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 NOTICE OF INTENT TO USE FED. R. EVID. 404(b) EVIDENCE

COMES NOW the Defendant, KARL LUCIUS DELANO, a/k/a CARL DELANO TORJAGBO, by and through counsel, and files this reply to the government's notice of intent to introduce evidence under Federal Rule of Evidence 404(b). (Doc. 196). In reply and in opposition to the government's motion to introduce extrinsic evidence, or alleged inextricably intertwined evidence of other crimes or wrongs, Mr. Delano shows as follows:

The government has filed notice suggesting it just learned the Defendant has two different social security numbers, associated with two different dates of birth. (Doc. 196-2). In the previous indictments, the government alleged the Defendant filed two fraudulent U.S. individual income tax returns (Forms 1040) on February

13, 2021, one under a social security number (SSN), and the other under an individual taxpayer identification number (ITIN)[1]. None of the prior indictments, nor the 2020 tax returns at issue, contain or refer to Defendant's date of birth. In its 404(b) Notice, the government indicated it would supersede the indictment to remove the term "ITIN" and replace it with "an additional SSN," and has now done so. (Doc. 196, p.2, note 1; Third Superseding Indictment, Doc. 198, p.6).

The government submits this new revelation, two different SSNs associated with two different birth dates, demonstrates the Defendant must have obtained one of his SSNs with false or fraudulent information. (Doc. 196-3). The government ignores an innocent explanation: the original SSN, issued in 1997, reflected a typographical error, a 1975 date of birth. When a replacement SSN was issued in 2005, the error was corrected to reflect the true date of birth in 1979. It should be noted - the month and day of birth are the same for both SSN accounts. The name is the same. Only the years are different.

Most of the "new discovery" is <u>not</u> inextricably intertwined with admissible evidence in this case.

Assuming proper foundations, in an attempt to prove what was charged as

[1] (Docs. 1, 110,180.)

Count 3 in the second superseding indictment, (Doc. 180-p.7)[2], the government would have admitted the two tax returns filed in 2021 in Carl Torjagbo's name. The two returns contain different numbers, one ending in 6010, the other ending in 0540. If the returns are admitted, the different SSNs likely will be admitted[3].

However, the tax returns do not contain dates of birth for Mr. Delano (formerly Mr. Torjagbo). There is no need for the government to go into the matter of different birth dates to prove the wire fraud allegations in Counts 2 and 3 of the Third Superseding indictment. There is no need for the government to allege, imply or attempt to prove the two different SSNs were fraudulently obtained. There is no purpose for the government to go into the birth dates, or the implied Social Security fraud, other than to create undue and unfair prejudice based solely upon supposition and insinuation[4]. The government presumes some type of Social Security Number fraud, apparently without evidence.

Furthermore, from the government's notice, it appears the SSNs were issued in 1997 and 2005. It defies reason, and the evidence, to suggest the Defendant

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[2]And is now charged in Counts 2 and 3 of the Third Superseding Indictment.

[3]Although, the better and safer practice would be to redact the SSNs.

[4]Mr. Delano will move to strike the dates of birth and Social Security fraud implication from the Third Superseding Indictment within the allotted time-period from his July 11, 2025, arraignment. (Doc. 201).

began orchestrating his 2021 wire fraud schemes, twenty years ago. Matters relating to the obtaining of a Social Security numbers in 1997 and 2005 are not part of, intrinsic to, or inextricably intertwined with the government's proof of a 2021 wire fraud.

The different dates of birth and the alleged Social Security fraud are not inextricably intertwined with the evidence regarding the current charged wire fraud offenses. *United States v. Ramsdale*, 61 F.3d 825, 829 (11th Cir. 1995). The different dates of birth are not part of the crimes or the tax returns at issue. They are not necessary to explain the chain of events or context. They do not explain or prove motive or set-up of the crime. This evidence should not be admitted as it is not "linked in time and circumstances with the charged crime[s], [and does not form] an integral and natural part of an account of the crime, or is necessary to complete the story of the crime for the jury." *United States v. Williford*, 764 F.2d 1493, 1499 (11th Cir. 1985).

The Different Dates of Birth Associated with the Different SSNs Do Not Meet the Requirements of Rule 404(b) or Rule 403.

"Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Fed. R. Evid. 404(b)(1). However, "[t]his evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Fed. R. Evid. 404(b)(2).

The Court should apply a three-part test to determine admissibility under this rule. First, the evidence must be relevant to an issue other than the defendant's character. Second, there must be sufficient proof that the defendant committed the extrinsic act. Third, the evidence must survive the balancing test of Rule 403. *United States v. Mills*, 138 F.3d 928, 935 (11th Cir. 1998); *United States v. Cancelliere*, 69 F.3d 1116, 1124 (11th Cir. 1995). The Government bears the burden of proving the admissibility of extrinsic evidence under Rule 404(b). *Mills*, 138 F.3d at 935. Under Rule 404(b) extrinsic evidence of other crimes, wrongs, or acts is inherently prejudicial to the defendant. *United States v. Beechum*, 582 F.2d 898, 910 (5th Cir.1978) (en banc). "One of the dangers inherent in the admission of extrinsic offense evidence is that the jury may convict the defendant not for the offense charged but for the extrinsic offense." *Id*. at 914. In addition, extrinsic evidence "may lead [the jury] to conclude that, having committed a crime of the type charged, [the defendant] is likely to repeat it." *Id*. (quotation marks omitted). Either inference is directly contrary to the long-standing rule that propensity to commit crimes should not be the basis of a conviction. *Id.*

