UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 11 CR 820
v.	)	
	)	Hon. Harry D. Leinenweber
SHARON ANZALDI	)	

GOVERNMENT'S CONSOLIDATED RESPONSE TO DEFENDANT ANZALDI'S PRE-TRIAL MOTIONS

The UNITED STATES OF AMERICA, by and through its attorney, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, respectfully submits the following response to defendant Anzaldi's pre-trial motions.

I. Background

On November 17, 2011, a federal grand jury charged defendant Anzaldi and two co-defendants with conspiring to defraud the Department of the Treasury by filing false claims, namely, tax returns, in violation of Title 18, United States Code, Section 286. The grand jury also charged each with individual execution counts of the same, in violation of Title 18, United States Code, Section 287. The grand jury specifically charged the defendants with participating in a scheme in which they gathered taxpayers' mortgage and debt information, aggregated each taxpayers' total debt amount on IRS Schedule B (then made part of the taxpayers' returns), falsely claimed the taxpayers' total debt amount as both interest income and tax withholdings, and thereby sought falsely inflated refunds. In all, the grand jury charged the defendants with having prepared and filed fourteen fraudulent returns, that sought a total of $8,497,161 in refunds. Of the fourteen refunds sought, the IRS issued five, totaling $1,252,030.

Defendant Anzaldi, who describes herself as an "Executrix," a "true Creditor," and a "woman on the land," is representing herself *pro se*, and has filed several pre-trial motions. Defendant's motions are generally improper as a matter of law, in that they espouse non-sensical legal theories, and put forth factually and legally undeveloped and improper arguments. For this reason, among others, the government urges this Court to appoint defendant Anzaldi stand-by counsel to assist her in navigating her way through the criminal process, as set forth in the government's motion filed concurrently with this response.

II. Motion to Dismiss the Indictment

Defendant has moved to dismiss the indictment against her, claiming it "fails to adequately allege each element of the offenses charged." Mot. 5. Specifically, as the government understands it, defendant contends that although she is a natural "person," the government should have alleged she is a "'person' within the relevant provision of the Internal Revenue Code[,]" as "it is an element of the crime as to which the Grand Jury should have been instructed[.]" Mot. 8. Defendant also claims that the indictment should have alleged that she was an "employee," "in employment," and that she received "wages," as the IRS defines those terms. *Id*. at 9. However, because the indictment in this case sets out each of the elements of the crimes charged, and provides the defendant with adequate notice of the charges against her such that she may prepare a defense, the indictment is sufficient. Moreover, the elements defendant claims are missing from the indictment do not actually constitute elements of the crimes charged. Accordingly, her motion to dismiss must be denied.

When a defendant moves to dismiss the indictment, "[t]he government does not face a particularly demanding standard in opposing" such a motion. *United States v. Pitt-Des Moines, Inc.*,

970 F. Supp. 1346, 1353 (N.D. Ill. 1997) (quotation omitted). Rule 7(c) of the Federal Rules of Criminal Procedure only requires that an indictment be "a plain, concise and definite written statement of the essential facts constituting the offense charged and ... signed by an attorney for the government."[1]

Applicable case law holds that an indictment is sufficient within the meaning of Rule 7 of the Federal Rules of Criminal Procedure if it 1) states each element of the crimes charged, 2) provides the defendant with adequate notice of the nature of the charges so that the accused may prepare a defense, and 3) allows the defendant to raise the judgment as a bar to future prosecutions for the same offense. *United States v. Dooley*, 578 F.3d 582, 589 (7th Cir. 2009) (citing *United States v. Castaldi*, 547 F.3d 699, 703 (7th Cir. 2008)). To satisfy the first requirement, it is generally acceptable for the government "track the words of the statute itself, so long as those words expressly set forth all the elements necessary to constitute the offense intended to be punished." *United States v. Smith*, 230 F.3d 300, 305 (7th Cir. 2000) (citation omitted). Therefore, for a defendant to successfully challenge to the sufficiency of an indictment, she must show that the indictment failed to satisfy one or more of the three requirements listed above. *Dooley*, 578 F.3d at 590.

