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.	)	
	)	
	)	

MOTION TO DISMISS COUNT 2

COMES NOW the Defendant, KARL LUCIUS DELANO, a/k/a CARL DELANO TORJAGBO, by and through counsel, and moves to dismiss Count 2 of the Second Superseding Indictment. In support of this motion, Mr. Delano shows as follows:

1.

The government obtained the Second Superseding Indictment in this case on May 13, 2025. (Doc. 180). Mr. Delano entered pleas of "not guilty" to all counts on May 22, 2025. (Doc. 186). Count 1 of the Second Superseding Indictment charges bank fraud in violation of 18 U.S.C. §§ 1344 and 2. Count 2 charges aggravated identity theft in violation of 18 U.S.C. §§ 1028A and 2. Counts 3 and 4 charge wire fraud in violation of 18 U.S.C. §§ 1343 and 2. Counts 5 through 7 charge concealment money laundering in violation of 18 U.S.C. §§ 1956(a)(1)(B)(I) and 2. Counts 8 through 11 charge three counts of transactional money laundering in violation of 18 U.S.C. §§ 1957 and 2. (Doc. 180).

2.

Count 2 of the Second Superseding Indictment alleges aggravated identity theft, specifically, as follows:

> **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 Second Superseding Indictment.
>
> All in violation of Title 18, United States Code, Section 1028A(a)(l) and Section 2.

(Doc. 180).

3.

Count 2 alleges the identity of M.S. was used during and in relation to the bank fraud scheme charged in Count 1 of this Second Superseding Indictment. (Doc. 180-p. 5). A closer review of Count 1, and paragraphs 2 through 12 thereof, reveals the government's aggravated identity theft charge in Count 2 is premised upon the alleged use of "M.S.'s" identity (name) as being included among the 493 employee names submitted with the PPP loan application at issue, to wit:

> 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 stated that Kremkov Industries had 493 employees. That was not true.
>
> (Doc. 180, p. 3, Count 1, paragraph 9).

4.

Given the government's incorporated language from Count 1 and the allegation in Count 2, as a matter of law, the identity of "M.S." was <u>not</u> used or possessed "during and in relation to" the bank fraud scheme charged in Count 1. Thus, Count 2 must be dismissed. *See Dubin v. United States*, 599 U.S. 110, 143 S. Ct. 1557 (2023). (Copy attached hereto as "Exhibit A.")

ARGUMENT AND AUTHORITY

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).

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 premised on the theory that 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. Delano's case is similar to *Dubin*. There is no allegation he obtained a loan in the name of "M.S." Use and possession of the identity of "M.S." was not at the crux of the PPP fraud charged on Count 1. According to the face of the indictment, the identity of "M.S." was submitted as one of the 493 (allegedly non-existent) employees. According to the face of the indictment, the PPP loan application was submitted for and by Kremkov Industries and Mr. Delano.

The loan application is not alleged to have been submitted in the name of "M.S." "M.S." did not lose 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 identity of "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. Delano 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 to the fraud.

WHEREBY, Mr. Delano asks that Count 2 be dismissed as it fails to adequately state a crime.

Dated: This 5th day of June, 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 to Dismiss Count Two 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. Nicholas Evert
Assistant United States Attorneys
600 U.S. Courthouse
75 Ted Turner Drive, S. W.
Atlanta, Georgia 30303

DATED: This 5th day of June, 2025.

s/ *L. Burton Finlayson*

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