UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA
Plaintiff

CASE NO.: 23-CR-60173-2

vs.

TRACY D. WADE
Defendant.

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RENEWED MOTION TO STAY JAIL SENTENCE PENDING APPEAL

Introduction.

Tracy D. Wade was found guilty at trial of multiple counts related to Paycheck Protection Program (PPP) loan fraud and sentenced to 90 days in jail followed by probation. He was tried jointly with his wife Carolyn Wade, who was also convicted and was sentenced to probation. He has not yet surrendered to begin serving the jail sentence and is scheduled to surrender on August 27, 2025. The Court previously extended the surrender date so that Mr. Wade could have this appellate bond motion considered, which he very much appreciates. He has filed an appeal which is pending in the Eleventh Circuit Court of Appeals, case 25-11132-D. A briefing schedule was issued today and the Appellant's brief on behalf of the Wades is due August 20, 2025 (a briefing schedule was previously issued but was rescinded because not all transcripts had been filed).

Undersigned counsel on behalf of Mr. Wade previously filed a Motion to Stay Jail Sentence Pending Appeal on April 9, 2025 (D.E. 247). The Court denied the motion without prejudice to refile since it did not specify what appellate grounds would be raised and therefore that the appeal "is not for the purpose of delay and raises a substantial question of law or fact likely to result in" reversal, a new trial, or a reduced sentence. 18 U.S.C. § 3143. Undersigned counsel had to order and read the trial and pretrial hearing transcripts in order to properly file that motion. That has been accomplished, and this motion follows. Undersigned counsel notes that the reason for the delay was that the court reporter did not promptly transcribe all hearings despite the transcripts having all been ordered initially, which required follow-up. Now all transcripts have been provided. The most recent one, of a lengthy pretrial motions hearing that occurred on September 26, 2024, was filed on July 11, 2025. Again, Mr. Wade and undersigned counsel appreciate the Court using its discretion to allow him to remain out of custody to date so that this motion could be properly filed and considered.

Background on Tracy Wade.

Tracy D. Wade is a 52-year old man. He and his wife Carolyn have an 11-year-old daughter. The family resides together in South Florida. Besides his immediate household of three, Mr. Wade had two adult children from a previous marriage. Mr. Wade is from and grew up in Miami, graduating from Carol City High School and Miami Dade College with an associates degree. He is a veteran of the US Marine Corps. He served the community as a Broward Sheriff's Deputy, working in BSO's detention facilities for 25 years, from 1997-2022. After retiring from BSO, Mr. Wade became a police officer in Pembroke Park. Given his law enforcement background, it is unsurprising that Mr. Wade has no criminal history whatsoever. His only experience of a jail cell is working in the Broward jails as a detention deputy for a quarter-century.

In addition to his law enforcement work, Mr. Wade has owned and operated a local small business, Wade Funeral Home located in Hallandale Beach, since 2011. This business provides his family's income, particularly since his wife Carolyn is marginally employed as a waitress after her conviction in this case (Carolyn also worked as a detention deputy for BSO prior to her arrest and ultimate conviction in this case). Mr. Wade also employs multiple community members as 1099 employees/independent contractors at the funeral home. Mr. Wade runs the funeral home that bears his name, and being unable to run it for 90 days would have a definite short-term negative effect on the business, and potentially cause the business to close altogether due to lack of revenue and the possible inability for the business to remain operational without Mr. Wade to run it.

During the pendency of the case, since July 1, 2024, Mr. Wade has been out of custody living in the community on bond/pretrial release and has had no issues whatsoever. And, of course, prior to his arrest in this case he lived in this community his entire life, over 50 years, with no issues whatsoever. After conviction and then after sentencing, he remained at liberty despite the Government's arguments that he should be taken into custody, and has continued to comply with all terms and conditions of his release and show up for all court dates and other required appointments. He hired counsel to represent him at sentencing and has hired undersigned counsel to represent him on appeal, demonstrating that he is dedicated to fighting his case through the proper channels and complying with all requirements of the court. His family, including his 11-year-old daughter, his home, and his business are here. Mr. Wade presents zero risk of flight from a 90-day jail sentence and no danger to the community.