The indictment in this case easily satisfies the requirements of Rule 7. All counts track the precise language of the criminal statutes charged. *Cf.* Indictment Count One ¶ 2 *with* 18 U.S.C. § 286; *Cf.* Indictment Counts 2 - 15 ¶ 2 *with* 18 U.S.C. § 287. In addition, the allegations set forth in paragraphs 3 through 12 of Count One describe the conspiracy to defraud in great detail. This detail

[1] Defendant points to the fact that her copy of the indictment was not signed as an additional reason to dismiss the indictment. Mot. 5. However, it is customary in this District to provide a defendant with an unsigned copy of the indictment, and for the Court to retain the signed copy. The government would suggest that at the next status, perhaps the Court could show defendant the signed copy of its indictment so as to assuage her concerns in this regard.

provides the defendant with more than adequate notice of the nature of the charges, so that she may prepare a defense. Lastly, because the defendant is aware of the charges against her, she may raise any judgment as a bar to future prosecutions for the same offense, should she find the need.

Although defendant claims the indictment is defective for not specifically alleging that she is, pursuant to certain IRS definitions, a "person" and an "employee," who was "in employment" and received "wages," Mot. 9, a quick review of 18 U.S.C. §§ 286 and 287 reveals that such allegations are not elements of those crimes. Defendant also does not cite any case law holding that such definitions or allegations are required. In short, defendant has created new elements for her crimes out of whole cloth. Her Motion should be denied.

III. Jurisdictional Challenge

In defendant's "Affidavit of Truth and Demand for Substantive Due Process in Law," she claims she is not subject to the jurisdiction of this Court. Mot. 1. Jurisdictional arguments such as these have uniformly been rejected as a matter of law by courts around the country. This Court has jurisdiction over the defendant pursuant to 18 U.S.C. § 3231, which states: "The district courts of the United States shall have jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States." *Id.*

Defendant Anzaldi is properly before the Court as a defendant in this case, and as such, is subject to the valid and enforceable criminal laws of the United States. *United States v. Sloan*, 939 F.2d 499, 500-01 (7th Cir. 1991) (rejecting argument that an individual can be a sovereign of a state who is not subject to the jurisdiction of the United States); *see also United States v. Raymond,* 228 F.3d 804, 812 (7th Cir. 2000) (same); *United States v. Hilgeford,* 7 F.3d 1340, 1342 (7th Cir. 1993) (same); *United States v. Delatorre* 2008 WL 312647 (N.D. Ill. Jan. 30, 2008) (Castillo, J.)

(discussing same).

Because these arguments have consistently been rejected as a matter of law by courts at all levels, they are nothing more than nullification claims that have no proper place before the Court.

IV. Motions for Discovery, Exculpatory Evidence, and Grand Jury Materials

Defendant moves for disclosure of a variety of materials, including discovery, exculpatory evidence and grand jury materials. The government has complied with its obligations to turn over various items pursuant to Rule 16 Fed.R.Crim.P., and will continue to do so, and has made all of its materials available to defense counsel should they wish to inspect them.[2] The government understands its obligation to produce exculpatory evidence to the defense, pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972). If any such evidence comes to the government's attention, it will be turned over.

The government is also aware of, and will comply with, its *Giglio* obligations to turn over information that impeaches its witnesses. Specifically, with respect to the persons the government intends to call in its case-in-chief, the government will turn over the following: prior inconsistent statements of the particular witness; evidence concerning a witness' addiction to alcohol or drugs; promises of reward to a witness; statements of advice concerning future prosecutions, including proffer letters and non-subject letters; promises of leniency or favorable treatment; grants of immunity; criminal records; things of value provided to witnesses (other than statutory witness fees, costs of transporting witnesses, and the like); prior acts of misconduct which the witness has acknowledged or which have been established to the satisfaction of the government; plea

[2] To that end, although not required, the government is producing to defendants the grand jury transcripts from this case.

agreements; results of polygraph examinations; and placement in a witness relocation or protection program. *Cf. United States v. Heidecke*, 683 F. Supp. 1211, 1215 n. 5 (N.D. Ill. 1988). The government will provide any impeachment/*Giglio* material to the defendants at least three weeks prior to trial, except as to any witness who could be endangered by such pretrial disclosure, provided that defense counsel agree to make the same disclosures regarding their witnesses at that same time.

The government's acknowledgment of its obligations under *Brady* and *Giglio* should not be interpreted as a stipulation to provide defendant with all of the materials requested in her pretrial motions. Rather, the government will abide by the law in this Circuit, and will provide defendant with any and all materials to which she is entitled.

