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12 UNITED STATES OF AMERICA

13 UNITED STATES DISTRICT COURT

14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 ALEXANDER SMIRNOV,

19 Defendant.

No. CR 2:24-cr-00091-ODW

**GOVERNMENT'S SECOND MOTION
IN LIMINE TO EXCLUDE FBI
HANDLING AGENT'S ALLEGED
MISTAKES**

Hearing Date: November 25, 2024

Hearing Time: 10:00 a.m.

Location: Courtroom of the Hon.

Otis D. Wright

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25 Plaintiff, United States of America, by and through its counsel of record, hereby
26 files its Motion in Limine to preclude the defendant from introducing evidence relating to
27 the alleged mistakes made by the defendant's FBI Handling Agent while he served as a
28 confidential human source, including any alleged documentation errors he made. This

1 evidence is irrelevant under Federal Rule of Evidence 401 and, even if it did have any
2 probative value, is unduly prejudicial under Federal Rule of Evidence 403.

3 This motion is based upon the attached memorandum of points and authorities and
4 the declaration of Leo J. Wise, the indictment in this case, and any further evidence and
5 argument as the Court may deem necessary.

6
7 Dated: November 1, 2024

Respectfully submitted,

8 DAVID C. WEISS
9 Special Counsel

10 /s/ _____
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19 Attorneys for Plaintiff
20 UNITED STATES OF AMERICA

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 In communications with the government, defense counsel has suggested that he may
3 attempt to rely on certain evidence pertaining to the conduct of the FBI Handling Agent
4 who worked with the defendant as a confidential human source (CHS), including
5 administrative reports that contain minor notes about the sufficiency of the Handling
6 Agent’s documentation. These alleged mistakes have no relevance to the elements of
7 either of these offenses, and even if they did, evidence about the Handling Agent’s conduct
8 would risk confusing the jury and cause undue prejudice. Accordingly, the Court should
9 exclude any evidence relating to the Handling Agent’s alleged mistakes as irrelevant and
10 otherwise inadmissible pursuant to Federal Rules of Evidence 402 and 403.

11 **I. ARGUMENT**

12 **A. Evidence of the FBI Handling Agent’s Alleged Mistakes Is Not**
13 **Relevant to the Charges.**

14 Under Federal Rule of Evidence 401, “[e]vidence is relevant if: (a) it has any
15 tendency to make a fact more or less probable than it would be without the evidence; and
16 (b) the fact is of consequence in determining the action.” Fed. R. Evid. 401. Irrelevant
17 evidence is not admissible. Fed. R. Evid. 402.

18 Defense counsel has indicated that he may introduce evidence relating to purported
19 documentation errors made by the Handling Agent in his dealings with the defendant.
20 Specifically, in a letter to government counsel, defense counsel stated that the defendant’s
21 Handling Agent “failed to properly document” the defendant’s “[otherwise illegal
22 activity]; consensually monitored conversations; Mr. Smirnov’s foreign travel including
23 trips to Ukraine, Italy, Switzerland, Austria, England France, Moldova, and UAE for
24 personal, business, and operational reasons; Mr. Smirnov’s residence in Las Vegas, and
25 Mr. Smirnov’s assistance with the FBI Seattle’s Office.” Def.’s October 24, 2024 Touhy
26 Letter. These allegations appear to be primarily based on three administrative reports: (1)
27 a February 13, 2013 Human Source Validation Report; (2) a Standard Validation Report
28

1 from February 13, 2013 to March 18, 2021; and (3) a Standard Validation Report from
2 March 18, 2021 to November 16, 2023.

3 Any mistakes made by the Handling Agent—including those noted in the three
4 administrative reports—are irrelevant to the charges in this case. Under § 1001, the
5 government must prove that the defendant “(1) made a statement, 2) that was false, and 3)
6 material, 4) with specific intent, 5) in a matter within the agency’s jurisdiction.” *United*
7 *States v. Fortenberry*, 89 F.4th 702, 705 (9th Cir. 2023). Under § 1519, the government
8 must prove that the defendant “(1) knowingly committed one of the enumerated acts in
9 the statute, such as destroying or concealing; (2) towards ‘any record, document, or
10 tangible object’; (3) with the intent to obstruct an actual or contemplated investigation by
11 the United States of a matter within its jurisdiction.” *United States v. Singh*, 979 F.3d 697,
12 715 (9th Cir. 2020). Even if the Handling Agent occasionally made documentation
13 mistakes over the course of ten years, this has nothing to do with whether *the defendant*
14 provided materially false information or knowingly obstructed a federal investigation.
15 Both offenses involve statements made by *the defendant*, not his Handling Agent. And
16 both offenses involve *the defendant’s* state of mind, not his Handling Agent’s. Because
17 any purported errors made by the Handling Agent do not make any of the elements of
18 § 1001 or § 1519 more or less likely, none of this evidence is relevant, and it should be
19 excluded. *See* Fed. R. Evid. 401, 402.

