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

Defendant.

CRIMINAL ACTION NO.
1:22-CR-00171-MLB-RDC

NON-FINAL REPORT AND RECOMMENDATION

Pending before this Court are three motions filed by Defendant Carl Delano Torjagbo: Preliminary Motion and Amended Motion to Suppress Statements [Docs. 44, 88], and Motion to Strike Surplusage. [Doc. 81]. The Government filed its response to the Motion to Strike Surplusage on March 26, 2024. [Doc. 83]. This Court held an evidentiary hearing to receive evidence related to Mr. Torjagbo's Motions to Suppress Statements on June 5, 2024. [Doc. 94]. On August 13, 2024, Mr. Torjagbo filed a post-hearing brief in support of his Motions to Suppress Statements. [Doc. 108]. The Government filed its response on September 5, 2024.

[Doc. 109]. Mr. Torjagbo filed his reply brief on October 25, 2024. [Doc. 123].

Following review of Mr. Torjagbo's pleadings, the Government's responses, the transcripts of the evidentiary hearing [Doc. 94 (hereafter "Tr.")] and the audio recording and transcript of Mr. Torjagbo's initial interview [Gov't Ex. 2, Def. Ex. 1, FBI Interview of Carl Torjagbo (hereafter "Interview Tr.")], these matters are now ripe for judicial review.

Factual and procedural background

1. The Superseding Indictment

Mr. Torjagbo is named in a ten count Superseding Indictment that charges him with crimes involving bank fraud, aggravated identity theft, concealment and transactional money laundering, and wire fraud. [Doc. 110]. Count One alleges that from in or about January 2021 through in or about March 2021, Mr. Torjagbo, "aided and abetted by others unknown to the Grand Jury, knowingly executed, attempted to execute, and participated in a scheme and artifice to defraud JPMorgan Chase Bank, National Association, d/b/a 'Chase Bank,' a financial institution whose deposits were then insured by the FDIC, and to obtain moneys and funds owned by and under the custody and control of Chase Bank, by means of materially false and fraudulent pretenses, representations, and promises, and by the omission of material facts ('the bank fraud scheme')." *Id.* at 1.

The Superseding Indictment states that Mr. Torjagbo, in furtherance of his bank fraud scheme, organized an illegitimate business, Kremkov Industries LLC ("Kremkov Industries") to take advantage of Chase Bank's participation as a lender in the Paycheck Protection Program ("PPP"). [Doc. 110 at 2]. Allegedly, he organized Kremkov Industries on or about January 4, 2021, ten months after the PPP eligibility date expired. *Id.* At that time, Kremkov Industries was not eligible for a PPP loan because it was not in operation on February 15, 2020, "never conducted any legitimate business, had no income, and never paid wages to employees because it had no employees." *Id.*

On or about February 16, 2021, Mr. Torjagbo allegedly signed a PPP loan application on behalf of Kremkov Industries, certifying that the business was "in operation on February 15, 2020," the loan was "necessary to support the ongoing operations of Kremkov Industries," had 493 employees, and averaged a monthly payroll of $3,821,770. [Doc. 110 at 3]. Although he swore that the information he provided in the application and in all supporting documents and forms was "true and accurate in all material aspects," the Government alleges that Mr. Torjagbo "knew and had reason to know that the application contained materially false and fraudulent misrepresentations." *Id.* Additionally, in support of the PPP loan application, Mr. Torjagbo purportedly submitted fraudulent documents to Chase

Bank, including "false tax returns, as well as copies of phony payroll reports purporting to show that Kremkov Industries had paid wages to 493 employees." [Doc. 110 at 3]. After Mr. Torjagbo submitted these documents, Chase Bank transferred $9,554,425 in PPP loan proceeds to his custody and control, "[a]ll in violation of Title 18, United States Code, Section 1344 and Section 2." *Id.* at 4.

Count Two of the Superseding Indictment charges Mr. Torjagbo with aggravated identity theft, and alleges that on or about February 16, 2021, he, "aided and abetted by others . . . knowingly possessed and used, without lawful authority, a means of identification of another person, the person being M.S., during and in relation to the bank fraud scheme charged in Count 1 of [the] Superseding Indictment . . . [a]ll in violation of Title 18, United States Code, Section 1028A(a)(1) and Section 2." [Doc. 110 at 5].

Counts Three through Five charge Mr. Torjagbo with concealment money laundering, and allege that he, "aided and abetted by others, . . . conducted and attempted to conduct a financial transaction, knowing that the property involved in such financial transaction represented the proceeds of some form of unlawful activity, which in fact involved the proceeds of specified unlawful activity, namely, the bank fraud scheme charged in Count 1 of [the] Superseding Indictment, while acting with the knowledge that the transaction was designed in whole and in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of the specified unlawful activity . . . [a]ll in violation of Title 18, United States Code, Section 1965(a)(1)(B)(i) and Section 2." [Doc. 110 at 8–7]. Count Three specifically alleges that Mr. Torjagbo transferred $3 million of the PPP loan proceeds by check, indicating the check was for "payroll," from Chase Bank account #8755 to PNC Bank account #9499, both of which were titled in the name of Kremkov Industries. *Id.* at 6. He instead purportedly used these funds to pay "personal debts and expenses and to fund a lifestyle for himself that he otherwise could not have afforded." *Id.*

The Superseding Indictment also alleges that Mr. Torjagbo, four months after he received the PPP loan proceeds, petitioned to change his name to Karl Lucius Delano. [Doc. 110 at 7]. Court Four provides that he then used $91,076.66 of the bank fraud proceeds to purchase real property in the name of Karl Lucius Delano. *Id.* at 5–6. Count Five states that Mr. Torjagbo then deposited bank fraud proceeds into Bank of America account #1199, which he opened in the name of a Wyoming company he created on or about August 17, 2021, named "FlyingJack freight& Logistics LLC" ("FlyingJack"). *Id.* at 9. These fraudulently obtained bank funds were then used to pay startup expenses and to purchase property and equipment for Flying Jack. *Id.* at 7.

