

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE NEW YORK TIMES COMPANY,

Plaintiff,

v.

No. 20-CV-833(PAE)

FEDERAL BUREAU OF PRISONS,

Defendant.

DECLARATION OF RUSSELL CAPONE

I, Russell Capone, hereby declare as follows:

1. I am Counsel to the Acting United States Attorney in the United States Attorney's Office for the Southern District of New York ("USAO-SDNY"). I have served in this capacity since June 2020. Prior to my current role, I served as Deputy Chief and then Chief of the Public Corruption Unit in the USAO-SDNY from July 2017 and as an Assistant United States Attorney from January 2011. I supervised the *Noel* prosecution directly in my prior role as Chief of the Public Corruption Unit, and I play a supervisory role over both the *Noel* and *Tartaglione* prosecutions in my current role as Counsel to the Acting United States Attorney.

2. I am familiar with the Freedom of Information Act requests filed by the New York Times Company (the "FOIA Requests") that are the subject of this case, which seek records related to the incarceration of Jeffrey Epstein at the Metropolitan Correctional Center ("MCC"). I am also familiar with the responsive records that defendant the Federal Bureau of Prisons ("BOP") has withheld pursuant to exemptions 5, 6, 7(A), 7(C), 7(E), and 7(F) of FOIA, 5 U.S.C. § 552(b)(5)-(7). In addition, I am familiar with the proceedings in *United States of*

America v. Noel, 19-CR-830 (AT), and *United States of America v. Tartaglione*, 16-CR-832 (KMK). True and correct copies of the Indictment filed in *Noel* on November 19, 2019 (the “Noel Indictment”), and the Superseding Indictment filed in *Tartaglione* on April 16, 2019 (the “Tartaglione Indictment”), are attached hereto as Exhibits A and B, respectively. The statements contained in this declaration are based on my personal knowledge, documents maintained in the files of the USAO-SDNY, conversations with members of the *Noel* and *Tartaglione* prosecution teams at the USAO-SDNY, public court filings, and conclusions made in accordance therewith.

3. I submit this declaration in support of BOP’s motion for summary judgment in this case.

The Prosecution of Jeffrey Epstein

4. On July 2, 2019, Jeffrey Epstein was charged with one count of conspiracy to commit sex trafficking, in violation of 18 U.S.C. § 371, and one count of sex trafficking, in violation of 18 U.S.C. §§ 1591(a), (b)(2), and 2. On July 6, 2019, Epstein was arrested and thereafter incarcerated at the MCC until his death.

5. On July 10, 2019, Epstein was assigned to the Special Housing Unit (“SHU”) at the MCC due to, among other things, a risk of suicidality and safety concerns relating to housing him with the MCC’s general population. On July 18, 2019, a bond hearing as to Epstein was held before the Honorable Richard M. Berman, after which the Court granted the government’s motion for remand and denied Epstein’s motion for pretrial release. *See Noel Indictment ¶ 10.*

6. On July 23, 2019, MCC officers responded to an emergency call and found Epstein on the floor of his cell with a strip of bedsheet around his neck. *See Noel Indictment ¶ 11.* Michael Thomas, a correctional officer at the MCC and one of the defendants in the *Noel* case, was one of the MCC officials who responded to this incident. *See id.* Epstein was subsequently transferred out of the SHU, placed on suicide watch for 24 hours, and then

transferred to psychological observation, a different status in a different location within MCC's hospital ward, until July 30, 2019. On July 30, 2019, Epstein was transferred back to the SHU. *See id.* ¶¶ 11-13.

7. On August 10, 2019, Epstein was found in his cell, not responsive and with a noose around his neck. *See id.* ¶ 26. He was transferred to a local hospital where he was declared dead shortly thereafter. *See id.* ¶ 27. The Office of the Chief Medical Examiner of the City of New York conducted an autopsy and determined that Epstein had committed suicide by hanging himself. *See id.*

8. On August 29, 2019, following a public hearing on August 27, 2019, Judge Berman entered an order of *nolle prosequi* against Epstein. *See Nolle Prosequi*, Dkt. No. 52, *United States v. Epstein*, No. 19 Cr. 490 (RMB) (S.D.N.Y.).

The Prosecution of Tova Noel and Michael Thomas

9. As alleged in the Noel Indictment, Thomas and Tova Noel were correctional officers on duty at the SHU on August 9-10, 2019, the night of Epstein's death. *See Noel Indictment* ¶¶ 3-4. On that night, Noel and Thomas repeatedly failed to perform mandated counts of prisoners under their watch, including Epstein. To conceal this failure, they repeatedly signed false certifications attesting to having conducted multiple counts of inmates, when, in truth, they had not conducted such counts. *See id.* ¶¶ 15-24. On November 19, 2019, Noel and Thomas were charged in the Noel Indictment with one count of conspiring to defraud the United States and to make or use a false writing or document, in violation of Title 18, United States Code, Section 371; and five counts as to Noel and three counts as to Thomas of making or using a false writing or document, in violation of Title 18, United States Code, Sections 1001(a)(3) and (2). Noel Indictment ¶¶ 28-40. The *Noel* case is pending before the Honorable Analisa Torres. Trial has been scheduled to begin on January 4, 2021.

The Prosecution and Incarceration of Nicholas Tartaglione

10. In a superseding indictment filed on April 16, 2019, Nicholas Tartaglione was charged with one count of conspiracy to distribute narcotics, in violation of Title 21, United States Code, Section 846; four counts of intentional killing in furtherance of a drug trafficking crime, in violation of Title 21, United States Code, Section 848(e)(1)(A) and Title 18, United States Code, Section 2; three counts of murder through the use of a firearm in furtherance of a drug trafficking crime, in violation of Title 18, United States Code, Sections 924(j) and 2; one count of conspiracy to commit kidnapping, in violation of Title 18, United States Code, Section 1201; four counts of kidnapping resulting in death, in violation of Title 18, United States Code, Sections 1201(a)(1) and 2; and four counts of using a facility of interstate commerce to commit a crime of violence in violation of Title 18, United States Code, Sections 1952 and 2. These charges arise from the April 2016 murders of Martin Luna, Miguel Luna, Urbano Santiago, and Hector Gutierrez. On April 19, 2019, USAO-SDNY filed a Notice of Intent to Seek the Death Penalty against Tartaglione. The *Tartaglione* case is pending before the Honorable Kenneth M. Karas. No trial date has been set.

11. Tartaglione has been detained since he was arrested on December 19, 2016. For certain periods of his detention, including in July 2019, Tartaglione was housed at the MCC. In early July 2019, Tartaglione was transferred to the MCC's SHU. For a time, including on July 23, 2019, Tartaglione was housed in the same SHU cell as Jeffrey Epstein.

Records Withheld from Disclosure Pursuant to FOIA Exemption 7(A) on

Account of Likely Interference with *Noel*

12. 5 U.S.C. § 522 (b)(7)(A) ("Exemption 7(A)") exempts from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production

of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings . . .”

13. I and the prosecutors responsible for the *Noel* prosecution have reviewed each of the records responsive to the FOIA requests withheld in full or in part under Exemption 7(A), including those reflected on the index prepared by BOP and attached to the declaration of Kara Christenson (the “BOP index”). All of these records fall within the scope of Exemption 7(A).

