of, or prejudicial variance from, the allegations in the Indictment.

5. The District Court's sentence was procedurally reasonable.

For the foregoing reasons, we AFFIRM the District Court's June 29, 2022, judgment of conviction.

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[57] SA-459.

[58] SA-461.

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APPENDIX B

IN RE: INVESTIGATION OF JEFFREY EPSTEIN

NON-PROSECUTION AGREEMENT

IT APPEARING that the City of Palm Beach Police Department and the State Attorney's Office for the 15th Judicial Circuit in and for Palm Beach County (hereinafter, the "State Attorney's Office") have conducted an investigation into the conduct of Jeffrey Epstein (hereinafter "Epstein");

IT APPEARING that the State Attorney's Office has charged Epstein by indictment with solicitation of prostitution, in violation of Florida Statutes Section 796.07;

IT APPEARING that the United States Attorney's Office and the Federal Bureau of Investigation have conducted their own investigation into Epstein's background and any offenses that may have been committed by Epstein against the United States from in or around 2001 through in or around September 2007, including:

(1) knowingly and willfully conspiring with others known and unknown to commit an offense against the United States, that is, to use a facility or means of interstate or foreign commerce to knowingly persuade, induce, or entice minor females to engage in prostitution, in violation of Title 18, United States Code, Section 2422(b); all in violation of Title 18, United States Code, Section 371;

(2) knowingly and willfully conspiring with others known and unknown to travel in interstate commerce for the purpose of engaging in illicit sexual conduct, as defined in 18 U.S.C. § 2423(f),

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with minor females, in violation of Title 18, United States Code, Section 2423(b); all in violation of Title 18, United States Code, Section 2423(e);

(3) using a facility or means of interstate or foreign commerce to knowingly persuade, induce, or entice minor females to engage in prostitution; in violation of Title 18, United States Code, Sections 2422(b) and 2;

(4) traveling in interstate commerce for the purpose of engaging in illicit sexual conduct, as defined in 18 U.S.C. § 2423(f), with minor females; in violation of Title 18, United States Code, Section 2423(b); and

(5) knowingly, in and affecting interstate and foreign commerce, recruiting, enticing, and obtaining by any means a person, knowing that the person had not attained the age of 18 years and would be caused to engage in a commercial sex act as defined in 18 U.S.C. § 1591(c)(1); in violation of Title 18, United States Code, Sections 1591(a)(1) and 2; and

IT APPEARING that Epstein seeks to resolve globally his state and federal criminal liability and Epstein understands and acknowledges that, in exchange for the benefits provided by this agreement, he agrees to comply with its terms, including undertaking certain actions with the State Attorney's Office;

IT APPEARING, after an investigation of the offenses and Epstein's background by both State and Federal law enforcement agencies, and after due consultation with the State Attorney's Office, that the interests of the United States, the State of Florida, and

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the Defendant will be served by the following procedure;

THEREFORE, on the authority of R. Alexander Acosta, United States Attorney for the Southern District of Florida, prosecution in this District for these offenses shall be deferred in favor of prosecution by the State of Florida, provided that Epstein abides by the following conditions and the requirements of this Agreement set forth below.

If the United States Attorney should determine, based on reliable evidence, that, during the period of the Agreement, Epstein willfully violated any of the conditions of this Agreement, then the United States Attorney may, within ninety (90) days following the expiration of the term of home confinement discussed below, provide Epstein with timely notice specifying the condition(s) of the Agreement that he has violated, and shall initiate its prosecution on any offense within sixty (60) days' of giving notice of the violation. Any notice provided to Epstein pursuant to this paragraph shall be provided within 60 days of the United States learning of facts which may provide a basis for a determination of a breach of the Agreement.

After timely fulfilling all the terms and conditions of the Agreement, no prosecution for the offenses set out on pages 1 and 2 of this Agreement, nor any other offenses that have been the subject of the joint investigation by the Federal Bureau of Investigation and the United States Attorney's Office, nor any offenses that arose from the Federal Grand Jury investigation will be instituted in this District, and the charges against Epstein if any, will be dismissed.

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Terms of the Agreement:

1. Epstein shall plead guilty (not nolo contendere) to the Indictment as currently pending against him in the 15th Judicial Circuit in and for Palm Beach County (Case No. 2006-cf-009495AXXXMB) charging one (1) count of solicitation of prostitution, in violation of Fl. Stat. § 796.07. In addition, Epstein shall plead guilty to an Information filed by the State Attorney's Office charging Epstein with an offense that requires him to register as a sex offender, that is, the solicitation of minors to engage in prostitution, in violation of Florida Statutes Section 796.03;

2. Epstein shall make a binding recommendation that the Court impose a thirty (30) month sentence to be divided as follows:

   (a) Epstein shall be sentenced to consecutive terms of twelve (12) months and six (6) months in county jail for all charges, without any opportunity for withholding adjudication or sentencing, and without probation or community control in lieu of imprisonment; and

   (b) Epstein shall be sentenced to a term of twelve (12) months of community control consecutive to his two terms in county jail as described in Term 2(a), *supra*.

