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

UNITED STATES OF AMERICA *v.* CARL DELANO TORJAGBO, a/k/a KARL LUCIUS DELANO	CRIMINAL ACTION NUMBER 1:22-CR-171-MLB-RDC

RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION TO STRIKE SURPLUSAGE

The United States of America files this response in opposition to Defendant's Motion to Strike Surplusage (Doc. 81).

Defendant Carl Delano Torjagbo, a/k/a Karl Lucius Delano, seeks to strike from the Indictment the phrase "a/k/a Karl Lucius Delano." (*Id.* ¶ 6). He fails to meet his burden of showing that this phrase is both (a) not relevant to the charges in the indictment and (b) inflammatory and prejudicial. Therefore, the Court should deny his motion.

Facts

The Indictment charges Defendant Torjagbo with one count of bank fraud, in violation of 18 U.S.C. § 1344; three counts of concealment money laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i); and three counts of transactional money laundering, in violation of 18 U.S.C. § 1957. (Doc. 1).

1. Bank Fraud

JPMorgan Chase Bank, National Association ("Chase Bank") is a federally insured financial institution. And Chase Bank participated as a lender in the Paycheck Protection Program ("PPP"), which was designed to help small businesses survive the COVID-19 pandemic by providing them with funds to cover certain payroll costs, including benefits, interest on mortgages, rent, and utilities. To be eligible for a PPP loan, a business had to have been "in operation on February 15, 2020."

Kremkov Industries LLC is a Georgia entity that was created by Defendant Torjagbo on January 4, 2021, approximately 10 months *after* the PPP-eligibility date had expired. Kremkov Industries was not eligible for a PPP loan because it was not "in operation on February 15, 2020."

Defendant Torjagbo falsely represented that Kremkov Industries was in the gold-mining business. Kremkov Industries never conducted *any* business related to gold mining or anything else. And it never paid wages to employees because it had no employees.

Nevertheless, on February 16, 2021, Defendant Torjagbo signed a PPP loan application on behalf of Kremkov Industries and submitted it to Chase Bank, requesting a PPP loan of $9,554,425.00.

Defendant Torjagbo swore that the information he provided on Kremkov's PPP loan application and in all supporting documents and forms was "true and accurate in all material respects." It was not.

On the contrary,

- Defendant Torjagbo falsely stated that Kremkov Industries was "in operation on February 15, 2020."
- Defendant Torjagbo falsely stated that a PPP loan was necessary to support the "ongoing operations" of Kremkov Industries.
- Defendant Torjagbo falsely stated that Kremkov Industries had an average monthly payroll of $3,821,770.00.
- Defendant Torjagbo falsely stated that Kremkov Industries had 493 employees.

- Defendant Torjagbo submitted fraudulent documents to Chase Bank, including false tax returns (IRS Forms 940, 941, and 1040) and fake reports that listed the names and make-believe payroll information of 493 people who allegedly worked for Kremkov Industries.

On March 29, 2021, as a result of Defendant Torjagbo's materially false and fraudulent representations, Chase Bank transferred $9,554,425.00 in PPP loan proceeds to Defendant Torjagbo's custody and control.

2. Money Laundering

The fraudulent PPP loan proceeds were initially deposited into Chase Bank account #8755, titled in the name of Kremkov Industries. Immediately before that deposit, the balance in that account was only $105.00.

On Kremkov's PPP loan application, Defendant Torjagbo certified that "(a)ll loan proceeds (would) be used only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program Rules." Defendant Torjagbo acknowledged that he could be prosecuted if the PPP loan proceeds were "knowingly used for unauthorized purposes."

Defendant Torjagbo used the PPP loan proceeds for unauthorized purposes. He also engaged in financial transactions designed to conceal and disguise the nature, location, source, ownership, and control of the proceeds. For example,

(A) On April 8, 2021, Defendant Torjagbo transferred $3 million of the PPP loan proceeds by check from Chase Bank account #8755 to PNC Bank ("PNC") account #9499. Both accounts were titled in the name of Kremkov Industries. On that check, Defendant Torjagbo wrote a note stating that the payment was for "payroll." That note was false and intentionally misleading. Kremkov Industries had no payroll because it had no employees.

(B) On August 17, 2021, Defendant Torjagbo created a Wyoming entity called FlyingJack freight& Logistics LLC ("FlyingJack").

(C) On August 26, 2021, Defendant Torjagbo opened Bank of America (BOA) account #1199 in the name of FlyingJack.

(D) Defendant Torjagbo deposited the PPP loan proceeds into six different bank accounts at three different banks:

(1) Chase Bank account #8755, titled in the name of Kremkov Industries;

(2) PNC account #9499, titled in the name of Kremkov Industries;

(3) PNC account #9814, titled in the name of Carl Torjagbo;

(4) PNC account #9822, titled in the name of Carl Torjagbo;

(5) PNC account #9849, titled in the name of Carl Torjagbo; and

(6) Bank of America account #1199, titled in the name of FlyingJack.

(E) After the date on which Defendant Torjagbo obtained the PPP loan proceeds, there were no significant deposits into any of these six accounts from any legitimate source.