14. Public disclosure of the records withheld under Exemption 7(A) could reasonably be expected to interfere with the pending prosecutions of Noel and Thomas. These records include information about which numerous witnesses are expected to testify at trial, include details that are not publicly known or known to other witnesses, and include information and documents authored by potential trial witnesses. These records also include potential trial exhibits, which some or all potential trial witnesses have not seen, and premature disclosure of those materials could influence witness testimony at trial, or enable witnesses to change or shape their testimony. Premature disclosure of these records and/or the information contained therein could reasonably be expected to influence witnesses’ potential testimony at trial and/or allow witnesses to alter their testimony to conform to other evidence.

15. Further, premature public disclosure of the records withheld under Exemption 7(A) could reasonably be expected to impair the government’s (and the defendants’) ability to seat a fair and impartial jury in *Noel*. The government anticipates that some of the records withheld under Exemption 7(A) will be entered into evidence as exhibits at trial, and other records that may not be trial exhibits bear on the contents of potential trial exhibits. Premature disclosure of these records, or the information contained therein, could influence potential jurors’ understanding of the evidence at trial and the case overall. Similarly, premature disclosure of the records could prejudice potential jurors for or against the defendants in the *Noel* action, which

would also impair the government's (and the defendants') ability to seat a fair and impartial jury. In addition, as noted above, these records include specific information about which witnesses are expected to testify at trial, as well as information and documents authored by potential trial witnesses, such that premature public disclosure could reasonably be expected to influence potential jurors' perception of the witnesses and the evidence to be presented at trial.

16. The risks of interference with the *Noel* proceedings are heightened by the media coverage of speculation and theories about Epstein's death. Many publicly-discussed theories of Epstein's death are unfounded. Premature release of the withheld records, particularly if the records are released in part or without full context, may influence the perception of jurors who have been exposed to such media coverage of speculation and theories.

*Non-Email Records Withheld Pursuant to Exemption 7(A) on
Account of Likely Interference with Noel*

17. The considerations discussed above apply to each of the categories of responsive non-email records withheld in full or in part by BOP under Exemption 7(A).

18. First, the government anticipates that MCC staffing records, including overtime logs and daily assignment rosters for the MCC on July 22, July 23 August 9, and 10, 2019 and some of the dates in between, will be the subject of witness testimony at the *Noel* trial. In addition, the government anticipates that some of these documents will be trial exhibits. Releasing these materials prematurely could reasonably be expected to influence witnesses' potential testimony at trial, allow witnesses to alter their testimony to conform to other evidence, or influence potential jurors' perceptions of witness testimony or evidence.

19. Second, the government anticipates that reports and memoranda prepared by BOP, such as the reports, memoranda, photographs, and evidence of Epstein's July 23, 2019 apparent suicide attempt; reports, memoranda, and letters concerning Epstein's August 10, 2019

suicide and surrounding events; documents in BOP's possession from the New York City Office of Chief Medical Examiner; and reports and letters concerning MCC's and BOP's response to Epstein's death, may be trial exhibits, the subject of witness testimony, or were prepared by witnesses who will testify at trial. Premature disclosure of these materials could reasonably be expected to influence witnesses' potential testimony at trial, allow witnesses to alter their testimony to conform to other evidence, or influence potential jurors' perceptions of witness testimony or evidence. Alternatively, if evidence of Epstein's July 23, 2019 suicide attempt or August 10, 2019 suicide and surrounding events is excluded from evidence at trial, pre-trial publication of these materials would risk exposing potential jurors for or against the defendants in the *Noel* action on the basis of material they would otherwise not be shown during trial, which would impair the government's (and the defendants') ability to seat a fair and impartial jury.

20. Third, the government anticipates that certain medical and psychological records of Epstein prepared by BOP may be trial exhibits, the subject of witness testimony, and/or were prepared by witnesses who will testify at trial. Premature disclosure of these records could influence the testimony of potential witnesses, including by potentially causing them to alter or confirm their testimony. In addition, premature disclosure of these records could reasonably be expected to prejudice potential jurors for or against the defendants in the *Noel* action, which would impair the government's (and the defendants') ability to seat a fair and impartial jury.

21. Fourth, the government anticipates that documents related to counts of inmates, including logs, count slips, and rosters, and other entries in BOP logs for August 9 and 10 may be trial exhibits, the subject of witness testimony, and/or were prepared by witnesses who will testify at trial. Premature disclosure of these materials could reasonably be expected to influence witnesses' potential testimony at trial, allow witnesses to alter their testimony to conform to other evidence, and/or influence potential jurors' perceptions of witness testimony or evidence.

22. Fifth, the government anticipates that an August 8, 2019, review of inmates in the SHU prepared by BOP may be a trial exhibit, the subject of witness testimony, and/or was prepared by witnesses who will testify at trial. Premature disclosure of this record could reasonably be expected to influence witnesses' potential testimony at trial and/or allow witnesses to alter their testimony to conform to other evidence.

Email Records Withheld Pursuant to Exemption 7(A) on

Account of Likely Interference with Noel

23. The considerations discussed above also apply to each of the categories of responsive email documents withheld in full or in part by BOP under Exemption 7(A).

24. First, emails pertaining to Epstein's July 23, 2019 apparent suicide attempt, his incarceration prior to his suicide, and his mental health, including emails written by BOP's Psychology Services, discuss topics and information that the government anticipates may be the subject of witness testimony at the *Noel* trial. Their disclosure could influence witness testimony, including by allowing witnesses to alter their testimony to conform to other evidence, or influence potential jurors' perceptions of witness testimony or evidence. Alternatively, as described above, if evidence of Epstein's July 23, 2019 suicide attempt or is excluded from evidence at trial, pre-trial publication of these materials would risk exposing potential jurors for or against the defendants in the *Noel* action on the basis of material they would otherwise not be shown during trial, which would impair the government's (and the defendants') ability to seat a fair and impartial jury.

25. Second, emails relating to Epstein's death, investigations into Epstein's death, the circumstances of his suicide, and the BOP's response to Epstein's death discuss topics and information that the government anticipates will be relevant to and/or the subject of witness testimony at the *Noel* trial. Their disclosure could influence witness testimony, including by

allowing witnesses to alter their testimony to conform to other evidence, or influence potential jurors' perceptions of witness testimony or evidence. Alternatively, as described above, if evidence of Epstein's suicide is excluded from evidence at trial, pre-trial publication of these materials would risk exposing potential jurors for or against the defendants in the *Noel* action on the basis of material they would otherwise not be shown during trial, which would impair the government's (and the defendants') ability to seat a fair and impartial jury.

26. Providing more detailed public descriptions of the withheld documents and how their release would interfere with the *Noel* prosecution would itself risk interfering with the *Noel* prosecution. For example, public disclosure of more detailed descriptions of the documents anticipated to be proffered as exhibits at trial, or that bear on other trial exhibits, would disclose elements of the Government's trial strategy in *Noel*, including its selection of trial exhibits and the anticipated content of witness testimony. More detailed public descriptions could also prematurely disclose how the prosecution team expects the trial to proceed.

