

**Deferred Prosecution/Misdemeanor Request Memorandum**  
**United States v. Tova Noel, 19 Cr. 830 (AT)**<sup>1</sup>

AUSAs: [REDACTED]

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[REDACTED] – Federal Bureau of Investigation  
Agent: [REDACTED] – Department of Justice, Office of the Inspector  
General

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Defendant: Tova Noel

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Age: [REDACTED] ([REDACTED])

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Education: Noel graduated from high school in 2005 at the age of 16. At age 18, she began taking classes at the Borough of Manhattan Community College. She enlisted in the Army National Guard in 2008 and in 2012 was deployed to Kuwait for active duty in support of Operation Enduring Freedom. During her military service, Noel took courses at ASA College in New York City and earned an

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<sup>1</sup> Prior to charging this case, we gave defense counsel for Noel an opportunity to meet with the case team, unit supervisors, and the United States Attorney. During the meeting, defense counsel urged a declination or deferred prosecution, but did not raise the majority of the arguments set forth in the deferred prosecution request (the “Request”). The defendant did not make a written deferred prosecution submission prior to charging. As is discussed in more detail below, the Request provides multiple facts not known to us at the time of the charging decision, as well as a discussion of how similar cases have been handled in other districts. In particular, the Request explains that Noel intended to do the counts and rounds but could not do so because her co-defendant refused to assist her, and it was against BOP regulations for her to perform them on her own. Noel’s counsel also identified a case in the Western District in which non-prosecution agreements were offered to the defendants, correctional officers who were charged for falsely representing that they completed rounds in the SHU when an inmate homicide took place. Noel’s counsel also provided additional information about *United States v. Hernandez*, a case from the Northern District of Texas that we relied upon as precedent in making the charging decision in the instant case. In *Hernandez*, the only guard with a felony disposition was an experienced officer who was watching pornography instead of doing rounds and made false statements during the investigation after an inmate death.

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Associate of Applied Science degree in Criminal Justice in 2014. After being honorably discharged from the military, Noel enrolled in John Jay College of Criminal Justice, where she majored in criminal justice and minored in law. She graduated in 2017 with a Bachelor of Science degree in Criminal Justice.

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Drugs: The deferred prosecution request (the “Request,” which is attached hereto) is silent on drug use, and we do not know of any drug use by Noel.

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Health: According to the Request, Noel has been diagnosed with a number of medical conditions as a result of her military service in a war zone, including the following: major depressive disorder; generalized anxiety; insomnia disorder; post-traumatic stress disorder; contact dermatitis, posterior neck; bronchial asthma; right ankle posterior tibial tendinopathy (ankle injury sustained in Kuwait); dysmenorrhea and irregular menstruation with pedunculated fibroid status post-myomectomy (related to environmental hazard in Gulf War); breast lesion (residual painful scar, right breast, s/p excisional biopsy); degenerative spondylosis; irritable bowel syndrome with nausea (related to environmental hazard in Gulf War); and migraines. She was receiving disability benefits from the military until she was suspended from her employment at the Bureau of Prisons (“BOP”) due to the instant charges.

According to the Request, there is significant use of synthetic marijuana (K2) by inmates throughout the Metropolitan Correctional Center (“MCC”), including in the Special Housing Unit (“SHU”). Noel has experienced illness, including headaches, lightheadedness, and nausea, that she believes is associated with breathing in secondhand smoke from the inmates.

Noel has various mental health conditions, which began during her military service and were exacerbated due to family tragedy (discussed below) and the instant case. Noel’s counsel has told us that since he met her in connection with this case, she has struggled with serious and lengthy bouts of depression, sometimes spending multiple days in bed. In November 2019, Noel was referred to the New York Center for Neuropsychology & Forensic Behavioral

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Science for therapy to assist with stress stemming from the instant case.

Despite believing that she could not become pregnant due to certain medical conditions, Noel is currently pregnant, with a due date in late April 2021. Noel is scheduled for a cesarean section on April 1, 2021.

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Noel was born in Antigua, where she was raised by her single mother, her grandparents, and other relatives. Noel's mother left Antigua to pursue her education; at age 13, Noel joined her mother in the United States. Before Noel joined her, Noel's mother got married in the United States and had a son, who is approximately 11 years younger than Noel and is currently attending college.

Noel married in 2007; she and her husband separated in 2011 and are now divorced.