It is the government's position that the disclosure of the *Brady* and *Giglio* information outlined above meets defendant's motions. To the extent that defendant's demands require disclosure broader than that required under *Brady* and *Giglio*, they should be denied.

V. Motion to Suppress

Defendant has filed a motion to suppress "all evidence obtained as part of warrantless and illegal indictment," as well as "all video and audio materials as violative of the fourth amendment's protection against searches and seizures."[3] Defendant's motion boils down to a complaint that she was arrested without an arrest warrant or "affidavit of probable cause." Mot. 1-2.[4]

Defendant's motion must be denied. Agents are not required to produce an arrest warrant when arresting someone who has been indicted by a federal grand jury, nor are agents required to

[3] As a practical matter, the government is unaware of any video evidence in this case.

[4] Defendant refers to her arrest as a "kidnapping." *Id*. at 2.

produce an "affidavit of probable cause" in such circumstances. *See, e.g., Gerstein v. Pugh,* 420 U.S. 103, 113 (1975) (requiring an arrest warrant for all arrests "would constitute an intolerable handicap for legitimate law enforcement."); *United States v. Burnside*, 588 F.3d 511, 517 (7th Cir. 2009) ("an arrest supported by probable cause is reasonable by its very nature"). This is because "an indictment establishes probable cause to believe the defendant guilty of crime, and no more is required to justify instituting a criminal proceeding." *Park Manor Ltd. v. U.S. Dept. of Health and Human Services*, 495 F.3d 433, 437 (7th Cir. 2007); *see also United States v. Gardner*, 860 F.2d 1391, 1395 (7th Cir. 1391) ("The grand jury determines whether probable cause exists that a crime has been committed, and it protects citizens against unfounded criminal prosecutions."). Accordingly, defendant is not entitled to a hearing on this legally deficient motion, and it should be denied.

VI. Miscellaneous Motions

Defendant has filed a number of other miscellaneous motions, including a motion "to preclude all presumptions saving that of innocence," and a motion to preclude "prosecutorial misconduct." The government is aware of the rules of evidence and trial procedure, and intends to follow them.

Defendant has also filed a motion for "production of federal prosecutor's foreign agent registration act statement." The government does not understand the defendant's request, and is therefore unable to respond. Relatedly, defendant has asked for production of "federal prosecutor's license to practice law." Defendant can visit www.iardc.com and satisfy herself that government counsel is licensed to practice law in Illinois, and an attorney in good standing.

Lastly, defendant has filed an "affidavit of negative averment, opportunity to cure, and

counterclaim," in which she denies the charges against her as a factual matter, purports to file a counterclaim against the prosecution team, and assesses "damages" in excess of $2,000,000 per claim. This motion is frivolous, and does not warrant a response.

VII. Government's Motion for Reciprocal Discovery

The government, pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure, moves this Court to enter an order requiring defendant to make available for inspection by the government:

I. All photographs, books, papers, documents, and tangible objects, including tape recordings which she intends to introduce at trial (Rule 16(b)(1)(A));

B. Any result or report of any physical or mental examination and scientific tests or experiments made in connection with this case, which defendant may raise at trial (Rule 16(b)(1)(B));

C. Any and all documents and tangible objects which defendant intends to mark as exhibits at trial (Rule 16(b)(1)(A));

D. Statements of defense witnesses (Rule 26.2);

E. Notice of any alibi or similar defense the defendant intends to raise, including any defense of necessity or coercion and any defense asserting the defendant's unavailability on or near the dates named in the indictment (Rule 12.1); and

F. Notice of any defense to be raised of a mental defect inconsistent with the state of mind required for the offense charged (Rule 12.2); and

G. Notice of any defense to be raised that includes a claim of public authority (Rule 12.3).

The disclosures requested are specifically covered by the Federal Rules of Criminal Procedure. Moreover, defendant has been granted discovery by the government. It is therefore appropriate that defendant now make the reciprocal disclosures that the rules of criminal procedure require, since "[d]iscovery must be a two-way street." *Wardius v. Oregon*, 412 U.S. 470, 475 (1973).

X. Conclusion

For the aforementioned reasons, the government respectfully requests that the defendant's motions be denied, and the government's motions granted, as outlined above.

Dated: December 15, 2011

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: */s/ Rachel M. Cannon*
RACHEL M. CANNON
Assistant United States Attorney
United States Attorney's Office
219 South Dearborn Street, Suite 500
Chicago, Illinois 60604
(312) 353-5357