20 A closer look at the administrative reports referenced by the defendant reveals the
21 extent of their irrelevance. Two of the three administrative reports fall outside of the time
22 period covered by the indictment—the Human Source Validation Report is dated February
23 13, 2013, and one of the Standard Validation Reports is dated March 2021 to November
24 2023. The indictment concerns statements made by the defendant to his Handling Agent
25 from 2017 to 2020. These reports address time periods occurring years before and after
26 the charged conduct, and accordingly, they are not relevant.

27 Further, the only remarks about the Handling Agent’s conduct in the administrative
28 reports reflect what are essentially ministerial errors. For example, the Standard Validation

1 Report dated February 2013 to March 2021—the only report that coincides with the dates
2 in the indictment—states that the Handling Agent documented the defendant’s operational
3 travel, but did not document his “extensive” foreign travel for personal and business
4 reasons. There is nothing in this Standard Validation Report that concludes that the
5 Handling Agent failed to document the travel connected to the false statements in this case.
6 In another example, defense counsel claims that the Handling Agent did not properly
7 document the defendant’s address (a claim which, again, comes from a statement in the
8 2013 Human Source Validation Report issued years before the relevant time period)—but
9 this has no bearing on the elements of either offense. And nothing in any of the three
10 administrative reports suggests that the Handling Agent failed to properly document
11 statements made by the defendant or comes close to a finding of impropriety.

12 Moreover, to the extent the defendant is trying to claim that the Handling Agent did
13 not follow FBI internal guidelines, he cannot do so. Internal agency guidelines are not
14 enforceable by third parties, so they “offer no assistance to an accused complaining of
15 their violation.” *United States v. Lecco*, No. CRIM.A. 2:05-0010701, 2007 WL 295487,
16 at *2-3 (S.D. W. Va. Jan. 29, 2007) (granting motion in limine to exclude references to
17 violations of confidential informant guidelines); *see also United States v. Fernandez*, 231
18 F.3d 1240, 1246 (9th Cir. 2000) (holding internal agency guidelines do not create
19 substantive or procedural rights). Thus, whether the Handling Agent’s documentation
20 occasionally fell short of FBI guidelines is irrelevant for this reason as well. *See United*
21 *States v. Smith*, 817 F. Supp. 1366, 1369 (E.D. Ky. 1993) (excluding evidence relating to
22 claim that FBI agents failed to follow guidelines as irrelevant).

23 **B. Evidence of the Handling Agent’s Alleged Mistakes Is Unfairly**
24 **Prejudicial.**

25 Even if evidence of the Handling Agent’s conduct was relevant (and it is not), it
26 would be inadmissible under Federal Rule of Evidence 403. Under Rule 403, “[t]he court
27 may exclude relevant evidence if its probative value is substantially outweighed by a
28 danger of one or more of the following: unfair prejudice, confusing the issues, misleading

1 the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed.
2 R. Evid. 403. Permitting evidence about the Handling Agent’s purported errors would pose
3 a threat of confusing and misleading the jury. *See United States v. Miles*, No. 1:19-cr-
4 0183-TWP-DML, 2022 WL 474721, at *1 (S.D. Ind. Feb. 16, 2022) (excluding written
5 reprimand received by law enforcement witness because of “the high risk of unfair
6 prejudice and confusion to a jury”); *United States v. Harris*, 551 F. App’x 699, 706 (4th
7 Cir. 2014) (affirming exclusion of officer disciplinary records because they “had little
8 probative value and posed a risk of ‘sidetrack[ing]’ the trial”). It would be unduly
9 prejudicial to the government because it would lead to a mini-trial over whether the
10 Handling Agent adequately followed internal FBI guidelines—something that not only is
11 wholly irrelevant to the defendant’s false statement and obstruction charges, but is also
12 unenforceable by the defendant. Given the risk of prejudice and confusion of issues, the
13 evidence should also be excluded on these grounds.

14 **II. CONCLUSION**

15 For these reasons, the Court should issue an order excluding evidence about alleged
16 mistakes made by the defendant’s Handling Agent.