(F) Defendant Torjagbo moved and hid the PPP loan proceeds by using online transfers between accounts, wire transfers, regular checks, cashier's checks, debit cards, credit cards, and cash withdrawals.

(G) Defendant Torjagbo used more than $800,000.00 of the PPP loan proceeds to purchase 11 tractor-trailers for FlyingJack and to pay other startup expenses incurred by FlyingJack.

(H) In addition, for his personal pleasure and enjoyment, Defendant Torjagbo used PPP loan proceeds to pay for the following:

Date	Description	Amount
05-28-21	House located at 5114 Greythorne Lane, Marietta, GA, titled in name of Carl Torjagbo	$1,660,861.01
06-11-21	Plastic surgery ("surfer abs") for Carl Torjagbo	$15,030.38
08-06-21	2021 Land Rover Velar, titled in name of Carl Torjagbo	$87,020.00
10-27-21	Undeveloped land known as Tract 4, Fiber Drive, Cartersville, GA, titled in name of Karl Lucius Delano	$91,076.66
01-24-22	2022 BMW M850XL, titled in name of Carl Torjagbo	$115,250.79
03-07-22	Undeveloped land known as 101 Holt Drive, Acworth, GA, titled in name of FlyingJack	$150,005.13
04-21-22	Down payment on a yacht; proceeds transferred from BOA account #1199 in the name of FlyingJack	$51,000.00
04-22-22	2014 Lamborghini Aventador, titled in name of Karl Lucius Delano	$332,999.80

3. Aggravated Identity Theft and Wire Fraud

The government plans to supersede the Indictment to add new charges against Defendant Torjagbo, including aggravated identity theft and wire fraud.

The aggravated identity theft charges arise from the fraudulent documents that Defendant Torjagbo submitted to Chase Bank to obtain the $9.5 million PPP loan.

The wire fraud charges stem from not just one but two fraudulent tax returns (Forms 1040) for tax year 2020, which Defendant Torjagbo electronically filed with the IRS on February 13, 2021—three days before he submitted his fraudulent PPP loan application to Chase Bank. One return used Defendant Torjagbo's SSN, and the other used his ITIN. Both tax returns reported large fictitious Form W-2 wages, withholdings, and losses from Kremkov Industries (a sham company), generating over $6.3 million in total tax refunds. IRS records do not contain any evidence that the alleged wages or withholdings were ever paid. And IRS records show that Kremkov Industries never filed any W-2s or business or employment tax returns for tax year 2020, or for any other tax year.

On April 23, 2021, based on the fraudulent Form 1040 that Defendant Torjagbo filed using his SSN, the IRS issued a refund check payable to Carl Torjagbo for $3,366,240.76. The IRS flagged Defendant Torjagbo's other return, which was tied to his ITIN, and did not issue the requested refund of $3,015,573.00.

4. Defendant's name change

On July 29, 2021—approximately four months after he fraudulently obtained a $9.5 million PPP loan and filed two fraudulent tax returns, requesting refunds of $3,366,240.76 (which the IRS paid) and $3,015,573.00 (which the IRS flagged as fraud and did not pay)—Defendant Torjagbo filed a petition in the Superior Court of Cobb County, Georgia to change his name to Karl Lucius Delano. (Doc. 1 ¶ 23; Gov't Ex. 1). In his name-change petition, Defendant Torjagbo stated that he wanted to change his name because "Torjagbo is very difficult to pronounce and when (he) was in primary school, the other kids made fun of it." (Gov't Ex. 1 ¶ 4). His petition was granted on September 17, 2021. (Gov't Ex. 2). After changing his name, Defendant Torjagbo continued using his old name whenever it suited his criminal purposes. (*See supra* chart p. 7; Doc. 1 ¶¶ 17-31).

Argument

"Upon the defendant's motion, the court may strike surplusage from the indictment." Fed. R. Crim. P. 7(d). "Surplusage is defined as 'immaterial or irrelevant allegations in an indictment . . . which may . . . be prejudicial.'" *United States v. Hernandez*, No. 1:02-CR-730-BBM-AJB, 2006 WL 8453535, at *5 (N.D. Ga. May 9, 2006) (quoting FED. R. CRIM. P. 7(d), Advisory Committee's Note).

The Eleventh Circuit has held that "(a) motion to strike surplusage from an indictment should not be granted 'unless it is clear that the allegations are not relevant to the charge and are inflammatory and prejudicial. . . . (T)his is a most 'exacting standard.'" *United States v. Awan*, 966 F.2d 1415, 1426 (11th Cir. 1992) (quoting *United States v. Huppert,* 917 F.2d 507, 511 (11th Cir. 1990)).