In total, the Government claims that Mr. Torjagbo caused bank fraud proceeds to be deposited into six different bank accounts, all titled in the name of either Carl Torjagbo, Kremkov Industries, or FlyingJack. [Doc. 110 at 8]. He allegedly "used online transfers between accounts, wire transfers, personal checks, cashier's checks, debit cards, credit cards, and cash withdrawals to convert the bank fraud proceeds to his own use." *Id.*

Counts Six through Eight charge Mr. Torjagbo with transactional money laundering, and allege that he, "aided and abetted by others unknown to the Grand Jury, knowingly engaged in and attempted to engage in a monetary transaction in criminally derived property of a value greater than $10,000, said property having been derived from a specified unlawful activity, namely, the bank fraud scheme charged in Count 1 of [the] Superseding Indictment . . . [a]ll in violation of Title 18, United States Code, Section 1957 and Section 2." [Doc. 110 at 10–11]. It is also alleged that wire transfers and transfers by cashier's check were used to purchase real property at 5114 Greythorne Lane, Marietta, Georgia, and to purchase a Land Rover vehicle and a BMW vehicle. *Id.* at 11.

Counts 9 and 10 charge Mr. Torjagbo with wire fraud, and allege that, from in or about February 2021 through in or about April 2021, he "devised, intended to devise, and participated in a scheme and artifice to defraud the United States

Department of the Treasury, Internal Revenue Service ('IRS'), and to obtain money from the IRS by means of materially false and fraudulent pretenses, representations, and promises, and by the omission of material facts ('the wire fraud scheme')." [Doc. 110 at 12]. Because Kremkov Industries purportedly did not operate until January 4, 2021, "never conducted any legitimate business, had no income, and never paid wages to employees because it had no employees," the company had never filed any W-2s or tax returns for the tax year 2020, or for any other tax year. *Id.* Additionally, Mr. Torjagbo, in his individual capacity, did not have any wages and did not pay any withholdings to the IRS for tax year 2020. *Id.*

On or about February 13, 2021, Defendant Torjagbo allegedly electronically filed with the IRS two fraudulent U.S. individual income tax returns (Forms 1040) for tax year 2020, and "reported fictitious wages, withholdings, and nonpassive losses from Kremkov Industries" on both forms. [Doc. 110 at 12].On one of the fraudulent tax returns, he used his Social Security Number (SSN) and claimed a refund in the amount of $3,373,441.00. *Id.* at 13. On the other tax return, Defendant Torjagbo used an Individual Taxpayer Identification Number ("ITIN") and claimed a refund in the amount of $3,015,573.00. *Id.*

The Superseding Indictment also includes a forfeiture provision seeking the seizure of any United States currency and real property representing or derived from the proceeds obtained by the Defendant as a result of the commission of the charged offenses. [Doc. 110 at 14–16].

2. <u>The FBI Interview</u>

On May 12, 2022, ten Special Agents arrived at 1032 Industrial Boulevard North, Dallas, Georgia, where the Agents had set a meeting with Mr. Torjagbo in anticipation of his arrest, in three or four vehicles [Tr. at 7, 26]. [1] When the Agents observed Mr. Torjagbo walking across the parking lot, they surrounded him with their vehicles, exited with their guns drawn and pointed at him, identified themselves, and at least one Agent yelled for Mr. Torjagbo to "get down on the ground" and to "show [his] hands." [Tr. at 8, 26–28]. The Agents were wearing bullet proof vests with FBI placards on the front and back. [Tr. at 9]. Mr. Torjagbo complied with the Agents' commands, and the Agents handcuffed him while he was lying on the ground. [Tr. at 9, 27]. According to Special Agent Marissa Pressley, the Agents returned their weapons to their holsters once they securely placed Mr. Torjagbo in custody. [Tr. at 9].

At approximately 9:58 a.m., Special Agents Pressley and Scott Caruana placed Mr. Torjagbo in the back seat of Special Agent Caruana's vehicle to

[1] The citation page numbers reflect the numbering of the official transcript rather than the filed-stamp page number located at the top of Document 94.

interview him. [Tr. at 9]. At this time, the Agents changed the position of the handcuffs to the front of Mr. Torjagbo's body. [Tr. at 9]. Special Agent Pressley indicated that she and Special Agent Caruana believed the cuffs were loose enough to not cause any pain. [Tr. at 10]. In anticipation of the interview, the Agents activated a recording device, and Special Agent Caruana read Mr. Torjagbo his *Miranda* rights. [Tr. at 11, 13; Interview Tr.]. Agent Pressley testified that Mr. Torjagbo indicated he understood his *Miranda* rights, voluntarily waived them, agreed to speak to the Agents without a lawyer present, and signed an advice of rights form.[2] [Gov't Ex. 1; Tr. at 10–13; Interview Tr. at 2–3].

The interview lasted forty-two minutes. [Tr. at 14; Interview Tr.]. During the course of the interview, Special Agents Caruana and Pressley questioned Mr. Torjagbo about his personal background; the PPP loan application; the formation

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[2] The waiver of rights form, signed by Mr. Torjagbo and Special Agent Caruana, states in part:

> Before we ask you any questions, you must understand your rights.
> You have the right to remain silent.
> Anything you say can be used against you in court.
> You have the right to talk to a lawyer for advice before we ask you any questions.
> You have the right to have a lawyer with you during questioning.
> If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.
> If you decide to answer questions now without a lawyer present, you have the right to stop answering at any time.
> I have read this statement of my rights and I understand what my rights are. At this time, I am willing to answer questions without a lawyer present.

and operation of Kremkov Industries; Mr. Torjagbo's expenditures after obtaining the PPP loan; the formation, assets, and employees of FlyingJack; and various property owned by Mr. Torjagbo that the Government intended to seize. [Tr. at 35; *see generally*, Interview Tr.].

In relevant part, Special Agent Caruana's questioning turned to the number of employees Mr. Torjagbo employed through Kremkov Industries. [Interview Tr. at 11]. Mr. Torjagbo explained that the company conducts its mining activities primarily in Africa and but those activities were currently halted due to the Covid-19 pandemic, which caused him to re-channel his efforts into transportation. [Interview Tr. at 12]. Mr. Torjagbo stated that, because Kremkov Industries' operations took place in Africa, most of his employees were located there. [Interview Tr. at 12–13].

