

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE No. 22-20290-CR-BLOOM/OTAZO-REYES

UNITED STATES OF AMERICA,

v.

ERIC DEAN SHEPPARD

/

**REQUEST FOR ORAL ARGUMENT
ON POST-TRIAL MOTIONS [ECF #204 & #205]**

Defendant Eric Dean Sheppard respectfully requests oral argument on the post-trial motions. Given the novelty of the legal issues raised in the Motion for Judgment of Acquittal [ECF #205], summarized below, we submit that one hour of oral argument would be especially helpful to the Court.¹

1. The convictions for aggravated identity theft (“AIT”) are in tension with last year’s decision in *Dubin v. United States*, 599 U.S. 110, 117 (2023) (holding that a defendant “uses” another person’s means of identification in contravention of the AIT statute only when “the means of identification is at the crux of what makes the predicate offense criminal.”), and the Eleventh Circuit’s decision in *United States v. Gladden*, 78 F.4th 1232, 1248 (11th Cir. 2023) (reversing an AIT conviction even where the defendant put another person’s name on a fraudulent bill). Oral argument would aid the Court’s application of *Dubin*’s stringent standard to the facts of Sheppard’s case.

2. The fraud convictions are in tension with last year’s decision in *Ciminelli v. United States*, 598 U.S. 306 (2023) (holding that “the wire fraud statute reaches

¹ Sheppard also requests permission to address the substantial issues raised in the Motion for New Trial [ECF #204].

only traditional property interests,” and emphasizing that a “scheme to defraud” must be designed to do more than deceive someone of information needed to make discretionary decisions about the use of money or property). Oral argument would be helpful in deconstructing the government’s two invalid theories, neither of which proved a scheme designed to cause harm to a traditional property interest. *See* Defendant’s Motion for Judgment of Acquittal [ECF #205] at 15-18.

Undersigned post-trial attorneys propose to present the arguments in support of judgments of acquittal. For scheduling purposes, we itemize here impending, professional commitments:

- Jeffrey Fisher (admitted pro hac vice) is delivering oral argument in the Supreme Court of the United States on March 19 (S. Ct. No. 23-14, *Diaz v. United States*)² and on March 27 (S. Ct. No. 23-370, *Erlinger v. United States*),³ and has teaching responsibilities at Stanford Law School during the week of April 1-5.
- Jason Zarrow (pro hac vice motion forthcoming) has a deadline of April 11 to file an Answer brief in the U.S. Court of Appeals (3d Cir. No. 23-2962, *Fields v. American Airlines, Inc.*) and will be drafting a Reply Brief for filing by April 30 in the Supreme Court of the United States (S. Ct. No. 23-1004, *Mendoza v. Lumpkin*).⁴
- Howard Srebnick is set for a federal criminal trial from April 8-19 (S.D. Fla. No. 22-cr-20114-KMW, *United States v. Polit Faggioni*).

² <https://www.supremecourt.gov/docket/docketfiles/html/public/23-14.html>.

³ <https://www.supremecourt.gov/docket/docketfiles/html/public/23-370.html>.

⁴ <https://www.supremecourt.gov/docket/docketfiles/html/public/23-1004.html>.

Passover begins at sundown on April 22. All attorneys for Sheppard are available to deliver argument on the following dates: **April 24 and 29**. Sentencing is currently scheduled for May 8, 2024.

Respectfully submitted,

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