IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Nos. 25-4282(L), 25-4283

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

TONYA FARLEY,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION FOR BAIL AND STAY OF SENTENCE PENDING APPEAL

Pursuant to Federal Rule of Appellate Procedure 27(a)(3), the United States respectfully files this opposition to defendant-appellant Tonya Farley's Motion for Bail and Stay of Sentence Pending Appeal, filed on May 22, 2025.

STATEMENT OF THE CASE

A. Factual Background

W.W. was an inmate in the custody of the Bureau of Prisons (BOP) Federal Correctional Institution, Petersburg. Doc. 411 (PSR), at 5 (¶ 11).[1] Beginning in the early morning hours of January 9, 2021, and continuing until his death the next day, W.W. exhibited sudden and severe medical symptoms, including incontinence, incomprehension, incoherence, and the inability to stand or walk without falling. *Ibid.* Without medical attention to address his readily apparent crisis, W.W. fell into walls and other objects dozens of times, striking his head and other parts of his body. *Ibid.* After sustaining multiple skull fractures and extensive scalp hemorrhaging, W.W. died of blunt force trauma to the head. *Id.* at 7 (¶ 19). According to the medical examiner, had W.W. been hospitalized and examined at any point during his ordeal, he could have lived. *Ibid.*

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[1] "Doc. __, at __" refers to the docket entry and page number of documents filed in the district court, No. 3:23-cr-00068-RCY-2 (E.D. Va.). "Mot. __" refers to the page number of Farley's Motion for Bail and Stay of Sentence Pending Appeal, C.A. Doc. 5. "Sent. Tr. __" refers to the page number of the transcript of Farley's sentencing hearing, and "__/__/__ Trial Tr. __" refers to the date and page number of the trial transcript.

Defendant Farley, a BOP nurse, was the only nurse to medically assess W.W. in the facility's medical unit during this ordeal. PSR 5 (¶ 12). Although Farley observed and even documented W.W.'s obvious and alarming symptoms, she did not call the facility's on-call physician or send W.W. to the hospital, as she was required to do under BOP policy and her training as a nurse. *Id.* at 5-7 (¶¶ 12, 17). Instead, Farley provided misleading information to the facility's on-call psychologist, who then authorized W.W.'s placement in a suicide watch cell. *Id.* at 6-7 (¶ 17). Farley wrote a Clinical Encounter report that contained false statements, including the false assertion that she had notified a physician of W.W.'s condition (*id.* at 6 (¶ 16)), and left the facility without notifying any other health care provider of W.W.'s condition (*id.* at 5 (¶ 12)). W.W. later died in the suicide watch cell. *Ibid.*

When federal investigators interviewed defendant Farley, she blamed the on-call psychologist and the on-call physician for her failure to send W.W. to the hospital. PSR 5-6 (¶¶ 13-14). Specifically, she said that she put W.W. in suicide watch primarily because the on-call psychologist told her that W.W. was malingering (or "faking

symptoms"). PSR 6 (¶ 14). She also said that when she spoke with the on-call physician about W.W., the physician discouraged her from sending W.W. to the hospital. *Id.* at 5 (¶ 13). These statements were false. *See id.* at 5-6 (¶¶ 11-14). During this interview, Farley not only repeated her false statement about having contacted the on-call physician, but she also elaborated on it, describing the alleged location, length, and content of this telephone call, which never actually took place. *Id.* at 8 (¶¶ 22-23). When told that telephone records showed that no such call had been made, Farley insisted that she was "sticking to" her story. *Ibid.* (¶ 23).

B. Procedural Background

1. A grand jury charged Farley with violating (1) 18 U.S.C. 242 by willfully violating W.W.'s constitutional rights while acting under color of law by demonstrating deliberate indifference to his serious medical needs (Count 2); (2) 18 U.S.C. 1519 by making false entries in her official Clinical Encounter report (Count 4); and (3) 18 U.S.C. 1001 by making materially false statements to federal agents (Count 5). Doc. 34, at 2-5. Specifically, Count 5 charged Farley with lying to federal investigators about her conversations with the on-call psychologist and

the on-call physician. *Id.* at 5. The grand jury also charged two codefendants, Shronda Covington and Yolanda Blackwell, in connection with their roles in W.W.'s death. *Id.* at 2-3, 6. A fourth defendant, Michael Anderson, pleaded guilty to violating 18 U.S.C. 242 in connection with W.W.'s death and was sentenced to 36 months' imprisonment. Amended Judgment, *United States v. Anderson*, No. 3:23-cr-00080 (E.D. Va. Jan. 30, 2024).

