

**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 MOTION IN LIMINE TO EXCLUDE EVIDENCE**

COMES NOW, the Defendant, ALEXANDRA ACOSTA (“Acosta”), by and through the undersigned attorney, and respectfully motions this Court to exclude certain evidence, as explained below. In support thereof, Acosta states as follows:

1. Prior to filing the instant motion, the undersigned communicated with AUSA Trevor Jones (“AUSA Jones”), the prosecutor assigned to the instant case, and the parties were able to resolve some, but not all of the issues.

2. The instant motion asks the Court to exclude evidence of the following:
  - i. Evidence that Accosta and her wife are law enforcement officers and their employment as a Deputy Sheriff at the BROWARD SHERIFFS OFFICE (“BSO”) and a Sergeant at the MIRAMAR POLICE DEPARTMENT (“Miramar PD”), respectively.
  - ii. Evidence of Acosta’s IRS audit or tax liabilities, her lawsuit against the company that built her pool, and BSO’s off-duty work policy.
  - iii. Acosta’s utterance allegedly heard by SGT. ERIC GIRADO (“Sgt. Girado”) that either “this is f\*\*\*ed up” or “I f\*\*\*ed up.”
  - iv. Any overly prejudicial statements regarding COVID-19 or the purpose of PPP loans, including any mention that the program ran out of funds.

### **BASIS FOR EXCLUSION**

3. Acosta incorporates by reference, the portions of her Response in Opposition [DN-40] to the government’s Motion in Limine to Admit Inextricably Intertwined Evidence, etc. [DN-38] that relate to the above referenced evidence.

4. Acosta objects to the admission of any of the above 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.

**I. Evidence that Accosta and her wife are law enforcement officers and their employment as a Deputy Sheriff at the BROWARD SHERIFFS OFFICE (“BSO”) and a Sergeant at the MIRAMAR POLICE DEPARTMENT (“Miramar PD”), respectively.**

5. Evidence of Acosta’s status as a Deputy Sheriff at BSO, her wife’s status as a Sergeant at Miramar PD, and their status as law enforcement officers has absolutely nothing to do with this case. Acosta is not charged with any act of public corruption nor are there any allegations or facts that establish a nexus between her or her wife’s employment, role, or job title and the crimes that are being prosecuted in this case. Furthermore, there is absolutely nothing about their status or titles that the government requires to tell the story of its case to the jury. In fact, every time the words “Deputy Sheriff”, “law enforcement officer”, or “Broward Sheriffs Office” appear in this case, they could just as well be substituted with the words “barista,” “Starbucks,” or “coffee shop” and it would make no difference.

6. If the government was barred from mentioning Acosta and her wife’s status, etc., it could still tell the same exact story and argue the same exact case without incurring any prejudice or handicap. Instead of mentioning BSO by name or Acosta by job description/title, they can generically refer to BSO as Acosta’s

“employer” and her status as a Deputy Sheriff/law enforcement officer as her “job”, “work”, or “employment”. *Informing the jury of her law enforcement status will only inflame them against her.*

**II. Evidence of Acosta’s IRS audit or tax liabilities, her lawsuit against the company that built her pool, and BSO’s off-duty work policy.**

7. Acosta relies on the arguments and objections made in her Response in Opposition [DN-40] to the government’s Motion in Limine Admit Inextricably Intertwined Evidence, etc. [DN-38] and incorporates them herein by reference.

8. In essence, as was argued in DN-40, this evidence is inadmissible because it is irrelevant, is more prejudicial than probative, is unfairly prejudicial, and will only serve to confuse the jury and inflame them against her. This evidence is collateral and represents a small portion of the government’s overall case and concerns matters that the government has no duty to prove or address.

**III. Acosta’s utterance allegedly heard by SGT. ERIC GIRADO (“Sgt. Girado”) that either “this is f\*\*\*ed up” or “I f\*\*\*ed up.”**

9. After conferring with the government, the parties are in agreement that the above statements shall not be admitted. Because Sgt. Girado is unsure about what he heard, this evidence is speculative and therefore irrelevant.

**IV. Any overly prejudicial statements regarding COVID-19 or the purpose of PPP loans, including any mention that the program ran out of funds.**

10. While discussing the context of Covid-19 as it relates to PPP loans is entirely admissible, Acosta merely seeks exclusion of any evidence that harps on the tragedy of Covid-19 or over-emphasizes its impact on individuals or households, including any mention that the program ran out of funds as doing so would be more prejudicial than probative and would unfairly prejudice Acosta, confusing the jury away from the issues.

**MEMORANDUM OF LAW**

11. 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)

12. 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.

13. 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)

14. 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)

WHEREFORE, the Defendant and the undersigned attorney respectfully motion the Court to exclude the above named evidence from admission at trial.

Respectfully Submitted,

*/s/ Brian Silber*

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**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**

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