Records Withheld Pursuant to Exemption 7(A) on

Account of Likely Interference With *Tartaglione*

27. In the course of reviewing the responsive records that BOP has withheld pursuant to Exemption 7(A), prosecutors in the Criminal Division of the USAO-SDNY determined that certain of the records refer to or discuss Tartaglione (the "Tartaglione Records"). Upon determining that some of the records withheld by BOP refer to or discuss Tartaglione, USAO-SDNY reviewed these records to determine whether their release would interfere with the pending criminal action against Tartaglione. USAO-SDNY has concluded that release of certain of the withheld records could reasonably be expected to interfere with the prosecution of Tartaglione. This constitutes a basis to withhold these records under Exemption 7(A), independent from the likely interference with the *Noel* prosecution discussed above.

28. The Tartaglione Records fall within several categories of responsive documents withheld by BOP and include reports and evidence of Epstein's July 23, 2019 apparent suicide attempt; reports and evidence of Epstein's death on August 10, 2019; email correspondence between Tartaglione's attorneys and legal counsel at the MCC; and medical and psychological records of Epstein prepared by BOP. The Tartaglione Records also include emails pertaining to Epstein's July 23, 2019 apparent suicide attempt, Epstein's mental and physical health, and Epstein's incarceration prior to his suicide.

29. The Tartaglione Records fall within the scope of 7(A) because their disclosure could reasonably be expected to interfere with the prosecution of Tartaglione. The Tartaglione Records contain, among other things, information about Tartaglione's incarceration, including the period of time during which Tartaglione was Epstein's cellmate at the MCC, which includes the date of Epstein's apparent suicide attempt on July 23, 2019. The conditions of Tartaglione's confinement at the MCC, as well as his interactions with Epstein in July 2019, have been put directly at issue by Tartaglione's defense counsel, specifically in connection with the potential penalty phase of the case against Tartaglione. *See* Letter dated January 13, 2010, Dkt. No. 186, *United States v. Tartaglione*, No. 16 Cr. 832 (KMK); Letter dated January 21, 2020, Dkt. No. 193, *United States v. Tartaglione*, No. 16 Cr. 832 (KMK). In light of defense counsel's position, information contained in the Tartaglione Records may be relevant evidence in any possible penalty phase of the case against Tartaglione, and as a result, premature public disclosure of the Tartaglione Records could reasonably be expected to influence witness testimony and/or potential jurors' perceptions of witness testimony or evidence.

30. Moreover, the nature of the charges against Epstein and the circumstances of his apparent suicide attempt and death create a risk that premature public disclosure of the Tartaglione Records could reasonably be expected to impair the government's (and the

defendants') ability to seat a fair and impartial jury in *Tartaglione*, particularly for purposes of a potential penalty-phase hearing required by 18 U.S.C. § 3593, by influencing potential juror perceptions of any interactions between Epstein and Tartaglione.

31. The risks of interference with the *Tartaglione* proceedings are heightened by the media coverage of speculation and theories about Epstein's death. As noted previously, many publicly-discussed theories of Epstein's death are unfounded. The public dissemination of these theories increases the risk that premature release of the Tartaglione Records could influence witness testimony or jurors' perceptions, if records are released in part or without full context.

32. The Tartaglione Records include several categories of records withheld by BOP. Specifically, the government anticipates that premature disclosure of the reports and evidence of Epstein's July 23, 2019 apparent suicide attempt; an inmate investigative report prepared prior to Epstein's death; reports and evidence of Epstein's death on August 10, 2019; email correspondence between Tartaglione's attorneys and legal counsel at the MCC; the August 8, 2019 review of inmates in the SHU at MCC; and the medical and psychological records of Epstein prepared by BOP, including documents pertaining to his mental health, could reasonably be expected to adversely affect the *Tartaglione* proceedings and influence potential jurors' perceptions of Tartaglione, thereby impairing the district court's ability to seat a fair and impartial jury. In addition, emails pertaining to Epstein's July 23, 2019 apparent suicide attempt, Epstein's mental health, and Epstein's incarceration prior to his suicide, including emails that involve members of the defense or prosecution teams in *Tartaglione*, discuss topics and information that could adversely affect the *Tartaglione* proceedings and influence potential juror's perceptions of Tartaglione. These records likewise could reasonably be expected to impair the district court's ability to seat a fair and impartial jury.

33. Providing more detailed public descriptions of the withheld documents and how their release would affect the *Tartaglione* prosecution would itself risk interfering with the *Tartaglione* prosecution. For example, public disclosure of more detailed descriptions would potentially implicate and publicize associations, interactions, or perceptions of associations or interactions between Tartaglione and Epstein, thereby risking influencing potential jurors in proceedings against Tartaglione, including for any sentencing hearing required by 18 U.S.C. § 3593.

Segregability

34. The records withheld in full under Exemption 7(A) are exempt from disclosure in their entirety under Exemption 7(A). To the extent the records contain any non-exempt information, such information is inextricably intertwined with information that could reasonably be expected to interfere with the *Noel* and/or *Tartaglione* prosecutions for the reasons discussed above. The media coverage of speculation and theories about Epstein's death makes the segregation of any possibly non-exempt information particularly difficult because providing information pertaining to Epstein (or Tartaglione and Epstein) without complete context can reasonably be expected to contribute to the dissemination of speculation and theories about his death. This, in turn, could reasonably be expected to interfere with the district court's ability to seat a fair and impartial jury in proceedings against Noel, Thomas, and/or Tartaglione, including for any sentencing hearing required by 18 U.S.C. § 3593, for the reasons discussed above.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 5 day of August 2020.



Russell Capone
Counsel to the Acting United States Attorney
United States Attorney's Office for the
Southern District of New York

Exhibit A

JUDGE TORRES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ORIGINAL

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UNITED STATES OF AMERICA :

INDICTMENT

- v. -

: 19 Cr. 19 CRIM 830

TOVA NOEL and
MICHAEL THOMAS,

:

Defendants.

:

X

INTRODUCTION

1. On or about August 10, 2019, TOVA NOEL and MICHAEL THOMAS, the defendants, in dereliction of their duties as correctional officers at the Metropolitan Correctional Center ("MCC"), repeatedly failed to perform mandated counts of prisoners under their watch in the MCC's Special Housing Unit ("SHU"). Instead, for substantial portions of their shifts, NOEL and THOMAS sat at their desk, browsed the internet, and moved around the common area of the SHU. To conceal their failure to perform their duties, NOEL and THOMAS repeatedly signed false certifications attesting to having conducted multiple counts of inmates when, in truth and in fact, they never conducted such counts. As a result of those false statements, the MCC believed prisoners in the SHU were being regularly monitored and accounted for when, in fact, as a result of the defendants' conduct, no correctional officer conducted any count or round of the SHU from approximately 10:30

p.m. on August 9 until approximately 6:30 a.m. on August 10, at which time, as alleged herein, NOEL and THOMAS discovered the body of an MCC inmate, Jeffrey Epstein, who had committed suicide overnight while unobserved.

RELEVANT INDIVIDUALS AND ENTITIES

2. The MCC is a federal administrative detention facility located in Manhattan that is run by the Federal Bureau of Prisons ("BOP"). The MCC is one of several facilities used to house inmates who have been charged with federal crimes in the Southern District of New York and are awaiting trial. The MCC employs correctional officers, whose primary duty is to ensure the care, custody, and control of the inmate population of the MCC.