2. Defendants Farley, Covington, and Blackwell proceeded to trial. As relevant here, Farley moved for a judgment of acquittal after the government's case-in-chief; after the close of evidence; and after trial. 12/16/24 Trial Tr. 1826; 12/19/24 *id.* at 2815; Doc. 349. Among Farley's post-trial arguments in her Motion for Acquittal and New Trial (Doc. 349), Farley asserted that she was entitled to a new trial because, during the proceedings, she had suffered the prejudicial effect of "spillover evidence" that would not have been admissible had she been tried solely on her count of conviction and without her codefendant, Blackwell (Doc. 349, at 8-12).

The district court denied Farley's motion each time it was made. 12/16/24 Trial Tr. 1859-1860; 12/19/24 *id.* at 2821-2822; Doc. 398; Doc.

415. Regarding Farley's prejudicial-spillover argument in her Motion for Acquittal and New Trial, the court held that it "fail[ed] across the board" because "the Court's explicit jury instructions . . . instructed the jury to consider each count separately." Doc. 415, at 25. The court also observed that the prejudicial evidence cited by Farley—video of W.W.'s injuries and death in the suicide watch cell, beginning mere minutes after his encounter with Farley—likely would have been admissible in a new trial, providing another reason why "Farley's argument fails." *Id.* at 26 n.10. The court additionally noted that Farley's codefendant, Blackwell, was properly joined. *Id.* at 26 n.12.

3. On December 21, 2024, after an 11-day trial, the jury returned a verdict finding Farley guilty on Count 5 (the Section 1001 violation) and acquitting her on the other counts. Doc. 313, at 3. The jury found Covington guilty of both counts brought against her (the Section 242 and Section 1001 charges) (*id.* at 1, 3) and acquitted Blackwell of the sole count against her (*id.* at 2).

C. Sentencing

The United States Probation Office (USPO) calculated Farley's sentence by starting with a base offense level of six. Draft PSR, Doc.

383, at 10 (¶ 36); Sentencing Guidelines § 2B1.1. Next, USPO added eight levels because the offense involved the conscious or reckless risk of death or serious bodily injury (Doc. 383, at 10 (¶ 37); Sentencing Guidelines § 2B1.1(b)(16)(A)); two levels because the victim was physically restrained in the course of the offense (Doc. 383, at 10 (¶ 38); Sentencing Guidelines § 3A1.3); two levels because the defendant knew or should have known the victim was a vulnerable victim (Doc. 383, at 11 (¶ 39); Sentencing Guidelines § 3A1.1(b)(1)); and two points because the defendant abused a position of trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense (Doc. 383, at 11 (¶ 40); Sentencing Guidelines § 3B1.3). USPO calculated the total offense level as 20, resulting in a guidelines range of 33 to 41 months. Doc. 383, at 11, 16 (¶¶ 44, 73).

The government did not object to this calculation. Doc. 385. Farley lodged several factual and legal objections, including objections to every upward adjustment. Doc. 386. Specifically, Farley argued that calculating her guidelines with reference to W.W.'s death and injury would amount to punishing her for acquitted conduct, contrary to the recent acquitted-conduct amendment to the guidelines. *Id.* at 4, 7-16;

see also Sentencing Guidelines § 1B1.3(c). In sum, Farley argued that her total offense level should be the same as her base offense level, four, resulting in a guidelines range of zero to six months. Doc. 386, at 2.

