

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 2:23-cr-88-SPC-KCD

DIOP MCKENZIE
_____ /

**UNOPPOSED MOTION FOR LEAVE TO FILE A
PRE-TRIAL MOTION TO SUPPRESS**

The Defendant, DIOP MCKENZIE, moves this Court for leave to file a pre-trial motion to suppress after the previously scheduled motion deadlines, and in support states as follows:

1. Mr. McKenzie is charged in a multi-count indictment with two counts of bank fraud in violation of 18 U.S.C. § 1344, two counts of wire fraud in violation of 18 U.S.C. § 1343, and one count of aggravated identity theft in violation of 18 U.S.C. § 1028A.
2. The allegations revolve around what the Government maintains were fraudulent Paycheck Protection Act (PPP) loans. The Government further maintains that Mr. McKenzie acquired and used a stolen identity as part of the scheme.
3. The original motion deadline was set by the Court as October 20, 2023. The motion deadline was later extended by the Court until

November 20, 2023, shortly after the Government's first two disclosures.

4. As the Court has been advised at subsequent status conferences, the discovery in this case is voluminous, and has been provided piecemeal by the Government.
5. There have been ten discovery responses by the Government, the latest on December 8, 2023. All but two of these disclosures were after the original motion deadline. Six of these disclosures were after the extended deadline.
6. The December 8 disclosure includes two lengthy police body cam videos from a September 14, 2020, traffic stop.
7. A review of the videos along with discovery previously provided reflects that the evidence the Government intends to use against Mr. McKenzie at trial was derived from this traffic stop. Moreover, there are multiple grounds for challenging the seizure of evidence following this stop as violative of the Fourth Amendment.
8. Accordingly, Mr. McKenzie seeks leave of Court to file a motion to suppress evidence. The specific grounds for the anticipated motion could not have been known before the previous motion deadlines.
9. This matter is currently on the March 2024 trial calendar.

10. Mr. McKenzie requests until February 9, 2024, to file a motion to suppress.

11. Assistant United States Attorney Yolande Viacava does not oppose this motion.

WHEREFORE, the Defendant moves this Court to grant him leave to file a motion to suppress up to February 9, 2023.

Respectfully submitted,

A. Fitzgerald Hall, Esq.
Federal Public Defender
Middle District of Florida

/s/ Russell K. Rosenthal
Russell K. Rosenthal
Florida Bar No. 0319244
Assistant Federal Public Defender
2075 West First Street 3rd Floor
Fort Myers Florida 33901
Telephone: 239-334-0397
Facsimile: 239-334-4109

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of January 2023, a true copy of the foregoing filed in this court and a copy was forwarded using CM/ECF to Yolande Viacava, Office of the United States Attorney, 2110 First Street, 3-137 Fort Myers, Florida 33901.

/s/ Russell K. Rosenthal
Russell K. Rosenthal
Assistant Federal Defender