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
CARL DELANO TORJAGBO	)	

MOTION FOR SEVERANCE OF COUNTS

COMES NOW the Defendant, CARL TORJAGBO, by and through undersigned counsel, and moves this Court to sever for trial Counts Nine and Ten from the remaining counts of the superseding indictment. In support of this motion, Mr. Torjagbo states the following.

The original indictment charged Mr. Torjagbo with seven counts related to the acquisition of a PPP loan and the alleged expenditure of those funds. The charges included one count of bank fraud in violation of 18 U.S.C. §§ 1344 and 2, three counts of concealment money laundering in violation of 18 U.S.C. §§ 1956(a)(1)(B) and 2, and three counts of transactional money laundering in violation of 18 U.S.C. §§ 1957 and 2. The superseding indictment adds one count of aggravated identity theft in violation of 18 U.S.C. §§ 1028A(a)(1) and 2 and two counts of wire fraud in violation of 18 U.S.C. §§ 1343 and 2. The aggravated identity theft charge alleges that during and in relation to the acquisition of the PPP loan Mr. Torjagbo possessed and used, without lawful authority, a means of identification of another person, that person being M.S. Doc. 110 at 5. The wire fraud charges allege that on February 13, 2021 Mr. Torjagbo filed two fraudulent U.S. individual forms 1040 for tax year 2020. Doc. 110 at 12-13. The two wire fraud charges are set forth in Counts Nine and Ten. Doc. 110 at 12-13.

Federal Rule of Criminal Procedure 8(a) states:

> The indictment or information may charge a defendant in separate counts with 2 or more offenses if the offenses charged — whether felonies or misdemeanors or both — are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.

F.R.C.P. 8(a). Federal Rule of Criminal Procedure 14(a) states:

> If the joinder of offenses or defendants in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires.

F.R.C.P. 14(a).

The risk of prejudice is particularly great in this context, since the issue is not merely joinder of defendants but rather joinder of counts. "It is much more difficult for jurors to compartmentalize damaging information about one defendant derived from joined counts than it is to compartmentalize evidence against separate defendants joined for trial." United States v. Lewis, 787 F.2d 1318, 1322 (9th Cir. 1986), as amended, 798 F.2d 1250 (9th Cir. 1989) (reversing denial of motion to sever). As noted in legal commentary:

> The large majority of persons of average intelligence are untrained in logical methods of thinking, and are therefore prone to draw illogical and incorrect inferences, and conclusions without adequate foundation. From such persons jurors are selected. They will very naturally believe that a person is guilty of the crime with which he is charged if it is proved to their satisfaction that he has committed a similar offense, or any offense of an equally heinous character.

1 H.D. Underhill, Treatise on the Law of Criminal Evidence § 205, at 447 (Philip F. Herrick ed., 5th ed. 1956), quoted in Jones, 67 F.3d 320, 322 n. 6 (D.C. Cir. 1995).

This concern is no minor one. Courts have consistently recognized the "highly prejudicial nature of other-crimes evidence," as noted in United States v. Jones, 67 F.3d 320, 322 (D.C. Cir. 1995):

> It is always prejudicial to a defendant. It diverts the attention of the jury from the question of the defendant's responsibility for the crime charged to the improper issue of his bad character. Federal Rule of Evidence 403 embodies the concern for a defendant's right to a fair trial and requires the district court to reject evidence whose prejudicial effect substantially outweighs its probative value. See United States v. Simpson, 992 F.2d 1224, 1229 (D.C. Cir.) (finding "the fairness of the entire proceeding" questionable when other-crimes evidence was improperly admitted), cert denied, 510 U.S. 906 (1993).

Id. at 322. See also United States v. Nguyen, 88 F.3d 812, 816 (9th Cir.

1996).

The superseding indictment now charges offenses arising from separate alleged fraud schemes. The original indictment charged wrongful acquisition of a PPP loan and offenses based on alleged expenditure of that money. Now, the superseding indictment adds in Counts Nine and Ten allegations of illegality in the filing of two tax returns.

Mr. Torjagbo would be greatly prejudiced by a trial of the wire fraud charges, which relate to the filing of the tax returns, in conjunction with trial of offenses related to the alleged PPP fraud. Based on the nature of the charged conduct, there is a substantial risk that a single jury would be inhibited in its ability to consider the evidence separately with respect to the different alleged schemes. A single trial of all the counts would essentially allow the Government to present other-crimes evidence without satisfying the requirements of Rule 404(b) and without being subjected to the exclusionary discretion provided under Rule 403.

WHEREFORE, Mr. Torjagbo comes now and moves the Court to sever for trial Counts Nine and Ten from the remaining counts of the indictment.

Dated: This 26th day of September, 2024.

Respectfully submitted,

s/ Kendal D. Silas
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Severance of Counts was electronically filed this day with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following:

John Russell Phillips, Esq.
Assistant United States Attorney
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Dated: This 26th day of September, 2024.

s/ *Kendal D. Silas*
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