After hearing argument, the district court sustained Farley's most significant objection—to the specific offense characteristic involving reckless risk of death or bodily injury—and overruled her remaining objections. The court began by rejecting defendant Farley's argument that it should categorically disregard her conduct during W.W.'s medical ordeal. The court reasoned that, "[t]o find otherwise would overlook . . . the role that that conduct played in her false statements." Sent. Tr. 28. The court clarified at multiple points during the hearing, however, that it was "*not* relying on Ms. Farley's acquitted conduct that Ms. Farley made a false report or was deliberately indifferent." *Ibid.* (emphasis added); *see also id.* at 30 ("And so I just want to be clear that although I'm looking at some of this acquitted conduct to put her role based on what she was convicted of in context, I am not going to sentence her based on what she was acquitted of."); *ibid.* ("What I'm saying is when I affix her ultimate sentence, I'm not going to rely on acquitted conduct to affix that sentence. I'm only going to use the

acquitted conduct to place the false statement conviction in context."); *id.* at 99 ("And, again, I'm not going to sentence her based on her acquitted conduct."). Rather, the court reiterated that it was only considering Farley's conduct during the day of W.W.'s medical ordeal as "relevant conduct as to her false statements." *Id.* at 28.

The district court nevertheless sustained Farley's objection to the specific offense characteristic for reckless risk of death or serious bodily injury because, after reviewing this Court's precedent, it "[did] not find that Ms. Farley's offense of conviction, her false statement to [federal investigators], involved the conscious or reckless risk of death or serious bodily injury." Sent. Tr. 38. As for the vulnerable-victim enhancement, the court overruled Farley's objection because W.W.'s symptoms and status as an inmate had rendered him vulnerable, and Farley had understood that W.W. was in a position of such vulnerability. *Id.* at 44-45. The court also overruled Farley's objection to the restraint enhancement because she had "overs[een] and was pivotal in the decision that resulted in W.W. being placed on suicide watch," a restraint beyond W.W.'s lawful incarceration. *Id.* at 49-50. Finally, the court overruled Farley's objection to the position-of-trust enhancement

on the grounds that Farley's position as a nurse qualified as a special skill, and her position as the only medical provider at the facility when she encountered W.W. qualified as a position of trust. *Id.* at 55. In particular, the court emphasized the "considerable deference" inmates and staff afforded to Farley's professional judgment. *Ibid.* The court thus reasoned that Farley's acquittal on the deliberate-indifference count did not foreclose a finding that she had "take[n] advantage of her position as the sole medical practitioner that evening to facilitate W.W.'s placement on suicide watch, which she later lied about during her interview in the investigation into W.W.'s death." *Id.* at 55-56.

Applying the vulnerable-victim, restraint, and position-of-trust enhancements, the district court calculated a guidelines range of 10 to 16 months' imprisonment. Sent. Tr. 57. The court then granted Farley's motion for a downward variance based on, *inter alia*, her "acquittal of the deliberate indifference charge and the false report charge," as well as her history and characteristics, and sentenced Farley to six months' incarceration and six months' home detention as a special condition of supervised release. *Id.* at 102-105.

During sentencing, Farley also asked for release pending appeal. Sent. Tr. 111. The district court denied the request. *Ibid.*

DISCUSSION

This Court should deny Farley's Motion for Bail and Stay of Sentence Pending Appeal. "[O]nce a person has been convicted and sentenced to jail, there is absolutely no reason for the law to favor release pending appeal or even permit it in the absence of exceptional circumstances." *United States v. Miller*, 753 F.2d 19, 22-23 (3d Cir. 1985) (quoting H. Rep. No. 907, 91st Cong., 2d Sess. 186-187 (1970) (alteration in original)). Accordingly, a federal criminal defendant who appeals her sentence must be detained during the pendency of appeal unless she can demonstrate "by clear and convincing evidence," as relevant here, that her appeal "is not for the purpose of delay and raises a substantial question of law or fact likely to result in[] (i) reversal, (ii) an order for a new trial, (iii) a sentence that does not include a term of imprisonment, or (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of

the appeal process." 18 U.S.C. 3143(b)(1)(A) and (B).[2] A "substantial question" is one that is more than "fairly debatable," *United States v. Perholtz*, 836 F.2d 554, 555 (D.C. Cir. 1987) (construing Fourth Circuit standard (citation omitted)); specifically, it is "a 'close' question or one that very well could be decided the other way," *United States v. Steinhorn*, 927 F.2d 195, 196 (4th Cir. 1991) (per curiam) (citation omitted).