After Agent Special Caruana asked Mr. Torjagbo about Kremkov Industries' income and the location of its bank accounts, he again asked how many employees the company had in 2020 and 2021. [Interview Tr. at 14]. Mr. Torjagbo responded, "probably about fifty." *Id.* Special Agent Caruana then asked how many of those employees were located in the United States. *Id.* Mr. Torjagbo stated "honestly, off the top of my head, I don't know." *Id.* Special Agent Caruana continued this line of questioning and asked him the maximum amount of employees that he has ever had, to which he responded that the business has a high turnover and he, again, honestly did not know off the top of his head. *Id.* Special Agent Caruana encouraged him to "take a guess—a guesstimate. Was it fifty, was it a hundred, was it ten?" [Interview Tr. at 14]. Mr. Torjagbo again responded that he could not honestly answer the question. *Id.*

Special Agent Caruana pursued an alternate line of questioning in an attempt to ascertain the number of Kremkov Industries' employees, asking how much he pays his employees, to which Mr. Torjagbo responded, "It depends on how many people are, you know, digging and mining at the time." *Id.* at 15. He then asked approximately how many people Mr. Torjagbo paid to which Mr. Torjagbo again responded, "Like I said, I don't know off the top of my head because it's a high turnover." *Id.* Special Agent Caruana then instructed him to "Just take a guess. I'm not going to lock you into it. Just a rough guesstimate." *Id.* Mr. Torjagbo responded "A rough guesstimate? Maybe 50, 60." *Id.*

Next, Special Agent Caruana asked Mr. Torjagbo how much he paid his employees on an annually or quarterly basis. [Interview Tr. at 15]. He responded, "Like I said, those are hard figures, and I don't know off the top of my head, so honestly, I don't want to answer that question." *Id.* at 15–16. The Agent then stated, "Are you sure you want to tell me this stuff because it's not really going to help you." *Id.* at 16. Mr. Torjagbo's responded "I know that. But I don't wanna tell you something which is wrong and then . . . it'll appear like I'm . . . deceiving you or something." [Interview Tr. at 15]. Special Agent Caruana then explained to him that "this is a paper case . . . and it's a follow the money case . . . and the evidence shows that what you're telling me is bullshit . . . so you're not going to help yourself out by giving us a bunch of bullshit." *Id.* at 16–17]. Mr. Torjagbo responded that "to the best of [his] ability, [he] would be plain . . . and honest with [Special Agent Caruana]." *Id.* at 17.

Mr. Torjagbo and the Agents then discussed, *inter alia*, the tractor-trailers located on the property that were subject to a seizure warrant, Mr. Torjagbo's PPP loan, the loan money that he rechanneled into his company Flying Jack, and the income made by Kremkov Industries that was kept in foreign bank accounts. *Id.* at 17–25. Seventeen minutes into the interview, Agent Caruana stated:

> We don't need you to cooperate . . . Like I said, I don't know how clear to you I can be, okay? The paper is what proves it. The paper and the flow of money . . . I don't want to see you get in any more trouble than you're already in, that's why I was clear to you and explained to you how you can help yourself in the federal system. And I guarantee you, you speak to any attorney, an attorney gets appointed to you when you go through these proceedings, or you hire your own attorney, they will tell you the same thing. And I don't want you to sit back there later on and go, "Damn, he told me so."

[Interview Tr. at 25].

Mr. Torjagbo then answered additional questions from the Agents concerning his name change; the purchase of tractor-trailers and real estate with PPP funds; his relationship with a prior co-worker, Monica Sweeten; his reasons for moving to the United States, as well as his education and employment history; Kremkov Industries' payroll list that he submitted to Chase Bank to obtain the PPP funds; and the operational history of Kremkov Industries. *Id.* at 26–52. He also signed a form consenting to the Agents using his key fob to enter the garage in his home and seize a BMW he owned. *Id.* at 52; Gov't Ex. 3.

The Agents stopped recording the interview after forty minutes, but reactivated the recorder when Mr. Torjagbo indicated that he had additional questions. [Tr. at 14].[3] This segment of the recording lasted for another two minutes. [Tr. at 14]. At this point, Mr. Torjagbo expressed concern about the manner in which the agents conducted the arrest. [*See* Interview Tr. at 55]. He specifically stated that the agents could have come to his house, knocked on his door, and asked him to come out, and he would have complied. *Id.* He asked why they had to have "M16s and AR-15s," and that he thought "it was a little bit dramatic." *Id.* at 56. He further stated that "It

[3] Because the interview was stopped and then started again, Gov't Ex. 2 and Def. Ex. 1 are split into two separate electronic files. The transcript of the recordings includes both files and is referenced as "Part 2 of the interview of Carl Torjagbo" within the transcript. [Interview Tr. at 55].

actually scared [him].” *Id.* Special Agent Caruana responded that this was standard protocol followed to protect the safety of the agents. *Id.* at 56–57.

Special Agent Pressley testified that Mr. Torjagbo appeared calm and alert throughout the interview, and everything said by either Mr. Torjagbo, Special Agent Pressley, or Special Agent Caruana was recorded by the activated recording device.[4] [Tr. at 18]. He further asserted that Mr. Torjagbo never stated that he wanted to end the interview, that he did not understand anything the Agents said to him, that he wanted to speak to an attorney, or that he wanted to revoke his consent to speak with the Agents without an attorney being present. [Tr. at 17–18].

Mr. Torjagbo was arraigned on the Superseding Indictment on September 12,

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[4] The parties disagree about whether the recording device captured the entire interview. Mr. Torjagbo contends that “it was apparent that some amount of discussion leading up to the interrogation, such as the possibility of benefitting by cooperating with the agents, was not recorded.” [Doc. 108 at 3 n.2]. He further bases this belief on the fact that, during the interview, Special Agent Caruana states “That’s what I’m telling you. We don’t need you to cooperate. Like I said, I don’t know how clear to you I can be. The paper is what proves it, the paper and the flow of money . . . I don’t want to see you get in any more trouble than you’re already in. That’s why I was clear to you and explained to you how you can help yourself in the federal system.” [Interview Tr. at 25]. In response to being asked whether Special Agent Caruana and Mr. Torjagbo discussed cooperating with law enforcement prior to the recorded interview, Agent Pressley testified that she was not standing next to Special Agent Caruana when he placed Mr. Torjagbo into the vehicle. [Tr. at 31–32]. However, she stated that she does recall “that at some point, Special Agent Caruana told him that it would be in his best interest or reminded—he reminds him it was in his best interest to cooperate.” [Tr. at 32].

Notably, Mr. Torjagbo fails to present sufficient evidence that Special Agent Caruana coerced him into waiving his *Miranda* rights or into giving a statement by making promises prior to the start of the recorded interview. *See generally*, Doc. 94. Thus, “the facts are undisputed, there is no question of [Special Agent Pressley’s] credibility, and [Mr. Torjagbo] requests that inferences be drawn not from established facts, but from utter speculation.” *United States v. Copeland*, No. 1:19-CR-00009-MHC-RGV, 2020 WL 2502423, at *4 (N.D. Ga. Jan. 27, 2020), *report and recommendation adopted,* 2020 WL 1131026 (N.D. Ga. Mar. 9, 2020) (*citing United States v. Oroczo-Cuellar*, No. CR407-037, 2007 WL 2904165, at *3 (S.D. Ga. Oct. 2, 2007), *report and recommendation adopted*, 2007 WL 3069323, at *1 (S.D. Ga. Oct. 17, 2007).