3. This agreement is contingent upon a Judge of the 15th Judicial Circuit accepting and executing the sentence agreed upon between the State Attorney's Office and Epstein, the details of which are set forth in this agreement.

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4. The terms contained in paragraphs 1 and 2, *supra*, do not foreclose Epstein and the State Attorney's Office from agreeing to recommend any additional charge(s) or any additional term(s) of probation and/or incarceration.

5. Epstein shall waive all challenges to the Information filed by the State Attorney's Office and shall waive the right to appeal his conviction and sentence, except a sentence that exceeds what is set forth in paragraph (2), *supra*.

6. Epstein shall provide to the U.S. Attorney's Office copies of all proposed agreements with the State Attorney's Office prior to entering into those agreements.

7. The United States shall provide Epstein's attorneys with a list of individuals whom it has identified as victims, as defined in 18 U.S.C. § 2255, after Epstein has signed this agreement and been sentenced. Upon the execution of this agreement, the United States, in consultation with and subject to the good faith approval of Epstein's counsel, shall select an attorney representative for these persons, who shall be paid for by Epstein. Epstein's counsel may contact the identified individuals through that representative.

8. If any of the individuals referred to in paragraph (7), *supra*, elects to file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the United States District Court for the Southern District of Florida over his person and/or the subject matter, and Epstein waives his right to contest liability and also

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waives his right to contest damages up to an amount as agreed to between the identified individual and Epstein, so long as the identified individual elects to proceed exclusively under 18 U.S.C. § 2255, and agrees to waive any other claim for damages, whether pursuant to state, federal, or common law. Notwithstanding this waiver, as to those individuals whose names appear on the list provided by the United States, Epstein's signature on this agreement, his waivers and failures to contest liability and such damages in any suit are not to be construed as an admission of any criminal or civil liability.

9. Epstein's signature on this agreement also is not to be construed as an admission of civil or criminal liability or a waiver of any jurisdictional or other defense as to any person whose name does not appear on the list provided by the United States.

10. Except as to those individuals who elect to proceed exclusively under 18 U.S.C. § 2255, as set forth in paragraph (8), *supra*, neither Epstein's signature on this agreement, nor its terms, nor any resulting waivers or settlements by Epstein are to be construed as admissions or evidence of civil or criminal liability or a waiver of any jurisdictional or other defense as to any person, whether or not her name appears on the list provided by the United States.

11. Epstein shall use his best efforts to enter his guilty plea and be sentenced not later than October 26, 2007. The United States has no objection to Epstein self-reporting to begin

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serving his sentence not later than January 4, 2008.

12. Epstein agrees that he will not be afforded any benefits with respect to gain time, other than the rights, opportunities, and benefits as any other inmate, including but not limited to, eligibility for gain time credit based on standard rules and regulations that apply in the State of Florida. At the United States' request, Epstein agrees to provide an accounting of the gain time he earned during his period of incarceration.

13. The parties anticipate that this agreement will not be made part of any public record. If the United States receives a Freedom of Information Act request or any compulsory process commanding the disclosure of the agreement, it will provide notice to Epstein before making that disclosure.

Epstein understands that the United States Attorney has no authority to require the State Attorney's Office to abide by any terms of this agreement. Epstein understands that it is his obligation to undertake discussions with the State Attorney's Office and to use his best efforts to ensure compliance with these procedures, which compliance will be necessary to satisfy the United States' interest. Epstein also understands that it is his obligation to use his best efforts to convince the Judge of the 15th Judicial Circuit to accept Epstein's binding recommendation regarding the sentence to be imposed, and understands that the failure to do so will be a breach of the agreement.

In consideration of Epstein's agreement to plead guilty and to provide compensation in the manner

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described above, if Epstein successfully fulfills all of the terms and conditions of this agreement, the United States also agrees that it will not institute any criminal char es against any potential co-conspirators of Epstein, including but not limited to [redacted]. Further, upon execution of this agreement and a plea agreement with the State Attorney's Office, the federal Grand Jury investigation will be suspended, and all pending federal Grand Jury subpoenas will be held in abeyance unless and until the defendant violates any term of this agreement. The defendant likewise agrees to withdraw his pending motion to intervene and to quash certain grand jury subpoenas. Both parties agree to maintain their evidence, specifically evidence requested by or directly related to the grand jury subpoenas that have been issued, and including certain computer equipment, inviolate until all of the terms of this agreement have been satisfied. Upon the successful completion of the terms of this agreement, all outstanding grand jury subpoenas shall be deemed withdrawn.