Family: In 2013, Noel's 7-year-old half-brother and his mother were murdered in St. Croix. The perpetrators were never arrested. This event exacerbated Noel's mental health issues, including anxiety; she attended mental health treatment and managed her condition with medication.

In March 2020, Noel rekindled a friendship with Lloyd Gunnings, whom she previously dated. Noel and Gunnings are currently in a romantic relationship, and Gunnings is the father of Noel's child, due in April 2021.

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Immigration Status: As of 2009, Noel is a naturalized American citizen.

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Employment: Noel attempted to join the military at age 17, but her mother refused to allow Noel to enlist as a minor. Noel then attended some college classes and worked low-level jobs in New York City.

As noted above, in 2008, at age 19, Noel enlisted in the Army National Guard. She served for six years before her honorable discharge in 2014, eventually gaining the rank of E4 Specialist.

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Noel was deployed to Kuwait for active duty in 2012 in support of Operation Enduring Freedom.

During her military service, Noel also worked other jobs, including the following: security at Macy's (October 2008 – January 2009); EMT-B at Transcare Ambulance (January 2009 – July 2011); Life Skills Instructor at Ability Beyond Disability (November 2011 – January 2013).

While attending John Jay College from 2014 through 2017, Noel held the following positions: Intern/Case Manager for EAC Bronx TASC (summer 2014); Toll Booth Cashier for the MTA Bridge and Tunnel (June 2014 – April 2016); Cashier for Home Depot (January 2017 – August 2017).

After graduating from John Jay in May 2017, Noel began working as a mail handler assistant with the United States Postal Service (the "USPS") in White Plains. Noel left the USPS to join the BOP. She began working at MCC on June 24, 2018. She received two weeks of training after joining the BOP and attended another training course in August 2018 that was supposed to last for three weeks but was cut short due to a hurricane.

According to the Request, and as confirmed from our review of her work history, Noel and her MCC colleagues were forced or "mandated" to work many overtime shifts, including working two eight-hour shifts back-to-back. Due to difficulties finding parking near the MCC, Noel often drove to work at 5:00 a.m. and slept in her car before beginning her 8:00 a.m. shift. Noel was required to work so many overtime shifts that in a six-month period she earned the entirety of her annual base salary.

According to the Request, during her employment at MCC, Noel received multiple threats from inmates, including threats of violence and sexual assault. When she reported the threats, she did not always feel supported by her superiors.

As is set forth in the Request, or about March 15, 2019, Noel had an accident and fell at work. She was injured and did not return to work until June 26, 2019. When she returned to the MCC, she was assigned to the 4:00 p.m. – 12:00 a.m. shift in the SHU. According to the Request, Noel had never worked in the SHU before and did not receive the required SHU-specific training. When she reported for work at the SHU, her lieutenant asked her to sign documentation

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indicating that she had received the SHU training. Even though Noel informed the lieutenant that she had not received the training, the lieutenant told Noel that she needed to sign so that the facility could pass program review.

Noel was suspended from the BOP in 2019 due to the pending charges. Since the fall of 2020, Noel has been applying for jobs, but she has not received any employment offers to date.

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Potentially Disqualifying Factors:\* Potentially disqualifying factor: as a guard at the MCC who made false statements relating to the performance of her duties, Noel may qualify as “a public official or former public official accused of an offense arising out of an alleged violation of a public trust.”

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Criminal History: None (convictions or arrests).

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Offenses: Conspiring to knowingly defraud the United States and to knowingly make and use a false writing or document, in violation of 18 U.S.C. § 371 (one count).

Knowingly making and using a false writing or document, in violation of 18 U.S.C. § 1001 (five counts).

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Summary of Offense: At approximately 6:33 a.m. on August 10, 2019, correction officer Michael Thomas, Noel’s codefendant, found Jeffrey Epstein dead in cell L220 in the ninth floor SHU at MCC. Although Epstein committed suicide by hanging himself, two significant failures at the MCC created the conditions in which Epstein could do so: the failure to reassign Epstein a cellmate, and the failure to perform any of the required rounds and counts during the overnight shift.

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\* Pursuant to USAM 9-22.100 *Eligibility Criteria*, pretrial diversion (deferred prosecution) is not available against any individual against whom a prosecutable case exists and who is: (1) accused of an offense which, under existing Department guidelines, should be diverted to the State for prosecution; (2) a person with two or more prior felony convictions; (3) a public official or former public official accused of an offense arising out of an alleged violation of a public trust; or (4) accused of an offense related to national security or foreign affairs. Please consult with your unit chief and a deputy chief of the Criminal Division regarding the applicability of these provisions, including the status of any individual as an addict.

