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

UNITED STATES OF AMERICA *v.* CARL TORJAGBO	Criminal Indictment No. 1:22-CR-171-MLB-RDC

GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE

The United States of America, by its counsel, Richard S. Moultrie, Jr., Acting United States Attorney for the Northern District of Georgia, and Kelly K. Connors and Nicholas L. Evert, Assistant United States Attorneys, hereby files its response to Defendant Carl Torjagbo's motion *in limine*. (Doc. 178).

Though he acknowledges that Count 2 is properly pleaded in the Superseding Indictment and not subject to pretrial dismissal, Torjagbo asks the Court to exclude any testimony or evidence pertaining to Count 2 because the charge will not "survive Mr. Torjagbo's future Rule 29 motion to dismiss." (*Id.* at 2). But in making this request, he asks the Court to do exactly what he acknowledges is improper—dismiss Count 2. The Court should decline to do so.

ARGUMENT

The Superseding Indictment alleges that Torjagbo committed bank fraud and other offenses related to a PPP loan that he obtained in the name of his sham company, Kremkov Industries, LLC. (Doc. 110 at 1-4). In this loan application, Torjagbo falsely alleged that he employed 493 people in the U.S. and had monthly payroll over $3.8 million. He submitted itemized payroll for those 493 employees to justify his monthly payroll expenditure, and based on this payroll data, he was approved for a PPP loan in the amount of $9,554,425, which was 2.5 times the monthly payroll and was the standard calculation for a PPP loan.[1]

Among the 493 people that Torjagbo fraudulently identified as employees of Kremkov was M.S., a personal acquaintance who did not work for Kremkov and whose identity was used on the payroll without her permission. Count 2 charges aggravated identity theft related to the use of her identity to fraudulently obtain a PPP loan based on false information about Kremkov's monthly payroll and number of employees—two material misrepresentations that drove the eligibility and potential payment for a PPP loan.

Citing *Dubin v. United States*, 599 U.S. 110 (2023), Torjagbo asks the Court to exclude testimony from M.S. because the use of her identity was ancillary to the bank fraud scheme, and the Court will allegedly dismiss Count 2 after a Rule 29 argument. He further alleges that her testimony is irrelevant and would be unduly prejudicial. (Doc. 178 at 4-5). He is mistaken.

First, Count 2 is properly pleaded, as Torjagbo recognizes. Yet, despite this recognition, he seeks to exclude testimony and evidence pertaining to Count 2, which would effectively result in pretrial dismissal because it would be impossible for the government to prove the charge. Torjagbo cites to no authority that would permit the Court to do so, and there is none. "It is well-settled that 'a court may not dismiss an indictment . . . on a determination of facts that should

[1] The maximum number of employees for a company applying for a PPP loan was 500. PPP loans had a standardized method for calculating the potential loan amount. The amount was 2.5 times the monthly payroll amount, not to exceed $10 million. Thus, both the number of employees and the monthly payroll amount were material components of the PPP loan application.

have been developed at trial." *United States v. Sharpe*, 438 F.3d 1257, 1263 (11th Cir. 2006). And the Eleventh Circuit has long made clear that there is no avenue for summary judgment in a criminal case. *United States v. Critzer*, 951 F.2d 306, 307 (11th Cir. 1992) ("There is no summary judgment in criminal cases. Nor do the rules provide for a pre-trial determination of sufficiency of the evidence.").

Second, even if Torjagbo was not charged with aggravated identity theft, M.S.'s testimony would still be relevant to establish that Torjagbo lied on his PPP application when he identified her as an employee and claimed that he paid payroll to her. To prove that Torjagbo committed bank fraud, the government will have to prove, among other elements, that Torjagbo made material misrepresentations related to his PPP loan. These misrepresentations include Torjagbo's false identification of 493 employees (including M.S.) and the payroll paid to these employees. M.S.'s testimony is highly probative, and Torjagbo makes only a bald assertion that it would be prejudicial.

CONCLUSION

For the foregoing reasons, the Court should deny Defendant Torjagbo's motion *in limine* (Doc. 178).

Respectfully submitted,

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