Farley's motion fails to identify any substantial question of law or fact, let alone demonstrate by clear and convincing evidence that any such question is likely to result in a new trial or a different sentence. To the contrary, the district court applied settled case law when denying Farley's motion for a new trial and correctly calculated her guidelines range.

A. Farley fails to identify any substantial question of law or fact relating to the district court's calculation of her guidelines range.

Farley attempts to show that her appeal raises a substantial question of law or fact by portraying the district court as having relied

[2] The United States takes no position in this brief on whether Farley has met her burden under 18 U.S.C. 3143(b)(1)(A).

on acquitted conduct, in contravention of the newly amended acquitted-conduct amendment to the Guidelines. *See* Mot. 8-14. Farley does not, however, cite any specific portions of the sentencing transcript where, in her view, the court factored acquitted conduct into its determination of her sentence. Rather, Farley simply asserts that the court's "erroneous reliance on acquitted conduct . . . resulted in the [vulnerable-victim, restraint, and position-of-trust] enhancements." Mot. 14-15. Even assuming Farley has not "waived review of [her] conclusory arguments," *United States v. Goodpasture*, 697 F. App'x 184, 184 n.2 (4th Cir. 2017) (citing the proposition "that argument is waived when [a] party 'fail[s] to support its contentions with citations to the authorities'" (second alteration in original; citation omitted)), the transcript of Farley's sentencing hearing flatly contradicts her depiction of the court's sentencing analysis.

As described above, the district court took pains to state at least four times that it was *not* sentencing Farley based on her acquitted conduct. *See* pp. 8-9, *supra*. Indeed, the court's refusal to rely on any of Farley's acquitted conduct was evident in its decision *not* to apply the specific offense characteristic for an offense that involves the conscious

or reckless risk of death. As the court explained, "Farley's offense of conviction"—namely, the false statement she had made to federal investigators—had not "involved [any] conscious or reckless risk of death or serious bodily injury." Sent. Tr. 38.

Instead, when calculating Farley's guidelines, the court permissibly considered Farley's actions on the day of W.W.'s medical ordeal as "relevant conduct as to her false statements" (Sent. Tr. 28)—in other words, conduct that provides context for the criminal charge *for which Farley was convicted*. This included Farley's lies about whether she, in her position of trust as a BOP nurse, had contacted a physician about the care of an exceedingly vulnerable inmate, or whether she instead ensured that inmate was restrained in an isolation cell. In short, the court did not consider acquitted conduct, such as conduct that might have suggested that Farley had been *deliberately indifferent* to W.W.'s serious medical needs. Rather, when assessing Farley's culpability for "l[ying] . . . during her interview" with federal investigators who were looking "into W.W.'s death," the court reasonably recognized that Farley's egregious lies had been intended to evade accountability for having "take[n] advantage of her position as

the sole medical practitioner that evening to facilitate W.W.'s placement on suicide watch." Sent. Tr. 55-56. The court correctly concluded that, under Fourth Circuit precedent, the context of Farley's lies to investigators supported application of the three sentencing enhancements. *See also* U.S. Position on Sentencing, Doc. 385, at 8-11 (collecting cases and arguing in support of enhancements).

This Court's decision in *United States v. Agyekum*, 846 F.3d 744 (4th Cir. 2017), supports such an approach. *See also* Sent. Tr. 27 (discussing *Agyekum*). *Agyekum* involved a defendant who pleaded guilty to structuring currency transactions to evade financial reporting requirements, to hide his profits from illicit drug distribution. 846 F.3d at 752. This Court held that the defendant's "ongoing drug dealing activity was . . . relevant conduct" when determining the defendant's sentence for his currency-structuring offense. *Ibid.* Likewise, here, Farley's materially false statements to federal investigators sought to conceal actions that might have contributed to W.W.'s death. Those actions, which provided necessary context for Farley's lies, were relevant for evaluating the culpability of the offense for which Farley had been convicted and determining an appropriate sentence. *See also,*