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Epstein had allegedly attempted to commit suicide on July 23, 2019, and after he was removed from suicide watch, he was required to have a cellmate. Thomas was aware of Epstein's history, having been one of the officers who responded to that earlier alleged suicide attempt. However, Epstein's cellmate was released from the MCC on August 9, 2019, and despite being aware of that directive and the fact that Epstein did not have a cellmate, numerous correction officers and at least one lieutenant took no steps to assign a new cellmate to Epstein.

During the overnight shift on August 10, 2019, Thomas and Noel were assigned to the SHU from midnight to 8 a.m. Both were on overtime, and had worked 8 of the previous 24 hours at the start of their overnight shift: Noel had worked her regular shift in the SHU between 4 p.m. and midnight, and was on a voluntary overtime shift; Thomas had worked the overnight shift the night before, and while he had not worked during the day, he was on a mandatory overtime shift. Thomas was a material handler who worked in the warehouse, although he had previously worked as a senior correction officer for six years. Noel had worked for the BOP for a year, although she was injured during part of that period and spent less than two months working in the SHU.

While on duty in the SHU, Noel and Thomas were required to perform rounds every 30 minutes, and institutional counts at 12 a.m., 3 a.m., and 5 a.m. Because Noel had worked the previous shift from 4 p.m. to midnight, she was also required to conduct the 4 p.m. and 10 p.m. institutional counts, in addition to the required 30-minute rounds during that shift. Based on the investigation, it appears that the last time that any correction officer checked on Epstein in his cell was between 8:45 and 9:15 p.m. on August 9, 2019, which was approximately nine hours before he was found dead. It appears that the 4 p.m., 10 p.m., 12 a.m., 3 a.m., and 5 a.m. counts were not completed, and it appears that rounds—which were required every 30 minutes—were largely not completed after approximately 9:30 p.m. Prior to learning that Epstein had committed suicide, Thomas and Noel falsified forms showing that they had performed the required rounds and counts overnight, although they did not actually do so. Thomas and Noel appeared to be performing other tasks, using the computer, talking, or sleeping during their overnight shift. Epstein's cell was approximately ten to fifteen feet away from where they sat throughout the night. On the morning of August 10, while making

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preparations to serve breakfast, Thomas discovered Epstein's body. After sounding their body alarms, Thomas and Noel told a lieutenant, in sum and substance, that they had made a mistake in not checking on Epstein.

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- Guidelines:
- Counts One through Six are grouped into a single Group because they involve substantially the same harm (§§ 3D1.1(a) and 3D1.2(b))
  - Base offense level: **6**, because the offense has a statutory maximum term of imprisonment of less than 20 years (§§ 2B1.1(a)(2), 2X1.1(a))
  - Because the defendant or a co-conspirator completed all the acts the conspirators believed necessary on their part for the successful completion of the substantive offense, a 3-level decrease is **not warranted** (U.S.S.G. § 2X1.1(b)(2))
  - Offense involved the conscious or reckless risk of death or serious bodily injury: increased to **14** (§ 2B1.1(b)(16))
  - Offense level for Group: **14** (§ 3D1.3(a))
  - Acceptance of responsibility: **-2** (§ 3E1.1)
  - Total offense level: **12**

Criminal history category: I

GUIDELINES RANGE: 10-16 months' imprisonment

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Although not itemized as such, the defendant's deferred prosecution submission (the Request) offers seven reasons for leniency.

Defendant's Submission: First, Noel has lived a law-abiding, admirable life prior to and after the incident that gave rise to the criminal charges against her. She pursued an education despite difficult family circumstances and enlisted in the Army National Guard, serving overseas. She accomplished this despite considerable personal tragedies, including the murder of close family members, and medical and mental health issues traceable, at least in part, to her military service.

