IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,	**)**	
	)	
Plaintiff,	**)**	
	)	
v.	**)**	**CASE NO. 23-cr-60170-RNS**
	)	
	)	
ALEXANDRA ACOSTA,	**)**	
	)	
Defendant.	**)**	
	)	

DEFENDANT'S RESPONSE IN OPPOSITION TO GOVERNMENT'S MOTION IN LIMINE TO ADMIT INEXTRICABLY INTERTWINED EVIDENCE, ETC. [DN-38]

COMES NOW, the Defendant, ALEXANDRA ACOSTA ("Acosta"), by and through the undersigned attorney, and respectfully responds in opposition to the government's *Motion in Limine Admit Inextricably Intertwined Evidence or, in the Alternative, Evidence of Other Crimes, Wrongs, or Acts, Pursuant to Rule 404(b)* [DN-38]. In support thereof, Acosta states as follows:

1. In its motion, the government seeks admission of evidence concerning Acosta's IRS audit, a lawsuit she is party to against a pool contractor for breach of contract (she is the Plaintiff), and evidence concerning the Broward Sheriff's Office ("BSO") outside work policy.

2. Acosta objects to the admission of any of this evidence because it is irrelevant, it comprises inadmissible character/prior acts evidence, is more prejudicial than it is probative, will cause her to suffer unfair prejudice, and because it will confuse the issues and mislead the jury in violation of Fed. R. Evid. 401, 402, 403, and 404.

3. While Acosta does not deny that a PPP loan application and forgiveness application that contained materially false information were submitted to the SBA on her behalf, she wholeheartedly denies knowing the applications contained false information and denies preparing or filing the loan application and the forgiveness application, instead relying on a third party who handled everything on her behalf (her tax preparer). Acosta admits the loan was granted and that she was disbursed $20,180. Acosta does not deny immediately spending all the money on expenses that were not approved by the PPP program. According to Acosta, the applications were exclusively prepared and submitted by her tax preparer, VILSAINT ST. LOUIS. Her claim is substantiated by IP address evidence that proves her loan application was

signed and submitted by a user with the same IP address as St. Louis. It is further substantiated by St. Louis' own admissions.

4. The government wishes to admit evidence of Acosta's IRS audit and pool construction litigation to establish a financial motive for the alleged fraud. It also claims this evidence is inextricably intertwined with the story of its case and is therefore admissible. The government also wishes to admit BSO's outside work policy to suggest Acosta knew she did not qualify for a $20,000 PPP loan because she didn't do any meaningful real estate work in 2019, 2020, or 2021 – thus explaining why she obtained a permission slip for outside work in some years, but not in 2019, 2020, or 2021.

<u>BASIS FOR DENYING THE GOVERNMENT'S MOTION</u>

5. First, the IRS audit evidence and pool evidence are tenuous and speculative and are therefore irrelevant and should not be admitted. The claim that Acosta was motivated to defraud the government of $20,000 due to a tax audit liability of $18,491.55 or due to her pool litigation ($19,500 counterclaim that was later dismissed) is contradicted by the fact that <u>none</u> of the loan proceeds were ever used for either of these expenses.

6. Acosta's loan application was initiated with the SBA on February 1, 2021 and was approved on February 3, 2021. On February 4, 2021, a mere three days after the loan application was initiated, $20,180 was disbursed to Acosta. **That**

same day, February 4, 2021, Acosta immediately tried to wire $19,000 of the proceeds into her Robinhood Markets trading account but their system would only accept a $10,000 wire. As a result, Acosta deposited the remaining $9,000 into her savings account. The $10,000 deposited into Robinhood was quickly lost to speculative stock investments. The remainder of the loan was spent on unrelated personal expenses. None of the loan proceeds were used to pay the IRS tax liability or to pay the pool company.

7. The government's motive theory is inadmissible because it requires a jury to *speculate* that Acosta's motive must have totally **changed** during the three days that elapsed between the day her loan application was initiated (February 1st) and the day she received the funds and immediately tried to invest them with Robinhood (February 4th) instead of paying the IRS or the pool company.

8. While $9,000 of that effort may have been *frustrated* by Robinhood's wire transfer policies, it nonetheless gives a clear and contemporaneous insight into Acosta's intentions and state of mind at the time the loan was applied for, contrary to the government's motive theory. Because the government's motive theory requires the jury to resolve this conflict in the evidence with speculation, the theory itself is speculative and therefore irrelevant and inadmissible.