By signing this agreement, Epstein asserts and certifies that each of these terms is material to this agreement and is supported by independent consideration and that a breach of any one of these conditions allows the United States to elect to terminate the agreement and to investigate and prosecute Epstein and any other individual or entity for any and all federal offenses.

By signing this agreement, Epstein asserts and certifies that he is aware of the fact that the Sixth Amendment to the Constitution of the United States provides that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. Epstein further is aware that Rule 4 8(b) of the Federal Rules of Criminal Procedure provides that the Court

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may dismiss an indictment, information, or complaint for unnecessary delay in presenting a charge to the Grand Jury, filing an information, or in bringing a defendant to trial. Epstein hereby requests that the United States Attorney for the Southern District of Florida defer such prosecution. Epstein agrees and consents that any delay from the date of this Agreement to the date of initiation of prosecution, as provided for in the terms expressed herein, shall be deemed to be a necessary delay at his own request, and he hereby waives any defense to such prosecution on the ground that such delay operated to deny him rights under Rule 4 8(b) of the Federal Rules of Criminal Procedure and the Sixth Amendment to the Constitution of the United States to a speedy trial or to bar the prosecution by reason of the running of the statute of limitations for a period of months equal to the period between the signing of this agreement and the breach of this agreement as to those offenses that were the subject of the grand jury's investigation. Epstein further asserts and certifies that he understands that the Fifth Amendment and Rule 7(a) of the Federal Rules of Criminal Procedure provide that all felonies must be charged in an indictment presented to a grand jury. Epstein hereby agrees and consents that, if a prosecution against him is instituted for any offense that was the subject of the grand jury's investigation, it may be by way of an Information signed and filed by the United States Attorney, and hereby waives his right to be indicted by a grand jury as to any such offense.

By signing this agreement, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the conditions of this Non-Prosecution Agreement and agrees to comply with them.

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R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: _____

By: _____
A. MARIE VILLAFAÑA
ASSISTANT U.S. ATTORNEY

Dated: 9/24/07

/s/ Jeffrey Epstein
JEFFREY EPSTEIN

Dated: _____

_____
GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: _____

_____
LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

By signing this agreement, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the conditions of this Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: 9/27/07

By: /s/ A. Marie Villafaña
A. MARIE VILLAFAÑA
ASSISTANT U.S. ATTORNEY

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Dated: _____

_____
JEFFREY EPSTEIN

Dated: 9/24/07

/s/ Gerald Lefcourt
GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: _____

_____
LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

By signing this agreement, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the conditions of this Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: _____

By: _____
A. MARIE VILLAFAÑA
ASSISTANT U.S. ATTORNEY

Dated: _____

_____
JEFFREY EPSTEIN

Dated: _____

_____
GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: 9-24-07

/s/ Lilly Ann Sanchez
LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

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IN RE: INVESTIGATION OF JEFFREY EPSTEIN

ADDENDUM TO THE
NON-PROSECUTION AGREEMENT

IT APPEARING that the parties seek to clarify certain provisions of page 4, paragraph 7 of the Non-Prosecution Agreement (hereinafter "paragraph 7"), that agreement is modified as follows:

7A. The United States has the right to assign to an independent third-party the responsibility for consulting with and, subject to the good faith approval of Epstein's counsel, selecting the attorney representative for the individuals identified underthe Agreement. If the United States elects to assign this responsibility to an independent third-patty, both the United States and Epstein retain the right to make good faith objections to the attorney representative suggested by the independent third-party prior to the final designation of the attorney representative.

7B. The parties will jointly prepare a short written submission to the independent third-party regarding the role of the attorney representative and regarding Epstein's Agreement to pay such attorney representative his or her regular customary hourly rate for representing such victims subject to the provisions of paragraph C, infra.

7C. Pursuant to additional paragraph 7A, Epstein has agreed to pay the fees of the attorney representative selected by the independent third party. This provision, however, shall not obligate Epstein to pay the fees and costs of contested litigation filed against him. Thus, if

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after consideration of potential settlements, an attorney representative elects to file a contested lawsuit pursuant to 18 U,S.C. s 2255 or elects to pursue any other contested remedy, the paragraph 7 obligation of the Agreement to pay the costs of the attorney representative, as opposed to any statutory or other obligations to pay reasonable attorneys fees and costs such as those contained in s 2255 to bear the costs of the attorney representative, shall cease.