Second, the nature and circumstances of the crime favor leniency. Noel had been working at the MCC for a relatively short period, and had only spent about 6 weeks working in the SHU without any meaningful training. She had been working mandated overtime shifts for weeks and was fatigued. The strain from her job was

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causing mental health issues. She was not seeing family or friends, and she was spending some of her time sleeping in her car. At work, she faced threats and harassment, and was not supported by supervisors or more experienced colleagues. The SHU, where she had been assigned, was routinely understaffed and it was common for guards to skip rounds and counts. It is against that backdrop that Noel allegedly committed the charged offenses. On the night in question, Noel and her co-defendant had worked multiple overtime shifts in the prior 48 hours. There was no other guard assigned. After Noel pulled out the forms they would need to complete during their shift, Noel's co-defendant allegedly refused to assist her in conducting the counts and rounds. Under BOP regulations, Noel was not permitted to conduct rounds and counts in the SHU on her own. She did, however, assist another guard in conducting a count in a unit neighboring the SHU, evidencing the fact that she was willing to conduct counts and rounds. Noel also knew that it was common for guards in the SHU—particularly those working the night shift when all inmates were locked in their cells—to not complete required counts and rounds. While none of those circumstances excuse the falsification of records, Noel argues they show why she made the decision she did.

Third, Noel argues that the absence of obstructive intent favors a deferred prosecution. Specifically, according to the Request, there was never a discussion or agreement between the defendants that they would falsify the count and round forms. Rather, Noel filled out the initial information on the forms, and when it became time to complete the forms, she filled them in while Thomas slept. Noel acknowledges while she acted wrongfully in filling in the forms without doing the rounds and counts, she did not do it to obstruct any oversight or investigation. Indeed, Noel correctly notes that she filled out the forms *before* Epstein's body was discovered. Moreover, after he was discovered, Noel and Thomas admitted to their supervisor that they made a mistake in not doing rounds. There is no evidence in the case that the defendants attempted to conceal the fact that they had not done rounds after they found out by the suicide. There is also no evidence that the defendants tried to obstruct any investigation.

Fourth, Noel acknowledges that she made a mistake and what she did was wrong. While her counsel has told us that he has advised

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her to go to trial, her submission accepts responsibility for her involvement in the conduct at issue in the Indictment.

Fifth, Noel argues that historically failure to complete rounds and counts, or falsely completing paperwork about doing rounds and counts, is addressed administratively by the BOP. The few precedents for criminal prosecution have largely resulted in deferral, diversion, or dismissal of charges. Specifically, in *United States v. Hernandez*, a case from the Northern District of Texas involving the falsification of round and count slips following an inmate death, the case against one of the guards was dismissed (after entry into a diversion program was not feasible) and another guard pled to a misdemeanor. Only one defendant was convicted of a felony charge. But the facts involving that defendant were different than in the instant case: the defendant, who was an experienced officer, was watching pornography instead of doing rounds and made false statements during the investigation after the inmate death. In another case, *United States v. Marshall* in the Western District of Virginia, in which four correctional officers were indicted for falsely representing they completed rounds in the SHU when an inmate homicide took place, the U.S. Attorney's Office dismissed all the charges. Each of the defendants entered into a non-prosecution agreement. Thus, according to Noel, a deferred prosecution would be consistent with the outcomes for other similarly-situated defendants.

Sixth, the Indictment has already caused significant collateral consequences. Noel has been subject to public shaming and intense media scrutiny, which has exacerbated her depression. She has struggled to find employment. She will lose her BOP job, and the very fact of the Indictment will make it difficult for her to obtain future employment. A felony conviction would result in significant additional collateral consequences. Specifically, Noel will likely lose her Army disability benefits and will likely be unable to obtain future employment that she would be potentially qualified for, including other government positions. She will be legally prohibited from working for TSA, U.S. Customs and Border Patrol, and private security companies. She will not be able to possess a firearm, which would also prevent her from holding those positions. A felony conviction would also prevent her from becoming an EMT, a position that she would like to pursue at the conclusion of this case. A felony conviction could, of course, result in her going to prison, which would mean she would be separated from her newborn baby. A felony conviction would also result in general

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collateral consequences such as losing the right to vote and entitlement to certain public benefits. In short, the collateral consequences of a felony conviction and prohibition from exploring these opportunities would significantly limit her ability to make a living and provide for her child.

Finally, defense counsel has indicated that Noel is prepared to accept responsibility for her conduct pursuant to a deferred prosecution agreement, and that she would be prepared to meet with and provide information to the Department of Justice, Office of the Inspector General (“DOJ-OIG”), which office is still working on a report about the conditions at the BOP that led to Epstein’s suicide.

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Citation and Description  
of Proposed  
Misdemeanor:

Although the Request does not seek a misdemeanor disposition, there is a potentially applicable misdemeanor, 18 U.S.C. § 1018, which provides in relevant part that, “[w]hoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined under this title or imprisoned not more than one year, or both.”

