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
	)	Second Superseding
CARL DELANO TORJAGBO,	)	
a/k/a Karl Lucius Delano.	)	
______________________________	)	

REPLY TO GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE

COMES NOW the Defendant, CARL DELANO TORJAGBO, a/k/a Karl Lucius Delano, by and through counsel, and files this reply to the government's response (Doc. 179) to his motion in limine to exclude evidence allegedly related or relevant to Count 2 of the superseding indictment. (Doc. 178). In reply and in further support of his motion, Mr. Delano Torjagbo shows as follows:

1.

On May 13, 2025, the government obtained a second superseding Indictment in this case. (Doc. 180). Mr. Delano Torjagbo remains charged in Count 2 of the second 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.
>
> 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. 180).

2.

In his motion in limine, Mr. Delano Torjagbo submits 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 his 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. (Doc. 178-p.2).

3.

Mr. Torjagbo notes that 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). (Doc. 178-pp. 2-3, and see Doc. 178-Exhibit 1.) In *Dubin*, "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).

ARGUMENT

In response, the government correctly notes "there is no avenue for summary judgement in a criminal case." (Doc 179-p.3). While this is generally true, in its response the government makes no argument or cites any allegation or authority to avoid the *Dubin* issue and allow Count 2 to get to the jury. In fact, the government does not substantively address *Dubin* at all. (Doc. 179). Mr. Delano Torjagbo recognizes the perceived quandary his motion might place the government in - "he seeks to exclude testimony . . . it would [then] be impossible for the government to prove the charge." (Doc. 179-p.2). However, the government's response and proposed remedy, absent any consideration or rebuttal of the *Dubin* issue, creates a worse quandary for the Defendant and is less reasonable or fair. Under the government's approach, it will be allowed to present all evidence related to Count 2, including testimony of "M.S." Count 2 will be dismissed mid-trial, however "the bell will have been rung," as they say. Perhaps the jury can be instructed to disregard the irrelevant testimony and the dismissed charges, but here, when it is apparent from the face of the indictment and the face of the PPP loan application at issue, that use of "M.S.'s" name, among 493 names, was <u>not</u> "at the crux of what made the underlying [loan application] fraudulent," *Dubin*, 599 U.S. at 131-132, why allow such prejudice and risk of prejudice to be created ?

As the government alleges on the face of the second superseding indictment[1] in Count 1, the crux of what allegedly made the PPP loan application fraudulent was the following:

> 9. Contrary to his false certification, the PPP loan application that Defendant Torjagbo submitted was filled with materially false and fraudulent representations. For example:
>
> • Defendant Torjagbo certified that Kremkov Industries was "in operation on February 15, 2020." That was not true.
>
> • Defendant Torjagbo certified that a PPP loan was "necessary to support
>
> t the ongoing operations" of Kremkov Industries. That was not true.
>
> • Defendant Torjagbo stated that Kremkov Industries had 493 employees. That was not true.
>
> • Defendant Torjagbo stated that Kremkov Industries had an average monthly payroll of $3,821,770. That was not true either.
>
> . . . .
>
> 11. To support the fraudulent application, Defendant Torjagbo provided Chase Bank with copies of false tax returns, as well as copies of phony payroll reports purporting to show that Kremkov Industries had paid wages to 493 employees.

(*See* second superceding indictment. Doc. 180, paragraphs 9 & 11).

The crux of the alleged material falsehoods is that Kremkov Industries had 493 employees, with average monthly wages of $3,821,770. Who those employees were (or were not) is a collateral matter. As the government repeatedly points out, the list of 493 employees also included names such as Oliver Twist, John Snow

[1] Filed May 13, 2025.

and Gene Hackman.

If the government had put forth any argument to rebut the *Dubin* issue and allow Count 2 to survive a Rule 29 motion, Mr. Delano Torjagbo's motion in limine might be moot. It has not, and Mr. Delano Torjagbo's motion should be granted under Federal Rules of Evidence 401 and 403.

WHEREBY, Mr. 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 20th day of May, 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 Reply 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:

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DATED: This 20th day of May, 2025.

s/ *L. Burton Finlayson*

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