9. Additionally, admission of this evidence would be more prejudicial than probative. Hearing about her audit will only serve to tarnish her character,

especially by jurors who believe an audit means a person did something illegal, unethical, or against the rules with their taxes. It is also unfairly prejudicial because it gives the government an advantage at great cost to Acosta. This evidence will only serve to confuse and distract the jury's attention away from the relevant facts and issues.

10. Second, evidence concerning the pool defects lawsuit is too remote in time and substance to be relevant or to be attributable to a motive to defraud. The action is *still pending* and has not yet been resolved or adjudicated. Not only was Acosta the plaintiff in the action, but the lawsuit was not even filed until December 2021 – a full 11 months <u>after</u> the loan was applied for and the funds were spent. The counterclaim by the pool contractor that is at the heart of the government's argument was not even filed until May 2022 and was ultimately <u>dismissed</u> in May 2023.

11. Third, admission of any evidence concerning BSO's outside work policy in 2019 would mislead the jury because it is undisputed that Acosta worked outside BSO in 2019 as a part-time real estate agent and earned at least $13,904 in gross commissions from it. [DN-38, page 3 of 12] Because it is undisputed that Acosta worked in this capacity, admission of the work policy evidence will *only* inform the jury that Acosta violated BSO's work policy in 2019 when she worked part-time as a real estate agent while employed full-time at BSO.

12. As for 2020 and 2021, any evidence concerning those years is totally irrelevant because Acosta's PPP loan application made no mention of those years. On the contrary, the application submitted by St. Louis was supported by a fake 2019 form 1099 that he altered and a fake Schedule C that had no year on it. It makes no difference what Acosta thought about her business prospects in 2020 and 2021 because the PPP application at issue was limited to representations about 2019 only, as was permitted by the PPP loan application instructions. Introduction of this evidence is not relevant and will only serve to impermissibly and unfairly tarnish Acosta's credibility before the jury.

13. Fourth, introduction of BSO's work policy evidence will also inform the jury that Acosta is a law enforcement officer who is employed as a deputy sheriff at BSO – *a fact that is highly prejudicial because jurors will judge her differently than other defendants and some will hold it against her*. This issue is presented in Acosta's *Motion in Limine to Exclude Evidence* that will be filed after this response.

14. Aside from testimony, the government wishes to admit specific documents in support of its work policy theory that will reveal that Acosta is a law enforcement officer employed by BSO as a Deputy Sheriff. They are also adorned with BSO's agency name and logo and contain the signatures of multiple command staff members including Colonels, Lieutenant Colonels, Majors, Captains, and others. **Exhibit 1 (BSO Off-Duty Employment Form)**

15. Fifth, as the government referenced in its motion, admission of the IRS audit, pool lawsuit, and work policy evidence will unfairly cast Acosta in a negative light as a *rule breaker*. This evidence is especially prejudicial where the place she is breaking the rules at is a law enforcement agency where she works as a law enforcement officer.

16. Sixth, the government's grounds for admission of evidence concerning the IRS audit, pool litigation, and BSO's work policy, including the claim that the evidence is inextricably intertwined, <u>do not justify the breadth and scope</u> of the evidence that the government wishes to admit. The breadth and scope of this evidence is simply not necessary for the government to complete their story of the alleged crime for the jury or make their point about motive.

17. Seventh, <u>less prejudicial alternatives exist</u>. While Acosta maintains her objection to the admission of *any* of this evidence, the Court should at least <u>limit</u> the evidence the government may introduce as follows:

Regarding the IRS audit, the government can make its point by merely presenting testimony that states Acosta was being audited at such and such time, that she had to pay a tax liability of such and such, and it can admit the initial and ending notices sent by the IRS to Acosta. There is no need to have an exhaustive dissertation on her taxes and audit that will only distract the jury and impugn Acosta's character. This is especially true of her tax returns for any year other than 2019 because no other year was referenced or relied upon in her PPP loan application. What happened in any other year is irrelevant.

Regarding the pool litigation, it is merely enough for an investigator to testify that she/he searched *browardclerk.org* for Acosta's name and learned that she had sued a pool construction company for breach of contract on such and such date, and that she was counter-sued on such and such date for $19,500 by the defendant in that case, and that the countersuit was later dismissed on such and such date. Again, there is no need for a lengthy dissertation or the admission of exhaustive documents or testimony to make the point. The basics plus the dates will do, especially since the lawsuit is still pending.

