UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-60170-CR-SCOLA

UNITED STATES OF AMERICA

v.

ALEXANDRA ACOSTA and
VILSAINT ST LOUIS,

Defendants.
_______________________________________/

UNITED STATES' MEMORANDUM OF LAW REGARDING INAPPLICABILITY OF GOOD FAITH DEFENSE TO 15 U.S.C. § 645(a)

Introduction

Defendant Alexandra Acosta is charged in Count 1 with general conspiracy (18 U.S.C. § 371) as to Counts 2 and 3 of the Superseding Indictment, which charge Acosta with making a false statement to the Small Business Administration ("SBA"), in violation of 15 U.S.C. § 645(a). ECF No. at 23. Count 4 of the Superseding Indictment charges Acosta with wire fraud, in violation of 18 U.S.C. § 1343. *Id.* Defendant has proposed two special instructions regarding a good faith defense, *see* ECF No. 54-1 at 50–52. The first proposed instruction is a modified Eleventh Circuit Pattern Criminal Jury Instruction Special Instruction 9, which applies to Internal Revenue Code crimes that require "willfulness." *Id.* at 50. The second is Special Instruction 17, which applies to crimes that have as an essential element the specific "intent to defraud." Neither are correct instructions for Counts 1 through 3 related to 15 U.S.C. § 645(a) because those offenses do not have elements of "willfulness" or "intent to defraud." As such, the Court should refuse to give the proposed instructions as to those Counts. Assuming Defendant Acosta lays the proper foundation in evidence at trial to support a defense of good faith as to Count 4 of the Superseding Indictment that requires an intent to defraud, i.e., 18 U.S.C. § 1343, Special instruction 17 could be provided on Count 4 even though the standard instruction covering intent to defraud should suffice. *See, e.g.*, *United States v. Holzendorf*, 576 F. App'x 932, 936 (11th Cir. 2014) (holding that district court did not abuse its discretion in denying good-faith instruction where the defense was otherwise substantially covered by the court's instruction on intent—"which stated that the jury could not convict [the defendant] without finding that he acted with the intent to defraud.").

<u>Standard of Review</u>

"A refusal to give a requested theory of defense instruction is reversible error only if the requested instruction '(1) was correct, (2) was not substantially covered by the court's charge to the jury, and (3) dealt with some point in the trial so important that failure to give the requested instruction seriously impaired the defendant's ability to conduct his defense.'" *United States v. Camejo,* 929 F.2d 610, 614 (11th Cir. 1991) (quoting *United States v. Benz,* 740 F.2d 903, 910 (11th Cir.1984), *cert. denied,* 474 U.S. 817 (1985)); *see also United States v. Maxwell*, 579 F.3d 1282, 1303 (11th Cir. 2009).

Argument

A. Defendant's Good Faith Instructions are Inaccurate Statement of the Law

"Accuracy in a requested instruction on a theory of defense requires that there be some basis both in law and in the evidence to support the instruction." *United States v. Morris*, 20 F.3d 1111, 1116 (11th Cir. 1994). The special instructions proposed by Defendant Acosta regarding good faith are not correct statements of the law for Counts 1–3 because the elements of the substantive underlying offense of making a false statement under § 645(a), as charged, do not require the government to prove intent to defraud (S17) or willfulness (S9).

"The general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system." *Cheek v. United States*, 498 U.S. 192, 199 (1991). "Based on the notion that the law is definite and knowable, the common law presumed that every person knew the law." *Id.* However, with the growing number of complex statutes and regulations, statutory language requiring the elements of intent to defraud and willfulness create specific intent crimes where appropriate. *See id.* In such instances, the Eleventh Circuit is clear that good faith instructions apply only to these specific intent crimes requiring the elements of intent to defraud or willfulness. *See United States v. Zoriano*, 817 F. App'x 817, 821 (11th Cir. 2020) ("Because intent to defraud is not an element of the crimes charged in Zoriano's indictment, good faith is not a complete defense to those charges. Thus, the district court did not abuse its discretion in declining to give Zoriano's requested good faith instruction because the instruction was not a correct statement of the law."); *United States* *v. Maxwell*, 579 F.3d 1282, 1304 (11th Cir. 2009) (recognizing good faith defense as applicable to crimes involving intent to defraud or willfulness); *United States v. Morris*, 20 F.3d 1111, 1115–17 (11th Cir. 1994) (discussing good faith instruction for willfulness element in tax crimes); *see also* Eleventh Circuit Criminal Pattern Jury Instruction, Special Instruction 18 comments ("Because good-faith **relates to an element of the offense**, the defendant does not have the burden of persuasion, although the defendant may have the burden of production." (emphasis added)).

