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 FOR BILL OF PARTICULARS

COMES NOW the Defendant, KARL LUCIUS DELANO, a/k/a CARL DELANO TORJAGBO, by and through counsel, and moves this Court to order the government to file a bill of particulars so Mr. Delano can properly prepare his defense. In support thereof, he shows the following:

I. A BILL OF PARTICULARS IS NEEDED TO ALLOW MR. DELANO TO PREPARE HIS DEFENSE AND TO MINIMIZE HIS SURPRISE AT TRIAL.

Pursuant to Federal Rule of Criminal Procedure 7(f), "[t]he court may direct the government to file a bill of particulars." Fed. R. Crim. P. 7(f). The purpose of a bill of particulars is to "inform the defendant of the charge against him with sufficient precision to allow him to prepare his defense, to minimize surprise at

trial, and to enable him to plead double jeopardy in the event of a later prosecution for the same offense." *United States v. Anderson*, 799 F.2d 1438, 1441 (11th Cir. 1985). A bill of particulars supplements an indictment by providing information necessary for a defendant to prepare for trial, and it is not meant to function as a discovery device. *Anderson*, 799 F.2d at 1441-42. The Court is vested with broad discretion in deciding whether to grant a motion for a bill of particulars. *United States v. Cole*, 755 F2d. 748, 760 (11th Cir. 1985); *United States v. Colson*, 662 F.2d 1389, 1391 (11th Cir. 1981). However, "where an indictment fails to set forth specific facts in support of requisite elements of the charged offense, and the information is essential to the defense, failure to grant a request for a bill of particulars may constitute reversible error." *Cole*, 755 F.2d at 760; see also *United States v. Sharpe*, 483 F.3d 1257, 1263 n. 3 (11th Cir. 2006) (noting that an indictment need not allege in detail the factual proof that will be relied upon to support a charge but that failing to grant a motion for a bill of particulars to obtain information essential to the defense nay be reversible error).

Count 2 of the Second Superseding Indictment charges Mr. Delano with aggravated identity theft and alleges he used the identity of "M.S." during and in relation to the bank fraud scheme charged in Count 1 of this Second Superseding Indictment. (Doc. 180-p. 5). A close review of Count 1, and paragraphs 2 through

12 thereof, reveals the government's aggravated identity theft charge in Count 2 appears to be premised solely upon the alleged inclusion of "M.S.'s" name as being one of the 493 employee names submitted along with the PPP loan application. In a separate motion, Mr. Delano has moved to dismiss Count 2 for failure to adequately state the offense of aggravated identity theft. Specifically, 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 not used during and in relation to the bank fraud scheme charged in Count 1. Thus, Count 2 must be dismissed. *Citing Dubin v. United States*, 599 U.S. 110, 143 S. Ct. 1557 (2023). (Doc. 188).

Should the government contest his motion to dismiss Count 2, Mr. Delano requires a bill of particulars to inform him -

> **How the identity of "M.S." allegedly was used or possessed in furtherance of the bank fraud charged in Count 1.**

Admittedly, an indictment may use the statutory language to generally describe the offense. However, that language "must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offen[s]e, coming under the general description, with which he is charged." *Hamling v. United States*, 418 U.S. 87, 117-18 (1974). In *Sharpe*, 438 F.3d at

1263, the Eleventh Circuit found that indictment provided sufficient factual details about the charged fraud scheme. However, the *Sharpe* case, specifically noted:

> To the extent the defendants suggest more detail was required in the indictment, we disagree. "It is not necessary for an indictment ... to allege in detail the factual proof that will be relied upon to support the charges. That information, if essential to the defense, can be obtained by a motion for a bill of particulars and failure to grant such a motion may be reversible error." *United States v. Crippen,* 579 F.2d 340, 342 (5th Cir.1978). **We note that the defendants did not move for a bill of particulars here, nor, for that matter, did they ever ask for the relief they ultimately obtained by virtue of the *sua sponte* dismissal of the indictment**.

Sharpe at 1263 n.3. (Emphasis).

Here, Count 2 should be dismissed, or, at a minimum, a bill of particulars should issue. As it currently stands, Count 2 of Mr. Delano's indictment is insufficient. The evidence and allegations provided are insufficient for Mr. Delano to prepare a defense to the charge of aggravated identity theft. For this reason, Mr. Delano asks this Court to grant his request for a bill of particulars.

WHEREBY, Mr. Delano asks the Court to order the government to file the requested bill of particulars and give him notice of how the identity of "M.S." allegedly was used or possessed in furtherance of the bank fraud charged in

Count 1.

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 for Bill of Particulars 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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