3. TOVA NOEL, the defendant, has been employed as a correctional officer at the MCC since approximately 2016. As of August 2019, NOEL's primary assignment was the SHU. On August 9, 2019, NOEL worked a regular shift from 4 p.m. to 12 a.m. in the SHU, and then worked an overtime shift from 12 a.m. to 8 a.m. on August 10, 2019, also in the SHU. NOEL had also worked a regular shift in the SHU the day before, August 8, 2019, from 12 p.m. to 8 p.m.

4. MICHAEL THOMAS, the defendant, has been employed as a correctional officer at the MCC since approximately 2007. Beginning in approximately 2013, THOMAS was assigned to work as a

materials handler supervisor, although THOMAS regularly worked overtime shifts as a correctional officer, including in the SHU. THOMAS worked an overtime shift in the SHU on August 10, 2019, from 12 a.m. to 8 a.m. THOMAS did not work his regular shift on August 8 or August 9, 2019, but did work an overtime shift in the SHU on August 9, 2019 from 12 a.m. to 8 a.m.

5. As detailed herein, Jeffrey Epstein was incarcerated at the MCC between his arrest on July 6, 2019, and his suicide on August 10, 2019. Epstein was detained pending trial in the Southern District of New York on sex trafficking charges.

THE MCC AND INSTITUTIONAL COUNTS

6. The MCC, which houses approximately 750 inmates at any given time, assigns inmates to various housing units within the MCC. The SHU is a housing unit within the MCC where inmates are securely separated from the general inmate population to ensure their own safety as well as the safety of staff and other inmates. The SHU is located on the ninth floor of the MCC, and access to that floor is controlled by a locked door that can be opened remotely only by an officer in the MCC's centralized control center (the "Control Center"), which is located on the first floor of the MCC. Access into the SHU is also controlled by a second locked door to which only correctional officers assigned to the SHU have

keys while on duty. Within the SHU, inmates are assigned to six separate tiers, each of which can be accessed only via a single locked door to which the correctional officers assigned to the SHU have keys while on duty. Each tier has eight cells, each of which can house either one or two prisoners, and each individual cell - which is made of cement and metal - is accessed only through a single locked door, to which only correctional officers assigned to the SHU have keys while on duty.

7. The BOP requires correctional officers assigned to guard inmates at the MCC to conduct institution-wide counts of inmates at regular, scheduled intervals to ensure that each inmate is alive and accounted for within the MCC (the "institutional count"). On weekdays, the MCC conducts five institutional counts at 4 p.m., 10 p.m., 12 a.m., 3 a.m., and 5 a.m. Performing an institutional count is one of the most basic and essential aspects of a correctional officer's job, and the count is one of the most basic and essential functions of daily operation of the MCC. Two officers are required to perform the institutional count for each housing unit, including the SHU, and are further required to document their performance of the count on an official MCC form called a count slip. To perform the institutional count in the SHU, two officers must walk from tier to tier to observe and count each individual inmate.

8. On the count slip, both correctional officers are required to fill in the date and time the count was performed, write the total number of inmates physically present in the unit counted, and then sign the count slip. Once the correctional officers have completed and signed the count slips, the count slips are then collected and delivered to the Control Center, where officers within the Control Center are responsible for comparing the count slips from each housing unit to the institution's inmate roster to ensure that each inmate is accounted for. Only after all the count slips are collected from each housing unit, and the numbers on the slips are matched to the institution's inmate roster, can the institutional count be deemed "cleared" or completed. If a housing unit's count slip is incorrect or incomplete, then the institution cannot "clear" the count. Instead, the count must be completely redone in that housing unit via a more-intensive version of the institutional count called a "bed book count," in which officers must compare every individual inmate to the institution's inmate roster. Records of each institutional count, including the count slips, are provided to a supervising official and retained by the MCC.

9. In addition to the institutional count, the BOP requires correctional officers assigned to the SHU to walk each of the tiers of the SHU - which is called a "round" - every thirty

minutes ("30-minute rounds"). Like the institutional counts, correctional officers conduct 30-minute rounds to ensure that each inmate is alive and accounted for within his cell. Correctional officers working in the SHU are required to complete a form, which is reviewed and signed by their supervisor, documenting the date and time of each 30-minute round in each tier of the SHU.

EPSTEIN'S PRIOR APPARENT SUICIDE ATTEMPT

10. On July 6, 2019, inmate Jeffrey Epstein was arrested and detained at the MCC on sex trafficking charges. On July 10, 2019, Epstein was assigned to the SHU due to, among other things, risk factors for suicidality and safety concerns relating to housing him with the MCC's general population.

11. On July 23, 2019, while Epstein was housed in the SHU, MCC officers responded to an emergency call, and found Epstein on the floor of his cell with a strip of bedsheet around his neck. MICHAEL THOMAS, the defendant, was one of the MCC officers who responded to the incident. Epstein was subsequently transferred out of the SHU and was placed on suicide watch. Inmates placed on suicide watch are housed in a cell on the hospital wing floor of the MCC, and are watched twenty-four hours a day by a staff member or a specially trained inmate companion.

12. Epstein remained on suicide watch for approximately twenty-four hours, and then was transferred to psychological

observation, until July 30, 2019. Psychological observation is less restrictive than suicide watch, but inmates are still housed in the hospital wing of the MCC and watched twenty-four hours a day.

13. On July 30, 2019, Epstein was transferred back to the SHU, and, at the direction of the MCC's psychological staff, was required to have an assigned cellmate. Epstein was also assigned to the cell closest to the correctional officers' desk in the common area of the SHU, which was approximately fifteen feet from the cell. Conducting the required institutional counts and thirty-minute rounds in the SHU were also part of the MCC's procedures for ensuring the safety of inmates, including Epstein.

EVENTS OF AUGUST 9-10, 2019

14. On August 9, 2019, Epstein's cellmate was transferred out of the MCC in a routine, pre-arranged transfer at approximately 8 a.m. Despite the MCC's psychological staff's direction that Epstein have a cellmate, no new cellmate was assigned to Epstein's cell.

15. TOVA NOEL, the defendant, was one of the assigned officers on duty in the SHU from 4 p.m. on August 9, 2019 to 8 a.m. on August 10. From 4 p.m. to 12 a.m., two other officers were on duty with NOEL in the SHU: one officer was assigned to work from 2 p.m. to 10 p.m. ("Officer-1"), and one officer was

assigned to work from 4 p.m. to 12 a.m. ("Officer-2"). MICHAEL THOMAS, the defendant, started his shift in the SHU at 12 a.m. on August 10. From 12 a.m. until 8 a.m. on August 10, NOEL and THOMAS were the only two officers on duty in the SHU.

16. During the time period from 4 p.m. on August 9 to 8 a.m. on August 10, the officers on duty in the SHU, including TOVA NOEL and MICHAEL THOMAS, the defendants, were responsible for conducting five institutional counts: 4 p.m. and 10 p.m. on August 9; and 12 a.m., 3 a.m., and 5 a.m. on August 10. NOEL, THOMAS and the other officers on duty were also responsible for completing paperwork attesting to each of those counts. While, as detailed herein, count slips were completed for each institutional count, in fact, not a single one of those institutional counts was done.

17. TOVA NOEL, the defendant, and Officer-1 were responsible for conducting the 4 p.m. institutional count in the SHU. As video from the MCC's internal video surveillance system makes clear, NOEL and Officer-1 did not perform the 4 p.m. count. Nonetheless, NOEL and Officer-1 completed and signed a count slip that falsely stated that the 4 p.m. institutional count had been performed. In reliance on that falsified count slip, at approximately 5:03 p.m., the Control Center cleared the 4 p.m. count.

