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 |
| | ) | Third Superseding |
| CARL DELANO TORJAGBO, | ) | |
| a/k/a | ) | |
| KARL LUCIUS DELANO. | ) | |
| | ) | |
| | ) | |

**MOTION TO DISMISS COUNTS 2 AND 3**

COMES NOW the Defendant, KARL LUCIUS DELANO, a/k/a CARL DELANO TORJAGBO, by and through counsel, and moves this Court to dismiss Counts 2 and 3 of the third superseding indictment in this case as they both contain duplicitous allegations. 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.

Counts 2 and 3 allege Mr. Delano committed wire fraud in the filing of two tax returns to the IRS. (Doc. 198). However, the third superseding indictment adds

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

a new twist: alleging Mr. Delano obtained two Social Security Numbers under two different dates of birth. This is an allegation of a prior and separate crime which, according to the discovery materials, occurred in Florida and / or Texas, not the Northern District of Georgia.

4.

It is improper to charge two crimes in the same count of an indictment. As the Eleventh Circuit recently noted:

> "A count in an indictment is duplicitous if it charges two or more separate and distinct offenses." *United States v. Seher*, 562 F.3d 1344, 1360 (11th Cir. 2009) (quotation marks and citation omitted). The risk of a duplicitous count is that "(1) [a] jury may convict a defendant without unanimously agreeing on the same offense; (2) [a] defendant may be prejudiced in a subsequent double jeopardy defense; and (3) [a] court may have difficulty determining the admissibility of evidence." *United States v. Deason*, 965 F.3d 1252, 1267 (11th Cir. 2020) (citation omitted). To determine whether a count is duplicitous, we "look to the text of the underlying statute" and consider "what conduct constitutes a single offense." *Id.* (citations omitted).
>
> *United States v. Pulido*, 133 F.4th 1256, 1269, (11th Cir. 2025).

5.

Here, Mr. Delano has all three concerns articulated by the Eleventh Circuit. He worries he may be convicted by a non-unanimous jury, with some convicting him for fraud on the Social Security Administration and others convicting him for wire fraud upon the IRS, the charged offense. He also worries about subsequent prosecutions in Florida, Texas or even the Northern District of Georgia for fraud upon the Social Security Administration, in violation of Title 42 U.S.C. § 408, or Title 18 U.S.C.§ 1001, (making false statements), or other crimes covering the conduct. He also worries the allegations of this separate crime "muddies the water" and perhaps makes it easier for the government to introduce otherwise inadmissible prior bad acts.

WHEREBY, for the reasons put forth above, Mr. Delano asks that Counts 2 and 3 be dismissed.

Dated: This 13th day of July, 2025.

Respectfully submitted,

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

LAW OFFICE OF
L. BURTON FINLAYSON, LLC
685 Linwood Avenue, NE, Suite 200A
Atlanta, Georgia 30306
(404) 872-0560
lbfcourts@aol.com

**CERTIFICATE OF SERVICE**

This is to certify that I have this day electronically filed this Motion to Dismiss Counts 2 and 3 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