e.g., *United States v. Young*, 266 F.3d 468, 477-478 (6th Cir. 2001) (finding defendant's underlying "embezzlement conduct was necessarily . . . relevant to the money laundering offense" because it "significantly facilitated" the "basis of his money laundering conviction," and therefore was relevant as an act taken "in preparation for" the offense of conviction); *United States v. Cianci*, 154 F.3d 106, 108, 112-113 (3d Cir. 1998) (finding defendant's uncharged acts of embezzlement, which "le[d] to his receipt of the income he failed to report," were properly considered relevant for tax evasion convictions).

Even as amended, the U.S. Sentencing Guidelines also endorse this type of wholistic analysis. Under the guidelines, "[r]elevant [c]onduct" for sentencing purposes includes "all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant," regardless of whether those acts and omissions were themselves charged as crimes. Sentencing Guidelines § 1B1.3(a)(1). And, as the guidelines further explain, "[t]he principles and limits of sentencing accountability under this guideline are not always the same as the principles and limits of criminal liability." *Id.* comment. (n.1). Thus, as the court correctly summarized,

"the overarching design of the Sentencing Guidelines is aimed at sentencing defendants, in substantial part, for the actual conduct in which the defendant engaged" regardless of the charges for which he was indicted or convicted. Sent. Tr. 27 (citing *Agyekum*, 846 F.3d at 751). Accordingly, the court here considered Farley's actual conduct—including "the nature and context of her actions" with respect to W.W. "and the role that . . . conduct played in her false statements"—without regard to whether such conduct established liability for the deliberate indifference charge of which she was acquitted. *Id.* at 28.

The acquitted-conduct amendment to the guidelines is not to the contrary. Section 1B1.3(c) provides that "[r]elevant conduct does not include conduct for which the defendant was criminally charged and acquitted in federal court, *unless such conduct also establishes, in whole or in part, the instant offense of conviction*." Sentencing Guidelines § 1B1.3(c) (emphasis added). In other words, *some* acquitted conduct—specifically, that which overlaps with the count of conviction—*can* be relevant when determining an appropriate sentence for convicted conduct. The guidelines explicitly entrust that determination to the sound discretion of the trial court. *See id.* comment. (n.10) ("[T]he court

is in the best position to determine whether such overlapping conduct . . . qualifies as relevant conduct."). As explained above, the district court took note of the guidelines' treatment of acquitted conduct and described in detail the conduct on which it was relying and the purposes for which such conduct was being considered.[3]

Farley has accordingly failed to establish the existence of a "substantial question" regarding her sentence. *Steinhorn*, 927 F.2d at 196. Even if she had raised the kind of close question necessary, which she has not, Farley has not demonstrated the likelihood of achieving a different result in her case. Farley's six-month sentence was the result of a downward variance of more than 80% from the low end of the guidelines range that the district court calculated, including the challenged enhancements. It also falls within what Farley believes to be her correct guidelines range. This strongly suggests that, if this

[3] Although Farley attempts to cast her argument as one sounding in constitutional concerns (Mot. 14 n.1 (describing her "robust constitutional argument in opposition to the enhancement for acquitted conduct")), the district court rightly pointed out that this Court has rejected such arguments, *see United States v. Freitekh*, 114 F.4th 292, 318 & n.11 (4th Cir. 2024) (explaining that "a court's consideration of acquitted conduct does not violate the Sixth Amendment" (citation omitted)). *See also* Sent. Tr. 29.

Court were to remand for resentencing, the district court would simply impose the same sentence it did previously, even absent the contested enhancements. *See, e.g.*, *United States v. Beckley*, 136 F. App'x 555, 557 (4th Cir. 2005) (concluding defendant's contention that he would receive a lesser sentence on remand was "speculative at best" because he had "not shown that it is as likely as not that the district court will elect to sentence him based on different facts than those applied in his first sentencing proceeding, or exercise its discretion in his favor on the same facts").