18. That evening, Epstein returned to the SHU from his attorney visit and was escorted into his cell by TOVA NOEL, the defendant, and another officer at approximately 7:49 p.m. NOEL and the other officer left the tier in which Epstein was housed immediately thereafter.

19. By or before 10 p.m., all inmates in the MCC were locked in their cells for the night. At or around that time, TOVA NOEL, the defendant, and Officer-2 were responsible for conducting the 10 p.m. institutional count in the SHU. However, video from the MCC's internal video surveillance system shows that NOEL and Officer-2 did not perform the 10 p.m. count. Nonetheless, NOEL and Officer-2 completed and signed a count slip falsely stating that the 10 p.m. institutional count had been performed. In reliance on that falsified count slip, at approximately 10:36 p.m., the Control Center cleared the 10 p.m. count.

20. As reflected on video obtained from the MCC's internal video surveillance system, at approximately 10:30 p.m. on August 9, 2019 - after TOVA NOEL, the defendant, had signed and submitted the 10 p.m. count slip and the institutional count had been completed - NOEL briefly walked up to, and then walked back from, the door to the tier in which Epstein was housed. As confirmed by the video obtained from the MCC's internal video surveillance system, this was the last time anyone, including any

correctional officer, walked up to, let alone entered, the only entrance to the tier in which Epstein was housed until approximately 6:30 a.m. on August 10.

21. Officer-1's shift ended at approximately 10 p.m., and at approximately 12 a.m., MICHAEL THOMAS, the defendant, replaced Officer-2, joining TOVA NOEL, the defendant, as the only two correctional officers on duty in the SHU. NOEL and THOMAS were responsible for conducting the 12 a.m. institutional count in the SHU. As confirmed by video from the MCC's internal video surveillance system, NOEL and THOMAS did not perform the 12 a.m. count. Nonetheless, NOEL and THOMAS completed and signed a count slip for the 12 a.m. count that falsely stated that the institutional count had been performed. In reliance on that falsified count slip, at approximately 12:49 a.m., the Control Center cleared the 12 a.m. count.

22. TOVA NOEL and MICHAEL THOMAS, the defendants, were additionally responsible for conducting the 3 a.m. and 5 a.m. institutional counts in the SHU. As confirmed by video from the MCC's internal video surveillance system, NOEL and THOMAS did not perform either the 3 a.m. or the 5 a.m. counts. NOEL and THOMAS nonetheless completed and signed count slips for both counts that falsely stated that they had performed the 3 a.m. and 5 a.m. institutional counts. In reliance on those falsified count slips,

at approximately 3:24 a.m. and 5:30 a.m., the Control Center cleared the 3 a.m. and 5 a.m. counts, respectively.

23. Moreover, despite the requirement that officers on duty in the SHU conduct and document regular, 30-minute rounds, TOVA NOEL and MICHAEL THOMAS, the defendants, did not perform any of the required 30-minute rounds during their shift between approximately 12 a.m. and 6:30 a.m. Nonetheless, NOEL completed and signed more than 75 separate 30-minute round entries falsely affirming that they had, in fact, conducted such rounds.

24. During the night, instead of completing the required counts and rounds, TOVA NOEL and MICHAEL THOMAS, the defendants, were seated at the correctional officers' desk in the SHU common area (as noted above, approximately 15 feet from Epstein's cell), used the computers, and moved around the SHU common area. For a period of approximately two hours, NOEL and THOMAS sat at their desk without moving, and appeared to have been asleep. NOEL used the computer periodically throughout the night, including to search the internet for furniture sales and benefit websites. THOMAS used the computer briefly around 1 a.m., 4 a.m., and 6 a.m. to search for motorcycle sales and sports news.

25. At approximately 4 a.m., the overnight supervisor briefly visited NOEL and THOMAS in the SHU, and conferred with NOEL and THOMAS, who were seated at and around the officers' desk,

before leaving. At approximately 5:30 a.m., another correctional officer briefly walked through the SHU common area. Aside from those two officers, as confirmed by video surveillance, no one else entered the SHU, no one conducted any counts or rounds throughout the night, and no one entered the tier in which Epstein was housed.

26. Shortly after 6 a.m. on August 10, 2019, MICHAEL THOMAS and TOVA NOEL, the defendants, received a delivery of breakfast carts into the SHU, after which time they were again the only officers in the SHU. Shortly after 6:30 a.m., NOEL and THOMAS walked up to and entered the tier in which Epstein was housed to serve breakfast. At approximately 6:33 a.m., an alarm was activated in the SHU. Epstein was alone in his cell and not responsive, with a noose around his neck. A supervisor who had just started his shift ("Supervisor-1") responded to the alarm almost immediately thereafter, and as NOEL approached the door to the SHU to open the door for Supervisor-1, NOEL told Supervisor-1 that "Epstein hung himself." After arriving in the SHU, Supervisor-1 spoke with THOMAS and NOEL. NOEL told Supervisor-1 "we did not complete the 3 a.m. nor 5 a.m. rounds." THOMAS stated, "we messed up," and "I messed up, she's not to blame, we didn't do any rounds."

27. Epstein was transferred to a local hospital where he was declared dead shortly thereafter. The Office of the Chief Medical Examiner of the City of New York conducted an autopsy and determined that Epstein had committed suicide by hanging himself.

STATUTORY ALLEGATIONS

COUNT ONE
(Conspiracy)

The Grand Jury charges:

28. The Grand Jury incorporates the allegations contained in paragraphs 1 through 27 of this Indictment as though fully set forth herein.

29. In or about August 2019, in the Southern District of New York, TOVA NOEL and MICHAEL THOMAS, the defendants, knowingly conspired with each other to:

a. Knowingly defraud the United States by impairing, obstructing, and defeating the lawful functions of a department or agency of the United States, to wit, the MCC's function to ensure the care, custody, and control of its inmate population.

b. Knowingly make and use a false writing or document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any

department or agency of the United States, in violation of Title 18, United States Code, Section 1001 (a) (3).

30. In furtherance of the conspiracy and to effect the illegal objects thereof, TOVA NOEL and MICHAEL THOMAS, the defendants, committed the following overt acts, among others, in the Southern District of New York:

a. On August 10, 2019, NOEL and THOMAS falsely certified, on an MCC count slip, that they had performed the 12 a.m. institutional count of the SHU, when they had not in fact done so.

b. On August 10, 2019, NOEL and THOMAS falsely certified, on an MCC count slip, that they had performed the 3 a.m. institutional count of the SHU, when they had not in fact done so.

c. On August 10, 2019, NOEL and THOMAS falsely certified, on an MCC count slip, that they had performed the 5 a.m. institutional count of the SHU at MCC, when they had not in fact done so.

d. On August 10, 2019, NOEL falsely certified that she and THOMAS had performed a series of 30-minute rounds of the SHU between 12 a.m. and 6:30 a.m., when they had not in fact done so.

(Title 18, United States Code, Section 371)

COUNT TWO
(False Records - 4 p.m. Count)

The Grand Jury further charges:

31. The Grand Jury incorporates the allegations contained in paragraphs 1 through 27 of this Indictment as though fully set forth herein.

