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 Strike Surplusage [207]

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 Strike Surplusage.

Defendant is charged with, *inter alia*, two counts of wire fraud, based on his submission of two fraudulent tax returns to the United States Department of the Treasury, Internal Revenue Service (IRS). One fraudulent return was submitted using a Social Security number ("SSN") ending 0540 that was associated with a birthdate in 1979, and the other fraudulent tax return was submitted using a different SSN ending 6010 that was associated with a birthdate in 1975. The two different birthdates were part of what Defendant caused to be transmitted to the IRS.

Defendant has moved to strike as surplusage the phrases "that was associated with a date of birth in 1979" and "that was associated with a date of birth in

1975" from the Third Superseding Indictment. For the reasons set forth below, Defendant's Motion to Strike Surplusage (Doc. 207) should be denied.[1]

1. Legal Standard

"Upon the defendant's motion, the court may strike surplusage from the indictment[.]" Fed. R. Crim. P. 7(d). "Surplusage is defined as immaterial or irrelevant allegations in an indictment ... which may, however, be prejudicial." *United States v. Ruiz*, No. 1:21-CR-00426-MLB-JEM, 2023 WL 3871721, at *4 (N.D. Ga. Mar. 27, 2023) (internal quotation marks omitted), *report & rec. adopted by* 2023 WL 3562970 (N.D. Ga. May 19, 2023). To prevail on a motion to strike surplusage, a defendant must show both (1) that "it is clear that the allegations are not relevant to the charge" and (2) that the allegations "are inflammatory and prejudicial[.]" *United States v. Awan*, 966 F.2d 1415, 1426 (11th Cir. 1992). "[T]his is a most exacting standard." *Id.* (internal quotation marks omitted).

"[I]f evidence of the allegation is admissible and relevant to the charge, then regardless of how prejudicial the language is, it may not be stricken." *United States v. Thompson*, 141 F. Supp. 3d 188, 201 (E.D.N.Y. 2015) (quoting *United States v. Scarpa*, 913 F.2d 993, 1013 (2d Cir. 1990)); *see also United States v. Hill*, 799 F. Supp. 86, 88-89 (D. Kan. 1992) ("If the language is information which the government hopes to properly prove at trial, it cannot be considered surplusage no matter how prejudicial it may be." (internal quotations omitted)). "Rule 7(d) is

[1] The Court has denied this motion by docket entry, but indicated that it will address the matter further at the start of trial. The Government files this response to have its position on the record.

strictly construed against striking surplusage." *United States v. McCray*, No. 1:15-CR-212-WSD-AJB, 2017 WL 11716129, at *1-2 (N.D. Ga. June 15, 2017). Thus, "[m]otions to strike surplusage are rarely granted." *United States v. Hedgepeth*, 434 F.3d 609, 611 (3d Cir. 2006).

2. Argument

Here, Defendant fails to show that the allegations that one SSN he used "was associated with a date of birth in 1979" and the other SSN "was associated with a date of birth in 1975" (1) are clearly not relevant to the charges and (2) are inflammatory and prejudicial. *See Awan*, 966 F.2d at 1426. As such, his motion must fail.

A. Relevance

Evidence about the two birthdates is relevant. As Defendant has acknowledged, "[t]he government must prove the identity of the filer or the filers of each return." (Doc. 204 at 8). Showing that the two birthdates associated with the SSNs and fraudulent returns were both birthdates that Defendant in fact used (including on government identification documents) will provide key identity evidence to show that Defendant was behind the submissions of both fraudulent returns. That Defendant electronically transmitted the 1975 birthdate to the IRS in connection with the tax return associated with the SSN ending 6010, and the 1979 birthdate to the IRS in connection with the tax return associated with the SSN ending 0540 provides strong evidence that it was Defendant who filed both returns. It is unlikely that anyone else would know that there were different birthdates associated with the different SSNs.

In addition to being relevant to show identity, the allegations that Defendant seeks to strike are relevant to showing how Defendant was able to accomplish his crimes. Specifically, evidence that Defendant had two different SSNs associated with different dates of birth explains how he was able to submit two individual tax returns for the same time period. The Government expects to show that the use of two SSNs with the associated birthdates was critical to commission of the crime because IRS would not have accepted two returns with the same identifying information on them.

Accordingly, the allegations regarding the different dates of birth are relevant, and the motion must fail.

B. Inflammatory and Prejudicial

Even if Defendant could somehow succeed on the relevance prong, his motion would fail on the "inflammatory and prejudicial" prong. Defendant does not (and cannot) seek to strike the allegations that (1) he used two different SSNs or (2) that he filed two separate fraudulent tax returns.[2] All that he seeks to strike is the allegation that the two SSNs he used were associated with different birthdates. He fails to explain how this additional allegation about dates would add any undue prejudice, much less be so inflammatory as to warrant striking it from the indictment. The motion thus fails on this basis too.

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[2] He has, however, moved to dismiss the wire fraud counts in a separate motion (Doc. 208).

3. Conclusion

For the reasons set forth above, Defendant's Motion to Strike Surplusage (Doc. 207) should be denied.

Respectfully submitted,

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July 14, 2025

/s/ NICHOLAS L. EVERT
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