By signing this Addendum, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby, states that he understands the clarifications to the Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: 10/30/07

By: /s/ [Illegible]
for A. MARIE VILLAFAÑA
ASSISTANT U.S. ATTORNEY

Dated: 10/29/07

/s/ Jeffrey Epstein
JEFFREY EPSTEIN

Dated: _____

_____
GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: _____

_____
LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

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By signing this Addendum, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the clarifications to the Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: 10/30/07

By: /s/ [Illegible]
for A. MARIE VILLAFAÑA
ASSISTANT U.S. ATTORNEY

Dated: _____

_____
JEFFREY EPSTEIN

Dated: 10/29/07

/s/ Gerald Lefcourt
GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: _____

_____
LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

By signing this Addendum, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the clarifications to the Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: 10/30/07

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By: /s/ [Illegible]
for A. MARIE VILLAFAÑA
ASSISTANT U.S. ATTORNEY

Dated: _____

_____
JEFFREY EPSTEIN

Dated: _____

_____
GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: 10-29-07

/s/ Lilly Ann Sanchez
LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

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APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Case Number: S2 20 CR 330 (AJN)
USM Number: 02879-509

UNITED STATES OF AMERICA

v.

GHISAINE MAXWELL

BOBBI C. STERNHEIM
Defendant's Attorney

JUDGMENT IN A CRIMINAL CASE

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) which was accepted by the court. _____

☑ was found guilty on count(s) after a plea of not guilty. 1, 3, 4, 5, 6 (judgment not entered on 1 & 5 as multiplicitous, Dkt. No. 657)

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC 371.F	Conspiracy to transport minors with intent to engage in criminal sexual activity	7/30/2004	3

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The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☑ The defendant has been found not guilty on count(s) 2

☑ Count(s) 7, 8 and underlying indictments ☐ is ☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

6/29/2022
Date of Imposition of Judgment

/s/ Alison J. Nathan
Signature of Judge

ALISON J. NATHAN, US Circuit Judge sitting by designation
Name and Title of Judge

6/29/2022
Date

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18 USC 2423.F	Transportation of a minor with intent to engage in criminal sexual activity	12/31/1997	4
18 USC 1591.F	Sex trafficking of an individual under the age of eighteen	7/30/2004	6

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IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

The Defendant is sentenced to a term of 240 Months.

Count 3 a sentence of 60 Months. Count 4 a sentence of 120 Months. Count 6 a sentence of 240 Months. All Counts to run concurrently.

Defendant was notified of her right to Appeal.

☑ The court makes the following recommendations to the Bureau of Prisons:
Defendant to be considered for designation to FCI Danbury.

Defendant to be considered for enrollment in FIT program.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ____ ☐ a.m. _____ ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

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RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
United States Marshal

By _____
Deputy United States Marshal

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

3 Years on Counts 3 and 4. 5 Years on Count 6 to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)

4. ☑ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute

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authorizing a sentence of restitution. (*check if applicable*)

5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. ☑ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
7. ☐ You must participate in an approved program for domestic violence. (*check if applicable*)

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the

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probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.

3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.

4. You must answer truthfully the questions asked by your probation officer.

5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not

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possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see Overview of Probation and Supervised Release Conditions, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

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SPECIAL CONDITIONS OF SUPERVISION

You shall submit your person, and any property, residence, vehicle, papers, computer, other electronic communication, data storage devices, cloud storage or media, and effects to a search by any United States Probation Officer, and if needed, with the assistance of any law enforcement. The search is to be conducted when there is reasonable suspicion concerning violation of a condition of supervision or unlawful conduct by the person being supervised. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition. Any search shall be conducted at a reasonable time and in a reasonable manner.

You shall undergo a sex-offense-specific evaluation and participate in an outpatient sex offender treatment and/or outpatient mental health treatment program approved by the U.S. Probation Office. You shall abide by all rules, requirements, and conditions of the sex offender treatment program(s), including submission to polygraph testing and refraining from accessing websites, chatrooms, instant messaging, or social networking sites to the extent that the sex offender treatment and/or mental health treatment program determines that such access would be detrimental to your ongoing treatment. You will not view, access, possess, and/or download any pornography involving adults unless approved by the sex-offender specific treatment provider. You must waive your right of confidentiality in any records for mental health assessment and treatment imposed as a consequence of this judgment to allow the U.S. Probation Office to review the course of treatment and progress with the treatment provider. You must contribute to the cost of

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services rendered based on your ability to pay and the availability of third-party payments. The Court authorizes the release of available psychological and psychiatric evaluations and reports, including the presentence investigation report, to the sex offender treatment provider and/or mental health treatment provider.

You must not have contact with the victim(s) in this case. This includes any physical, visual, written, or telephonic contact with such persons. Additionally, you must not directly cause or encourage anyone else to have such contact with the victim (s).

You must not have deliberate contact with any child under 18 years of age, unless approved by the U.S. Probation Office. You must not loiter within 100 feet of places regularly frequented by children under the age of 18, such as schoolyards, playgrounds, and arcades. You must not view and/or access any web profile of users under the age of 18. This includes, but is not limited to, social networking websites, community portals, chat rooms or other online environment (audio/visual/messaging), etc. which allows for real time interaction with other users, without prior approval from your probation officer.

