UNITED STATES DISTRICT COURT DISTRICT OF MAINE

UNITED STATES OF AMERICA	)	
	)	
	)	**DOCKET No. 2:22-cr-0012-JDL**
VS.	)	
	)	
JASON PARENT,	)	
Defendant	)	

JASON PARENT'S MOTION TO SEVER COUNT 59 FROM JANUARY 2024 TRIAL

NOW COMES Defendant Jason Parent, by and through undersigned counsel and hereby moves this Honorable Court to sever count 59 for January 2024 trial purposes and to otherwise exclude any reference to the allegations in count 59 stating as cause as follows:

PROCEDURAL HISTORY

Mr. Parent was charged by indictment with Conspiracy to Commit Offenses Against the United States in violation of 18 U.S.C. §371, specifically defining the offense as "two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each

shall be fined under this title or imprisoned not more than five years, or both." See *ECF #1* at page Id. 17-28.

On October 20, 2022, Defendant Jason Parent was indicted on a single count of conspiracy to "defraud the United States by interfering with and obstructing, by deceitful and dishonest means, a lawful function of NOAA, namely, the collection, evaluation, and analysis of biological, economic, and catch data" relating to Atlantic herring. See *Superseding Indictment* at ¶ 18 (*ECF #140*). Additionally, Mr. Parent was indicted on count 59, Conspiracy to Defraud the Internal Revenue Service in violation of 18 U.S.C. §371 in the superseding indictment. *Id*.

Although the period for pretrial Motions has passed, a review of the applicable caselaw and discovery necessitates this Motion. The Government has no objection to this Motion being filed beyond the timeframe for pretrial Motions. See Motion to Extend Time for Pretrial Motions filed contemporaneously with this matter.

ARGUMENT

Rule 8 of the Federal Rules of Criminal Procedure permits the indictment to join offenses if the offenses charged "are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan." Fed. R. Crim. P. 8. "In determining whether counts are properly joined for trial, [the

First Circuit] historically [has] considered whether the charges are laid under the same statute, whether they involve similar victims, locations, or modes of operation, and the time frame in which the charged conduct occurred." *United States v. Boulanger,* 444 F.3d 76, 87 (1st Cir. 2006). "If, [however], the joinder of offenses … in an indictment … appears to prejudice a defendant or the government, the court may order separate trials of counts … or provide any relief that justice requires." *Fed. R. Crim. P.* 14. This Court should sever count 59 from the remaining counts, because the Indictment does not allow the connection in the counts and the prejudice that will arise if the charges are tried altogether.

It is anticipated that the Government will argue that considerations of judicial efficiency favor joint trials, and as a rule, a conspiracy allegation is ordinarily enough of a connecting link between multiple offenses to permit joinder. *United States v. Rehal,* 940 F.2d 1, 3 (1st Cir. 1991). A court, however, may sever counts if there is a serious risk that joint trials or counts would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence. *United States v. DeCologero*, 530 F.3d 36, 52 (1st Cir. 2008) quoting *Zafiro v. United States,* 506 U.S. 534, 539, 113 S. Ct. 933, 122 L. Ed. 2d 317 (1993); see also Fed. R. Crim. P. 14(a) ("If the joinder of offenses or defendants in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires.") In making the determination on the connecting link between counts one and 59,

the Court is constrained to the language contained in the indictment. *United States v. Rittweger,* 524 F.3d 171, 178 (2nd Cir. 2008)("[T]he plain language of Rule 8(b) does not appear to allow for consideration of pre-trial representations not contained in the indictment.")

A. The Plain Language in the Indictment does not Support Joinder

The Indictment incorporates ¶1-17 by reference. *ECF #140* at page id. 404. The Government further explains in ¶42 how it presumes that conspiracy to defraud the IRS occurred. *Id*. at page id. 405. The Government nor the Indictment explains absent pre-trial representations, how Mr. Parent conspired with any other Defendant to commit tax fraud.[1]

In *United States v. Kerik*, 615 F. Supp. 2d 256 (S.D.N.Y. 2009), a former New York City police commissioner was charged with 15 counts of "conspiracy to commit mail and wire fraud, honest services fraud, substantive counts of mail and wire fraud, obstructing and impeding the due administration of federal tax laws, filing false income tax returns, and making false statements to the government." *Id.* at 260-63. The District Court granted severance finding that under a "beyond the broad mantra of 'dishonesty,' Kerik's alleged conspiracy to defraud New York citizens of his honest services had nothing to do with, for example, his alleged failure to withhold payroll taxes from his

[1] It is anticipated that the Government will argue that tax fraud is evidence of complacency in a conspiracy. But the Government has failed to make that connection without bootstrapping.

nanny." *Id.* at 275. Similar to the matter it is not enough for one count to have a Rule 8(a) connection to the next, and so on through the indictment: “the Government's 'daisy chain' of charges — linking one offense to the next, through common laws or facts, until all charges are included," is not "sufficient to attain joinder of these charges.” *Id.* citing *United States v. Shellef*, 507 F.3d 82 (2nd Cir. 2007). Rule 8(a) does not permit joinder when "[t]he charges are not related to *all others* by time, actors, places, or subject matter." *Id.* at 275 (emphasis added).