32. On or about August 9, 2019, in the Southern District of New York, TOVA NOEL, the defendant, willfully and knowingly did make and use a false writing or document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States, and did attempt to do the same, to wit, NOEL created, signed, and submitted to the MCC a materially false count slip indicating that she had performed the 4 p.m. institutional count of the SHU, when she had not in fact done so.

(Title 18, United States Code, Sections 1001(a)(3) and 2)

COUNT THREE
(False Records - 10 p.m. Count)

The Grand Jury further charges:

33. The Grand Jury incorporates the allegations contained in paragraphs 1 through 27 of this Indictment as though fully set forth herein.

34. On or about August 9, 2019, in the Southern District of New York, TOVA NOEL, the defendant, willfully and knowingly did make and use a false writing or document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States, and did attempt to do the same, to wit, NOEL created, signed, and submitted to the MCC a materially false count slip indicating that she had performed the 10 p.m. institutional count of the SHU, when she had not in fact done so.

(Title 18, United States Code, Sections 1001(a)(3) and 2)

COUNT FOUR
(False Records - 12 a.m. Count)

The Grand Jury further charges:

35. The Grand Jury incorporates the allegations contained in paragraphs 1 through 27 of this Indictment as though fully set forth herein.

36. On or about August 10, 2019, in the Southern District of New York, TOVA NOEL and MICHAEL THOMAS, the defendants, willfully and knowingly did make and use a false writing or document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry with the intent to impede, obstruct, or influence the investigation or proper

administration of any matter within the jurisdiction of any department or agency of the United States, and did attempt to do the same, to wit, NOEL and THOMAS created, signed, and submitted to the MCC a materially false count slip indicating that they had performed the 12 a.m. institutional count of the SHU, when they had not in fact done so.

(Title 18, United States Code, Sections 1001(a)(3) and 2)

COUNT FIVE
(False Records - 3 a.m. Count)

The Grand Jury further charges:

37. The Grand Jury incorporates the allegations contained in paragraphs 1 through 27 of this Indictment as though fully set forth herein.

38. On or about August 10, 2019, in the Southern District of New York, TOVA NOEL and MICHAEL THOMAS, the defendants, willfully and knowingly did make and use a false writing or document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States, and did attempt to do the same, to wit, NOEL and THOMAS created, signed, and submitted to the MCC a materially false count slip indicating that they had

performed the 3 a.m. institutional count of the SHU, when they had not in fact done so.

(Title 18, United States Code, Sections 1001(a)(3) and 2)

COUNT SIX
(False Records - 5 a.m. Count)

The Grand Jury further charges:

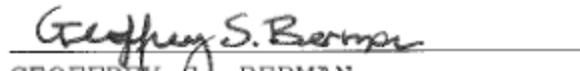
39. The Grand Jury incorporates the allegations contained in paragraphs 1 through 27 of this Indictment as though fully set forth herein.

40. On or about August 10, 2019, in the Southern District of New York, TOVA NOEL and MICHAEL THOMAS, the defendants, willfully and knowingly did make and use a false writing or document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States, and did attempt to do the same, to wit, NOEL and THOMAS created, signed, and submitted to the MCC a materially false count slip indicating that they had

performed the 5 a.m. institutional count of the SHU, when they had not in fact done so.

(Title 18, United States Code, Sections 1001(a)(3) and 2)


Tracy M. Miller
FOREPERSON


Geoffrey S. Berman
GEOFFREY S. BERMAN
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

TOVA NOEL and
MICHAEL THOMAS,

Defendants.

INDICTMENT

19 Cr.

Title 18, United States Code,
Sections 371, 1001(a)(3), and 2.

GEOFFREY S. BERMAN
United States Attorney

A TRUE BILL


Foreperson.

2 Arrest warrants
Indictment Filed
Assigned to Judge Torres
Hon. Sarah Netburn, USMJ



11/19/19

Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x
UNITED STATES OF AMERICA : SUPERSEDING INDICTMENT
: S4 16 Cr. 832 (KMK)
- v. - :
NICHOLAS TARTAGLIONE, :
: Defendant.
: - - - - - x

COUNT ONE

The Grand Jury charges:

1. From at least in or about 2015, up to and including in or about April 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to violate the narcotics laws of the United States.

2. It was a part and an object of the conspiracy that NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, would and did distribute and possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

3. The controlled substance that NICHOLAS TARTAGLIONE, the defendant, conspired to distribute and possess with intent to distribute was 5 kilograms and more of mixtures

and substances containing a detectable amount of cocaine, in violation of Title 21, United States Code, Section 841(b)(1)(A).

(Title 21, United States Code, Section 846.)

COUNT TWO

The Grand Jury further charges:

4. In or about April 2016, in the Southern District of New York, while engaged in an offense punishable under Section 841(b)(1)(A) of Title 21, United States Code, to wit, a conspiracy to distribute, and to possess with the intent to distribute, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, NICHOLAS TARTAGLIONE, the defendant, intentionally and knowingly killed, and counseled, commanded, induced, procured, and caused the intentional killing of Martin Luna, in and around a bar known as the Likquid Lounge at 69 Brookside Avenue, Chester, New York (the "Likquid Lounge"), and did aid and abet the same.

(Title 21, United States Code, Section 848(e)(1)(A); Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

5. In or about April 2016, in the Southern District of New York, while engaged in an offense punishable under Section 841(b)(1)(A) of Title 21, United States Code, to wit, a conspiracy to distribute, and to possess with the intent to

distribute, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, NICHOLAS TARTAGLIONE, the defendant, intentionally and knowingly killed, and counseled, commanded, induced, procured, and caused the intentional killing of Urbano Santiago, in and around the vicinity of 419 Old Mountain Road in Otisville, New York, and did aid and abet the same.

(Title 21, United States Code, Section 848(e)(1)(A);
Title 18, United States Code, Section 2.)

COUNT FOUR

The Grand Jury further charges:

6. In or about April 2016, in the Southern District of New York, while engaged in an offense punishable under Section 841(b)(1)(A) of Title 21, United States Code, to wit, a conspiracy to distribute, and to possess with the intent to distribute, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, NICHOLAS TARTAGLIONE, the defendant, intentionally and knowingly killed, and counseled, commanded, induced, procured, and caused the intentional killing of Miguel Luna, in and around the vicinity of 419 Old Mountain Road in Otisville, New York, and did aid and abet the same.

(Title 21, United States Code, Section 848(e)(1)(A);
Title 18, United States Code, Section 2.)

COUNT FIVE

The Grand Jury further charges:

7. In or about April 2016, in the Southern District of New York, while engaged in an offense punishable under Section 841(b)(1)(A) of Title 21, United States Code, to wit, a conspiracy to distribute, and to possess with the intent to distribute, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, NICHOLAS TARTAGLIONE, the defendant, intentionally and knowingly killed, and counseled, commanded, induced, procured, and caused the intentional killing of Hector Gutierrez, in and around the vicinity of 419 Old Mountain Road in Otisville, New York, and did aid and abet the same.

(Title 21, United States Code, Section 848(e)(1)(A);
Title 18, United States Code, Section 2.)