You must provide the probation officer with access to any requested financial information.

You must not incur new credit charges or open additional lines of credit without the approval of the probation officer unless you are in compliance with the installment payment schedule.

If you are sentenced to any period of supervision, it is recommended that you be supervised by the district of residence.

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

TOTALS:

Assessment	Restitution	Fine
$300.00	$	$750,000.00

AVAA Assessment*	JVTA Assessment**
$	$

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
TOTALS	$ 0.00	$ 0.00	

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after

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the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 300.00 due immediately, balance due

☐ not later than _____, or

☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

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C ☐ Payment in equal ____ (*e.g., weekly, monthly, quarterly*) installments of $ _____ over a period of _____ (*e.g., months or years*), to commence _____ (*e.g., 30 or 60 days*) after the date of this judgment; or

D ☐ Payment in equal _____ (*e.g., weekly, monthly, quarterly*) installments of $ ____ over a period of _____ (*e.g., months or years*), to commence _____ (*e.g., 30 or 60 days*) after release from imprisonment to a term of supervision; or

E ☑ Payment during the term of supervised release will commence within 30 (*e.g., 30 or 60 days*) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

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☐ Joint and Several

Case Number
Defendant and Co-Defendant Names
(*including defendant number*)
Total Amount

Joint and Several Amount

Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

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APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

20-cr-330 (AJN)

UNITED STATES OF AMERICA,

–v–

GHISLAINE MAXWELL,

Defendant.

OPINION & ORDER

ALISON J. NATHAN, District Judge:

In June 2020, a grand jury returned a six-count indictment charging Ghislaine Maxwell with facilitating the late financier Jeffrey Epstein's sexual abuse of minor victims from around 1994 to 1997. The Government filed a first (S1) superseding indictment shortly thereafter, which contained only small, ministerial corrections. The S1 superseding indictment included two counts of enticement or transportation of minors to engage in illegal sex acts in violation of the Mann Act and two counts of conspiracy to commit those offenses. It also included two counts of perjury in connection with Maxwell's testimony in a civil deposition. Trial is set to begin on July 12, 2021.

Maxwell filed twelve pretrial motions seeking to dismiss portions of the S1 superseding indictment, suppress evidence, and compel discovery. After the parties fully briefed those motions, a grand jury returned a second (S2) superseding indictment adding

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a sex trafficking count and another related conspiracy count.

This Opinion resolves all of Maxwell's currently pending pretrial motions other than those seeking to suppress evidence, which the Court will resolve in due course. The motions, and this Opinion, deal exclusively with the S1 superseding indictment and do not resolve any issues related to the newly added sex trafficking charges. For the reasons that follow, the Court denies Maxwell's motions to dismiss the S1 superseding indictment in whole or in part. It grants her motion to sever the perjury charges for a separate trial. It denies her motion to further expedite discovery.

The Court provides a brief summary of its conclusions here and its reasoning on the pages that follow:

- Maxwell moves to dismiss all counts based on a non-prosecution agreement between Jeffrey Epstein and the U.S. Attorney for the Southern District of Florida. The Court concludes that the agreement does not apply in this District or to the charged offenses.
- Maxwell moves to dismiss all counts as untimely. The Court concludes that the Government brought the charges within the statute of limitations and did not unfairly delay in bringing them.
- Maxwell moves to dismiss the Mann Act counts because they are too vague, or in the alternative to require the Government to describe the charges in greater detail. The Court concludes that the charges are specific enough.

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- Maxwell moves to dismiss the perjury counts because, in her view, her testimony responded to ambiguous questioning and was not material. The Court concludes that these issues are best left for the jury.
- Maxwell moves to sever the perjury counts from the Mann Act counts so that they can proceed in a separate trial. The Court concludes that severance is appropriate and will try the perjury counts separately.
- Maxwell moves to strike language from the indictment that she believes is superfluous and to dismiss conspiracy counts she believes are redundant. The Court concludes that these motions are premature before trial.
- Maxwell moves to compel the Government to immediately disclose certain categories of evidence. The Court concludes that she is not entitled to do so, but the Court will order Maxwell and the Government to confer on a discovery schedule.
- Maxwell moves to dismiss all counts because a grand jury in White Plains, rather than Manhattan, returned the S1 superseding indictment. Because a jury in Manhattan returned the S2 superseding indictment, the motion appears moot.