15 U.S.C. 645(a)—False Statement—does not have elements of intent to defraud or willfulness

"Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acted intentionally and purposely in excluding the particular language." *United States v. Henry*, 111 F.3d 111, 114 (11th Cir. 1997); *Zoriano*, 817 F. App'x at 821.

Section 645(a) proscribes two separate crimes false statements and overvaluations of securities to the SBA:

> (a) FALSE STATEMENTS; OVERVALUATION OF SECURITIES
>
> <u>Whoever makes any statement knowing it to be false</u>, or whoever willfully overvalues any security, <u>for the purpose of obtaining for himself or for any applicant any loan</u>, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, <u>or for the purpose of influencing in any way the action of the Administration</u>, or for the purpose of obtaining money, property, or anything of value, under this chapter, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both.

(emphasis added). Thus, within the statute itself, Congress determined that willfulness is an element of charges relating to the overvaluing of any security but not for making any false statement. And distinct from the false statements of § 645(a), Congress expressly included the element of intent to defraud in § 645(c):

> Whoever, **with intent to defraud**, knowingly conceals, removes, disposes of, or converts to his own use or to that of another, any property mortgaged or pledged to, or held by, the Administration, shall be fined not more than $5,000 or imprisoned not more than five years, or both; but if the value of such property does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

15 U.S.C. § 645(c) (emphasis added); *United States v. Kelly*, 630 F.2d 302 (5th Cir. 1980)[1] (discussing intent to defraud element of § 645(c)). It expressly required the same intent to defraud element § 645(b)(2) and (3). Thus, it is clear from the statutory language of § 645 that a person can be convicted of a false statement under § 645(a) without the intent to defraud and without willfulness. *Cf. United States v. Condon*, 132 F.3d 653, 656 (11th Cir. 1998) (reading plain language of § 645(a) to not require element of materiality because the statutory language "fails to mention materiality and expressly prohibits 'any' false statements made to the SBA"). For example, a false representation about who was signing the applications is a knowing false statement that could be done without intent to defraud, but with the intent to influence the SBA in approving

[1] In *Bonner v. City of Prichard,* 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all of the decisions of the former Fifth Circuit handed down before the close of business on September 30, 1981.

a loan under false pretenses.

By comparison, 18 U.S.C. § 1001 requires that the false statement be knowing and willful. *Id.* ("[W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully . . . ."); *United States v. Johnson*, 730 F.2d 683 (11th Cir. 1984) (addressing possible application of good faith instruction to 18 U.S.C. § 1001, which has willfulness element).

And while perhaps there is an implicit intent to deceive that is inherent in § 645(a)—i.e., knowingly making a false statement—the government need not prove the intent as an element of the offense. *See Zoriano*, 817 F. App'x 817, 821 ("Zoriano argues that an instruction on the good faith defense was appropriate with respect to the charged violations of § 408(a)(7)(C) because the intent to deceive is inherent in the crime of selling counterfeit documents . . . . We agree that dishonesty is inherent in the act of selling a counterfeit Social Security card that the defendant knows is fake. But the fact that the intent to deceive is implicit in the crime does not mean that the government is required to prove such intent as an element of the offense.").

Accordingly, a good faith instruction as to willfulness and intent to defraud is an inaccurate statement of the law and should not be provided to the jury as to Counts 1 through 3 of the Superseding Indictment.

