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

UNITED STATES OF AMERICA *v.* CARL DELANO TORJAGBO A/K/A KARL LUCIUS DELANO	Criminal Action No. 1:22-CR-171-MLB-RDC

Response in Opposition to Defendant's Motion to Continue Trial [Doc. 197]

The United States of America, by Theodore S. Hertzberg, United States Attorney, and Kelly K. Connors and Nicholas L. Evert, Assistant United States Attorneys for the Northern District of Georgia, files this Response in Opposition to Defendant's Motion to Continue Trial (Doc. 197).

Defendant Carl Delano Torjagbo a/k/a Karl Lucius Delano has moved to continue the upcoming trial date, citing the Government obtaining a third superseding indictment and the exhaustion of Criminal Justice Act (CJA) funds. Defendant's motion should be denied for the reasons below.

1. Third Superseding Indictment

Defendant suggests that the trial ought to be continued under 18 U.S.C. § 3161(c)(2), which provides that "[u]nless the defendant consents in writing to the contrary, the trial shall not commence less than thirty days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se." (*See* Doc. 197 at 5). The Supreme Court has held that § 3161(c)(2) "does not require that the 30-day trial preparation period be restarted upon the filing of a superseding indictment[.]" *United States v. Rojas-Contreras*, 474 U.S. 231, 236 (1985); *see also United States v. Brantley*, 68 F.3d 1283, 1288 (11th Cir. 1995) ("The mandatory 30–day trial preparation period provided by the Speedy Trial Act is not automatically restarted upon the filing of a superseding indictment."). Defendant is therefore not entitled—as he acknowledges—to a continuance as matter of right, and while courts enjoy broad discretion to grant continuances when necessary for additional preparation, *see Rojas-Contreras*, 474 U.S. at 236; *Brantley*, 68 F.3d at 1288, one is not necessary here where the superseding indictment merely corrected a minor factual error.

Since September 3, 2024, the operative indictment has included two counts of wire fraud, based on Defendant's filing of two fraudulent tax returns using two different identification numbers. (*See* Docs. 110 at ¶¶ 31–38; 180 at ¶¶ 16–23; 1198 at ¶¶ 14–21).[1] With respect to these two fraudulently filed tax returns, the Government initially understood that Defendant filed one using his Social Security Number (SSN) and one using an individual taxpayer identification number (ITIN). On approximately June 24, 2025, the Government learned that what it understood was an ITIN was in fact a second SSN that Defendant had obtained using a different date of birth. Because the then operative indictment

[1] The grand jury returned the First Superseding Indictment on September 3, 2024, which added the two counts of wire fraud. On May 13, 2025, the government obtained a Second Superseding Indictment that continued to include these same two counts.

mistakenly referred to the second identification number as an ITIN, as opposed to a SSN, the Government promptly superseded to correct this mistake.[2]

Defendant claims that "the new indictment adds a new allegation of wire fraud for the first time." (Doc. 197 at 2). This is incorrect. The wire fraud charges in the Third Superseding Indictment are almost identical to those in the First and Second Superseding Indictments, except that the second form of identification is now accurately described as a SSN, as opposed to an ITIN.

Defendant also contends that he will now have to review new discovery related to his acquisition of multiple SSNs (Doc. 197 at 3–4), but this concern is unfounded, as the Government anticipates producing less than 10 additional pages of discovery related to Defendant's acquisition of two SSNs.[3]

Defendant separately complains that he "must now defend against allegations that he obtained by fraudulent means a second Social Security Number, using a different and fictitious date of birth." (Doc. 197 at 3). This argument misses the mark. The charges that Defendant must defend against have been—and remain—that he submitted two fraudulent tax returns falsely claiming that he was entitled to refunds of over $3 million on each return, based on fictitious wages, withholdings, and nonpassive losses for Kremkov Industries. (*Compare* Doc. 110 *with* Doc. 198). The Government has also consistently alleged that

[2] The government obtained the Third Superseding Indictment on July 1, 2025, which also removed the aggravated identity theft charge. (*See* Doc. 188).

[3] On June 30, 2025, even before presenting the Third Superseding Indictment to the Grand Jury, the Government notified defense counsel of the mistake related to the ITIN—both over the phone and with its 404(b) Notice (Doc. 196).

Defendant used different identifying information in connection with the two returns, which is reflected in records that have been provided in discovery showing that Defendant used a 1975 birthdate in connection with one fraudulent tax return and a 1979 birthdate in connection with the other. Put differently, the government's trial evidence was always going to show that Defendant used multiple identities in connection with the two returns. The only change is that one of the identification numbers is now accurately described as a SSN, as opposed to an ITIN.

Finally, Defendant argues that the trial should be delayed because the Third Superseding Indictment somehow creates the possibility that he faces denaturalization. (Doc. 197 at 4–5 (citing 8 U.S.C. § 1451(a)). If Defendant did in fact become a citizen through fraud, he will likely face consequences for having done so. But that possibility has existed all along and will remain regardless of the date of the trial.

2. Exhaustion of CJA Funds

Defendant also moves for a continuance based on the national exhaustion of CJA funds for the 2025 fiscal year. (Doc. 197 at 6–7). Beyond vaguely asserting that it will delay payments to experts and service providers, Defendant does not explain how this impacts his case specifically. On the evening of July 7, 2025, defense counsel emailed the Government stating that he *hopes* to call Dr. Solomon Owusu as a potential expert witness to testify about the prevalence of small-scale artisanal gold mines in Ghana. It is evident from this email that Defendant has *not* retained Dr. Owusu at this time, despite the trial being less than two weeks away. The limited "disclosures" concerning Dr. Owusu fail to meet the requirements of Federal Rule of Criminal Procedure 16(b)(1)(C), and it is unclear how the proposed testimony would be relevant to the case.

Conclusion

For the reasons set forth above, the Government respectfully requests that the Court deny Defendant's Motion to Continue Trial (Doc. 197).

Respectfully submitted,

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July 7, 2025

/s/ NICHOLAS L. EVERT
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