IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	Case No. 1:22-cr-00171-MLB-RDC
	)	Third Superseding
CARL DELANO TORJAGBO,	)	
a/k/a	)	
KARL LUCIUS DELANO.	)	
	)	
______________________________	)	

MOTION TO CONTINUE TRIAL

COMES NOW the Defendant, KARL LUCIUS DELANO, a/k/a CARL DELANO TORJAGBO, by and through counsel, and moves to continue his trial to October 1, 2025, or a later date acceptable to the Court and the parties. In support of this motion, Mr. Delano shows as follows:

A) The New Indictment.

1.

Mr. Delano's trial is currently set for July 21, 2025. (Doc. 176). On the afternoon of July 3, 2025, the government notified Mr. Delano's counsel that it had obtained a third superseding indictment in this case. The new indictment has not yet been docketed. The new indictment charges Mr. Delano in Count 1 with bank fraud in violation of 18 U.S.C. §§ 1344 and 2. Counts 2 and 3 charge wire fraud in violation of 18 U.S.C. §§ 1343 and 2. Counts 4 through 6 charge concealment money laundering in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2. Counts 7 through 10 charge transactional money laundering in violation of 18 U.S.C. §§ 1957 and 2. Mr. Delano is scheduled for arraignment on Friday, July 11, 2025. (See attached Ex. 1, Third Superseding indictment and summons, not yet docketed).

2.

The new indictment removes the §1028A aggravated identity theft allegation, previously charged as Count 2 of the Second Superseding Indictment and challenged by Mr. Delano in a motion to dismiss. (Docs. 180,188, *now moot*).

3.

However, the new indictment adds a new allegation of wire fraud for the first time. Counts 3 and 4 of the prior indictment, charged wire fraud and included the following allegations as part of the fraud scheme:

> 21. On one of the fraudulent tax returns, Defendant Torjagbo used his Social Security Number (SSN) and fraudulently claimed a refund in the amount of $3,373,441.00.
>
> 22. On the other fraudulent tax return, Defendant Torjagbo used an alternate form of identification called an Individual Taxpayer Identification Number

("ITIN") and fraudulently claimed a refund in the amount of $3,015,573.00.

(Doc. 180).

4.

The new indictment moves the wire fraud to Counts 2 and 3, and alleges the following as part of the scheme:

> 19. On one of the fraudulent tax returns, Defendant Torjagbo used a Social Security Number (SSN) that was associated with a date of birth in 1979 and fraudulently claimed a refund in the amount of $3,373,441.00.
>
> 20. On the other fraudulent tax return, Defendant Torjagbo used a different SSN that was associated with a date of birth in 1975 and fraudulently claimed a refund in the amount of $3,015,573.00.

(See Summons and Indictment, attached as “Ex. 1").

5.

Mr. Delano must now defend against allegations that he obtained by fraudulent means a second Social Security Number, using a different and fictitious date of birth. As of this date, Mr. Delano has received no discovery relating to these new allegations. Presumably, additional discovery is forthcoming. Once arraigned on July 11, 2025, Mr. Delano anticipates filing at least one additional pretrial motion to address these new allegations in the new indictment.

6.

These new allegations not only require additional investigation and review of new discovery, they also implicate severe additional collateral consequences, particularly if Mr. Torjagbo exercises his right to testify at trial. Of great concern to the defense is a new policy announced by Assistant Attorney Genera, Brett A. Shumate on June 11, 2025, encouraging the denaturalization of foreign born citizens for a variety of reasons:

> The Department of Justice may institute civil proceedings to revoke a person's United States citizenship if an individual either "illegally procured" naturalization or procured naturalization by "concealment of a material fact or by willful misrepresentation." 8 U.S.C. § 1451(a). . . . .
>
> To promote the pursuit of all viable denaturalization cases available under 8 U.S.C. § 1451 and maintain the integrity of the naturalization system while simultaneously ensuring an appropriate allocation of resources, the Civil Division has established the following categories of priorities for denaturalization cases: . . . .
>
> 6. Cases against individuals who engaged in various forms of financial fraud against the United States (including Paycheck Protection Program ("PPP") loan fraud and Medicaid/Medicare fraud);
>
> 7. Cases against individuals who engaged in fraud against private individuals, funds, or corporations;
>
> 8. Cases against individuals who acquired naturalization through government corruption, fraud, or material misrepresentations, not otherwise addressed by another priority category;

(See June 11, 2025, Shumate memo, attached as "Ex. 2").