There is precedent bringing this misdemeanor charge against a BOP corrections officer who knowingly made a false statement in a BOP memo. See *United States v. Rodas Castro*, No. 5:15-cr-25 (M.D. Fla., Jan. 13, 2016), 2016 WL 270157 (plea agreement).

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Agent Recommendation:

FBI Special Agent [REDACTED] is the lead agent on the case. She reviewed the Request with her supervisors. Special Agent [REDACTED] has informed us that the FBI supports a deferred prosecution. Special Agent [REDACTED] provided two principal reasons why they believe a deferred prosecution is appropriate. First, when the FBI opened the investigation, the focus was on whether Epstein was murdered, whether he was given an opportunity to commit suicide because of a bribe, and/or whether obstruction was committed after Epstein’s suicide. Having concluded that Epstein committed suicide without the assistance of any person, and that no obstruction was committed after the fact, the FBI believes that this type of matter is best handled administratively and a criminal resolution is

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not necessary. Second, the FBI believes a deferred prosecution is appropriate because Noel did attempt to do some aspects of her job (e.g., she assisted another officer in doing a count that night), but failed to do some specific tasks that night at least partially because Thomas was sleeping. Special Agent [REDACTED] also said that avoiding a trial will be helpful to the FBI because they will have a number of trials later this year, but that was not one of the primary reasons they support a deferred prosecution.

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AUSA Recommendation: Deferred prosecution.

AUSA Rationale:

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As an initial matter, the nature and seriousness of the offense mitigate in favor of a deferred prosecution. Noel is charged with falsifying BOP forms during a period that spanned less than 24 hours. She falsified the documents before Epstein was discovered dead, and her alleged motive to conceal was to hide the fact that she had not performed a job duty--conducting rounds and counts—not obstruct a government investigation. Additionally, as noted above, Noel immediately told her supervisor that she had made a mistake and admitted that she had not completed the rounds, further evidencing that she did not intend to obstruct any government inquiry following Epstein's death. Notably, Noel did nothing to attempt to hide her conduct, and in fact consented to the Government's search of her phone months before she was arrested. Moreover, while the circumstances at the MCC do not excuse her conduct, Noel was a relatively inexperienced employee at the MCC (especially in the SHU); she was forced to work very long hours; and she claims to not have been supported by her supervisors or more senior colleagues. Indeed, because of the dangers associated with the SHU, the protocol in the SHU is that one officer (who controls the keys) unlocks the door to go down a range and stands at the door, while the other guard goes down the range and inspects the cells. If it is true that Noel asked Thomas to do the rounds and counts and he refused, it was impossible for her to complete the rounds and counts in the manner specified in BOP regulations.

Further, prosecution here is also unlikely to be necessary to advance the interests in specific or general deterrence. Noel has no criminal history, and given the adverse employment consequences and intense public scrutiny, it is highly unlikely that she will recidivate. Further prosecution is also unlikely to significantly

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advance general deterrence. This case has already garnered substantial media attention, which has furthered interests in deterrence. The filing of charges already sent the message that Thomas and Noel committed serious crimes, which provides some degree of deterrence for any correction officer tasked with ensuring the safety of the prisoners in his or her care. In the course of our investigation, we learned that even before charges were brought, the MCC and its employees had begun taking rounds and counts more seriously. And given the low advisory Guidelines range, and thus the anticipated sentence, it is unlikely that any sentence imposed would deter others contemplating the same conduct.

Moreover, a deferred prosecution would result in an outcome consistent with most cases in which falsification of round or count forms has occurred. According to information provided by defense counsel and the correctional officers' union, most instances of failing to complete counts are addressed administratively. That seems to be borne out by the fact that there have been relatively few criminal cases relating to falsely certifying the completion of rounds and counts, while the practice appears, unfortunately, to be not uncommon. In the few cases in which officers have been criminally charged, most defendants had their cases dismissed or resolved through deferred prosecution. Indeed, all four of the defendants in the Western District of Virginia case discussed above—which we were not aware of when we charged this case—had their cases dismissed pursuant to deferred prosecution agreements. In the case in Texas, only one defendant was convicted of a felony, and he undertook obstructive conduct *after* an inmate's death. We are not aware of any felony conviction for an officer who falsified count or round slips but did not take subsequent obstructive conduct or make false statements. Put another way, while deferred prosecutions have been the outcome in other cases, a felony conviction in this case would be basically unprecedented: never before, to our knowledge, has a correctional officer been convicted of a felony for making false certification on BOP forms without any other obstructive conduct.

