

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

Case Nos.

1:22-CR-171-MLB

1:25-CV-5672-MLB

Response in Opposition to Defendant's 28 U.S.C. § 2255 Motion

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 28 U.S.C. § 2255 Motion (Docs. 240 & 245).

BACKGROUND

On July 25, 2025, Defendant was convicted of bank fraud, wire fraud, and money laundering, following a five-day trial. His sentencing hearing is currently set for January 13, 2026. On September 8, 2025, Defendant, who was then represented by Leigh Burton Finlayson (his trial attorney), filed a *pro se* motion pursuant to 28 U.S.C. § 2255 ("§ 2255") (Doc. 240). On September 15, 2025, Mr. Finlayson moved to withdraw as Defendant's attorney (Doc. 241). The Court granted Mr. Finlayson's Motion to Withdraw on September 23, 2025 (Doc. 242), and Sandra Louise Michaels was appointed to represent Defendant on September 24, 2025 (Doc. 243). Defendant re-filed his *pro se* § 2255 Motion on

October 1, 2025 (Doc. 245).¹ On October 7, 2025, the Court denied Defendant's Motion, stating, "Defendant is represented by counsel and has not complied with the provisions of Local Criminal Rule 57.1(D)(3). Nor has the Court granted Defendant permission to proceed pro se." (Doc. 246). On October 9, 2025, Defendant's new counsel, Ms. Michaels, emailed the Court and indicated that, despite the Court's denial, Defendant wishes to persist with his § 2255 motion. On October 14, 2025, the Court asked the United States to file a responsive pleading.

ARGUMENT

Relief under § 2255 is available to "prisoner[s] in custody *under sentence* of a court...." 28 U.S.C. § 2255(a) (emphasis added). Accordingly, a § 2255 motion filed prior to sentencing is subject to dismissal as premature. *See United States v. Casaran-Rivas*, 311 F. App'x 269, 273 (11th Cir. 2009) (holding that district court erred in considering merits of § 2255 motion that was filed before sentencing because the motion was premature, and noting that "the statutory language [of § 2255] assumes that the movant already has been sentenced"); *Smith v. United States*, No. 23-CR-20122-1, 2024 WL 3718101, at *2 (S.D. Fla. Aug. 8, 2024) (noting that "§ 2255 motion [would be] subject to dismissal as premature because Petitioner [had] not yet been sentenced"). Here, because Defendant "has not yet

¹ The substance of the two motions appears to be identical, although the first motion appears to have additional pages of exhibits attached to it. The second filing makes clear that it is meant to be a refiling of the first. (*See* Doc. 245 at 53).

been sentenced[,]" his "§ 2255 motion ... is subject to dismissal as premature[.]" *See Smith*, 2024 WL 3718101, at *2. For that reason, and the reasons set forth in the Court's October 7 Order (Doc. 246), Defendant's § 2255 Motion (Docs. 240 & 245) should be denied.²

Respectfully submitted,

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² The instant filing does not address the merits of Defendant's § 2255 Motion, as it would be improper for the Court to consider the merits of the motion at this time. *See Casaran-Rivas*, 311 F. App'x at 273. Should the Court require additional briefing on the merits, the United States requests leave to supplement its response.