The Court has had ample opportunity to observe Tracy Wade extensively firsthand, as the court presided over his trial and sentencing, as well as a previous trial of his wife Carolyn where Mr. Wade was called as a witness. He is certainly unhappy about his present situation and feels he and his wife have not been treated justly by the Government, and he stands up for what he believes to be right, but he is always appropriate in court, respectful to all parties, and has never disobeyed a court order. His behavior and general demeanor inside and outside of court is that of the law enforcement officer he has been for his entire adult life.

Legal Argument.

18 U.S.C. § 3143(b)(1) provides that a judge shall detain a person who has been convicted and sentenced to imprisonment and has filed an appeal, unless the judge finds:

> (A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and (B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in—(i) reversal, (ii) an order for a new trial, (iii) a sentence that does not include a term of imprisonment, or (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

If these findings are made, then the Court "shall order the release of the person" pending disposition of the appeal. The flight/danger determination of § 3143(b)(1)(A) is easy. As detailed above, Mr. Wade presents no risk of flight and no danger to the community. He has established himself as a productive member of this community over his entire life, has no priors, and has worked in law enforcement throughout his adult life. The validity of the issues to be raised on appeal pursuant to § 3143(b)(1)(B) requires further analysis. Undersigned counsel is an appellate law specialist and is representing Mr. Wade on the appeal, which is pending in the Eleventh Circuit. The Appellant's Brief is due in 19 days. It would be reasonable to assume we would have an appellate decision from the Eleventh Circuit within six months. If that appellate decision is an affirmance, Mr. Wade will have to serve his

90-day jail sentence. He simply asks that the Court allow him to remain at liberty in the community until the Eleventh Circuit has the opportunity to weigh in. Otherwise, he will certainly have to serve the entire jail sentence even if the conviction is ultimately overturned, since he is scheduled to surrender August 27th and even if he served all 90 days would be released no later than November 25, 2025. The appeal will not be resolved through a decision by then.

The defense does not claim that the jail sentence imposed is unreasonable or illegal in any way, and there will be no issue as to the sentence itself raised on appeal, meaning that the appeal will not result in a reduction of the jail sentence independently of the conviction. Therefore, the defense proceeds pursuant to 18 U.S.C. § 3143(b)(1)(B)(i-ii), related to the potential for reversal or an order for a new trial on appeal, not subsections iii and iv which related to an appellate order of a reduced sentence.

The appeal is clearly not taken for the purpose of delay. This is a direct appeal, taken by right, of Mr. Wade's first ever felony conviction. Mr. Wade always maintained his innocence, and in fact as the Court is aware he was charged because he also asserted his wife's innocence and testified at her first trial, which resulted in a hung jury. He is not seeking to delay anything, he is seeking to reverse what he views as an injustice, a conviction for a crime he has always maintained he did not commit.

The appeal also raises substantial questions of law or fact likely to result in reversal or a new trial. Specifically, although additional issues may be raised in the Eleventh Circuit after further work and review by counsel, undersigned counsel intends to raise at least the following appellate issues[1] in the Eleventh Circuit:

1. Error in Permitting the Government to Introduce Evidence of Other Uncharged Loans And Then Argue to the Jury That Mr. Wade Was Guilty Due to Those Other Uncharged Loans.

The charged loan was a PPP loan for $20,833. There was no dispute that an application was submitted in Mr. Wade's name for this loan and it was disbursed. There was also no dispute that another person, Haydee Granados, was the one who initiated this loan application and created and uploaded a fake Schedule C document to make it seem like Mr. Wade qualified for this loan when he did not. The government introduced evidence that Mr. Wade had logged into the online account of the loan provider and electronically signed documents, which he acknowledged when he testified but clarified that he did not place any of the fraudulent information in the loan documents, nor did he see it, and relied entirely on Ms. Granados, who

[1] What follows is a summary of the issues to be raised, not an appellate brief. Undersigned counsel expects to flesh out these arguments in the actual appeal, but writes now to advise the Court as to the issues to be raised and that they are substantial, non-frivolous, and reasonably likely to succeed, as 18 U.S.C. § 3143 requires in order for this Court to stay the jail sentence.

told him she had experience procuring PPP loans and could get him one without telling him that he in fact did not qualify or that qualifying would involve falsifying documents. Mr. Wade said he simply logged in and signed the documents electronically, without actually downloading or viewing them as he had given Ms. Granados the correct information and trusted that she had therefore used the correct information in the loan application. (10/21/24 pp. 42-45, 118-122). Thus, Mr. Wade's intent, knowledge, and credibility were central issues for the jury. If he were telling the truth he was not guilty, if he was lying and in fact knew he was submitting false loan information to the government, he was guilty.