I. Jeffrey Epstein's non-prosecution agreement does not bar this prosecution

In September 2007, under investigation by both federal and state authorities, Jeffrey Epstein entered into a non-prosecution agreement ("NPA") with the Office of the United States Attorney for the Southern

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District of Florida. Dkt. No. 142 at 1-2. Epstein agreed in the NPA to plead guilty in Florida state court to soliciting minors for prostitution and to serve eighteen months in a county jail. *Id.* In exchange, the U.S. Attorney's Office agreed not to charge him with federal crimes in the Southern District of Florida stemming from its investigation of his conduct between 2001 and 2007. *Id.* It also agreed not to bring criminal charges against any of his "potential co-conspirators." *Id.*

As a recent report from the Department of Justice's Office of Professional Responsibility observed, the NPA was unusual in many respects, including its breadth, leniency, and secrecy. OPR Report, Gov. Ex. 3, Dkt. No. 204-3, at x, 80, 175, 179, 260–61. The U.S. Attorney's promise not to prosecute unidentified co-conspirators marks a stark departure from normal practice for federal plea agreements. This provision appears to have been added "with little discussion or consideration by the prosecutors." *Id.* at 169, 185. The report concluded that the U.S. Attorney's negotiation and approval of the NPA did not amount to professional misconduct, but nonetheless reflected "poor judgment." *Id.* at 169.

Only the NPA's effect, and not its wisdom, is presently before the Court. Maxwell contends that the NPA bars this prosecution, because she is charged as a co-conspirator of Jeffrey Epstein and the NPA's co-conspirator provision lacks any geographical or temporal limitations. The Court disagrees for two independent reasons. First, under controlling Second Circuit precedent, the NPA does not bind the U.S. Attorney for the Southern District of New York. Second, it does not cover the offenses charged in the S1 superseding indictment.

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A. The non-prosecution agreement does not bind the U.S. Attorney for the Southern District of New York

United States Attorneys speak for the United States. When a U.S. Attorney makes a promise as part of a plea bargain, both contract principles and due process require the federal government to fulfill it. *See Santobello v. New York*, 404 U.S. 257, 262 (1971); *United States v. Ready*, 82 F.3d 551, 558 (2d Cir. 1996). The question here is not whether the U.S. Attorney for the Southern District of Florida had the power to bind the U.S. Attorney for the Southern District of New York. The question is whether the terms of the NPA did so. Applying Second Circuit precedent and principles of contract interpretation, the Court concludes that they did not.

In *United States v. Annabi*, the Second Circuit held: "A plea agreement binds only the office of the United States Attorney for the district in which the plea is entered unless it affirmatively appears that the agreement contemplates a broader restriction." 771 F.2d 670, 672 (2d Cir. 1985) (per curiam). This is something akin to a clear statement rule. Single-district plea agreements are the norm. Nationwide, unlimited agreements are the rare exception. Applying *Annabi,* panels of the Second Circuit have stated that courts cannot infer intent to depart from this ordinary practice from an agreement's use of phrases like "the government" or "the United States." *United States v. Salameh*, 152 F.3d 88, 120 (2d Cir. 1998) (per curiam); *United States v. Gonzalez*, 93 F. App'x 268, 270 (2d Cir. 2004). Those are common shorthand. A plea agreement need not painstakingly spell out "the Office of the United States Attorney for Such-and-Such District" in

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every instance to make clear that it applies only in the district where signed.

Maxwell asks this Court to draw the opposite conclusion. The provision of the NPA dealing with co-conspirators does not expressly state that it binds U.S. Attorneys in other districts. It does not expressly state that it applies in other districts. The relevant language, in its entirety, reads as follows: "the United States also agrees that it will not institute any criminal charges against any potential co-conspirators of Epstein." Dkt. No. 142-1 at 5. Under *Annabi, Salameh, and Gonzalez*, a statement that "the United States" agrees not to prosecute implies no restriction on prosecutions in other districts.

Two provisions of the NPA refer specifically to prosecution in the Southern District of Florida. The first states that the U.S. Attorney for the Southern District of Florida will defer "prosecution in this District" if Epstein complies with the agreement. Dkt. No. 142-1 at 2. The second states that no prosecution "will be instituted in this District, and the charges against Epstein if any, will be dismissed" after he fulfills the agreement's conditions. Maxwell contends that the lack of similar language in the co-conspirator provision must mean that it lacks any geographical limitation. If anything, that language reflects that the NPA's scope was expressly limited to the Southern District of Florida. It is not plausible—let alone "affirmatively apparent", *Annabi*, 771 F.2d at 672,—that the parties intended to drastically expand the agreement's geographic scope in the single sentence on the prosecution of co-conspirators without clearly so saying.