B. Farley has not raised a substantial question about spillover prejudice that would require a new trial.

In her motion, Farley also argues that this case involves a substantial question of law or fact that is likely to result in a new trial. Specifically, Farley contends that a new trial would be warranted because she was prejudiced by the introduction of evidence relevant to the charges for which she was acquitted and to the charges brought against her two codefendants. Mot. 15-20. But she has failed to identify a substantial question likely to result in a new trial.

As the district court correctly concluded, the jury instructions alone foreclose Farley's argument. The jury was specifically instructed

to consider "[e]ach alleged offense . . . separately" and to "give separate and individual consideration to each charge against each Defendant." Doc. 415, at 25 (citation omitted). Farley has not identified anything in the record below that rebuts the presumption that the jurors followed their charge. *United States v. Brewbaker*, 87 F.4th 563, 584 (4th Cir. 2023) ("We can only overcome the presumption that a jury follows instructions in extraordinary situations." (citation and internal quotation marks omitted)), *cert. denied*, 145 S. Ct. 544, and 145 S. Ct. 545 (2024). Indeed, the record quite clearly shows that the jurors parsed the evidence against each defendant separately and differentiated between those charges that had been proven beyond a reasonable doubt and those that, in the jury's judgment, had not been so proven. This is apparent from the jury finding Farley guilty on the Section 1001 false-statement count but acquitting her of the others, while also finding defendant Covington guilty on both counts and acquitting defendant Blackwell. *See United States v. Simon*, 12 F.4th 1, 44 (1st Cir. 2021) (noting that "the jury differentiated not only between counts but among defendants—and that selectivity is strong evidence that the jury was not blinded by raw emotion but, rather, properly

compartmentalized and applied the law to the facts" (citation and internal quotation marks omitted)). Thus, Farley has not demonstrated a substantial question regarding prejudicial spillover that would warrant a new trial on remand.

Significantly, Farley's argument, which amounts to a complaint about the jury's mixed verdict, would militate in favor of a new trial in every mixed-verdict case.[4] That cannot be right. The fact that the jury acquitted on some counts does not render the court's evidentiary rulings or the jury's verdict infirm in any respect. Even if the jury's verdict were in some respect inconsistent—and to be clear, there is no reason to find so here—"inconsistent verdicts . . . should not necessarily be

[4] Farley's "spillover prejudice" theory also requires the Court to equate acquitted conduct with vacated convictions. In this circuit, a "spillover prejudice" challenge arises when a conviction is vacated or reversed. *See United States v. Hart*, 91 F.4th 732, 741 (4th Cir. 2024) ("A prejudicial spillover challenge asks us to 'determine whether evidence admitted to support a reversed count prejudiced the remaining counts to warrant their reversal.'" (quoting *United States v. Hornsby*, 666 F.3d 296, 311 (4th Cir. 2012))). But here, there is no vacated or reversed count for the Court to consider in this case. Farley cites no Fourth Circuit precedent permitting this Court to equate acquitted conduct with vacated or reversed conduct. She also fails to explain why another defendant's acquittal would afford her the right to attack "spillover prejudice" from evidence that was properly admitted at trial.

interpreted as a windfall to the Government at the defendant's expense [because] [i]t is equally possible that the jury, convinced of guilt, properly reached its conclusion" on certain convictions but reached an inconsistent conclusion on other acquittals. *United States v. Powell*, 469 U.S. 57, 65 (1984). Similarly, because there might be many reasons why a jury convicts on some but not all criminal charges, the issuance of a mixed verdict does not necessarily suggest that a defendant suffered spillover prejudice from the introduction of evidence admitted to prove an acquitted charge.

Two additional reasons underscore that Farley suffered no spillover prejudice from the district court's admission of what she describes as "the most inflammatory evidence in the case – the videos of W.W. repeatedly falling in the suicide watch room." Mot. 16. First, Farley argues that this video would not have been admitted without Blackwell as her codefendant. Mot. 18-19. But as the district court explained, Blackwell was properly joined with her codefendants, and the evidence was properly admitted when all three defendants were properly tried together. *See* Doc. 415, at 26 n.12; Doc. 134; *see also* Fed. R. Crim. P. 8(b) (providing that an indictment may join "[two] or more

defendants if [those defendants] are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses"); *United States v. Ali*, 735 F.3d 176, 192 (4th Cir. 2013) ("[W]e have found it decidedly preferential to try jointly defendants who have been indicted together.").