The Government's case was fundamentally about one relatively small loan applied for and issued at a time when the PPP program was brand new and nobody had any significant experience in it, the country was shut down over Covid pandemic and the government policy was to get money into the hands of (eligible) Americans as soon as possible to prevent a recession or worse, and where there was no doubt that the primary false document (the Schedule C) was created and uploaded by a cooperating government witness rather than Mr. Wade. The Government was no doubt also cognizant that the same basic case had recently resulted in a hung jury as to Carolyn Wade. Thus, to bolster their case, the Government aggressively sought to introduce evidence of other loans Mr. Wade had applied for which they viewed as incriminatory and evidence that he had intentionally defrauded the Government with this charged PPP loan. Specifically, the Government filed a Notice of Intention to Introduce Evidence of Other Crimes, Wrongs, Or Acts, Pursuant to Fed. R. Evid. 404(b)(2), seeking to introduce evidence that Mr. Wade had applied for two Economic Injury Disaster Loan (EIDL) loans for his business, Wade Funeral Home, which grossly overstated both the revenue and expenses of the business by a factor of 100 (the actual revenue was about $350,000 per a 2019 tax return, whereas the revenue for the past 12 months stated on the application was $465,000,000). (D.E. 135). One of the EIDL loans was issued after the Government realized the revenue/expense information in the application was wrong and directed Mr. Wade to provide accurate information via his tax return, which he did. The actual EIDL amount disbursed was accurately tied to the real financials of the business and was not alleged to have been improper in any way, and did not result in charges. The second EIDL loan application, which also had incorrect financial information in the hundreds of millions, was denied as duplicative of the first one. The government claimed these prior applications, even though not criminal, showed that it was not an accident when false information was submitted in Mr. Wade's name as to the charged loan. The charged PPP loan for the $20,833 was to Mr. Wade personally per the application, although he said he intended it to be for the funeral home and did not know Ms. Granados had applied for it using the business name as his name rather than that of the funeral home.

The Court addressed the Government's 404(b) motion at a pretrial calendar call on 10/1/24, and stated after argument from the parties that it would wait to hear the evidence in the Government's case in chief before deciding if this evidence regarding uncharged loans would be admissible (10/1/24 p. 22).

After the jury was picked but before testimony, the parties discussed admitting exhibits and the government brought up documents for a $700,000 PPP loan for Wade Funeral Home that was not issued. (10/7/24 p. 113). The government acknowledged this loan was not alleged in the indictment, and said it was referenced in the 404(b) motion but not as 404(b) evidence, rather as charged conduct (despite not being charged in the indictment). (10/7/24 p. 114). The government was referencing D.E. 135 pp. 3-4, where in the "offenses charged in the superseding indictment" section of the 404(b) motion the Government discussed allegedly false statements in the "Wade Funeral Home PPP Application", which, again, was not actually charged in the superseding indictment. The Court quickly (and in the defense view correctly) disposed of this issue, stating "I would think this is the 404(b), and it's not referenced in the indictment. And so for those reasons, at this time, I am sustaining the objections" to the $700,000 Wade Funeral Home PPP application. (10/7/24 p. 117). The Government tried to get the Court to change its mind later that day, and the Court maintained its ruling—the $700,000 Wade Funeral Home PPP loan was not charged in the indictment so it was not substantive evidence, and the Court would address 404(b) evidence after hearing the Government case in chief. (10/7/24 pp. 165-66).

