

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

ATLANTA DIVISION

UNITED STATES OF AMERICA	)	
	)	
vs.	)	CRIMINAL ACTION NO.
	)	1:22-CR-171-MLB-RDC
CARL DELANO TORJAGBO	)	
_____	)	

MOTION TO STRIKE SURPLUSAGE (ALIAS)

COMES NOW Defendant, CARL DELANO TORJAGBO, by and through undersigned counsel, pursuant to Fed. R. Crim. Proc. 7(d) and moves this Court to strike surplusage from the indictment in this case. In support, Defendant shows as follows:

(1)

Fed. R. Crim. Proc. 7(d) authorizes the Court to strike surplusage from an indictment on motion of the defendant.

(2)

The purpose of Rule 7(d) is to protect a defendant against prejudicial allegations that are neither relevant nor material to the charges in the indictment, are not essential to the charge, are unnecessary, or are inflammatory. United States v. Poore, 594 F.2d 39 (4th Cir. 1979); see United States v. Freeman, 619 F.2d 1112 (5th Cir. 1980).

(3)

The indictment refers to Mr. Torjagbo in the style of the case and with respect to each count of the indictment as “a/k/a Karl Lucius Delano.” Doc. 1 at 1, 7, 9. Paragraph 23 of the indictment states, “On or about July 29, 2021, Defendant Torjagbo filed a petition to change his name to Karl Lucius Delano.” Doc. 1 at 5. The indictment does not indicate that Mr. Torjagbo’s name was ever formally changed to Karl Lucius Delano. Additionally, the discovery materials do not indicate that Mr. Torjagbo’s name was ever formally changed to Karl Lucius Delano.

(4)

This reference to the alleged alias in the style of the case and in the body of the indictment is prejudicial and unnecessary to any of the essential elements of the offenses charged. As a result, it should not be in the indictment. In United States v. Wilkerson, 456 F.2d 57, 59 (6th Cir. 1972), the Sixth Circuit wrote that it "strongly disapprove[s] the practice of including aliases in indictments." Quoting Petrilli v. United States, 129 F.2d 101, 104 (8th Cir. 1942), the Wilkerson court stated that "the preliminary reading of aliases in an indictment is not a practice which should be encouraged in an ordinary criminal prosecution, but rather one which should be curbed." Wilkerson, 456 F.2d at 59.

(5)

Fed. R. Crim. Proc. 7(c)(1) requires that an indictment "must be a plain, concise, and definite written statement of the essential facts constituting the offense charged." Because reference to an alleged alias is unnecessary to the government's allegations, and in this case very prejudicial, it does not meet the standard set out by Rule 7(c)(1).

(6)

The indictment is easily and fairly redacted. The Court simply should strike the language of "a/k/a Karl Lucius Delano" throughout the indictment.

WHEREFORE, Mr. Torjagbo requests that this motion be granted.

DATED: This 14th day of February, 2024.

Respectfully submitted,

S/ Kendal D. Silas

KENDAL SILAS

State Bar No. 645959

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing Motion to Strike Surplusage (Alias) formatted in Times New Roman 14-pt. upon:

John Russell Phillips, Esq.
Assistant United States Attorney
Federal Courthouse, Ste. 600
75 Ted Turner Drive, S.W.
Atlanta, GA 30303

by electronically filing the same through the Court's ECF system.

Dated: This 14th day of February, 2024.

s/ Kendal D. Silas

KENDAL SILAS, Esq.

Attorney for CARL TORJAGBO