The district court expressly considered whether the video was "relevant" and "not substantially outweighed by any risk of unfair prejudice in . . . Farley's case[]." Doc. 134, at 9-10. The court explained that the video was relevant to whether W.W. had a serious medical need and "highly probative" of whether W.W. suffered bodily injury and died—two of the four elements of the Section 242 count with which Farley and her codefendants Covington and Blackwell were charged. Doc. 132; *see also* Doc. 134, at 9-10. Consequently, because the video was directly relevant to charged conduct for all three defendants, the court correctly ruled that the evidence was neither unduly inflammatory nor unfairly prejudicial, let alone "*so* extensive, inflammatory, and prejudicial that it necessarily spilled over into the jury's consideration of [his] guilt on other charges." *Simon*, 12 F.4th at 43 (emphasis added) (quoting *United States v. Mubayyid*, 658 F.3d 35,

72 (1st Cir. 2011)); *see also* Doc. 132, at 4-9 (rejecting motion in limine to exclude video); Doc. 134, at 9-10 (rejecting video as basis for severance). Indeed, the jury's careful scrutinizing of the evidence and the multiple acquittals that followed offer little reason to conclude that such spillover prejudice resulted. *See Simon*, 12 F.4th at 44.

Second, as the district court observed, even if Farley's spillover prejudice argument had some merit, "it is likely that the suicide watch video, or at least portions of it, would [still] be[] admissible in a new trial." Doc. 415, at 26 n.10; *see also Hart*, 91 F.4th at 741 ("To prevail under [a spillover prejudice] theory, a defendant must show that the challenged evidence would have been inadmissible at trial without the vacated count and prejudiced his convictions on the remaining counts."). Farley told federal agents that she put W.W. in suicide watch primarily because the on-call psychologist told her that W.W. was malingering (or "faking symptoms"). PSR 6 (¶ 14). The admitted surveillance footage, however, showed W.W. exhibiting severe medical symptoms mere minutes after Farley spoke with the psychologist. The video thus undermines Farley's claim that the psychologist would have characterized W.W.'s medical crisis as "malingering." It also

undermines Farley's suggestion that she would have credited such a characterization. The video also explains why Farley made the false statements; namely, she attempted to blame others for her failure to address the symptoms that are so apparent on the surveillance. *See United States v. Hornsby*, 666 F.3d 296, 311 (4th Cir. 2012) (When a criminal charge includes "attempted or actual obstruction of justice with respect to a given crime, evidence of the underlying crime and the defendant's part in it is admissible to show the motive for his efforts to interfere with the judicial processes." (quoting *United States v. Willoughby*, 860 F.2d 15, 24 (2d Cir. 1988)). Consequently, on remand, the video would remain probative as to the false-statements count.

CONCLUSION

For the foregoing reasons, Farley's Motion for Bail and Stay of Sentence Pending Appeal should be denied.

Respectfully submitted,

ERIK S. SEIBERT
United States Attorney
Eastern District of Virginia

THOMAS A. GARNETT
Assistant United States Attorney
Eastern District of Virginia
919 East Main Street, Suite 1900
Richmond, Virginia 23219
(804) 819-5431

HARMEET K. DHILLON
Assistant Attorney General
Civil Rights Division

JESUS A. OSETE
Deputy Assistant Attorney General
Civil Rights Division

s/ Barbara A. Schwabauer
JASON LEE
YAEL BORTNICK
BARBARA A. SCHWABAUER
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 305-3034

Date: May 29, 2025

CERTIFICATE OF COMPLIANCE

I certify that the attached UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION FOR BAIL AND STAY OF SENTENCE PENDING APPEAL:

(1) complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A), because the document, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f), contains 4877 words; and

(2) complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E), 32(a)(5), and 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365, in 14-point Century Schoolbook font.

s/ Barbara A. Schwabauer
BARBARA A. SCHWABAUER
Attorney

Date: May 29, 2025