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
	)	Superseding
CARL DELANO TORJAGBO.	)	
	)	
	)	

MOTION IN LIMINE

COMES NOW the Defendant, CARL DELANO TORJAGBO, by and through counsel, and files this motion in limine to exclude all evidence allegedly related or relevant to Count 2 of the superseding indictment. In support of this motion, Mr. Torjagbo shows as follows[1]:

1.

Mr. Torjagbo is charged in Count 2 of the superseding indictment with aggravated identity theft, specifically, the following:

Count 2
(Aggravated Identity Theft)

> 14. The facts alleged in paragraphs 2 through 12 are realleged and incorporated here.

[1]As directed by the Court, (Doc. 176), the parties met and conferred on April 8, 2025. This specific motion was not addressed for it had not yet been conceived.

> 15. On or about February 16, 2021, in the Northern District of Georgia and elsewhere, the Defendant, Carl Delano Torjagbo, a/k/ a Karl Lucius Delano, aided and abetted by others unknown to the Grand Jury, knowingly possessed and used, without lawful authority, a means of identification of another person, that person being M.S., during and in relation to the bank fraud scheme charged in Count 1 of this Superseding Indictment.
>
> All in violation of Title 18, United States Code, Section 1028A(a)(l) and Section 2.

(Doc. 110).

2.

At this time, Mr. Torjagbo does not allege Count 2 fails to adequately charge the offense of aggravated identity theft. However, the evidence at trial and applicable Supreme Court precedent will not allow Count 2 to survive Mr. Torjagbo's future Rule 29 motion to dismiss. Put bluntly, Count 2 will not make it to the jury, thus evidence to support the count, including the testimony of "M.S." should be excluded from Mr. Torjagbo's trial when the evidence will show, as a matter of law, the identity of "M.S." was not used "during and in relation to" the bank fraud scheme charged in Count 1.

3.

In *Dubin v. United States*, the Supreme Court held,

> A defendant "uses" another person's means of identification "in relation to" a predicate offense when this use is at the crux of what makes the conduct criminal. To be clear, being at the crux of the criminality requires more than a causal relationship, such as "'facilitation'" of the offense or being a but-for cause of its "success." *Post*, at ___, ___-___, 216 L. Ed. 2d, at 157, 158-160 (Gorsuch, J., concurring in judgment). Instead, with fraud or deceit crimes like the [*132] one in this case, the means of identification specifically must be used in a manner that is fraudulent or deceptive. Such fraud or deceit going to identity can often be succinctly summarized as going to "who" is involved.
>
> Here, petitioner's use of the patient's [***156] name was not at the crux of what [**1574] made the underlying overbilling fraudulent. The crux of the healthcare fraud was a misrepresentation about the qualifications of petitioner's employee. The patient's name was an ancillary feature of the billing method employed.

Dubin v. United States, 599 U.S. 110, 131-132, 143 S. Ct. 1557, 1573-1574 (2023). (Copy of opinion attached hereto as "Exhibit 1.")

Dubin was a Medicare fraud case where the defendant over-billed Medicare for services provided to a patient. The Government also charged Dubin with aggravated identity theft because he used the patient's identification to submit the inflated bill. "The Supreme Court clarified the scope of the statute, explaining '[a] defendant 'uses' another person's means of identification 'in relation to' a predicate offense when this use is at the crux of what makes the conduct criminal.' *Dubin*, 599 U.S. at 131. **In other words, just because the defendant used a patient's name in submitting an inflated bill did not mean that he committed identity**

theft under the statute." *Dixon v. United States*, 2024 U.S. Dist. LEXIS 222621, *9, 2024 WL 5075637 (December 9, 2024)(ND Ga)(emphasis added).

Mr. Torjagbo's case is similar to *Dubin*. He did not take out a loan in the name of "M.S." Use of the name "M.S." was not at the crux of the PPP fraud. Only the name "M.S." was submitted as one of 493 employees. No other identifiers of "M.S." were used or submitted. The PPP loan application was not submitted in the name of "M.S." "M.S." did not lose any money because of the PPP loan. "M.S." was not a victim of identity theft, and surely not a victim of aggravated identity theft. The use of the name "M.S." was ancillary and collateral. The insignificance of the alleged name-use is born out by the fact, (as the government often notes), that many of the 493 employee names submitted with the PPP loan application appear to belong to fictional characters such as "John Snow" and "Oliver Twist." The crux of the charged PPP loan fraud is the allegation that Mr. Torjagbo allegedly did not have a company with 493 employees who needed their payroll checks protected / paid during the COVID pandemic. The specific names of those employees were ancillary.

Under Federal Rules of Evidence 401 and 403, the evidence related to Count 2, including the testimony of "M.S.," should be excluded as it will not be relevant, and its introduction is unduly prejudicial when compared to any probative value it might have.

WHEREBY, CARL DELANO TORJAGBO requests that his motion in limine be granted and the Court direct the Government to exclude all evidence allegedly related or relevant to Count 2 of the superseding indictment, including the testimony of "M.S."

Dated: This 22nd day of April, 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 the Motion in Limine 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. Nick Evert
Assistant United States Attorneys
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75 Ted Turner Drive, S. W.
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DATED: This 22nd day of April, 2025.

s/ *L. Burton Finlayson*

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