When government cooperating witness Haydee Granados, the person who admitted to initiating these loan applications and falsifying and submitting the Schedule Cs, testified, on cross examination the defense asked her about and introduced Defense Exhibit 8, which was an email from a Wade Funeral Home account to Ms. Granados with Tracy Wade's driver's license and social security card, as well as a voided check from Wade Funeral Home, attached. (10/15/24 pp. 155-57). Ms. Granados said this email was not for the PPP loan application she did but for a business loan Mr. Wade was applying for with someone else. (10/15/24 p. 157). The Government began their redirect of Ms. Granados by asking her about Defense Exhibit 8, and she again said it was "for a business loan Tracy Wade was applying for". (10/16/24 p. 40). The defense objected that this was getting into uncharged crimes and the parties went sidebar. The Court said now the check was in evidence so the prosecutor could ask about it. (T. 10/16/24 pp. 41-42). The Government said they wanted to ask Ms. Granados about whether she was aware of the separate PPP loan application for Wade Funeral Home (the loan referenced as the $700,000 PPP loan) which Ms. Granados did not process, and admit it through her. (T. 10/16/24 p. 42-46). The Court said it would allow the Government to ask Ms. Granados what she knew about why the email in Defense Exhibit 8 was sent, but not information about the actual application if she didn't have personal knowledge of that. (10/16/24 pp. 45-46). A proffer was held outside the presence of the jury where Ms. Granados said she received the check and forwarded it to her husband's accountant, Odalys Concepcion (who did not testify) at her husband's direction. (10/16/24 p. 47). Ms. Granados testified in the proffer this was because Ms. Concepcion was going to apply for a business loan for Mr. Wade, but the Court correctly recognized that information was hearsay. (10/16/24 p. 49). The government (still during the proffer) introduced for identification Government Exhibit 2002, which was an email from Ms. Concepcion to Ms. Granados with a "Loan Overview" from "Smartbiz" with no name or other identifying information on the document (there is an application number which was never linked to anything) that says a loan application for $701,873 has been completed. When the Court asked Ms. Granados how she knew what this was she said she was told by her husband, and the Court told the prosecutor that was why its alleged significance was hearsay and inadmissible. (10/16/24 p. 51). The Government later pointed out that the subject line in the email Ms. Concepcion sent Ms. Granados with the loan application was "wade funeral home". (10/16/24 p. 53). The Court said it would admit the email document but the parties would have to argue about its significance at closing. (10/16/24 p. 55). The defense objected to the admission of the amount of the loan in the email, but the Court said the defense had opened the door. (10/16/24

p. 57). Ms. Granados testified before the jury that she received this email from Odalys Concepcion, her husband's accountant, that the subject line was "Wade Funeral Home", and that it stated an estimated loan amount of $701,873. (10/16/24 pp. 63-64). Ms. Granados testified she did not do a PPP loan for the Wade Funeral Home business and did not know how to do business PPP loans. (10/16/24 pp. 65-66).

After Ms. Granados testified the Government again renewed its request to bring in evidence of the other allegedly fraudulent loans they believed Mr. Wade was involved in. They wanted to introduce the application for the $700,000 Wade Funeral Home PPP loan. (10/16/24 p. 74). The Court asked how that was relevant to this case and what was the evidence this application was false. (10/16/24 p. 74). The Government could not satisfactorily answer that question as they clearly did not have any evidence to support their position that they could show this loan application, for a loan which was not disbursed, was knowingly falsely submitted by Mr. Wade, and the Court excluded the evidence as irrelevant. (10/16/24 p. 76). The Government said they reserved the right to use it in cross-examination if Mr. Wade testified, and the Court said that was a different issue. (10/16/24 p. 76).

The Government ultimately rested without introducing any 404(b) evidence (other than Exhibit 2002 which referenced a $700,000 loan application without any details). The defense called a couple witnesses who essentially said they were also defrauded by Haydee Granados and she uploaded false documents to their PPP loan applications without their knowledge, which is what the Wades alleged Ms. Granados also did for them. The defense then called Tracy Wade, who testified that he did not know the false loan documentation had been submitted by Ms. Granados and he trusted her and her husband, who he knew very well, to handle this properly.

On cross-examination the prosecutor asked Mr. Wade if the charged PPP application was submitted for Wade Funeral Home and he said it wasn't but should have been. (10/22/24 p. 33). The prosecutor then asked if Mr. Wade had applied for a separate PPP loan for Wade Funeral Home and the defense objected and the parties went sidebar as this was getting into the heretofore excluded 404(b) evidence. (10/22/24 pp. 33-34). The Court asked the defense why the government couldn't ask if Mr. Wade had had other loans and the defense said it was not relevant. (10/22/24 p. 36). The Court said this was different from the prior ruling excluding 404(b) because "now he's asking him about his knowledge of other PPP loans since the subject of the examination is PPP loans". (10/22/24 p. 37). The Court analogized to a defendant's prior convictions, which are not admissible in the Government case in chief but are admissible if the defendant testifies. (10/22/24 p. 37). The Court was not clear on what loan the Government was actually asking about, and the Government clarified it was the same loan referenced in the email from Ms. Concepcion that the Government was allowed to ask Ms. Granados about. (10/22/24 pp. 38-39). The Court overruled the defense objection and the Government was allowed to ask about the $700,000 Wade Funeral Home PPP loan. (10/22/24 p. 39).