2024. [Doc. 113]. He had previously filed pretrial motions on November 30, 2022, February 12, 2024, and May 10, 2024, following his arraignment on the original Indictment. [Docs. 1, 44, 80, 81, 88].

A. <u>Defendant's Motions to Suppress Statements</u>

The parties' contentions

In Mr. Torjagbo's motions to suppress several incriminating statements made during his initial custodial interview, he submits that the statements are inadmissible because they were obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966) [Docs. 44, 88]. Primarily relying on *Hart v. Att'y Gen. of Fla.*, 323 F.3d 884, 894–95 (11th Cir. 2003), *United States v. Lall*, 607 F.3d 1277 (11th Cir. 2015), and *United States v. Castor*, 598 Fed. Appx. 700 (11th Cir. 2015), Mr. Torjagbo claims that his statements regarding the maximum number of people employed by Kremkov Industries should be suppressed because Special Agent Caruana coerced him into making these statements by telling him "he would not lock [him] into his answer" in contradiction of the *Miranda* warning that "anything a suspect says during the custodial interrogation can and will be used against him in court." [Doc. 108 at 13]. Additionally, Mr. Torjagbo relies on *Lall* and *Castor* to assert that these statements should be suppressed because Special Agent Caruana's promise that he would not lock Mr. Torjagbo into his answer "distorted [his] ability to weigh the pros and cons of making a statement and going with the balance as it appeared at the time . . . [and] distorted [his] ability to weigh the consequence of making the statement." [Doc. 108 at 19].

Further, Mr. Torjagbo claims that all of his statements made after Special Agent Caruana stated that "any attorney would tell him to cooperate and answer the Agents' questions" should be suppressed because that statement was "at odds with the right to remain silent," because it told him "that silence would hurt him and that disclosure would help him . . ." and, because it "undermined the right to counsel . . . that is, to waive your right to remain silent and disregard any potentially incriminating impact your statements might have in court." [Doc. 108 at 21]. Lastly, he claims that any statements made after Special Agent Caruana's comment regarding what an attorney would advise him should be suppressed because the circumstances of his arrest and Special Agent Caruana's comments "combined to produce an environment that was not conducive to Mr. Torjagbo making a free and unrestrained choice to make statements." [Doc. 108 at 22–23].

The Government urges this Court to deny Mr. Torjagbo's motions, arguing that it met its burden of demonstrating that he knowingly and intelligently waived his rights because the Agents did not coerce him to do so and read him his *Miranda* warnings. [Doc. 109 at 12–13]. Additionally, it asserts that Mr. Torjagbo signed a *Miranda* waiver before questioning began and "at no point . . . state[d] that he wanted the questioning to end or that he wanted to speak to a lawyer." [Doc. 109 at 12–13]. The Government further contends that Mr. Torjagbo's "arguments all fail" because the "presence of a large number of agents at the scene of the 'arrest does not indicate' sufficient coercion," "the use of handcuffs does not establish coercion," Special Agent Caruana's assertion that his responses were "bullshit" and lies did not "overborne his will," Special Agent Caruana's statement that "any attorney would tell him he should cooperate and truthfully answer the agents' questions was not improper," Mr. Torjagbo's "refusal to answer certain questions . . . was not an invocation . . . of the constitutional right to remain silent," and that he presented no evidence that he "was tricked or coerced into signing the FBI Advice of Rights form." [Doc. 109 at 17–23].

In reply, Mr. Torjagbo re-iterates his claim that the "central concern" in the case at bar is "the actions that the law enforcement agents took to coerce and coax [him] into not exercising [his *Miranda*] rights after the interrogation began. [Doc. 123 at 2]. He asserts that the Government has failed to meet its burden in proving that his statements were voluntarily rendered based on the totality of the circumstances. [Doc. 123 at 3]. He also contends that his statements were not voluntary because of the coercive impact of the number of Agents and their manner of approach, as well as

Special Agent Caruana's aggressive behavior and deceptive statements made during the course of the interview. [Doc. 123 at 4–5].

Discussion

A. Mr. Torjagbo Voluntarily, Knowingly, and Intelligently Waived His *Miranda* Rights and His Statements Were Voluntarily Rendered

Before the government may introduce a suspect's uncounseled statement made during custodial interrogation, it must show that the suspect made a voluntary, knowing and intelligent waiver of his privilege against self-incrimination and his right to counsel. *Miranda v. Arizona*, 384 U.S. 436 (1966); *Missouri v. Seibert*, 542 U.S. 600, 608 n.1 (2004); *United States v. de la Fuente*, 548 F.2d 528, 533 (5th Cir. 1978) ("[I]f a defendant shows that a confession was obtained while he was under custodial interrogation, the government then has the burden of proving that the defendant voluntarily waived his privilege against self-incrimination"); *United States v. Bengivenga*, 845 F.2d 593, 596 (5th Cir. 1988); *Dunkins v. Thigpen,* 854 F.2d 394, 398 (11th Cir. 1988). This showing has two distinct aspects: (1) relinquishment of the right must have been the product of a suspect's free and deliberate choice (rather than intimidation, coercion, or deception), and (2) the waiver must have been made with the full awareness of both the rights being abandoned and the consequences of the decision to abandon those rights. *Dunkins*, 854 F.2d at 398 (citing *Moran v Burdine*, 475 U.S. 412 (1986)).

Although the Supreme Court has held that the police do not have to recite the *Miranda* warnings in a talismanic fashion, the warnings must not be misleading. *California v. Prysock*, 453 U.S. 355 (1981); *see, e.g., United States v. Dohm*, 618 F.2d 1169, 1175 (5th Cir. 1980) (en banc) (holding magistrate's warning "you may say something that might hurt you in the future" to defendant testifying without counsel at bail bond hearing insufficient for valid *Miranda* waiver); *United States v. Womack,* 542 F.2d 1047 (9th Cir. 1976) (holding waiver invalid where law enforcement officers' conduct negated their assertion that defendant had a right to counsel). This Circuit has found that an officer's statements that confuse a suspect or contradict an express part of the *Miranda* warnings warrant suppression of the incriminating statements. *United States v. Beale*, 921 F.2d 1412, 1335 (11th Cir. 1991) (where appellant court found agents' advice that signing a waiver form would not hurt him "contradicted the *Miranda* warning that a defendant's statements can be used against the defendant in court, thereby misleading [him] concerning the consequences of relinquishing his right to remain silent"); *Hart v. Att'y Gen. of Fla.*, 323 F.3d 884 (11th Cir. 2003) (court found detective's deception and contradictory statements that a disadvantage of having a lawyer is that a lawyer would prevent him from answering questions and that "honesty wouldn't hurt him" prevented defendant from understanding his right against self-incrimination and the consequences arising from that waiver. Thus, it concluded defendant's waiver "was not voluntary, knowing and intelligent as required by *Miranda*").

