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 IN OPPOSITION TO DEFENDANT'S MOTION TO CONTINUE TRIAL

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 response in opposition (Doc. 203) to Defendant's motion to continue trial. In reply and in further support of his motion to continue trial (Doc. 197), Mr. Delano shows as follows:

The government chose to bring a new indictment, very close in time to the scheduled trial date of July 21, 2025. (Doc. 198). Arraignment on the Third Superseding Indictment is scheduled for July 11, 2025. (Doc. 201). The government opposes Mr. Delano's request for continuance of his trial.

The government admits it (apparently) made mistakes, for years, in the way it charged the case:

> [T]he 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.

(Gov. Response, Doc. 203, p. 2).

Mr. Delano's need for a continuance is not of his own making. It is the government's fault for correcting (and making) mistakes that it has had years to correct, well before what is almost the eve of trial.

The government seeks to minimize the effect and implication of the change to the wire fraud counts:

> 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.

(Doc. 203, p. 3).

First, the new indictment charge more than just "a second SSN, as opposed to an ITIN." It specifically charges, "a Social Security Number (SSN) that was associated with a date of birth in 1979," and "a different SSN that was associated with a date of birth in 1975." (Doc. 198, p.6). Furthermore, the government's

notice of intent to introduce 404(b) evidence, or so-called inextricably intertwined evidence, (Doc. 196), tells a very different story: "Because one person cannot have two birthdates, **the implication of this testimony is that at least one of Defendant's SSNs must have been obtained using false or fraudulent information**." (Gov. 404(b) notice, Doc. 196, pp.2-3)(emphasis added). Additionally, the government intends to introduce under Rule 404(b) evidence that Mr. Delano obtained Florida and Texas drivers' licenses using the date of birth of 1975, but he later obtained a Georgia driver's license with a birth date of 1979. (Doc. 196, p.3).

In the new indictment, the government adds, for the first time, the allegation that a second SSN was obtained using a different date of birth. (Doc. 198, p. 6). Perhaps this addition is an attempt to strengthen the government's argument that the second SSN and birth date were inextricably intertwined with the wire fraud scheme counts. However, inserting such extrinsic and collateral matters into the indictment at this point is gratuitous and improper. These new allegation are neither elements of the charged offenses, nor required to prove the government's case.

The government downplays Mr. Delano's concerns about having to review and investigate new Rule 16 discovery materials: "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." (Doc. 203, p.3).

As of this filing, the new discovery has not been produced to the defense. Admittedly, discovery is not due to be produced to the Defendant until the arraignment on July 11, 2025. Fed. R. Crim. Pro. Rule 16. However, July 11, 2025, is only 10 calender days and 5 business days before trial is set to begin. A defendant deserves sufficient time to review new discovery and file pretrial motions related to it and the new indictment.

Last, the government complains about Mr. Delano "vaguely asserting that [exhaustion of CJA funds] will delay payments to experts and service providers. . . ." (Doc. 204, p.4). There is nothing vague about it. CJA service providers, including investigators and experts will not be paid for their work until after October 1, 2025. Furthermore, appointed counsel will not receive any additional payments, interim or final, from any CJA case, until after October 1, 2025.

The government is correct that undersigned counsel notified the government of his intent to call Dr. Solomon Owusu as a witness at trial. In his July 7, 2025, notice, the Defendant informed the government of the following:

> I expect this witness will provide lay opinion under Rule 701 and not expert opinion, however, just in case, to comply with Rule 16(a)(1)(G) of the Federal Rules of Criminal Procedure, I hereby give notice of my intent to introduce testimony under Rules 702, 703, and 705 of the Federal Rules of Evidence.

Counsel also provided the government with a summary of Dr. Owusu's expected testimony, a rough version of his qualifications and work history, and an article he authored. As stated in Defendant's motion to continue,

> The Criminal Justice Act provides that counsel for an indigent defendant may make an *ex parte* request to obtain investigative, expert, or other services necessary for an adequate defense. Title 18 U.S.C. § 3006 A(e)(1). Defense counsel will have to reveal confidential and privileged information in order to make the requisite showing, and the government's presence will infringe upon Mr. Delano's Fifth and Sixth Amendment rights, and his right to conceal the preparation of his defense. Where a sufficient showing of need is made, an indigent defendant is entitled to assistance at the expense of the government so that he may have "a fair opportunity to present his defense" and "the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake." *Ake v. Oklahoma*, 470 U.S. 68, 76 (1985).
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> (Motion to Continue Trial, Doc. 197, p.7).

Defense counsel remains in discussions and negotiations with Dr. Owusu. Such negotiations remain protected under the Fifth and Sixth Amendments, and should only be revealed *ex parte*. To the extent the Government complains of insufficient notice of a potential 702 expert, the best remedy, and candidly, the needed remedy, is to continue Mr. Delano's trial.

WHEREFORE, for the reasons stated above and in his original motion, Mr. Delano requests that this Honorable Court continue his trial to a date convenient to the Court and the parties, after October 1, 2025.

Dated: This 8th day of July, 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 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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