When the Government asked Mr. Wade, he said he was not aware of any PPP loan for Wade Funeral Home. (10/22/24 pp. 39-40). If such a loan application was submitted for Wade Funeral Home, he didn't have anything to do with it. (10/22/24 p. 40). The prosecutor then asked Mr. Wade if the funeral home ever had $3 million in payroll, and the defense objected to relevance. (10/22/24 p. 41). At sidebar the Court said first the prosecutor should ask if Mr. Wade was familiar with the document he was referring to with this number, but when the prosecutor resumed questioning instead of doing that he asked again about the actual number, "My question for you is did Wade Funeral Home ever have $3,368,909.56 in payroll?" (10/22/24 p. 41). Of course the defense objected again, the Court again directed the prosecutor to ask the predicate question, and when the prosecutor did Mr. Wade said he had never seen the loan application being asked about before in his life. (10/22/24 p. 42). The prosecutor showed him other loan applications which he also testified he had never seen and was not familiar with. (10/22/24 p. 42). The prosecutor asked if the funeral home had ever had a payroll of $3 million, the defense objected to relevancy, the Court overruled the objection, and Mr. Wade testified in response to the prosecutor's questions that the funeral home never had a payroll of $3 million or 45 employees. (10/22/24 p. 43). The prosecutor was clearly referencing, in front of the jury, the uncharged loan documents it had asked Mr. Wade about that he had just testified he had never seen. (10/22/24 p. 43). The prosecutor asked Mr. Wade about the email from Ms. Concepcion to Ms. Granados, and he read it and that the subject Ms. Concepcion wrote was “Wade Funeral Home” and the amount was $701,873, but never said anything about his personal knowledge of that document and in fact when Mr. Wade asked to see the document again the prosecutor declined to show it to him and said “we’re moving on, sir”. (10/22/24 p. 44).

Then the prosecutor tried to ask Mr. Wade about the EIDL loans, which were what the Court had already excluded. The defense immediately objected and the parties went sidebar. (10/22/24 p. 45). The Court did not recall what loans were being talked about (to be fair, there were a lot of different loans being talked about), the defense explained these were the loans that had already been discussed and excluded with the applications stating hundreds of millions in revenue and expenses which were corrected pre-disbursement and then funded correctly based on the actual revenue and expenses and not charged. (10/22/24 pp. 45-46). The prosecutor claimed “I’m not going into this for 404(b). This is impeachment.” (10/24/24 p. 47). The prosecutor did not explain what testimony he believed this would impeach, nor had Mr. Wade testified to anything about any other loans including the EIDL loans. The prosecutor claimed this was relevant because “The heart of this case is false statements to the SBA. This is an application saying that Wade Funeral Home had

$465 million in gross revenue." (10/22/24 p. 48). The defense explained that the dollar amounts on the application were corrected before the loan was issued in the correct amount. (10/22/24 p. 49). The prosecutor said the original loan application went to Mr. Wade's credibility. The Court said "Now I'm getting into another trial. That's what troubles me . . . am I ever going to finish this case?" (10/22/24 pp. 49-50). The defense said this was also prejudicial and confused the issues under Rule 403. (10/22/24 p. 51). The Court said it would allow a few questions. (10/22/24 p. 51).

Back before the jury, the prosecutor asked and Mr. Wade acknowledged that he applied for a SBA loan in approximately 2020. (10/22/24 p. 52). The prosecutor asked if he put that the revenues for the business were $465 million and Mr. Wade said he never made that amount and that was a typo. (10/22/24 pp. 54-55). The prosecutor asked about the expenses saying $175 million and Mr. Wade said that was also a typo. (10/22/24 pp. 54-55). The prosecutor asked about another SBA application for the same loan which listed $350 million in revenue and $250 million in expenses and Mr. Wade said those were also typos. (10/22/24 pp. 55-56). Mr. Wade said he spoke with the SBA multiple times on recorded conversations about this loan, he provided accurate tax documents, and the loan was funded and was currently being repaid properly. (10/22/24 p. 56). The prosecutor then asked about all five loans again (the two charged PPP loans for Mr. Wade and Ms. Wade, the two SBA loan applications, and the PPP loan application for Wade Funeral Home that Mr. Wade said he had never seen) again. (10/22/24 p. 58). The "few questions" the Court allowed turned into 38 questions about these uncharged loans spanning eight transcript pages.