B. Defense is Substantially Covered by Offense Instruction

The substantive offense instruction for 15 U.S.C. § 645(a) substantially covers the defense theory that she did not know the statements were false:

(1) the defendant **knowingly** made any false statement; and

(2) the false statement was **for the purpose of obtaining** for herself or for any applicant any loan or for the purpose of influencing in any way the action of the SBA.

ECF No. 54-1 at 40 (emphasis added). Defendant Acosta cannot argue that she relied in good faith on advice that it was okay to knowingly make false statements on the SBA application. *See also United States v. Johnson*, 730 F.2d 683, 686–87 (11th Cir. 1984) (denying a good faith reliance instruction in 18 U.S.C. § 1001 (requires knowledge and willfulness) case where defendant claimed to not know about the false statements, i.e., the knowledge element, and did not claim that he was advised to make the false statements).

Alternative Proposed Instruction for 15 U.S.C. § 645

In *Condon*, the Eleventh Circuit noted that 15 U.S.C. 645(a) "contains language substantially similar to" 18 U.S.C. 1014, which prohibits false statements made to federally insured banks. 132 F.3d at 655. The two statutes were so similar that the Eleventh Circuit concluded that 645(a) did not have a materiality element because § 1014 also lacked a materiality element (as the Supreme Court had recently held in *United States v. Wells*, 519 U.S. 482 (1997)). *See Condon*, 132 F.3d at 655–56.

While the jointly submitted instruction accurately states the elements of § 645(a) as agreed by the parties, the Eleventh Circuit also has a pattern instruction for § 1014 offenses. Given the textual and structural similarities between the two statutes, as recognized by the Eleventh Circuit, the Court could use the alternative instruction below that would substantially cover Defendant

Acosta's defense without misstating the law[2]:

> It's a Federal crime to knowingly make a false statement or report to *the Small Business Administration* ~~a federally insured financial institution~~.
>
> The Defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:
>
> (1) the Defendant made a false statement ~~or report~~; *and*
> ~~– or –~~
> ~~(when the alleged wrongdoing is overstating the value of an asset or income)~~
> ~~[(1) the Defendant willfully overvalued land property or security;]~~
>
> (2) the Defendant did so knowingly and with intent to influence an action of the *Small Business Administration* ~~institution described in the indictment~~ regarding a ~~an application, advance, commitment, or~~ loan~~,~~ or *with the intent to influence in any way the action of the Small Business Administration.* ~~a change or extension to any of those loan; and~~
>
> (3) ~~the deposits of the institution were insured by the Federal Deposit Insurance Corporation.~~
>
> A statement ~~or report~~ is "false" if it is untrue when made and the person making it knows it is untrue.
>
> The heart of the crime is the attempt to influence the action of the *Small Business Administration* ~~institution~~ by knowingly ~~[willfully]~~ making a false statement ~~or report~~. The Government does not have to prove that the *Small Business Administration* ~~institution~~ was actually influenced or misled.

C. Evidentiary Basis

The good-faith instruction requested by Defendant requires an underlying evidentiary foundation. *See United States v. Williams*, 728 F.2d 1402, 1404–05 (11th Cir. 1984) (citing *United States v. Goss*, 650 F.2d 1336 (5th Cir. Unit A 1981)).

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[2] Proposed additions are in *italics* and omissions have ~~strikethrough~~.

Because the decision to give the good-faith-defense instruction is nuanced and dependent upon the evidence presented to the jury at trial, the United States objects to the instruction as to Count 4 (wire fraud) before the close of evidence, and respectfully requests that the Court reserve ruling on this issue and address the proposed instruction—and any arguments for or against—at the charging conference. Indeed, the United States' case-in-chief alone will not support a good-faith instruction.

Conclusion

Good faith instructions are an incorrect statement of the law for 15 U.S.C. § 645(a), as charged, because the government is not required to prove intent to defraud or willfulness. And the jointly proposed instructions for Counts 1-3 substantially cover the defense because they require that the Defendant knew the statements were false. Accordingly, this Court should deny the Defendant's request to instruct the jury with Special Instruction 9 and Special Instruction 17 as to Counts 1 through 3, and reserve ruling on instructing the jury with Special Instruction 17

Respectfully submitted,

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