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The Government Does Not Want You To Know This Mystery Man's Story

Andrew Wimmer

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Who is the mysterious man above and why will the government not let anyone tell his story? You might guess that he is an informant against a drug cartel and now a marked man. Or, perhaps a former CIA agent who worked at black sites around the world. Truthfully, he is just a financial industry entrepreneur who, at least as the Securities and Exchange Commission tells it, ran afoul of federal financial regulations in the aftermath of the Great Recession.

The reason why he remains a man of mystery is because he is subject to a gag order prohibiting him from publicly talking about his case. If anyone else were to tell his story, he could face staggering penalties and costly litigation.

Mr. X believes he acted within the law, but the cost of going up against the SEC can be bankrupting. So, faced with the prospect of years of costly litigation, Mr. X decided to accept the government's offer to settle the case. But that came with two conditions: First, he did not have to admit to any wrong doing. But that point was largely moot, because he was also forced to sign a gag order prohibiting him from talking about his case. So, although he never had to admit that he did anything wrong, he also could not tell anyone that he believed the government's initial allegations were baseless.

The only public document in his case is the SEC's initial press release laying out all the charges he was facing. And, while the agency may not have been able to reach a conviction on all these charges, it can easily appear that Mr X. admitted to all of these offenses.

What happened here is far different from a criminal case. Criminal defendants plea to specific conduct and are free to give their side of the story at the conclusion of their case. They are free to criticize the conduct of prosecutors in their case and defend themselves in the court of public opinion.

Mr. X can privately discuss the case and he has written a book about his experience, but if another individual were to reveal anything about his prosecution or if his book were to leak, he would be in violation of the gag order.

His situation may sound unusual, but government regulatory agencies are increasingly subjecting individuals to gag orders as a condition of settling civil cases. The Commodity Futures Trading Commission, Consumer Financial Protection Board and various state agencies use similar gag orders in settlement agreements.

The libertarian Cato Institute has long been concerned with abusive and coercive government agency actions, especially in cases where agencies want to hide the process from the public. As

Cato Vice President for Criminal Justice Clark Neily pointed out, “It is vital for citizens of a democracy to know how their government operates, particularly when it accuses fellow citizens of wrongdoing.”

Cato would like to publish Mr. X’s book, but they also don’t want to cause legal pain for the author. So, Cato is teaming up with the Institute for Justice to sue for the right to publish the book and let the American people decide whether what happened in this case is just. The First Amendment gives every American the right to criticize the government and regulatory agencies shouldn’t be in the business of silencing their potential critics.

In an era of cell phones and social media, this is the rare First Amendment case about literal freedom of the press. The government isn’t trying to burn or ban a book; it is trying to keep it from being printed in the first place. The SEC might be right that Mr. X violated its rules, or Mr. X might be right that the SEC railroaded him. In a free society, the government and citizens should both be able to make their case in the court of public opinion.