Moreover, "if evidence of the allegation is admissible and relevant to the charge, then regardless of how prejudicial the language is, it may not be stricken." *United States v. Scarpa*, 913 F.2d 993, 1013 (2d Cir. 1990) (internal quotations omitted); *see also United States v. Hill*, 799 F. Supp. 86, 88-89 (D. Kan. 1992) ("If the language is information which the government hopes to properly prove at trial, it cannot be considered surplusage no matter how prejudicial it may be.") (internal quotations omitted). Even where terms on their face appear prejudicial, courts have refused to strike them where they are relevant to the charges. *See, e.g.*, *United States v. Al-Arian*, 308 F. Supp. 2d 1322, 1356-57 (M.D. Fla. 2004) (refusing to strike the words "terrorists," "terrorism," and "terrorist activity," as well as language indicating animus towards the United States, despite the obvious prejudice, where those allegations were potentially relevant to the charges); *United States v. Dellacroce*, 625 F. Supp. 1387, 1392 (E.D.N.Y. 1986) (refusing to strike from indictment terms such as "Gambino Crime Family," "boss," "capos," and "Old Man," because government represented that allegations were relevant). Similarly, even when an allegation may not be strictly relevant to the charges—serving only as background or color in an indictment—it should not be stricken unless it is also "inflammatory and prejudicial." *Awan*, 966 F.2d at 1426 (internal quotations omitted).

"Rule 7(d) is strictly construed against striking surplusage." *United States v. McCray*, No. 1:15-CR-212-WSD-AJB, 2017 WL 11716129, at *1-2 (N.D. Ga. June 15, 2017). Thus, "(m)otions to strike surplusage are rarely granted." *United States v. Hedgepeth*, 434 F.3d 609, 611 (3d Cir. 2006).

"In particular, defendants are usually unsuccessful in their attempts to have aliases expunged from an indictment." *United States v. Ailsworth*, No. 94-40017-01-SAC, 1994 WL 539347, at *14 (D. Kan. Aug. 24, 1994) (citations omitted). An alias is "(a)n assumed or additional name that a person has used or is known by." *United States v. Cofield*, No. 3:06-CR-208-MEF, 2007 WL 2670288, at *4 (M.D. Ala. Feb. 23, 2007) (quoting Black's Law Dictionary 79 (8th ed. 2004)), *report and recommendation adopted as modified*, 2007 WL 2670278 (M.D. Ala. Sept. 7, 2007). "If the Government intends to introduce evidence of an alias and the use of that alias is necessary to identify the defendant in connection with the acts charged in the indictment, the inclusion of the alias in the indictment is both relevant and permissible, and a pretrial motion to strike should not be granted." *United States v. Harriston*, 329 F.3d 779, 792 (11th Cir. 2003) (citation omitted).

Here, Defendant Torjagbo seeks to strike from the Indictment the phrase "a/k/a Karl Lucius Delano." (Doc. 81 ¶ 6). He does not cite any case where the defendant's former legal name was stricken from the indictment as surplusage because it was found to be either (a) irrelevant to the charge or (b) inflammatory and prejudicial, let alone both (a) and (b) as required to prevail on a motion to strike surplusage in the Eleventh Circuit. *See Awan*, 966 F.2d at 1426.

Defendant Torjagbo's name change is unquestionably relevant to the charges in the Indictment: the government avers in the Indictment that Defendant Torjagbo changed his name in order to conceal, disguise, and dispose of the fraud proceeds. (*See* Doc. 1 ¶¶ 17-31; *see also* O.C.G.A. § 19-12-4 ("Nothing contained in this chapter shall authorize any person to change his name with a view to deprive another fraudulently of any right under the law.")).

Second, the phrase "a/k/a Karl Lucius Delano" is not inflammatory and prejudicial. "'Inflammatory' is defined as 'tending to cause strong feelings of anger, indignation, or other type of upset; (or) tending to stir the passions.'" *United States v. Skilling*, 554 F.3d 529, 559 (5th Cir. 2009) (quoting BLACK'S LAW DICTIONARY 794 (8th ed. 2004)), *vacated in part on other grounds,* 561 U.S. 358 (2010). Defendant Torjagbo voluntarily chose to change his name to Karl Lucius Delano. (*See* Gov't Ex. 1). There is nothing inflammatory or unfairly prejudicial about that.

And unlike other possible aliases "whose very mention could engender adverse sentiment, the name [Karl Lucius Delano] conveys nothing that is inherently prejudicial." *See United States v. Wright*, No. 00-4024-01/25-SAC, 2001 WL 523394, at *10 (D. Kan. Apr. 26, 2001) (denying defendant's motion to strike surplusage because the alias "Pony" was not inherently prejudicial); *see also United States v. Aldissi*, No. 8:14-CR-217-T-33EAJ, 2014 WL 5285984, at *2 (M.D. Fla. Oct. 15, 2014) (holding that "the use of Defendant Aldissi's prior legal name (was) not inflammatory or prejudicial with regard to the charges outlined in the indictment"), *aff'd*, 758 F. App'x 694 (11th Cir. 2018).

Conclusion

Defendant Torjagbo has not met his burden of showing that the phrase "a/k/a Karl Lucius Delano" is "not relevant to the charge and [is] inflammatory and prejudicial." *Awan*, 966 F.2d at 1426. Therefore, his Motion to Strike Surplusage (Doc. 81) should be denied.

Respectfully submitted,

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