In a matter with a similar charges, *United States v. Delle Donna*, the defendants were charged with conspiracy, mail fraud, and extortion (Counts 1-3), and with filing false tax returns (Counts 4 and 5). The trial court found that they were properly joined under Rule 8(a) because Counts 4 and 5 were of the “same or similar character” and Counts 5 and 3 arose from the same act or transaction *United States v. Donna*, 366 F. App'x 441, 446-47 (3rd Cir. 2010). The Third Circuit disagreed stating that “it is troublesome when the government plays 'connect-the-dots' in the manner it has done in this case. By linking one crime to another, statute by statute or subject by subject, the government can combine several cases in one.” *United States v. Donna*, 366 F. App'x 441, 447-48 (3rd Cir. 2010). That is exactly what the Government has done in this matter related to the superseding indictment and count 59.

B. Mr. Parent Is Prejudiced by the Joinder

A court may sever counts if there is a serious risk that joint trials or counts would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence. *United States v. DeCologero*, 530 F.3d 36, 52 (1st Cir. 2008) quoting *Zafiro v. United States,* 506 U.S. 534, 539, 113 S. Ct. 933, 122 L. Ed. 2d 317 (1993).

In *United States v. Scivola*, the First Circuit held that there are three types of prejudice that can occur:

> (1) the defendant may become embarrassed or confounded in presenting separate defenses; (2) proof that defendant is guilty of one offense may be used to convict him of a second offense, even though such proof would be inadmissible in a separate trial for the second offense; and (3) a defendant may wish to testify in his own behalf on one of the offenses but not another, forcing him to choose the unwanted alternative of testifying as to both or testifying as to neither.
> *United States v. Scivola*, 766 F.2d 37, 41-42 (1st Cir. 1985).

As the Court is aware, tax charges present very specific areas of the law and thus, unique defenses. See *United States v. Murdock,* 290 U. S. 389, 396 (1933)("Congress did not intend that a person, by reason of a bona fide misunderstanding as to his liability for the tax, as to his duty to make a return, or as to the adequacy of the records he maintained, should become a criminal by his mere failure to measure up to the prescribed standard of conduct.") Accordingly, the Supreme Court has made it clear that one can testify to create a "good faith" defense to the tax charges. See *Cheek v. United States*, 498 U.S. 192, 203-04, 111 S.Ct. 604, 611-12, 112 L.Ed.2d 617 (1991) (holding that a defendant is entitled to

present his subjective belief that he did not violate the law). But by testifying to his good faith beliefs as a defense to the tax charges, Mr. Parent would lose his 5th Amendment right to conspiracy count.[2] See *United States v. Jordan,* 112 F.3d. 14, 17 (1st Cir. 1997)("Here, we believe that Jordan's subjective testimony on the tax charges is analogous to the "credible alibi" we found lacking in *Alosa*. Only he can supply testimony of his subjective belief as permitted by *Cheek*, forthrightly subjecting himself to cross-examination. We do not accept the government's contention that this belief was adequately before the jury in the form of Jordan's statement on his amended tax form that the income was not taxable.")

WHEREFORE, Mr. Parent respectfully requests that this Honorable Court sever count 59, and otherwise prohibit the Government and its witnesses from referencing, suggesting, or otherwise discussing anything related to this count together with any and all other relief that this Honorable Court deems fit and just.

Dated this 15th day of October 2023 at Portland, Maine.

Respectfully submitted,

/s/David J. Bobrow

David J. Bobrow, Esq.
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BEDARD AND BOBROW, PC

[2] If Mr. Parent testified, he would explain the basis for his mistake as to the understanding of income and would further reinforce his previous offer to pay any tax deficit and penalty.

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DISTRICT OF MAINE

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JASON PARENT, Defendant	)	

CERTIFICATE OF SERVICE

I, David J. Bobrow, Esq., hereby certify that I have caused to be served via ECF the Defendant's Motion to Sever on the following individuals:

1. Joyce, David (USAME) <David.Joyce@usdoj.gov>
2. All other attorneys of record in this matter.

Dated this 15th day of October 2023 at Portland, Maine.

Respectfully submitted,

/s/David J. Bobrow

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