However, "trickery and deceit are prohibited only to the extent they prevent the defendant 'from understanding the nature of his rights and the legal consequences of waiving them.'" *United States v. Santacruz*, No. 1:21-CR-00304-LMM-JEM-1, 2022 WL 4554420, at * 2 (N.D. Ga. Sep. 29, 2022) (quoting *United States v. Farley*, 607 F.3d 1294, 1328 (11th Cir. 2010)). Although misrepresentations of fact are insufficient to undermine a *Miranda* waiver and render the statement involuntary, misrepresentations of law "are more likely to render a self-incriminating statement involuntary." *Farley*, 607 F.3d at 1285, 1287; *see also*, *United States v. Castor*, 598 F. App'x 700, 703–04 (11th Cir. Feb. 3, 2015) (finding *Miranda* violation where officer "misled [the defendant] regarding the consequences of relinquishing his right to remain silent when he assured him that he could not charge him with any other drugs"). "[G]iven the uniquely influential nature of a promise from law enforcement official not to use a suspect's inculpatory statement, such a promise may be the most significant factor in assessing the voluntariness of an accused's confession in light of the totality of the circumstances." *United States v. Lall*, 607 F.3d 1277, 1286 (11th Cir. 2010) (internal quotation marks omitted).

Aside from the dictates of *Miranda*, before a confession is admissible, this Court must find that it was voluntarily made. *Jackson v. Denno*, 378 U.S. 368, 378 (1964) ("[A] defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession[.]"). Whether a statement was voluntarily given must be examined in light of the totality of the circumstances, *see Schneckloth v. Bustamonte,* 412 U.S. 218, 226; *United States v. Thompson*, 422 F.3d 1285, 1295 (11th Cir. 2005); *Hubbard v. Haley*, 317 F.3d 1245, 1252 (11th Cir. 2003); and includes factors such as whether: (1) law enforcement provided *Miranda* warnings, *see Beckwith v. United States*, 425 U.S. 341, 348 (1976); (2) the interrogation lasted for a lengthy period of time, *Davis v. State of North Carolina*, 384 U.S. 737, 752 (1966); *Thompson*, 422 F.3d at 1296; (3) the defendant was mature; (4) law enforcement relied on misrepresentations that induced the incriminating statements, *Frazier v. Cupp*, 394 U.S. 731,739 (1969); *United States v. Mitchell*, 966 F.2d 92, 100 (2nd Cir. 1992); (5) law enforcement used force and threats of force, *Thompson*, 422 F.3d 1296; and (6) law enforcement made promises to induce the confession. *Thompson*, 422 F.3d at 1296; *United States v. Gonzalez*, 71 F.3d 819, 828 (11th Cir. 1996), *overruled on other grounds by Arizona* *v. Gant,* 556 U.S. 332 (2009). This totality of the circumstances test directs the Court ultimately to determine whether a defendant's statement was the product of "an essentially free and unconstrained choice." *United States v. Garcia,* 890 F.2d 355, 360 (11th Cir. 1989); *Hubbard v. Haley,* 317 F.3d 1245, 1252 (11th Cir. 2003). However, while the Eleventh Circuit has "enumerated a number of (non-exclusive) factors that may bear on the issue of voluntariness, the absence of official coercion is a *sine qua non* of effective consent . . . ." *Gonzalez,* 71 F.3d at 828 (citations omitted). In other words, courts examine whether the interview was coercive. *Id.*; *see also, Thompson*, 422 F.3d at 1296 ("Government coercion is a necessary predicate to a finding of involuntariness under the Fifth Amendment."). Further, "'[t]he government bears the burden of proving . . . that the consent was not a function of acquiescence to a claim of lawful authority but rather was given freely and voluntarily.'" *United States v. Hildago*, 7 F.3d 1566, 1571 (11th Cir. 1993) (quoting *United States v. Blake*, 888 F.2d 785, 798 (11th Cir. 1989). With these principles in mind, the undersigned turns to the errors alleged by Mr. Torjagbo.

a. The Totality of the Circumstances Show that Mr. Torjagbo Was Not Coerced into Waiving His *Miranda* Rights and that His Statements Were Voluntarily Rendered

First, the parties do not dispute that Special Agent Caruana read Mr. Torjagbo his *Miranda* warnings at the inception of the recorded interview, or that Mr. Torjagbo signed an FBI Advice of Rights Form. [Doc. 108 at 3–4; Doc. 109 at 2–3]. Additionally, there is no indication that Mr. Torjagbo did not understand his *Miranda* rights, each of which he acknowledged verbally and in writing. [Doc. 108 at 3–4; Doc. 109 at 2–3]. He never expressed confusion regarding his rights, asked for counsel, nor asked for the interview to end. [Tr. at 17–18, *see generally*, Interview Tr.].

Second, the Government contends, and Mr. Torjagbo does not dispute, that none of his characteristics caused him to have difficulty understanding or exercising his *Miranda* rights. [*See* Doc. 108; *see also*, Doc. 109 at 15–16]. Mr. Torjagbo was an adult at the time of the interview, and there is no evidence of low intelligence, fatigue, illness, or intoxication. [*See* Gov't Ex. 2, Def. Ex. 1]. A review of the interview recording and transcript between Mr. Torjagbo and the Agents reveals that he speaks fluent English, graduated from college, obtained employment with the Army, and maintained a pilot's license. [*See* Interview Tr. at 39, 41]. Moreover, the Defendant exhibited knowledge and at least some command of the investigation process by stating to the Agents that he "kn[e]w better than to lie to the FBI." [Interview Tr. at 9].

Third, the evidence does not indicate that the Agents physically intimidated or coerced Mr. Torjagbo into waiving his rights. Special Agent Pressley testified that she and Special Agent Caruana moved Mr. Torjagbo's handcuffs to the front of his body and believed that he suffered no discomfort from the handcuff's positioning. [Tr. at 9–10]. As the Government correctly points out, "the use of handcuffs does not establish coercion." *Shiner v. Wainwright*, 715 F.2d 1452, 1456 (11th Cir. 1983). Further, the interview lasted only forty-two minutes. [Tr. at 14].