COUNT SIX

The Grand Jury further charges:

8. On or about April 11, 2016, in the Southern District of New York, NICHOLAS TARTAGLIONE, the defendant, willfully and knowingly, during and in relation to a drug trafficking crime for which he may be prosecuted in a court of the United States, namely, the narcotics conspiracy charged in Count One of this Indictment, did use and carry a firearm, and, in furtherance of such drug trafficking crime, did possess a

firearm, and in the course of that drug trafficking crime did, through the use of a firearm, cause the death of Urbano Santiago, which killing was murder as defined in Title 18, United States Code, Section 1111(a), and did aid and abet the same.

(Title 18, United States Code, Sections 924(j) and 2.)

COUNT SEVEN

The Grand Jury further charges:

9. On or about April 11, 2016, in the Southern District of New York, NICHOLAS TARTAGLIONE, the defendant, willfully and knowingly, during and in relation to a drug trafficking crime for which he may be prosecuted in a court of the United States, namely, the narcotics conspiracy charged in Count One of this Indictment, did use and carry a firearm, and, in furtherance of such drug trafficking crime, did possess a firearm, and in the course of that drug trafficking crime did, through the use of a firearm, cause the death of Miguel Luna, which killing was murder as defined in Title 18, United States Code, Section 1111(a), and did aid and abet the same.

(Title 18, United States Code, Sections 924(j) and 2.)

COUNT EIGHT

The Grand Jury further charges:

10. On or about April 11, 2016, in the Southern District of New York, NICHOLAS TARTAGLIONE, the defendant,

willfully and knowingly, during and in relation to a drug trafficking crime for which he may be prosecuted in a court of the United States, namely, the narcotics conspiracy charged in Count One of this Indictment, did use and carry a firearm, and, in furtherance of such drug trafficking crime, did possess a firearm, and in the course of that drug trafficking crime did, through the use of a firearm, cause the death of Hector Gutierrez, which killing was murder as defined in Title 18, United States Code, Section 1111(a), and did aid and abet the same.

(Title 18, United States Code, Sections 924(j) and 2.)

COUNT NINE

The Grand Jury further charges:

11. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, unlawfully and knowingly did conspire to violate Title 18, United States Code, Section 1201.

12. It was a part and an object of the conspiracy that NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, would and did unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and carry away and hold for ransom and reward and otherwise a person, and used a means, facility, and instrumentality of interstate and foreign commerce in committing

and in furtherance of the commission of the offense, to wit, TARTAGLIONE and others known and unknown agreed to inveigle, seize, and confine Martin Luna, Urbano Santiago, Miguel Luna, and Hector Gutierrez in and around the Likquid Lounge.

Overt Act

13. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt act, among others, was committed in the Southern District of New York and elsewhere:

a. On or about April 11, 2016, NICHOLAS TARTAGLIONE and others lured Martin Luna to the Likquid Lounge, where TARTAGLIONE and others confined Martin Luna, Urbano Santiago, Miguel Luna, and Hector Gutierrez and would not permit them to leave the premises.

(Title 18, United States Code, Section 1201(c).)

COUNT TEN

The Grand Jury further charges:

14. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, unlawfully, willfully, and knowingly did seize, confine, inveigle, decoy, kidnap, abduct, and carry away and hold for ransom and reward and otherwise a person, and used a means, facility, and instrumentality of interstate and foreign commerce in committing

and in furtherance of the commission of the offense, and did aid and abet the same, to wit, TARTAGLIONE lured Martin Luna to the Likquid Lounge and confined Martin Luna in and around the Likquid Lounge, which resulted in the death of Martin Luna.

(Title 18, United States Code, Sections 1201(a)(1) and 2.)

COUNT ELEVEN

The Grand Jury further charges:

15. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, unlawfully, willfully, and knowingly did seize, confine, inveigle, decoy, kidnap, abduct, and carry away and hold for ransom and reward and otherwise a person, and used a means, facility, and instrumentality of interstate and foreign commerce in committing and in furtherance of the commission of the offense, and did aid and abet the same, to wit, TARTAGLIONE and others seized and confined Urbano Santiago in and around the Likquid Lounge and in and around the vicinity of 419 Old Mountain Road in Otisville, New York, which resulted in the death of Urbano Santiago.

(Title 18, United States Code, Sections 1201(a)(1) and 2.)

COUNT TWELVE

The Grand Jury further charges:

16. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the

defendant, and others known and unknown, unlawfully, willfully, and knowingly did seize, confine, inveigle, decoy, kidnap, abduct, and carry away and hold for ransom and reward and otherwise a person, and used a means, facility, and instrumentality of interstate and foreign commerce in committing and in furtherance of the commission of the offense, and did aid and abet the same, to wit, TARTAGLIONE and others seized and confined Miguel Luna in and around the Likquid Lounge and in and around the vicinity of 419 Old Mountain Road in Otisville, New York, which resulted in the death of Miguel Luna.

(Title 18, United States Code, Sections 1201(a)(1) and 2.)

COUNT THIRTEEN

The Grand Jury further charges:

17. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, unlawfully, willfully, and knowingly did seize, confine, inveigle, decoy, kidnap, abduct, and carry away and hold for ransom and reward and otherwise a person, and used a means, facility, and instrumentality of interstate and foreign commerce in committing and in furtherance of the commission of the offense, and did aid and abet the same, to wit, TARTAGLIONE and others seized and confined Hector Gutierrez in and around the Likquid Lounge and in and around the vicinity of 419 Old Mountain Road in

Otisville, New York, which resulted in the death of Hector Gutierrez.

(Title 18, United States Code, Sections 1201(a)(1) and 2.)

COUNT FOURTEEN

The Grand Jury further charges:

18. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, knowingly traveled in interstate and foreign commerce and used the mails and any facility in interstate and foreign commerce with intent to commit a crime of violence, namely, assault and murder, to further an unlawful activity, namely, a business enterprise involving a controlled substance, and with intent to promote, manage, establish, and carry on, and facilitate the promotion, management, establishment, and carrying on of the unlawful activity, and thereafter did perform a crime of violence to further the unlawful activity, and did aid and abet the same, and death resulted, to wit, TARTAGLIONE arranged for Martin Luna to be lured to the Likquid Lounge, where Luna was killed.

(Title 18, United States Code, Sections 1952 and 2.)

COUNT FIFTEEN

The Grand Jury further charges:

19. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the

defendant, knowingly traveled in interstate and foreign commerce and used the mails and any facility in interstate and foreign commerce with intent to commit a crime of violence, namely, assault and murder, to further an unlawful activity, namely, a business enterprise involving a controlled substance, and with intent to promote, manage, establish, and carry on, and facilitate the promotion, management, establishment, and carrying on of the unlawful activity, and thereafter did perform a crime of violence to further the unlawful activity, and did aid and abet the same, and death resulted, to wit, after Urbano Santiago accompanied Martin Luna to the Likquid Lounge, where Luna had been lured by TARTAGLIONE and others, Urbano Santiago was held captive, transported to the vicinity of 419 Old Mountain Road in Otisville, New York, and killed.

(Title 18, United States Code, Sections 1952 and 2.)