Without an affirmative statement in the NPA's text, Maxwell turns to its negotiation history. Under Second

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Circuit precedent she may offer evidence that negotiations of the NPA between the defendant and the prosecutors included a promise to bind other districts. *See United States v. Russo*, 801 F.2d 624, 626 (2d Cir. 1986). She alleges that officials in the U.S. Attorney's Office for the Southern District of Florida sought and obtained approval for the NPA from the Office of the Deputy Attorney General and communicated with attorneys in other districts. Any involvement of attorneys outside the Southern District of Florida appears to have been minimal. Maxwell has already received access to an unusually large amount of information about the NPA's negotiation history in the form of the OPR report and yet identifies no evidence that the Department of Justice made any promises not contained in the NPA. The OPR report reflects that the Office of the Deputy Attorney General reviewed the NPA, but only after it was signed when Epstein tried to get out of it. OPR Report at 103. Other documents show that attorneys in the Southern District of Florida reached out to other districts for investigatory assistance but not for help negotiating the NPA. Dkt. No. 204-2. Nor would direct approval of the NPA by the Office of the Deputy Attorney General change the meaning of its terms. No evidence suggests anyone promised Epstein that the NPA would bar the prosecution of his co-conspirators in other districts. Absent such a promise, it does not matter who did or did not approve it.

Second Circuit precedent creates a strong presumption that a plea agreement binds only the U.S. Attorney's office for the district where it was signed. Maxwell identifies nothing in the NPA's text or negotiation history to disturb this presumption. The Court thus concludes that the NPA does not bind the U.S. Attorney for the Southern District of New York.

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B. The non-prosecution agreement does not cover the charged offenses

The NPA would provide Maxwell no defense to the charges in the S1 superseding indictment even against an office bound to follow it. The NPA bars prosecution, following Epstein's fulfillment of its conditions, only for three specific categories of offenses:

> (1) "the offenses set out on pages 1 and 2" of the NPA; namely, "any offenses that may have been committed by Epstein against the United States from in or around 2001 through in or around September 2007" including five enumerated offenses;
>
> (2) "any other offenses that have been the subject of the joint investigation by the Federal Bureau of Investigation and the United States Attorney's Office"; and
>
> (3) "any offenses that arose from the Federal Grand Jury investigation." 6

Dkt. No. 142-1 at 2. The NPA makes clear that the covered charges are those relating to and deriving from a specific investigation of conduct that occurred between 2001 and 2007.

Maxwell contends that the NPA's co-conspirator provision lacks any limitation on the offenses covered. The Court disagrees with this improbable interpretation. The phrase "potential co-conspirator" means nothing without answering the question "co-conspirator in what?" The most natural reading of the co-conspirator provision is that it covers those who conspired with Epstein in the offenses covered by the NPA for their involvement in those offenses. Thus, it would cover any involvement of Maxwell in offenses committed by

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Epstein from 2001 to 2007, other offenses that were the subject of the FBI and U.S. Attorney's Office investigation, and any offenses that arose from the related grand jury investigation.

The Court has no trouble concluding that the perjury counts are not covered by the NPA. Those charges do not relate to conduct in which Maxwell conspired with Epstein and stem from depositions in 2016, more than eight years after Epstein signed the NPA. Maxwell now concedes as much, though her motion sought to dismiss the S1 superseding indictment in its entirety, perjury counts and all.

The Mann Act counts, too, fall comfortably outside the NPA's scope. The S1 superseding indictment charges conduct occurring exclusively between 1994 and 1997, some four years before the period covered by the Southern District of Florida investigation and the NPA. The NPA does not purport to immunize Epstein from liability for crimes committed before the period that was the subject of the FBI and U.S. Attorney's Office investigation. Maxwell's protection is no broader. The Court thus concludes that the NPA does not cover the offenses charged in the S1 superseding indictment.

C. Maxwell is not entitled to an evidentiary hearing

In the alternative to dismissing the indictment, Maxwell requests that the Court conduct an evidentiary hearing as to the parties' intent in the NPA. The Court finds no basis to do so.

The cases Maxwell cites where courts held hearings on the scope of a plea agreement mostly involved oral agreements where there was no written record of the full set of terms reached by the parties. All of them

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involved defendants with first-hand knowledge of negotiations who claimed prosecutors breached an oral promise. "An oral agreement greatly increases the potential for disputes such as . . . a failure to agree on the existence, let alone the terms, of the deal." *United States v. Aleman*, 286 F.3d 86, 90 (2d Cir. 2002). Thus, an evidentiary hearing may be necessary to determine the terms of an agreement never committed to writing. This is no such case. The NPA's terms are clear. Beyond the NPA itself, an extensive OPR report details its negotiation history. No record evidence suggests that prosecutors promised Epstein anything beyond what was spelled out in writing. The Court agrees with the Government that Maxwell's request for a hearing rests on mere conjecture.

For the same reason, the Court will not order the discovery on the NPA. In any case, it appears that the Government has already produced two of the documents Maxwell seeks in her motion—the OPR report and notes mentioned in a privilege log. Of course, the Government's disclosure obligations would require it to disclose to Maxwell any exculpatory evidence or evidence material to preparing the defense, including any evidence supporting a defense under the NPA. The Government shall confirm in writing within one week whether it views any evidence supporting Maxwell's interpretation of the NPA as material it is required to disclose, and, if so, whether it has disclosed any and all such evidence in its possession.