Mr. Torjagbo asserts that the nature of the arrest, namely the number of agents, who arrived in three or four vehicles, with guns drawn and pointed at him, with some of those guns being assault rifles, "could reasonably have a coercive impact on the arrestee who is interrogated immediately afterward." [Doc. 123 at 4]. However, he cites no cases to support this claim, while the Government points to *United States v. Vaughn* to support its assertion that a "large number of agents at the scene of an arrest 'does not indicate a level of intimidation or coercion sufficient to render Defendant's waiver involuntary if there is no evidence that the agents at the scene "employed any tactics that would augment the degree of coercion that is inherent in any arrest."'" *United States v. Vaughn*, No. 1:22-CR-00107-MHC-JEM-5, 2023 WL 4411957 (N.D. Ga. June 15, 2023) (quoting *United States v. Garcia*, 890 F.2d 355, 360 – 62 (11th Cir. 1989) (finding defendant's consent to search voluntary despite the presence of

14 agents)), *report and recommendation adopted*, 2023 WL 4411957 (N.D. Ga. July 7, 2023). While Mr. Torjagbo does express concern about the nature of the arrest during the second part of the recorded interview, stating that he "would have complied" if they had come to his home and knocked on his door, and noting that the "M16s and AR-15s . . . [were] a little bit dramatic," and that they scared him, his tone of voice at the outset of the interview does not reflect any such fear. [*See* Gov't Ex. 2; Def. Ex. 1]. In fact, his tone remains calm and conversational throughout the interview. *Id.* Additionally, he does not dispute that the Agents' weapons remained holstered throughout the entirety of the interview. [Doc. 108 at 3; Doc. 109 at 2; Tr. 9].

Mr. Torjagbo also avers that Special Agent Caruana's "[a]ggressive police conduct," relevant here, his use of curse words, "add[ed] an element of coerciveness." [Doc. 108 at 22–23; Doc. 123 at 4–5]. He relies upon *United States v. Eubank*, No. CR414-005, 2015 WL 3557493, at *9 (S.D. Ga. Mar. 18, 2015) to support this argument in his reply. *Id.* While the court in *Eubank* acknowledges that the law enforcement officer "enhanced [the] coercive elements [of police questioning] through her aggressive conduct during part of the interview (repeated accusations that [the defendant] was being deceptive, shouted-out questions, the use of curse words, dramatic displays of pique)," it also notes that the defendant remained "outwardly calm" in finding that her "will was never overborne and that her statements were entirely voluntary." *Id.* As previously noted, Mr. Torjagbo's tone remains calm throughout the entirety of the interview.

b. Special Agent Caruana's Statement That He Would Not Lock Mr. Torjagbo Into His Answer Did Not Undermine Mr. Torjagbo's Understanding of His *Miranda* Rights or the Consequences of Waiving Those Rights

The main issue here is whether two misleading statements made by Special Agent Caruana undermined Mr. Torjagbo's understanding of the right to remain silent and the consequences of waiving that right, and coerced Mr. Torjagbo into making involuntary incriminating statements. Mr. Torjagbo contends that his statement estimating that the maximum number of employees Kremkov Industries employed was "maybe 50, 60" must be suppressed. [Doc. 108 at 13]. While Special Agent Caruana told Mr. Torjagbo that he would not lock him into his answer regarding the maximum number of employees Kremkov Industries employed, and although the Government did not directly address this issue in its brief, the evidence presented shows that these statements are qualitatively different from the statements made in *Hart* (telling the defendant honesty would not hurt him), *Lall* (stating the officer was not going to pursue any charges against the defendant), and *Castor* (stating that the officer would not charge the defendant with a criminal offense). The "only plausible interpretation" of the officer's representations in those cases, "semantic technicalities aside," was that the information the defendants provided would not be used against them by the officers or anyone else. *United States v. Santacruz*, No. 1:21-CR-304-LMM-JEM-1, 2022 WL 5239533, at *6 (N.D. Ga. July 22, 2022) (citing *Lall*, 607 F.3d at 1287), *report and recommendation adopted*, 2022 WL 4554420 (N.D. Ga. Sep. 29, 2022).

In contrast, Special Agent Caruana's statement was not an express assurance that Mr. Torjagbo's response would not be used against him. The Agent repeatedly told Mr. Torjagbo that he did not need him to cooperate to make a case against him, and that they had the physical evidence to convict him in this case. [Interview Tr. at 10 (Special Agent Caruana stating "we have all your bank records, okay? So we traced the money . . . . You're being charged with money laundering as well, okay?"); *id.* at 16–17 (Special Agent Caruana stating "This is a paper case, okay? . . . And it's a follow-the-money case . . . . And the evidence shows that what you're telling me . . . is bullshit.")]. Moreover, the statements Mr. Torjagbo made both before and after this admission establish that he both understood his right to remain silent and the consequences of waiving that right. About a minute prior to making the contested statement, Mr. Torjagbo readily responded to Special Agent Caruana's question regarding how many employees Kremkov had in 2020 and 2021, stating "about 50." [Interview Tr. at 14]. He also conceded that most of his employees were located in Africa. [Interview Tr. at 12–13].

Furthermore, shortly after making the contested statement, Mr. Torjagbo expressed understanding that giving incorrect information would be detrimental to him. In response to Special Agent Caruana's statement "Are you sure you really want to . . . tell me this stuff. Because it's not really going to help you," he responded, "I don't [want] to tell you something which is wrong and then . . . it'll appear as if I'm . . . deceiving you or something." [Interview Tr. at 16]. This statement indicates Mr. Torjagbo's awareness that his statement could, and likely would, be used against him. Thus, Special Agent Caruana's statement that he would not lock him into his answer did not undermine the nature of Mr. Torjagbo's *Miranda* rights or his understanding of the consequences of waiving them. In consideration of the totality of the circumstances, the Government has established by a preponderance of the evidence that Mr. Torjagbo voluntarily made his statement estimating the total number of employees Kremkov Industries employed.

c. <u>Special Agent Caruana's Statement that any Attorney Would Tell Mr. Torjagbo to Cooperate and Answer the Agents'</u>

<u>Questions Did Not Undermine His Understanding of His *Miranda* Rights nor the Consequences of Waiving Those Rights</u>

This does not end the Court's inquiry, however, because Mr. Torjagbo also contends that Special Agent Caruana's statements that any attorney would tell him he should cooperate and truthfully answer the agents' questions and that Mr. Torjagbo would later regret it if he did not do so undermined the effect of the *Miranda* warning and was involuntarily given because it "was at odds with his right to remain silent," "contradicts the admonition that Mr. Torjagbo's statements would be used against him in court," "told him that silence would hurt him and that disclosure would help him," and "undermined the right to counsel." [Doc. 108 at 21]. The Government primarily argues that Agent Caruana's statements were not improper on the ground that "encouraging [a defendant to cooperate] by informing him of the benefits of cooperation is not inherently coercive." [Doc. 109 at 19]. However, Mr. Torjagbo avers that Special Agent Caruana's statement was coercive because he imputed the legal advice of an attorney. As he asserts in his reply, the Eleventh Circuit case upon which the Government relies that addresses this point did not sanction the agent's comments regarding an attorney. [Doc. 123 at 6].

