

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**UNITED STATES OF AMERICA**

**PLAINTIFF**

**v.**

**CASE NO. 3:20-cr-00031-CWR-LGI**

**TED BRENT ALEXANDER**

**DEFENDANT**

**Motion *In Limine*  
to Exclude Victim Impact Testimony at Trial**

Comes now Defendant Ted Brent Alexander and files this Motion *In Limine* to Exclude Victim Impact Testimony at Trial. In support of this Motion, Mr. Alexander presents the following:

**Introduction**

The prosecution charged Mr. Alexander in a multi-count Indictment with conspiracy to commit securities and wire fraud in violation of 18 U.S.C. § 1349, securities and commodities fraud in violation of 18 U.S.C. § 1348, and wire fraud in violation of 18 U.S.C. § 1343. During the discovery process, the prosecution provided the defense with multiple FBI Form 302 reports. Many of the reports pertain to FBI interviews of victims of the crimes alleged in the Indictment. In most of those reports, the victims communicate the financial and/or emotional hardships that they have allegedly suffered because of the fraud alleged in the Indictment.

At this point, the defense does not know if the prosecution intends to introduce the victim impact statements at the guilt phase of Mr. Alexander's trial. However, out of an abundance of caution, the defense is moving *in limine* to bar the prosecution from making any comments about purported victim impact during opening statement or to introduce any such evidence at trial.<sup>1</sup>

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<sup>1</sup> At this point in the litigation, the defense is not contending that the prosecution should be barred from introducing victim impact evidence at sentencing, should the jury return a guilty verdict on any count. However, Mr. Alexander reserves the right to make that argument at sentencing if the situation warrants such an argument.

## Argument

Admissibility of victim impact evidence is governed by Rules 401 through 403 of the Federal Rules of Evidence. By the Rules, evidence is relevant 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.

Fed. R. Evid. 401.

Relevant evidence is admissible unless any of the following provides otherwise:

- the United States Constitution;
- a federal statute;
- these rules; or
- other rules prescribed by the Supreme Court.

Irrelevant evidence is not admissible.

Fed. R. Evid. 402.

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.

Fed. R. Evid. 403.

In *United States v. Clark*, 577 F.3d 273 (5th Cir. 2009), the Fifth Circuit provided a good summary of these three rules. The court held:

Federal Rule of Evidence 402 provides that “[a]ll relevant evidence is admissible,” except as otherwise excluded by the Constitution, law, or other rule of evidence. Fed. R. Evid. 402. Rule 401 defines “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Fed. R. Evid. 401. Rule 403 limits the admissibility of relevant evidence, explaining that “[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Fed. R. Evid. 403.

*Clark*, 577 F.3d at 287.

In this case, evidence of victim impact has nothing to do with proving the elements of either securities fraud, wire fraud, or the conspiracy to commit either. Therefore, the evidence is irrelevant under Rule 401 and inadmissible under Rule 402. Since the evidence is inadmissible as irrelevant, the Court does not need to conduct a balancing analysis under Rule 403. The evidence is simply inadmissible.

But even if the evidence is relevant in some way, its prejudicial effect outweighs its probative value. Therefore, the evidence is inadmissible even if the Court does proceed to an analysis under Rule 403.

Mr. Alexander's argument is supported by the holdings in *United States v. Norman*, 638 Fed. App'x 934 (11th Cir. 2016). In *Norman*, the defendant argued that "the district court erred in allowing victims to testify at trial about how the credit card fraud affected their lives[.]" *Id.* at 936. The court found that the evidence was irrelevant to prove any of the elements of access device fraud. *Id.* at 939. The court also found that the evidence was unduly prejudicial. *Id.* Thus, the court concluded, "the district court abused its discretion by admitting the victim-impact testimony at trial because it was both irrelevant and unduly prejudicial. *Id.* However, the court went on to find that the error was harmless based on the overwhelming evidence of guilt. *Id.*

### **Conclusion**

Just as in *Norman*, victim impact evidence in Mr. Alexander's case is inadmissible as either irrelevant or unduly prejudicial. Therefore, the Court should grant this Motion, and bar the prosecution from making any comments about purported victim impact during opening statement or to introduce any such evidence at trial.

WHEREFORE, Defendant Ted Brent Alexander respectfully asks this Court to grant his Motion *In Limine* to Exclude Victim Impact Testimony at Trial.

Respectfully submitted, this the 22<sup>nd</sup> day of July, 2022.

/s/ J. Matthew Eichelberger  
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**CERTIFICATE OF SERVICE**

I, J. Matthew Eichelberger, do hereby certify that I have this day caused to be filed a true and correct copy of the foregoing document using the Court's CM/ECF system, which sent a true and correct copy of the same to all counsel of record.

**SO CERTIFIED**, this the 22<sup>nd</sup> day of July, 2022.

/s/ J. Matthew Eichelberger  
J. MATTHEW EICHELBERGER