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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 * * * * *

15 UNITED STATES OF AMERICA,) CASE NO. 2:24-CR-00091-ODW
16)
17 Plaintiff,)
18) **DEFENDANT’S NOTICE OF**
19) **MOTION AND MOTION *IN***
20 v.) ***LIMINE* TO PRECLUDE ANY**
21) **REFERENCENCES TO**
22) **DEFENDANT’S**
23 ALEXANDER SMIRNOV,) **LAWFULLY OWNED**
24) **FIREARMS**
25)
26 Defendant,) **Honorable Otis D. Wright II**
27) **November 25, 2024 at 10:00 a.m.**
28 _____)

29 PLEASE TAKE NOTICE that on November 25, 2024 at 10:00 a.m., or as
30 soon thereafter as counsel may be heard, Defendant, ALEXANDER SMIRNOV
31 (“Mr. Smirnov”), by and through his attorneys, DAVID Z. CHESNOFF, ESQ., and
32 RICHARD A. SCHONFELD, ESQ., of the law firm of CHESNOFF &

1 SCHONFELD, will ask this Honorable Court to enter an order granting his Motion
2 *in Limine* to Preclude Any References to Mr. Smirnov's Lawfully Owned Firearms,
3
4 which were seized from his Las Vegas apartment incident to his arrest in February
5 2024. *See* Fed. R. Evid. 401, 402, 403, 404(b).

6 This Motion is made and based upon the attached Memorandum of Points and
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8 Authorities, filed October 31, 2024.

9 On October 22, 2024, Mr. Smirnov sent an email to counsel for the
10 government, seeking the government's position on this motion *in limine*. Counsel
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1 for the government wrote, “We oppose.”¹

2 Dated this 31st day of October, 2024.

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4 Respectfully Submitted:

5 CHESNOFF & SCHONFELD

6 /s/ David Z. Chesnoff

7 DAVID Z. CHESNOFF, ESQ.

8 *Pro Hac Vice*

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16 Attorneys for Defendant

17 ALEXANDER SMIRNOV

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20 _____
21 ¹ When Mr. Smirnov sent a letter to ascertain the Government’s position on this proposed motion *in limine*, counsel for the Government responded:

22 You asked for our position on whether we intend to reference “[t]he firearms seized
23 from Mr. Smirnov’s residence in Las Vegas at or around the time of his initial arrest
24 in February 2024.” (Letter dated October 21, 2024, Paragraph 2). *We oppose*. While
25 we do not *intend* to introduce the seizure of the guns in our case in chief *at this*
26 *time, we reserve the right to do so* to establish, among other things, that items seized
from the defendant’s residence *belong to him*. If you do not intend to challenge
whether evidence seized from the defendant’s residence *belongs to him*, we believe
we can reach a stipulation that we will not introduce the firearms at trial.

27 E-mail by United States (Leo J. Wise, Principal Senior Assistant Special Counsel) to
28 Richard A. Schonfeld, Esq. at 2, ¶2 (Oct. 25, 2024) (emphases added).

1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 **A. Background**

4 The two-count Indictment in this case (ECF No. 1, Feb. 14, 2024) charges Mr.
5 Smirnov with: 1) Making False Statements to a Government Agent, in violation of
6 18 U.S.C. § 1001; and 2) Falsification of Records in a Federal Investigation, in
7 violation of 18 U.S.C. § 1519. As alleged in the Indictment, Mr. Smirnov served as
8 a confidential human source (“CHS”) for the FBI for at least 10 years, from 2013
9 through October 2023.
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12 The evidence shows (and the Government cannot dispute): 1) that, in February
13 2024, law federal agents arrested Mr. Smirnov in Las Vegas, Nevada; 2) that FBI
14 thereafter searched Mr. Smirnov’s apartment in Las Vegas, pursuant to an Order
15 granting and sealing the Search Warrant, signed by United States Magistrate Judge
16 (District of Nevada) Brenda Weksler on February 20, 2024; 3) that Attachment B to
17 the Search Warrant (“Property to be Seized,” at USA-01-00000042) lists
18 “documents,” “records,” “financial records,” “bank statements,” “credit card
19 records,” and “electronic devices” to be seized incident to the search; 4) that
20 Attachment B nowhere lists that “firearms” of any sort are to be “seized;” 5) that the
21 agents, pursuant to their search, nevertheless seized firearms from Mr. Smirnov’s
22 apartment; 6) that each of those firearms was lawfully owned and possessed by Mr.
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1 Smirnov, a United States citizen; and 7) that the agents subsequently returned all of
2 the seized, lawfully owned firearms to Mr. Smirnov.