The Eleventh Circuit requires that "other offense" evidence directly and logically bear on a relevant issue and not just show propensity. In *United States v. Mills*, 138 F.3d 928 (11th Cir. 1998), the defendant was charged with violating 18 U.S.C. § 1001 by making false claim on an airplane passenger manifest for reimbursement of travel expenses under Medicare. The Government introduced evidence of a prior act where the defendant lied on a customs declaration about a jewelry purchase upon returning to the United States from overseas travel. On appeal, the government argued that the first prong was satisfied because the customs incident was relevant to the defendant's intent; it showed her willingness to engage in intentional deception of government agents for personal gain. *Id*. at 936. The Eleventh Circuit, however, easily identified the improper inference that the government wanted the jury to draw: that the defendant was disposed to lie to the government; therefore, being a liar, she must have intended to lie on the passenger manifests in the case on trial. *Id.* The Eleventh Circuit held that this sort of evidence is precisely what Rule 404(b) prohibits and found that the trial court erred. *Id.* The forms and the context of the representations were too dissimilar.

The Eleventh Circuit has upheld the exclusion of prior dissimilar criminal acts as improper 404(b) evidence. See generally, *United States v. Lail*, 846 F.2d 1299, 1301 (11th Cir. 1988) (reversible error to admit uncharged bank robbery as

404(b) evidence in bank robbery case to show identity because dissimilarity); *United States v. Utter*, 97 F.3d 509, 514 (11th Cir. 1996) (in arson prosecution, reversible error to admit evidence of a fire at defendant's residence on different occasion due to deficient proof that defendant started other fire, i.e., committed the extrinsic act); *United States v. Young*, 39 F.3d 1561, 1573 (11th Cir.1994) (evidence of moonshining is not relevant to intent to distribute marijuana because the acts are not sufficiently similar even though both involved covert possession of a substance for distribution).

The government claims the evidence of two birth dates meets the Rule 404(b) requirements for three reasons:

> 1) Here, the evidence of Defendant's use of the two birthdates and acquisition of the two SSNs is directly relevant to identity and intent. First, the evidence, which would be presented through competent witness testimony, helps prove that it was indeed Defendant who submitted both fraudulent tax returns.
>
> 2) Second, the evidence demonstrates Defendant's intent to defraud the IRS by submitting two different tax returns that included false information.
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> . . . .
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> 3) This evidence is also probative of knowledge and intent concerning Defendant changing his name from Carl Torjagbo to Karl Delano. When interviewed by law enforcement, Defendant claimed that he changed his name "because [his old] last name was hard to pronounce." (Doc. 145 at 28). The Government contends that he changed his name in an effort to conceal his fraudulent acquisition of

> millions of dollars. Defendant previously shifted his identity by obtaining a new SSN based on a different date of birth. This fact shows that Defendant's intent in changing his name was not as innocuous as he says it was, but rather was designed to conceal his fraud schemes.
>
> (Gov. 404(b) Notice, Doc. 196-pp.4-5).

The government's arguments stretch logic too far and are non-persuasive. First, it is worth noting the birth dates differ only by the years: 1979 and 1975. Both SSNs were obtained in the name CARL DELANO TORJAGBO. The month and day born are identical for both SSN accounts. Absent discovery on this issue, the Defendant can only assume the Social Security Administration or some other bureaucratic agency in the United States or Ghana made a typographical error. Again, birth dates are not listed on the tax returns, only the SSNs were submitted.

The different birth dates being associated with Social Security accounts do not establish identity. The tax returns at issue were filed through use of a computer and the Turbo Tax program. The government must prove the identity of the filer or the filers of each return. The existence of different birth dates, or even different SSNs, does not prove the Defendant filed the tax returns.

Similarly, the fact that different birth years were associated with different SSNs in 1997 and 2005 does not establish Mr. Delano's intent to defraud the IRS in 2021. Last, the government's argument that the different birth years, associated with his SSNs in 1997 and 2005, proves that his name change in 2021was designed to conceal his fraud scheme, is almost absurd. This argument builds straws upon weak straws.

Here, the governments attempt to introduce evidence of two different birth dates and Social Security fraud will likely lead the jury to conclude that Mr. Delano is guilty of offenses for which he is on trial, because he allegedly committed a prior fraud in obtaining his Social Security Numbers. This evidence suggests nothing more than bad character, in violation of Rule 404(a), and a propensity to commit crimes, in violation of Due Process and *United States v. Beechum*, 582 F.2d 898, 910 (5th Cir.1978) (en banc).

Even if the proposed extrinsic evidence did meet the requirements of Rule 404(b), which it does not, it is more unfairly prejudicial than probative, and must be excluded under the balancing test of Rule 403.

WHEREFORE, for the reasons stated above, Mr. Delano requests that the Court exclude the evidence identified in the government's notice, and requests a hearing on the government's notice of intent to use 404(b) evidence and his motion to exclude the same.

Dated: This 8th day of July, 2025.

Respectfully submitted,
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CERTIFICATE OF SERVICE

This is to certify that I have this day electronically filed this 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 8th day of July, 2025.

s/ *L. Burton Finlayson*

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