

**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 Evidence Concerning Regulatory Action**

Comes now Defendant Ted Brent Alexander and files this Motion *In Limine* to Exclude Evidence Concerning Regulatory Action. 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. The Commodities and Futures Trading Commission (CFTC), pursuant to its statutory authority under Section 8a(11) of the Commodity Exchange Act, 7 U.S.C. § 12a(11), then moved to suspend Mr. Alexander's registrations with the CFTC.

Under Section 8a(11), the CFTC is authorized to suspend any person *charged* with participation in a crime that would reflect on their honesty, so long as the possible punishment exceeds one year. The basis for this authority is the desire to protect the public's confidence in our nation's commodities exchanges, and does not require any proof beyond the existence of a charging document. Mr. Alexander subsequently stipulated that he had indeed been charged with a crime that fit the statutory definition required for suspension, and agreed with the CFTC to a resolution that would allow for his suspension during the pendency of the instant action.

Out of an abundance of caution, Mr. Alexander seeks an order from this Court

prohibiting the introduction of any evidence (testimonial or otherwise) concerning this suspension, as such evidence is not relevant and is more prejudicial than probative. Further, such evidence poses the danger of confusing the issues before the jury.

Argument

Admissibility of all evidence, including any evidence concerning Mr. Alexander's agreed upon suspension with the CFTC, 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 the agreed upon suspension 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. The suspension by the CFTC, as stated above, is based upon the mere existence of the Indictment in this case. The CFTC did not make any finding that Mr. Alexander actually committed the crimes alleged in the indictment, rather that he was simply charged with them. Pursuant to Section 8a(11), it is the existence of the indictment that matters. The CFTC’s charge to protect investors’ confidences in the public commodities markets compels them to seek suspensions in cases such as this, and that directive should not be used to in any way lighten the burden of the Government in this case by allowing them to give the jury the misleading impression that the CFTC has already made some determination as to the truth of the allegations themselves.

Conclusion

Evidence concerning the CFTC’s suspension of Mr. Alexander is inadmissible as either irrelevant or unduly prejudicial. Therefore, the Court should grant this Motion, and bar the prosecution from making any comments about any CFTC regulatory action 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 Evidence Concerning Regulatory Action.

Respectfully submitted, this the 22nd 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 22nd day of July, 2022.

/s/ J. Matthew Eichelberger
J. MATTHEW EICHELBERGER