The Government cites *United States v. Quinn*, 123 F.3d 1415, 1423–24 (11th Cir. 1997) in defense of its Agents' tactics, noting that "police did not improperly induce

[that] defendant's confession by telling him that 'he was facing a 40-year sentence but might receive a more favorable sentence if he cooperated' and that 'it would be difficult to cooperate once an attorney has been appointed.'" *Id.* at 1423-24. However, with regard to the latter statement, the *Quinn* Court simply noted that the defendant "made no inculpatory statements after [the agent's] statement about obtaining counsel." *Quinn,* 123 F. 3d at 1424. In the instant case, Mr. Torjagbo made a wide range of inculpatory statements both before and after Special Agent Caruana's advice. [Doc. 110].

While this Court does not condone Special Agent Caruana's imputation of a prospective attorney's advice, it also does not find sufficient evidence showing that the Agent's misrepresentation mislead Mr. Torjagbo as to the nature of his *Miranda* rights, undermined his understanding of the consequences of waiving those rights, or induced Mr. Torjagbo's subsequent admissions. Immediately after Special Agent Caruana made the statement at issue, Mr. Torjagbo again stated that he did not want to make it look like he was attempting to be deceitful, conveying an understanding that his statements could, in fact, be used against him. [Interview Tr. at 26]. Mr. Torjagbo also displayed his understanding that he could continue to exercise his rights when he forthrightly refused to answer questions about 493 people listed on Kremkov Industries' payroll that he submitted to Chase to obtain the PPP loan. [*See* Interview

Tr. at 43–44 ("Honestly, I refrain from answering that question," "I don't want to answer that question," "I refrain from answering that question.")].

A review of the cases upon which Mr. Torjagbo relies in his briefing shows that they are distinguishable from the facts of the instant case. The defendant in *Hart* "asked the detective about the 'pros and cons' of hiring a lawyer, which indicated that he 'did not fully understand' his rights and was asking for clarification of them." *Farley*, 607 F.3d at 1329 (citing *Hart*, 323 F.3d at 894–95). As the Government notes, unlike the defendant in *Hart*, Mr. Torjagbo never made any indication that he did not "fully understand" his rights, nor did he ask for clarification of them.

Beale is also factually inapposite because that Defendant's unrebutted testimony showed that he signed a *Miranda* waiver ***only after*** the agent told him that signing the form would not hurt him, indicating the statement "mislead[] [him] concerning the consequences of relinquishing his right to remain silent." *Beale*, 921 F.2d at 1435. As the Government emphasizes, Special Agent Caruana's statement "necessarily had no effect on Torjagbo's waiver decision." [Doc. 109 at 23]. Although Mr. Torjagbo correctly argues that a misleading statement made seventeen minutes into a custodial interview could undermine a defendant's right to assert his *Miranda* rights at any time during the interview, he did in fact assert his right to remain silent in his refusal to answer other questions posed by the Agents, as discussed above.

Additionally, in *Hart* and *Beale*, the defendants made full confessions after the misleading statements at issue. In the case at bar, Mr. Torjagbo made incriminating statements both *before and after* Special Agent Caruana's statement that an attorney would tell him to cooperate, indicating this statement did not coercively induce any further confession from Mr. Torjagbo.[5] Specifically, before the Agent claimed that any attorney would tell him to cooperate and answer the Agents' questions, Mr. Torjagbo discussed tractor-trailers subject to a seizure warrant; gave the FBI permission to enter the garage and seize his BMW that was also subject to the seizure warrant; admitted that he applied for the PPP loan individually; and answered numerous questions about the operations and employees of Kremkov Industries, including the number of employees and the fact that most were not located in the United States. [Interview Tr. at 2–26]. His responses to the Agents' questions after the statement at issue primarily expounded upon topics he had already disclosed. He signed a consent form authorizing the agents to seize his BMW from his home garage; discussed purchases of tractor-trailers and real estate after obtaining the PPP loan; elaborated on the operational history of Kremkov Industries; admitted to changing his

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[5] In evaluating the totality of the circumstances, the district court must assess whether law enforcement conduct was 'causally related' to the confession." *United States v. Jones*, 32 F.3d 1512, 1517 (11th Cir. 1994); *see also*, *United States v. Santacruz*, at *7 ("[T]he record shows that Defendant's statements both before and after he was told that his comments [would] 'stay here' were not appreciably different.") (citing *United States v. Grant*, No. 5:19-CR-154, 2019 WL 5068530 (N.D. Ala. Aug. 16, 2019) (noting that the defendant's responses to law enforcement's questions "were not appreciably different following the threat than they had been prior to it, in contrast to *Hart* and *Lall*, where the defendants' full confessions following the misrepresentations to the defendants.").

name; addressed the two social security numbers associated with his name; discussed the names listed on employee payroll documents for Kremkov Industries; and spoke upon the basis for him having claimed approximately $9,000,000 as income on his personal tax return. [Interview Tr. at 27–58].

In consideration of the totality of these particular circumstances, the Government has established by a preponderance of the evidence that Mr. Torjagbo's waiver was knowing, voluntary and intelligent, and that his admissions were voluntarily given. Therefore, the undersigned recommends that Mr. Torjagbo's Preliminary Motion and Amended Motion to Suppress Statements [Doc. 44, 88] be **DENIED.**

B. <u>Defendant's Motion to Strike Surplusage</u>

The parties' contentions

Mr. Torjagbo moves this Court to strike "a/k/a Karl Lucius Delano" from the style of the case and the body of the Indictment. [Doc. 81 at ¶¶ 3–4, Doc 1. at 1, 7, 9]. Although the Superseding Indictment states, "On or about July 29, 2021, Defendant Torjagbo filed a petition to change his name to Karl Lucius Delano," he argues that the Indictment and the discovery materials "do[] not indicate that [his] name was ever formally changed." [Doc. 81 at ¶ 3]. For this reason, he submits that the alleged alias must be stricken because it is "prejudicial and unnecessary to any of the essential elements of the crime charged." [*Id.* at ¶ 4].