In closing the Government explicitly argued the Wade Funeral Home PPP loan application and the SBA loan applications as 404(b) evidence of guilt in this case, saying in part "that's four typos, two on one application and two on another. Do you believe that, or is that someone who's trying to get as much as he possibly can from the SBA during the Covid pandemic? It's evidence of intent. It's evidence of lack of [mistake]. This is someone who knew what he was doing." (10/22/24 p. 94).

On appeal, Mr. Wade will argue that the Court erred by allowing the Government to introduce evidence of the substance of these uncharged loan applications, some via Haydee Granados in the Government case in chief and much more via Mr. Wade on cross-examination. The admission of this evidence was contradictory to the (correct) earlier ruling that it was inadmissible, and it greatly prejudiced Mr. Wade, which was the entire reason the Government sought to admit it. It is not entirely clear, at least to undersigned counsel, on what basis the Court ultimately admitted this evidence, since it never explicitly modified its ruling that it did not come in under Rule 404. The government argued it was impeachment but never identified any actual testimony of Mr. Wade it allegedly impeached (and there was none as Mr. Wade had never testified about any other loans). In closing, the Government explicitly used this as 404(b) evidence, which was plainly their intention all along, arguing these other uncharged loan applications were evidence of intent and lack of mistake, which are rationales for admission of 404(b) evidence.

The Court's initial ruling that this evidence was not admissible under 404(b) was correct. A court abuses its discretion when it admits evidence of a prior bad act that does not satisfy the following criteria: 1) the evidence must be relevant to an issue other than character; 2) the evidence must be accompanied by sufficient proof that a jury could find that the defendant committed the extrinsic act; and 3) the probative value of the evidence must not be substantially outweighed by its undue prejudice. *United States v. Whatley*, 719 F.3d 1206, 1217 (11^{th} Cir. 2013). At least prongs 2 and 3 were not satisfied here.

There was no evidence whatsoever introduced at any time sufficient to link Mr. Wade to the $700,000 Wade Funeral Home PPP application. He denied having ever seen the application, the government's own witness Haydee Rivero said in proffer that she heard from her husband that another person, Odalys Concepcion, prepared it. Emails about it were sent between Ms. Rivero and Ms. Concepcion. The government presented no proof whatsoever that Mr. Wade had anything to do with this application. As to the EIDL loans with the multimillion dollar amounts, the government also provided no proof sufficient to demonstrate that Mr. Wade committed any bad act. He also denied seeing these applications, and when asked about the numbers the prosecutor said were on the applications (which were not admitted, so all we have is the prosecutor's allegations) he said they must have been typos and that he provided his real tax returns and the loan was funded properly. The government provided no evidence to the contrary. There was no evidence whatsoever as to how any incorrect figures got on the loan documents, or that Mr. Wade, as opposed to someone preparing the documents on his behalf, placed them there. The government certainly knew how to present such evidence—they did it in the charged crime, providing IP addresses and device type logins that matched Mr. Wade as well as Docusign information showing Mr. Wade viewed and signed the applications. One could reasonably assume that if such evidence existed as to the uncharged loans, which were undoubtedly applied for on internet platforms that preserved this information about the users logging in to the accounts, the Government would have obtained and presented it. Whatever the actual reason they didn't do so, the fact is they did not. Absent such evidence being presented as to the uncharged loans, the Government simply did not meet its burden to introduce extrinsic prior bad acts evidence. The question is whether the jury could "reasonably find the . . . fact [at issue] by a preponderance of the evidence". *Huddleston v. United States*, 485 U.S. 681, 690 (1988). Here there was no evidence, let alone a preponderance, to show that Mr. Wade applied for, participated in, or knew about any false information in these uncharged loan applications. *See United States v. Lockhart*, CR422-115, 2023 U.S. Dist. LEXIS 127132, 2023 WL 4707136 (S.D. Ga. July 24, 2023) ("in the Court's view, there is not sufficient proof to enable a jury to find by a preponderance of the evidence that Defendant committed the acts in question" which were an auto theft where the victim's credit cards were stolen and the defendant tried to use the credit cards, as "this evidentiary leap is a bridge too far for the Court to conclude a sufficient basis exists for the jury to find that Defendant was the actor"). At most here the Government had some proof (via what prosecutors said was in unintroduced loan applications, which they also did not seek to admit conditionally to allow appellate review of this issue) that somebody applied for loans in Tracy Wade's name with inaccurate information. Coupled with the fact that it was undisputed that other people including the Government's cooperating witness Haydee Rivero were applying for loans for Tracy Wade or his businesses at the relevant timeframe, and Ms. Rivero was manufacturing and uploading false financial documents to multiple loan applications including the Wades', this is plainly insufficient to demonstrate that Mr. Wade inputted the incorrect information or knew about it, which is the fact that would need to be proved by a preponderance by evidence introduced by the Government prior to potential admissibility.