Mr. Torjagbo is a foreign born U.S. citizen who was naturalized. In light of the additions to the most recent indictment, the government will seek to cross-examine him about his date of birth, his social security numbers as well as about his citizenship application and the documents he submitted. The defense must receive, obtain and review all pertinent documents, prior to any trial testimony from Mr. Delano.

7.

Title 18 § 3161 (2) provides, "Unless the defendant consents in writing to the contrary, the trial shall not commence less than thirty days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se. *Id.* At this time, Mr. Delano does not consent to a trial in less than 30 days from his arraignment, as he requires and requests additional time to investigate and defend against the new allegations. Mr. Delano recognizes, "the mandatory 30-day trial preparation period provided by the Speedy Trial Act is not automatically restarted upon the filing of a superseding indictment. Instead, trial courts have broad discretion to grant continuances when necessary for additional preparation." *United States v. Brantley*, 68 F.3d 1283, 1288 (11th Cir. 1995) (citation omitted). *United States v. Schier*, 438 F.3d 1104, 1110 (11^{th} Cir. 2006). Mr. Delano asks the Court to exercise its discretion and continue his trial date.

B) <u>CJA Funding For 2025 Has Been Exhausted</u>.

8.

Mr. Delano has been found indigent and is represented by appointed counsel in accordance with the Criminal Justice Act (CJA). (Doc. 170). On July 3, 2025, Elizabeth Luck, Chief of Defender Services, issued an email notifying CJA attorneys across the country that all "available CJA panel attorney funds have been depleted. Voucher payments will be deferred until additional funding becomes available." (See email from Elizabeth Luck, "Exhibit 3.") All CJA payments to appointed attorneys have now stopped. It is anticipated CJA funds will become available and payments restarted when the 2026 fiscal budget takes effect on October 1, 2025. (See June 26, 2025, memo from Judge Cathy Seibel, Chair, Judicial Conference Committee on Defender Services, attached as "Exhibit 4.") The fact that CJA funds have been exhausted not only impacts the work and *non*-payment of defense counsel, it means service providers, experts, court reporters[1] and investigators will not be paid until after October 1, 2025. This impacts defense counsel's ability to retain experts and service providers. Defense counsel can provide additional, more specific details to the Court, *ex parte,* if desired.

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[1]Not all court reporter payments come from the CJA funds.

9.

The Criminal Justice Act provides that counsel for an indigent defendant may make an *ex parte* request to obtain investigative, expert, or other services necessary for an adequate defense. Title 18 U.S.C. § 3006 A(e)(1). Defense counsel will have to reveal confidential and privileged information in order to make the requisite showing, and the government's presence will infringe upon Mr. Delano’s Fifth and Sixth Amendment rights, and his right to conceal the preparation of his defense. Where a sufficient showing of need is made, an indigent defendant is entitled to assistance at the expense of the government so that he may have "a fair opportunity to present his defense" and "the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake." *Ake v. Oklahoma*, 470 U.S. 68, 76 (1985). This right includes, but is not limited to, the right to obtain an investigator and experts of his choosing.

WHEREBY, for the reasons put forth above, Mr. Delano asks that his trial be continued to date convenient to the Court and parties, after October 1, 2025.

Dated: This 6th day of July, 2025.

Respectfully submitted,

s/ L. Burton Finlayson
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CERTIFICATE OF SERVICE

This is to certify that I have this day electronically filed this Motion to Continue Trial with the Clerk of Court using the CM/ECF system which will automatically send email notifications of such filing upon all counsel of record including the following:

Ms. Kelly Connors, and
Mr. Nicholas Evert
Assistant United States Attorneys
600 U.S. Courthouse
75 Ted Turner Drive, S. W.
Atlanta, Georgia 30303

DATED: This 6th day of July, 2025.

s/ *L. Burton Finlayson*

L. BURTON FINLAYSON
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