The Government objects to Mr. Torjagbo's request. [Doc. 83]. It argues that Mr. Torjagbo's name change is "unquestionably relevant to the charges in the Superseding Indictment . . . [because he] changed his name in order to conceal, disguise, and dispose of his fraud proceeds." [Doc. 83 at 13]. It also contends that because Mr. Torjagbo voluntarily changed his name, "the phrase 'a/k/a Karl Lucius Delano' is not inflammatory and prejudicial." [Doc. 83 at 13–14].

Discussion

Federal Rule of Criminal Procedure 7(d) provides that, "upon the defendant's motion, the court may strike surplusage from the indictment or information." Fed. R. Crim. P 7(d). To strike surplusage, the Defendant must satisfy a two-prong test. *United States v. Awan*, 966 F.2d 1415, 1426 (11th Cir. 1992); *United States v. Anyanwu*, No. 1:12-CR-190-TWT-ECS-1, 2013 WL 1558712, at *4, *report and recommendation adopted*, 2013 WL 1561011 (N.D. Ga. Apr. 12, 2013). Mr. Torjagbo must first show that the language he seeks to strike is not relevant to the charges against him. *United States v. Oxendine*, No. 1:22-CR-00183-SCJ-RDC-1, 2023 WL 10411893, at *10, *report and recommendation adopted*, 2024 WL 1008571 (N.D. Ga. Mar. 8, 2024). Secondly, he must show that the challenged language is unfairly prejudicial and inflammatory. *Id.* Because Rule 7(d) is discretionary, rather than mandatory, the Rule "is strictly construed against striking surplusage." *Id.* (quoting *United States v. Delgado*, 2018 WL 3029282, at *5 (M.D. Ala. Apr. 20, 2018)).

Further, a motion to strike surplusage should not be granted unless "it is clear" that the two prongs of the test have been met. *Oxendine*, 2023 WL 10411893, at *10 (citing *United States v. Brye*, 318 F. App'x 878, 880 (11th Cir. 1990) (*quoting Awan*, 966 F.2d at 426)). "'This is a most exacting standard.'" *United States v. Huppert*, 917 F.2d 507, 511 (11th Cir. 1990) (quoting 1 Charles A. Wright, Federal Practice and Procedure § 127 at 424–29 (1982)). Additionally, even when prejudice can be shown, this Court should not strike the information contained in the indictment if it is relevant to the charged offense. *Oxendine*, 2023 WL 10411893, at *10 (citing *United States v. Scarpa*, 913 F.2d 993, 1013 (2d Cir. 1990)).

Here, Mr. Torjagbo moves this Court to strike the phrase "a/k/a Karl Lucius Delano" because he contends that the Government has failed to prove the relevance of the alias to the crimes charged, and failed to show in both the Superseding Indictment and discovery that he ever formally changed his name. [Doc. 81 at ¶¶ 3–4]. Additionally, he asserts that because the Sixth Circuit "strongly disapproves the practice of including aliases in indictments," the inclusion of the alias creates significant prejudice. *United States v. Wilkerson*, 456 F.2d 57, 59 (6th Cir. 1972) (quoting *Petrilli v. United States*, 129 F.2d 101, 104 (8th Cir. 1942) ("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.").

The Government disagrees, arguing that Mr. Torjagbo has failed to meet his burden to prove that the alias is both irrelevant *and* unduly prejudicial. It attaches to its response Mr. Torjagbo's "Petition to Change Name of Adult" and the Superior Court of Cobb County Order granting the same. [Doc. 83-1, 83-2]. These documents support its assertion that the alias is relevant to the crimes charged because, "[a]fter changing his name, [he] continued using his old name whenever it suited his criminal purposes." [Docs. 1 ¶¶ 17–31, 83 at 9]. The Government also argues that the inclusion of "a/k/a Karl Lucius Delano" is not inflammatory or prejudicial because Mr. Torjagbo voluntarily changed his name, stating in his name-change petition that he wanted to make this change because "Torjagbo is very difficult to pronounce and when (he) was in primary school, the other kids made fun of it." [Doc. 83 at 13–14].

The Government's argument is well-taken. Counts 3 through 5 of the Superseding Indictment allege that Mr. Torjagbo petitioned to change his name to Karl Lucius Delano four months after he fraudulently received over $9.5 million in PPP proceeds in furtherance of his scheme to conceal the crime via money laundering. It further states that he used the bank fraud proceeds to purchase real property under the name of Karl Lucius Delano, but continued to deposit bank fraud proceeds into accounts under the name Carl Torjagbo. In addition, the Government has provided a copy of Mr. Torjagbo's signed, notarized, and filed petition to change his name to Karl Lucius Delano, and an order granting the same. Consequently, Mr. Torjagbo is unable to establish that the phrase "a/k/a Karl Lucius Delano" is irrelevant to the charges against him.

Furthermore, this Court does not find the inclusion of "a/k/a Karl Lucius Delano" to be *unduly* prejudicial. Mr. Torjagbo, through his own volition, petitioned to have his name legally changed because of his experiences with others mispronouncing it.[6] The Government has offered proof of Mr. Torjagbo's alias and its relevance to its charges, negating Mr. Torjagbo's use of *Wilkerson*, where the Sixth Circuit ultimately found that "the principal use to which the aliases were put was to indicate to the jury that people who use aliases are inherently suspect," and therefore should have been stricken from the indictment. *Wilkerson*, 456 F.2d at 59. Because Mr. Torjagbo has failed to show that the inclusion of his legally changed name is unduly prejudicial and inflammatory, the undersigned recommends that his Motion to Strike Surplusage [Doc. 81] be **DENIED.**

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[6] Mr. Torjagbo corroborates that he voluntarily changed his legal name in September of 2021 in his custodial interview with Special Agents Caruana and Pressley. [Interview Tr. at 28–29]. In response to Special Agent Caruana's question as to why he changed his name, he states "It's because the last name was hard to pronounce . . . It's just – everybody butchers it, so I . . . decided to use my first name and my middle name, which is Carl Delano." *Id.*

CONCLUSION

For the reasons stated above, this Court **RECOMMENDS** that Mr. Torjagbo's Preliminary Motion and Amended Motion to Suppress Statements [Docs. 44, 88] and his Motion to Strike Surplusage [Doc. 81] be **DENIED**.

IT IS SO RECOMMENDED this 26th day of November, 2024.

R. Cannon

REGINA D. CANNON
United States Magistrate Judge