IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

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

DEFENDANT'S RESPONSE IN OPPOSITION TO GOVERNMENT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE [DN-39]

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 to Exclude Evidence* [DN-39]. In support thereof, Acosta states as follows:

1. Acosta confirms that she agrees to exclude the following evidence (items 2, 3, and 4 of the government's motion):

- Evidence and arguments concerning any alleged negligence by the victim lender, their loan processors, or the United States Small Business Administration ("SBA");

- Evidence and arguments concerning any profit by the above-referenced victims;

- Evidence and arguments relating to jury nullification, including evidence and argument about the nature of the prosecution, use of federal resources, and the United States's charging decisions.

2. However, as is argued in Acosta's *Motion in Limine to Admit Specific Evidence*, she wishes to admit **limited evidence** (one or two questions and the admission of one or two documents) that will inform the jury that she repaid the loan in full, plus penalties and interest to the SBA. Acosta does not wish to introduce this evidence as a defense to fraud or to argue for a jury nullification. On the contrary, she wishes to admit this evidence to avoid a question about her **credibility**. This portion of her defense is very brief and limited, albeit essential.

3. Acosta claims that her tax preparer, VILSAINT ST. LOUIS, advised her that she qualified for a PPP loan because she had a 1099 due to the fact that she worked part-time as a real estate agent in 2019. When she asked St. Louis how she could qualify for a "Paycheck Protection" loan because she did not have any employees or pay any payroll, St. Louis advised her that the loan proceeds could be used for other purposes. Because he already had all of her financial information, St. Louis offered to handle the entire process for her. It is undisputed that St. Louis

prepared, signed, and submitted the loan application on his own. A memorandum detailing St. Louis' proffer to the government drafted by the lead case agent states that "St. Louis signed the PPP loan application for Acosta because St. Louis made up the Form 1099-Miscellaneous for Acosta; *she did not have any knowledge of it.*"

4. While Acosta does not deny that the loan was applied for on her behalf or that she received $20,180 in proceeds that she spent on personal items, Acosta strongly denies having any knowledge of or participation in the fraud or misrepresentations made in her loan application which was handled exclusively by St. Louis. While she knew St. Louis was going to apply for the loan on her behalf, she had no idea he was going to misrepresent her income or other information to get it. She did not learn of his fraud and misrepresentations until she was arrested in the instant case.

5. When this defense is presented to the jury, they will naturally wonder if she kept the money or returned it now that she knows and agrees that she received the money due to the fraud and misrepresentations made by St. Louis. **The jury will innately wonder if she is *telling* them one thing while *doing* another.** A reasonable jury would expect an honest person to return the money under these circumstances and would further expect to be informed of such. The absence of a clarification will be filled with a negative assumption that impugns her credibility and the believability of her <u>main defense</u>. Thus, evidence limited to one or two questions

and one or two documents should be admitted so that Acosta may avoid a question of her credibility and to avoid conferring the unfair advantage a lingering doubt will give to the government.

WHEREFORE, the Defendant and the undersigned attorney respectfully ask the Court to deny the government's *Motion in Limine to Exclude* [DN-39] to the extent that it asks to exclude evidence of loan repayment. In the alternative, should the Court be inclined to exclude the evidence, the Court is asked to permit Acosta to admit a limited version of repayment evidence just so she can make the point that she is acting consistently and there is no question about her credibility in this regard.

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.

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