From: [redacted]
To: [redacted]
Cc: [redacted]

Subject: 18 U.S.C. 1519 Elements
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Regarding your question on the 1519, here's our research and an overview of the charge:

Under 18 U.S.C. § 1519, in pertinent part, "[w]hoever knowingly . . . falsifies, or makes a false entry in . . . any record [or] document . . . with the intent to impede, obstruct, or influence the . . . proper administration of any matter within the jurisdiction of any department or agency of the United States . . . or in relation to or contemplation of any such matter" commits a twenty-year felony. Congress enacted § 1519 as part of the Sarbanes-Oxley Act following the prosecution of the accounting firm Arthur Andersen for its destruction of Enron-related documents. The statute "was intended to prohibit, in particular, corporate document-shredding to hide evidence of financial wrongdoing." *Yates v. United States*, 135 S. Ct. 1074, 1081 (2015). Nonetheless, the legislative history of the statute reflects the fact that Congress "meant [the act] to apply broadly" and cover a wide range of "obstructive conduct." S. Rep. 107-146, 14-15 (2002). In *Yates*, which concerned whether a fish was a "tangible object" as used in the statute, the Supreme Court rejected "reading § 1519 expansively to create a coverall spoliation of evidence statute" and instead held that "a 'tangible object' within § 1519's compass is one used to record or preserve information." *Id.* at 188-89. Ultimately, the restrictive reading of "tangible object" in *Yates* does not affect the application of the statute here because the proposed charge concerns the fabrication of a record or document, not a tangible object.

Thus, to prove a defendant violated § 1519, as is relevant here, the government must establish that (1) the defendant knowingly falsified a record or document; (2) the defendant acted with intent to impede, obstruct, or influence the administration of a matter, or in contemplation of a matter; and (3) the matter was within the jurisdiction of a department or agency of the United States.

1. Falsification of Documents and Entries

Section 1519 criminalizes the knowing falsification of a document, or false entries on a form. While the statute contained multiple verbs (e.g., "conceals," "creates a false entry," etc.), the "falsifies" charge is appropriate when a false document is created, and the "false entry" charge is "usually reserved for entries made on pre-existing forms." *United States v. Schmeltz*, 667 F.3d 685, 688 (6th Cir. 2011). Convictions for falsifying records or entries are upheld when the records or entries contain misrepresentations or omissions. *See United States v. Gray*, 692 F.3d 514, 517–21 (6th Cir.2012) (assuming without discussion that § 1519 covers omissions); *United States v. Norman*, 87 F. Supp. 3d 737, 743 (E.D. Pa. 2015) (collecting cases). Misrepresentations that are sufficient to support a § 1519 conviction include factual misrepresentations about the occurrence of an event. *See United States v. Yielding*, 657 F.3d 688, 715-16 (8th Cir. 2011) (backdating a document); *United States v. Taohim*, 529 F. App'x 969 (11th Cir. 2013) (omission of plastic discharge from ship's garbage record book). As is relevant here, 1519 has been applied to false BOP reports. *See, e.g., United States v. Gray*, 642 F.3d 371, 374 (2d Cir. 2011) (private prison guard charged for writing a false report regarding an assault); *United States v. Morris*, 404 F. App'x 916 (5th Cir. 2010) (submitting a false use of force report before there was a pending investigation); *United States v. Hamilton*, No. 15-CR-0240-TCB-LTW, 2016 WL 11432647, at *3 (N.D. Ga. Mar. 15, 2016), report and recommendation adopted, 2016 WL 1696136 (N.D. Ga. Apr. 28, 2016) (false jail incident report).

2. Knowledge Requirement

Violations of § 1519 require that the defendant "knowingly . . . falsifies, or makes a false entry in . . . any record [or] document . . . with the intent to impede, obstruct, or influence the . . . proper administration of any matter. . . or in relation to or contemplation of any such matter." A defendant must "knowingly" falsify documents or make false entries "with the intent to impede, obstruct, or influence." Section 1519 "requires only proof that the accused knowingly committed one of several acts, including falsification of a document or falsification of a record, and did so 'with the intent to impede, obstruct, or influence the investigation or proper administration' of a federal matter." *Yielding*, 657 F.3d at 711. Provided a defendant commits an act knowingly – here, that he or she knowingly made an entry in a record that was not true – then the question is whether the defendant did so with the intent to obstruct or influence the investigation or administration of a matter.

It is settled that knowledge of a pending federal investigation is not an element of the crime. *See United States v. Gray*, 642 F.3d 371, 378-79 (2d Cir. 2011) ("By the plain terms of § 1519, knowledge of a pending federal investigation or proceeding is not an element of the obstruction crime."); *United States v. Cossette*, 593 F. App'x 28, 31 (2d Cir. 2014) (same). Additionally, there is no requirement that an investigation be pending or imminent. *See Gray*, 642 F.3d at 377 ("in enacting § 1519, Congress rejected any requirement that the government prove a link between a defendant's conduct and an imminent or pending official proceeding"); *Yielding*, 657 F.3d at 711 ("The statute . . . does not allow a defendant to escape liability for shredding documents with intent to obstruct a foreseeable investigation of a matter . . . just because the investigation has not yet commenced."). There is also no requirement that there be a nexus or link between the defendant's conduct and an official proceeding. *Gray*, 642 F.3d at 377. Rather, in general, courts have found that defendants acted "in contemplation of" or "in relation to" a federal matter when a reasonable fact-finder could infer that the defendants' behavior was in anticipation of an investigation. Such evidence includes notice of a possible investigation, previous knowledge that the matter could be the subject of an investigation, or communications with other parties to design an appearance of legitimacy. *See Gray*, 642 F.3d at 378 (affirming a § 1519 conviction for corrections officers who did not report the abuse of an inmate by other officers, finding there was sufficient evidence that their actions were in "contemplation" of a matter since the defendant had been trained to report any improper use of force and omitted the beating in an official report); *see also United States v. Kernell*, 667 F.3d 746, 755 (6th Cir. 2012). Similarly, if a defendant believe that a false record "would be reviewed" or inspected some time in the future, that is sufficient for the false entry to satisfy the "in contemplation" prong. *Taohim*, 529 F. App'x 969 (11th Cir. 2013).

3. Jurisdictional Element

A matter is "within the jurisdiction of any department or agency of the United States" if the department or agency has power to exercise authority in a particular situation. *United States v. Ionia Mgmt. S.A.*, 526 F.Supp.2d 319, 329 (D. Conn. 2007), *aff'd,* 555 F.3d 303 (2d Cir. 2009). Here, there's no question that the matter is within the purview of the BOP and the DOJ.

Let us know if you have any questions.

[redacted]
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007
[redacted]