COUNT SIXTEEN

The Grand Jury further charges:

20. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, knowingly traveled in interstate and foreign commerce and used the mails and any facility in interstate and foreign commerce with intent to commit a crime of violence, namely, assault and murder, to further an unlawful activity, namely, a business enterprise involving a controlled substance, and with

intent to promote, manage, establish, and carry on, and facilitate the promotion, management, establishment, and carrying on of the unlawful activity, and thereafter did perform a crime of violence to further the unlawful activity, and did aid and abet the same, and death resulted, to wit, after Miguel Luna accompanied Martin Luna to the Likquid Lounge, where Martin Luna had been lured by TARTAGLIONE and others, Miguel Luna was held captive, transported to the vicinity of 419 Old Mountain Road in Otisville, New York, and killed.

(Title 18, United States Code, Sections 1952 and 2.)

COUNT SEVENTEEN

The Grand Jury further charges:

21. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, knowingly traveled in interstate and foreign commerce and used the mails and any facility in interstate and foreign commerce with intent to commit a crime of violence, namely, assault and murder, to further an unlawful activity, namely, a business enterprise involving a controlled substance, and with intent to promote, manage, establish, and carry on, and facilitate the promotion, management, establishment, and carrying on of the unlawful activity, and thereafter did perform a crime of violence to further the unlawful activity, and did aid and abet the same, and death resulted, to wit, after Hector

Gutierrez accompanied Martin Luna to the Likquid Lounge, where Luna had been lured by TARTAGLIONE and others, Hector Gutierrez was held captive, transported to the vicinity of 419 Old Mountain Road in Otisville, New York, and killed.

(Title 18, United States Code, Sections 1952 and 2.)

SPECIAL FINDINGS

22. Counts Two and Ten of this Indictment are realleged and incorporated by reference as though fully set forth herein. As to Counts Two and Ten, alleging the intentional killing of Martin Luna in furtherance of a drug trafficking crime (Count Two) and the kidnapping resulting in death of Martin Luna (Count Ten), the defendant NICHOLAS TARTAGLIONE:

- a. was 18 years of age or older at the time of the offense (Title 18, United States Code, Section 3591(a)(2));
- b. intentionally killed the victim (Title 18, United States Code, Section 3591(a)(2)(A));
- c. intentionally inflicted serious bodily injury that resulted in the death of the victim (Title 18, United States Code, Section 3591(a)(2)(B));
- d. intentionally participated in an act, contemplating that the life of a person would be taken and intending that lethal force would be used in connection with a

person, other than one of the participants in the offense, and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(C));

e. intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(D));

f. caused the death, and injury resulting in death, of the victim, during the commission of an offense under Title 18, United States Code, Section 1201 (kidnapping) (Title 18, United States Code, Section 3592(c)(1));

g. committed the offense in an especially heinous, cruel, and depraved manner in that it involved torture and serious physical abuse to the victim (Title 18, United States Code, Section 3592(c)(6));

h. committed the offense after substantial planning and premeditation to cause the death of a person (Title 18, United States Code, Section 3592(c)(9)); and

i. intentionally killed and attempted to kill more than one person in a single criminal episode (Title 18, United States Code, Section 3592(c)(16)).

23. Counts Three, Six, and Eleven of this Indictment are realleged and incorporated by reference as though fully set forth herein. As to Counts Three, Six, and Eleven, alleging the intentional killing of Urbano Santiago in furtherance of a drug trafficking crime (Count Three), the murder of Urbano Santiago through the use of a firearm in furtherance of a drug trafficking crime (Count Six), and the kidnapping resulting in death of Urbano Santiago (Count Eleven), the defendant NICHOLAS TARTAGLIONE:

- a. was 18 years of age or older at the time of the offense (Title 18, United States Code, Section 3591(a)(2));
- b. intentionally participated in an act, contemplating that the life of a person would be taken and intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(C));
- c. intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(D));

d. caused the death, and injury resulting in death, of the victim, during the commission of an offense under Title 18, United States Code, Section 1201 (kidnapping) (Title 18, United States Code, Section 3592(c)(1));

e. committed the offense after substantial planning and premeditation to cause the death of a person (Title 18, United States Code, Section 3592(c)(9)); and

f. intentionally killed more than one person in a single criminal episode (Title 18, United States Code, Section 3592(c)(16)).

24. Counts Four, Seven, and Twelve of this Indictment are realleged and incorporated by reference as though fully set forth herein. As to Four, Seven, and Twelve, alleging the intentional killing of Miguel Luna in furtherance of a drug trafficking crime (Count Four), the murder of Miguel Luna through the use of a firearm in furtherance of a drug trafficking crime (Count Seven), and the kidnapping resulting in death of Miguel Luna (Count Eleven), the defendant NICHOLAS TARTAGLIONE:

a. was 18 years of age or older at the time of the offense (Title 18, United States Code, Section 3591(a)(2));

b. intentionally participated in an act, contemplating that the life of a person would be taken and intending that lethal force would be used in connection with a

person, other than one of the participants in the offense, and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(C));

c. intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(D));

d. caused the death, and injury resulting in death, of the victim, during the commission of an offense under Title 18, United States Code, Section 1201 (kidnapping) (Title 18, United States Code, Section 3592(c)(1));

e. committed the offense after substantial planning and premeditation to cause the death of a person (Title 18, United States Code, Section 3592(c)(9)); and

f. intentionally killed more than one person in a single criminal episode (Title 18, United States Code, Section 3592(c)(16)).

25. Counts Five, Eight, and Thirteen of this Indictment are realleged and incorporated by reference as though fully set forth herein. As to Counts Five, Eight, and Thirteen, alleging the intentional killing of Hector Gutierrez in

furtherance of a drug trafficking crime (Count Five), the murder of Hector Gutierrez through the use of a firearm in furtherance of a drug trafficking crime (Count Eight), and the kidnapping resulting in death of Hector Gutierrez (Count Thirteen), the defendant NICHOLAS TARTAGLIONE:

a. was 18 years of age or older at the time of the offense (Title 18, United States Code, Section 3591(a)(2));

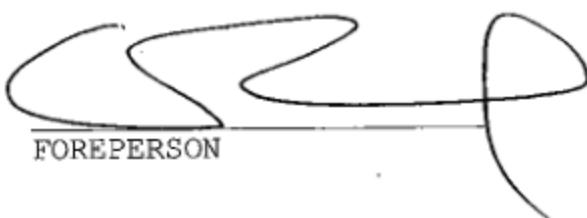
b. intentionally participated in an act, contemplating that the life of a person would be taken and intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(C));

c. intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(D));

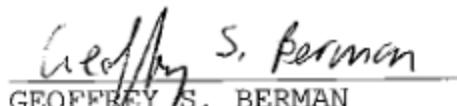
d. caused the death, and injury resulting in death, of the victim, during the commission of an offense under Title 18, United States Code, Section 1201 (kidnapping) (Title 18, United States Code, Section 3592(c)(1));

e. committed the offense after substantial planning and premeditation to cause the death of a person (Title 18, United States Code, Section 3592(c)(9)); and

f. intentionally killed more than one person in a single criminal episode (Title 18, United States Code, Section 3592(c)(16)).



FOREPERSON


Geoffrey S. Berman
GEOFFREY S. BERMAN
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

— V. —

NICHOLAS TARTAGLIONE,

Defendant.

SUPERSEDING INDICTMENT

S4 16 Cr. 832 (KMK)

(21 U.S.C. §§ 846 and 848(e);
18 U.S.C. §§ 924(j), 1201(c),
1201(a)(1), 1952, and 2.)