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4 Despite the never-listed firearms having nothing to do with any element
5 necessary for conviction under the either the “false statement or the obstruction”
6 offenses, the Government plans to refer to Mr. Smirnov’s firearms at during its case-
7 in-chief, opening statement, closing argument, and/or rebuttal. Because Mr. Smirnov
8 objects to any reference whatsoever, this motion follows. *See* Fed. R. Evid. 401, 402,
9 403. *See supra* at n.1.

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12 **B. This Court Should, Under Rule 403, Preclude References to Mr.**
13 **Smirnov’s Lawfully Owned Firearms**

14 While Rules 401 and 402 of the Federal Rules of Evidence exclude irrelevant
15 evidence (that is, evidence that is simply not probative of a disputed fact “of
16 consequence,” based on the elements of the charges in the Indictment), Rule 403
17 provides that even evidence containing some slight relevance should be excluded
18 where—as in this case—its limited probative value is substantially outweighed by
19 the following countervailing considerations:
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22 The court may exclude relevant evidence if its probative value is
23 substantially outweighed by a danger of one or more of the following:
24 unfair prejudice, confusing the issues, misleading the jury, undue delay,
wasting time, or needlessly presenting cumulative evidence.

25 Fed. R. Evid. 403; *see also United States v. Salman*, 618 F. App’x 886, 889 (9th Cir.
26 2015) (“Federal Rule of Evidence 401 provides that evidence is relevant if ‘it has
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1 any tendency to make a fact more or less probable than it would be without the
2 evidence' and 'the fact is *of consequence in determining the action,*' and Federal
3 Rule of Evidence 402 requires that irrelevant evidence be excluded.") (emphases
4 added).
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6 While Rule 403 decisions are reviewed under an abuse of discretion standard,
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8 *see, e.g., Mulligan v. Nichols*, 835 F.3d 983, 992 (9th Cir. 2016), the Ninth Circuit
9 does not hesitate to find error in district court admissions of unfairly prejudicial
10 evidence. Thus, for example, while ultimately holding that the admission of
11 inflammatory evidence did not rise to the level of harmful error, the Ninth Circuit
12 has stated:
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14 Evidentiary rulings are reviewed for an abuse of discretion. *See EEOC*
15 *v. Pape Lift, Inc.*, 115 F.3d 676, 680 (9th Cir.1997). Evidence is
16 inadmissible if it is not relevant, Fed. R. Evid. 401, or "if its probative
17 value is substantially outweighed by the danger of unfair prejudice,"
18 Fed. R. Evid. 403.

19 The testimony elicited by the Government regarding Lawrence's
20 ["unconventional"] marriage and the circumstances of that relationship
21 was *not* probative of Lawrence's guilt or innocence of the [fraud and
22 false statement] crimes with which he was charged. Any relevance this
23 testimony may have had is *easily outweighed by the unfair prejudicial*
24 *effect* it had on the jury's ability to focus on the issues relevant to the
25 charges. *See United States v. Hitt*, 981 F.2d 422, 424 (9th Cir. 1992) . .
26 . . Accordingly, *the district court abused its discretion in allowing this*
27 *testimony to be heard by the jury.*

28 *United States v. Lawrence*, 189 F.3d 838, 842–43 (9th Cir. 1999) (emphasis added).