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II. The indictment is timely

A. The indictment complies with the statute of limitations

Federal law imposes a five-year limitations period for most non-capital offenses. 18 U.S.C. § 3282(a). Recognizing the difficulty of promptly prosecuting crimes against children, Congress has provided a longer limitations period for "offense[s] involving the sexual or physical abuse, or kidnaping" of a minor. 18 U.S.C. § 3283. Until 2003, the operative version of § 3283 allowed prosecution of these offenses until the victim reached the age of twenty-five. Congress further extended the limitations period in the PROTECT Act of 2003, Pub. L. No. 108 21, 117 Stat. 650, to allow prosecution any time during the life of the victim.

The parties agree that the Mann Act charges are timely if subject to the PROTECT Act, but untimely under the general statute of limitations for non-capital offenses or the pre-2003 version of § 3283. Maxwell contends that the charged offenses do not qualify as offenses involving the sexual or physical abuse or kidnapping of a minor and are thus governed by the general statute of limitations. Alternatively, she contends that the pre-2003 version of § 3283 applies because the charged conduct occurred prior to 2003. The Court concludes that statute of limitations in the PROTECT Act applies and that the charges are timely.

1. The Mann Act charges are offenses involving the sexual abuse of minors

Maxwell does not dispute that the facts alleged in the S1 superseding indictment involve the sexual abuse of minors. The indictment charges that Epstein sexually abused each of the alleged minor victims and that Maxwell allegedly enticed them to travel or

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transported them for that purpose. Instead, Maxwell contends that charged offenses do not qualify as offenses involving the sexual abuse of minors because sexual abuse is not an essential ingredient of each statutory offense. *See Bridges v. United States*, 346 U.S. 209, 221 (1953). In Maxwell's view, for example, it is possible to transport a minor with intent to engage in criminal sexual activity and not follow through with the planned sexual abuse, and so sexual abuse is not an essential ingredient of the offense. Maxwell makes the same argument for the enticement and related conspiracy charges.

This approach is analogous to the "categorical approach" employed by courts to evaluate prior convictions for immigration and sentencing purposes. *See Taylor v. United States*, 495 U.S. 575, 602 (1990). Generally speaking, the "categorical approach" requires that courts "look only to the statutory definitions—i.e., the elements" of the relevant offense to determine if the provision applies "and not to the particular facts underlying those convictions." *Descamps v. United States*, 570 U.S. 254, 261 (2013) (internal quotation marks omitted). Whether a statute requires a categorical or case-specific approach is a question of statutory interpretation. To determine whether Congress used the word "offense" in a statute to refer to an offense in the abstract or to the facts of each individual case, the Court must examine the statute's "text, context, and history." *United States v. Davis*, 139 S. Ct. 2319, 2327 (2019).

Though it has not authoritatively settled the question, the Second Circuit has strongly suggested that Maxwell's approach is the wrong one. In *Weingarten v. United States*, 865 F.3d 48, 58–60 (2d Cir. 2017), the Second Circuit discussed at length how the text,

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context, and history of § 3283 show that Congress intended courts to apply the statute using a case-specific approach. The Third Circuit reached the same conclusion in *United States v. Schneider*, 801 F.3d 186, 196 (3d Cir. 2015).

The Court sees no reason to depart from the reasoning in *Weingarten*. First, "[t]he Supreme Court's modern categorical approach jurisprudence is confined to the post-conviction contexts of criminal sentencing and immigration deportation cases." *Weingarten*, 865 F.3d at 58. To the extent that the categorical approach is ever appropriate in other contexts, it is inappropriate here.

The Court begins with the statute's text. Statutes that call for application of the categorical approach typically deal with the elements of an offense in a prior criminal conviction. *Id.* at 59. "The language of § 3283, by contrast, reaches beyond the offense and its legal elements to the conduct 'involv[ed]' in the offense. That linguistic expansion indicates Congress intended courts to look beyond the bare legal charges in deciding whether § 3283 applied." *Id.* at 59–60 (alteration in original) (quoting § 3283). Maxwell cites one case holding otherwise, but that case involved a venue statute presenting significantly different concerns. *See United States v. Morgan*, 393 F.3d 192, 200 (D.C. Cir. 2004). The Supreme Court has likewise held that a statute which uses the language "an *offense that . . . involves* fraud or deceit in which the loss to the victim or victims exceeds $10,000" is "consistent with a circumstance-specific approach." *Nijhawan v. Holder*, 557 U.S. 29, 32, 38 (2009) (emphasis added). Thus, the word "involves" generally means that courts should look to the circumstances of an offense as committed in each case. This reading accords with a robust