Regarding BSO's outside work policy, the government can make its point by using generalized terms, such as referring to BSO as Acosta's "employer". There is no need to mention BSO by name or that it is a law enforcement agency. There is equally no reason to mention Acosta's title with BSO or that she is a law enforcement officer. Her title as a Deputy Sheriff is irrelevant to whether or not she submitted a request to perform outside work and did so for any particular reason. The government could tell the same story and argue the same points even if it substituted "barista" and "Starbucks" every time the words "Deputy Sheriff" and "Broward Sheriffs Office" appeared and it would make no difference. Acosta's role and the name and nature of her employer are totally irrelevant to this case *and will only serve to inflame the jury against her*.

18. In lieu of admitting any prejudicial documents (i.e. the work authorizations and printed policy), the government can make its point with testimony that refers to BSO as Acosta's "employer." There should be no mention of BSO by name or that her employer is a law enforcement agency. Equally, there should be no mention that Acosta is a law enforcement officer or a Deputy Sheriff at BSO. Given that her status as law enforcement officer has no nexus to the allegations in this case, it is irrelevant and should be excluded.

19. Eighth, it should be emphasized that the government's IRS audit evidence, pool evidence, and work policy evidence are not central to its case. *In fact, this evidence is 100% collateral*. The government has no duty to prove motive or present any of this evidence for any of its other stated reasons. Whereas the admission of this evidence will come at a great cost to Acosta and unfairly hamper her defense.

<u>MEMORANDUM OF LAW</u>

20. A trial court has great discretion when making evidentiary rulings. *United States v. McLean*, 138 F.3d 1398, 1403 (11th Cir. 1998) ("When an appellant challenges an evidentiary ruling on appeal, we 'will not disturb the [district] court's

judgment absent a clear abuse of discretion.'"), *United States v. Green*, No. 22-10785, 2023 U.S. App. LEXIS 8602, at *2 (11th Cir. Apr. 11, 2023)

21. Pursuant to Federal Rule of Evidence 401, evidence is relevant only if "(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Evidence that falls short of this threshold is irrelevant, and therefore inadmissible. Fed. R. Evid. 402.

22. However, even if evidence is relevant, there are conditions where it may nonetheless be inadmissible. Pursuant to Fed. R. Evid. 403, "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: *unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence*." Additionally, "Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait." and "Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Fed. R. Evid. 404(a)(1), (b)(1)

23. To determine if the probative value of evidence outweighs the risk of undue prejudice, the Court should consider: (1) the government's incremental need for the evidence to prove guilt beyond a reasonable doubt; (2) the similarity of the

extrinsic act and the charged offense; and (3) the closeness in time between the extrinsic act and the charged offense. *United States v. Ellisor*, 522 F.3d 1255, 1268 (11th Cir. 2008), *United States v. Green*, No. 22-10785, 2023 U.S. App. LEXIS 8602, at *3 (11th Cir. Apr. 11, 2023)

CONCLUSION

24. Acosta's trial should not turn into a case about her IRS audit, the shoddy construction job done by her pool guy, or BSO's work policy. This is a case about PPP loan fraud and that is where the jury's attention should remain focused. Above all, the jury's attention should not be misdirected by evidence that will unfairly and irreparably tarnish Acosta's character and credibility before the jury, especially on topics that are totally collateral to the government's case that they have no obligation to prove or even discuss.

WHEREFORE, the Defendant and the undersigned attorney respectfully ask the Court to deny the government's *Motion in Limine to Admit Inextricably Intertwined Evidence or, in the Alternative, Evidence of Other Crimes, Wrongs, or Acts, Pursuant to Rule 404(b)* [DN-38]. In the alternative, should the Court be inclined to admit the evidence, the Court is asked to limit the breadth and scope of the government's evidence as outlined above.

Respectfully Submitted,

/s/ *Brian Silber*

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silberlaw@gmail.com
briansilberlaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this document was served on the following parties via CM/ECF on May 22, 2024.

