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

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|---|---|---|
| UNITED STATES OF AMERICA | ) | |
| | ) | |
| v. | ) | |
| | ) | Case No. 1:22-cr-00171-MLB-RDC |
| | ) | Third Superseding |
| CARL DELANO TORJAGBO, | ) | |
| a/k/a | ) | |
| KARL LUCIUS DELANO. | ) | |
| | ) | |
| ______________________________ | ) | |

**MOTION TO STRIKE SURPLUSAGE**

COMES NOW the Defendant, KARL LUCIUS DELANO, a/k/a CARL DELANO TORJAGBO, by and through counsel, pursuant to Fed. R. Crim. Proc. 7(d), and moves this Court to strike surplusage from Counts 2 and 3 of the third superseding indictment in this case. In support of this motion, Mr. Delano shows as follows:

1.

On July 1, 2025, the government obtained a third superseding indictment in this case. (Doc. 198). The new indictment charges Mr. Delano in Count 1 with bank fraud in violation of 18 U.S.C. §§ 1344 and 2. Counts 2 and 3 charge wire fraud in violation of 18 U.S.C. §§ 1343 and 2. Counts 4 through 6 charge concealment money laundering in violation of 18 U.S.C. §§ 1956(a)(1)(B)(I) and

2. Counts 7 through 10 charge transactional money laundering in violation of 18 U.S.C. §§ 1957 and 2. Mr. Delano's arraignment hearing was held on Friday, July 11, 2025, (Doc. 201). The Magistrate Judge accepted Mr. Delano's waiver of arraignment and plea of "Not Guilty"[1].

2.

The new indictment charges wire fraud in Counts 2 and 3, and alleges (for the first time) the following as part of the scheme:

> 19. On one of the fraudulent tax returns, Defendant Torjagbo used a Social Security Number (SSN) **that was associated with a date of birth in 1979** and fraudulently claimed a refund in the amount of $3,373,441.00.
>
> 20. On the other fraudulent tax return, Defendant Torjagbo used a different SSN **that was associated with a date of birth in 1975** and fraudulently claimed a refund in the amount of $3,015,573.00.
>
> (Doc. 198)(emphasis added).

3.

Mr. Delano moves to strike these phrases from Paragraphs 19 and 20:

"that was associated with a date of birth in 1979," and

[1]Counsel filed a waiver of arraignment on July 9, 2025, (Doc. 206). Unfortunately, the Defendant was brought to the courthouse on July 11, 2025, and held there all day.

"that was associated with a date of birth in 1975."

4.

The alleged use of two different dates of birth is not material to the offenses charged and it is not an element of the wire fraud counts. Rather, inclusion of these allegations is a thinly-veiled attempt to include an allegation of a separate crime: fraud upon the Social Security Administration. The allegation that Mr. Delano obtained Social Security Numbers under two different birth dates likely will lead the jury to find him guilty at trial because he allegedly committed a prior fraud in obtaining his Social Security Numbers. This allegation of a prior crime, if left in the indictment, elicits nothing more than bad character evidence, 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).

5.

Fed. R. Crim. Proc. 7(c)(1) requires that an indictment "must be a plain, concise, and definite written statement of the essential facts constituting the offense charged." Because reference to an alleged alias is unnecessary to the government's allegations, and in this case very prejudicial, it does not meet the standard set out by Rule 7(c)(1).

6.

The indictment can be easily and fairly redacted. The Court simply should strike the language of "that was associated with a date of birth in 1979," and "that was associated with a date of birth in 1975" from the indictment.

WHEREBY, for the reasons put forth above, Mr. Delano asks that this motion be granted.

Dated: This 13th day of July, 2025.

Respectfully submitted,

***s/ L. Burton Finlayson***
L. BURTON FINLAYSON
Attorney for Defendant
Georgia Bar Number: 261460

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**CERTIFICATE OF SERVICE**

This is to certify that I have this day electronically filed this Motion to Strike Surplusage 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 13th day of July, 2025.

s/ *L. Burton Finlayson*

L. BURTON FINLAYSON
ATTORNEY FOR DEFENDANT
Georgia Bar Number: 261460