1 These principles compel an order precluding the Government from referring
2 to the firearms seized from Mr. Smirnov’s residence. First, under Rules 401 and 402,
3 Mr. Smirnov’s lawful gun possession is irrelevant to the elements charged in the
4 only two counts at issue: the fact of “possession” does make more (or less) likely
5 any fact “of consequence” in a prosecution charging false statements and
6 obstruction.
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9 Just as lawful firearm possession has nothing to do with—and is, therefore,
10 irrelevant in—a case charging workplace discrimination, Mr. Smirnov’s lawful
11 possession of the firearms seized from his residence equally irrelevant to a case
12 charging false statements and obstruction of an investigation. *See, e.g., Schagene v.*
13 *Mabus*, No. 13CV0333-WQH-RBB, 2015 WL 13566925, at *2 (S.D. Cal. Mar. 10,
14 2015) (granting motion *in limine* precluding civil plaintiff from even referring to
15 other employees’ “carrying or bringing guns to” the workplace: “Plaintiff has failed
16 to demonstrate that employees bringing guns to work has any probative value with
17 respect to Plaintiff’s discrimination, harassment, or retaliation claims. *See* Fed. R.
18 Evid. 401, 402. Defendant’s motion to exclude ‘all evidence of, or reference to,
19 employees carrying or bringing guns to [the workplace]’ is granted.”). Under Rules
20 401 and 402 alone, therefore, this Court can (and should) grant Mr. Smirnov’s
21 motion *in limine* and proceed no further.
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1 But even if this Court imagines that an American citizen’s lawfully owned
2 firearms bear *some* sort of “relevance” to a case charging false statements and
3 obstruction, any references to those firearms is still precluded under Rule 403.
4 Specifically, any slight “probative value” attached to the common law fact of Mr.
5 Smirnov’s “possession” is substantially outweighed by the risk of unfair prejudice,
6 confusing the issues, and misleading the jury. *See, e.g., United States v. Preston*, 873
7 F.3d 829, 841–42 (9th Cir. 2017) (“[T]he district court abused its discretion by
8 finding the evidence admissible under Rule 403. Rule 403 is meant to ‘ensure that
9 *potentially devastating evidence of little probative value will not reach the jury*’ . . .
10 . We have long held that ‘[w]here the evidence is of very slight (if any) probative
11 value, it’s an abuse of discretion to admit it if there’s *even a modest likelihood of*
12 *unfair prejudice or a small risk of misleading the jury.*” *United States v. Wiggan*,
13 700 F.3d 1204, 1213 (9th Cir. 2012) (emphases added)).
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19 Indeed, the Ninth Circuit as well as other Courts of Appeal have long
20 emphasized that even *pictures* of firearms raise heightened concerns regarding unfair
21 prejudice under Rule 403:
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23 Rightly or wrongly, many people view weapons, *especially guns*, with
24 fear and distrust. Like evidence of . . . past crimes, photographs of
25 firearms often have a *visceral impact that far exceeds their probative*
26 *value*. *See, e.g., United States v. Green*, 648 F.2d 587, 595 (9th Cir.
27 1981) (per curiam); *see also United States v. Peltier*, 585 F.2d 314, 327
28 (9th Cir. 1978) (dictum), *cert. denied*, 440 U.S. 945 (1979); *United*
States v. Robinson, 560 F.2d 507, 513–14 (2d Cir.1977) (en banc), *cert.*
denied, 435 U.S. 905 (1978); *United States v. Warledo*, 557 F.2d 721,

1 724–26 (10th Cir.1977). The prejudice is even greater when the picture
2 is not of one gun but of many.

3 *United States v. Hitt*, 981 F.2d 422, 424 (9th Cir. 1992) (emphases added).

4 Here, as noted above, the *only* reason the Government offers for referencing
5 the firearms at trial is that they “belong[ed]” Mr. Smirnov (*see supra* at n.1)—an
6 inflammatory tangent that: 1) has nothing to do with any element of the charged
7 offenses; and 2) furthers the Government’s impermissible trial goal of portraying
8 Mr. Smirnov not just as an “unpatriotic Russian spy,” but as an “*armed*, unpatriotic
9 Russian spy.” Because such tactics—getting the case agent to show the jury a picture
10 of a line of weapons, are precluded under Rule 403 and the precedent, this Court
11 should not permit *any* references to the firearms.
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1 **C. Conclusion**

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3 For the foregoing reasons, Mr. Smirnov respectfully requests that this Court
4 grant this motion *in limine*.

5 DATED this 31st day of October, 2024.

6
7 Respectfully Submitted:

8 CHESNOFF & SCHONFELD

9
10 /s/ David Z. Chesnoff

11 DAVID Z. CHESNOFF, ESQ.

12 *Pro Hac Vice*

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20 Attorneys for Defendant

21 ALEXANDER SMIRNOV
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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2024, I caused the forgoing document to be filed electronically with the Clerk of the Court through the CM/ECF system for filing; and served on counsel of record via the Court's CM/ECF system.

/s/ Camie Linnell
Employee of Chesnoff & Schonfeld

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