

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

**UNITED STATES OF AMERICA**

v.

CASE NO.: 3:06-cr-211(S1)-J-32HTS

**TONY HENDERSON**

**DEFENDANT HENDERSON'S MOTION TO EXCLUDE  
EVIDENCE OFFERED UNDER FED. R. EVID. 402, 403, and 404(b)**

The defendant, Tony Henderson, by his counsel, pursuant to Fed. R. Evid. 402, 403, and 404(b), moves for exclusion of irrelevant evidence (Rule 402), unfairly prejudicial, confusing, and misleading evidence as well as cumulative evidence (Rule 403), and evidence of other crimes, wrongs, or acts (Rule 404(b)), based on the following considerations:

1. Defendant Tony Henderson is charged in an eight count Superseding Indictment with conspiracy to distribute marijuana (Count One), distribution of marijuana (Count Two), and use of a communication facility to facilitate the distribution of marijuana (Counts Three through Eight).

2. It is anticipated the government will attempt to introduce evidence of the type listed above. For example, the government has already indicated its intent to introduce evidence that the defendant distributed marijuana to people not named in the Superseding Indictment and outside the time scope of the alleged conspiracy (see United States' First Notice of Intent

to Introduce Evidence Under Fed. R. Evid. 404(b)).<sup>1</sup> Additionally, the government may attempt to introduce evidence that Henderson knew that Pedro Fernandez de Campa was an illegal alien but ignored that fact, that Henderson committed acts of malfeasance as a Border Patrol agent that have nothing to do with the charges in this case, and that Henderson committed other acts tending to cast his character in a bad light.

3. Under Fed. R. Evid. 402, 403, and 404(b), this type of evidence should not be allowed during any phase of the trial, and by this motion it is requested that the Court order the exclusion of such evidence.

Respectfully submitted,

MARK J. ROSENBLUM, P.A.

s/Mark J. Rosenblum

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<sup>1</sup>It is assumed the “tradesmen” discussed in the government’s Notice will not be called as witnesses.

**CERTIFICATE OF SERVICE**

I hereby certify that on August 26, 2007, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following:

James R. Klindt, Esq. and D. J. Pashayan, Esq.  
United States Attorney's Office

*s/Mark J. Rosenblum*