SERVICE LIST

AUSA Trevor Jones
U.S. Attorney's Office SDFL
500 E. Broward Blvd, 7th Floor
Ft. Lauderdale, FL 33394
786-564-9109
trevor.jones@usdoj.gov

EXHIBIT 1

(BSO Off-Duty Employment Form)

RECEIVED
DEPT. OF PROFESSIONAL STANDARDS
JAN - 4 2017

RECEIVED
DEC 22 2016
MAJOR DAVID R. HOLMES

COLONEL JOHN DALE

Sheriff Scott Israel

BROWARD SHERIFF'S OFFICE OFF-DUTY EMPLOYMENT FORM

I Alexandra Acosta, CCN 17044, request that I be granted permission to accept
Print /Type Full Name
off-duty employment for the year 2017. The following is a description of the work I will perform and the days and times I will be engaged in this employment (if consulting or irregular hours, explain).

Business Name: Keller Williams Realty Partners SW Address: 2000 SW 150th Av Suite 1100, Pembroke Pines, FL 33028

Telephone: 954-237-0400 Work Days: Varies Work Hours: Varies

Job Description: Real Estate Sales

(If additional space is needed for explanation, provide information on a separate sheet of paper and attach to this application).

Does business involve sale and/or distribution of alcoholic beverages? ☐ YES ☑ NO

(If yes, provide a detailed summary in the space above)

I understand if this request is approved, it is VALID ONLY for the employer, employer's address, telephone number, type of work and work schedule outlined in this form. I also understand that off-duty employment is a privilege and not a right. This will include employees who sit on external boards and commissions (public, private, or non-profit) whether compensated or not. I agree that I will obtain and maintain all appropriate State, County, and or City approvals, licenses, etc., as applicable. I further understand that the Sheriff reserves the right to approve, deny, suspend, and or revoke this request at any time for any reason.

I have read and understand the policies as outlined in section 3.16 of the Sheriff's Policy Manual and agree to abide by them. I understand that this request expires on December 31st of each year. Once employment is terminated, I must submit an Off-Duty Termination form (BSO RP#45b). I also understand that my failure to do so may result in revocation of this off-duty employment request and/or disciplinary action.

Employee Signature, CCN	Date	Command	Job Title
17044	12/15/16	South Broward	Deputy Sheriff

Approval Signatures Below

	Signature	Date	Approved	Disapproved
Unit Supervisor:	Sgt. Abraham Cremidis, CCN 14612	12/15/16	☑ Approved	☐ Disapproved
Shift Supervisor:	Sgt. David Franks #11092 A/LT	12/19/16	☑ Approved	☐ Disapproved
Div. Cmdr/Dir.:	Capt. Danzell Brooks, CCN 16938	12/21/16	☑ Approved	☐ Disapproved
Regional Cmdr.:	Major David R. Holmes #8714	12/22/16	☑ Approved	☐ Disapproved
Bureau Cmdr:			☐ Approved	☐ Disapproved
Dept. Exec. Dir:	LTC James Polan ccn#14487	12/27	☑ Approved	☐ Disapproved
Sheriff/Designee:	Colonel John Dale #16920	1/4/17	☒ Approved	☐ Disapproved

RECEIVED
DEPT. OF LAW ENFORCEMENT
AUG 29
COLONEL

RECEIVED
DEPT. OF PROFESSIONAL STANDARDS
AUG 29 2016
COLONEL JOHN DALE

RECEIVED
AUG 24 2016
MAJOR DAVID R. HOLMES

Sheriff Scott Israel

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Employee Signature, CCN	Date	Command	Job Title
[signature]	8/18/16	South Broward	Deputy Sheriff

Approval Signatures Below

	Signature	Date		
Unit Supervisor:	Sgt. Abraham Cremidis, CCN 14612	8-18-16	☑ Approved	☐ Disapproved
Shift Supervisor:	Lieutenant Stephanie Coker CCN#11105	8-22-16	☑ Approved	☐ Disapproved
Div. Cmdr/Dir.:	Capt. Danzell Brooks, CCN 16938	8-22-16	☑ Approved	☐ Disapproved
Regional Cmdr:	Major David R. Holmes #8714	8/23/16	☑ Approved	☐ Disapproved
Bureau Cmdr:	Lt. Colonel J. Polan, CCN 14487	8/25	☑ Approved	☐ Disapproved
Dept. Exec. Dir:	Colonel Alvin Pollock, CCN 1858	8/26/16	☑ Approved	☐ Disapproved
Sheriff/Designee:	Colonel John Dale #16920	9/1/16	☒ Approved	☐ Disapproved

BSO RP#45 (Revised 04/15)

SCANNED

SEP 8 2016

BSO

RECEIVED
HUMAN RESOURCES

SEP 02 2016

SELECTION & ASSESSMENT