While Noel, on the advice of counsel, intends to proceed to trial if her deferred prosecution application is not granted, she has acknowledged since the beginning of our investigation, largely through counsel, that she falsified the BOP forms. She has acknowledged that her conduct was wrong. She has also offered to provide information to the DOJ-OIG about conditions at the MCC that may have contributed to Epstein's death. On that

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question, while the guards' failure to conduct rounds and counts were certainly a contributing factor, there is no question that larger systematic issues, as well as the MCC's failure to assign a new cellmate to Epstein, contributed significantly to the circumstances that led to his suicide. Noel has offered to provide information to the OIG about those circumstances.

Next, since charging the case, we have learned more about the significant collateral consequences to Noel of taking a guilty plea. Those include, most notably, that she will be effectively precluded from pursuing work in areas for which she is otherwise qualified. Specifically, as noted in the Request, a felony conviction will likely bar her from certain government positions (like TSA) and prevent her from getting private security jobs. Even if she was legally qualified for those positions, the prohibition on her possession of a firearm will prevent her from obtaining those jobs. A felony conviction will also likely prevent her from looking for employment in other fields, such as becoming an EMT. And, as noted in the Request and supporting materials, a felony conviction will prevent Noel from obtaining certain disability benefits related to her military service overseas. These potential collateral consequences are particularly concerning because Noel will soon be a mother who will need to provide financially for her child. (It is worth noting that while Noel became pregnant during the pendency of this case, she previously believed that she was unable to become pregnant due to certain medical conditions).

Given that a likely sentence if Noel is convicted following a guilty plea or a trial would be a term of probation, it does appear that prosecution resources could be better allocated to matters other than a trial against Noel. Further, there is non-trivial litigation risk at trial as Noel can credibly argue that she lacked criminal or obstructive intent, and was in fact put in a position where it was impossible for her to carry out her job. Noel is also certainly likely to make a number of arguments to attempt to nullify a verdict, including, but not limited to, that the U.S. Attorney's Office acted irregularly in bringing this case; the case attempts to scapegoat Noel because the Department of Justice is upset that Epstein died; these types of failures at the MCC are routine; and this prosecution was only brought because it relates to Epstein.

Finally, it is worth noting that the September 25, 2019, prosecution memo by the case team recommended a deferred prosecution in this case. The memorandum noted that while it was a "close case," a

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deferred prosecution was appropriate because provide a public accounting of the events that led to Epstein's death and would promote general deterrence, but it would not carry with it the collateral consequences of a felony conviction. That recommendation was not adopted at the time. As noted above, prior to charging the defendants, their attorneys made presentations to us, but did not submit written deferred prosecution applications. Noel's attorney's presentation focused on why, in his view, a charge was unwarranted. (Thomas's attorney stated that his client was willing to plead guilty, but then after the charging decision was made, reversed course and said his client would go to trial.) Since the case was charged, we have learned additional information about the circumstances of the offense, the outcome in comparable cases, and the collateral consequences to the defendant. In particular, we have learned about Noel's factual claim that she was unable to do the counts because Thomas refused to wake up. We have also learned about at least one other similar prosecution that resulted in deferred prosecutions, as well as additional information about the disposition and factual circumstances in the Texas case we previously cited to as precedent. And we have now obtained new information about the potential collateral consequences to Noel—information that is new to us now because Noel's attorney did not make a formal deferred prosecution application previously. Based on those subsequent developments, we no longer view this as a "close case," and believe a felony disposition is not necessary or appropriate in light of the circumstances. Indeed, in light of the applicable precedents, we believe a deferred prosecution is appropriate, and that a felony conviction would be unnecessarily punitive.

Finally, as noted above, there is a potential misdemeanor charge that could apply to the facts here. While, in our view, a misdemeanor disposition would be preferable to a felony conviction following a trial, it would not be necessary to achieve specific or general deterrence, and it is not consistent with the majority of cases in which the conduct at issue here was prosecuted. Moreover, while we have not offered a misdemeanor disposition, defense counsel has stated that Noel would likely not take a misdemeanor plea because some of the same collateral consequences, particularly those related to employment, would still result from such a plea.

For the foregoing reasons, we believe a diversionary disposition would be appropriate, particularly if it included a requirement that

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Noel meet with the DOJ-OIG and provide information about the circumstances that led to Epstein's death.

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**Decision**

<b>DP Committee Member</b>	<b>Dismissal/ <i>Nolle</i></b>	<b>DP</b>	<b>Misd</b>	<b>Felony</b>	<b>Comments</b>