To the extent there was any probative value to the uncharged loan evidence, it was far outweighed by the prejudicial effect that this had on Mr. Wade's ability to get a fair trial on the charged crimes. The prosecutor, vested in the natural authority of the Government in a United States courtroom, was accusing Mr. Wade of having knowingly lied on other loan applications based on undisclosed-to-the-jury information the prosecutor claimed to be privy to. These uncharged crimes were far more serious than the charged $20,833 loan, as purportedly Mr. Wade was trying to defraud the Government out of hundreds of thousands of dollars on multiple occasions. Mr. Wade had no real opportunity to defend himself against these allegations, as he had already been advised by the Court this evidence was inadmissible.

This sort of extrinsic evidence is akin to the Government introducing evidence of uncharged armed robberies when a defendant is on trial for shoplifting. When the alleged uncharged crimes are much worse than the charged crime, the prejudice is that much more severe. *See United States v. Williams*, 205 F.3d 23, 34 (2nd Cir 2000) ("we find no undue prejudice under Rule 403; the evidence did not involve conduct more serious than the charged crime and the district court gave a proper limiting instruction"). The prejudice is also greater here because the jury only heard the Government's version of events rather than being able to independently evaluate the evidence, particularly what link there was between the alleged prior crimes and Mr. Wade. The jury naturally would assume that if the Government was permitted to ask Mr. Wade about these other crimes, and purportedly read from papers documenting them, that there was actual evidence he applied for or knew about the prior loans—but as far as the record actually discloses, there was no such evidence. Prejudice is also apparent from the use the Government made of the prior loans—arguing in closing that Mr. Wade was guilty of this crime as the uncharged loans showed he was "someone who's trying to get as much as he possibly can from the SBA during the Covid pandemic" and "is someone who knew what he was doing." (10/22/24 p. 94). That was precisely the disputed issue at trial. The Government should have had to prove Mr. Wade's knowledge by evidence related to the charged crimes, not prejudicial innuendo about uncharged crimes.

If instead the Court admitted the uncharged loan evidence as impeachment, which logically would make sense as the Court had mostly denied its admission during the government case in chief (other than the emails purportedly about the $700,000 Wade Funeral Home PPP loan it allowed the Government to introduce and discuss during Haydee Rivero's testimony), and the Government had explicitly said it would therefore reserve the right to use it as impeachment, this was also error. "A witness's credibility may be impeached by a prior inconsistent statement so long as 'the statements are indeed inconsistent.'". *United States v. Frye*, 243 Fed. Appx. 575, 576 (11th Cir. 2007) (*quoting United States v. Hale*, 422 U.S. 171 (1975). "In order to introduce a prior inconsistent statement, 'the court must be persuaded that the statements are indeed inconsistent'". *United States v. Simpkins*, 240 Fed. Appx. 334, 342 (11th Cir. 2007) (*quoting Hale* at 176).

Here Mr. Wade never testified about any prior or uncharged loans. He never said "I never before submitted false documents to the Government" or "I never before applied for a business or personal loan from the Government" or anything along those lines. Therefore there was no prior statement inconsistent with the uncharged loan applications which would allow the Government to use them for impeachment, nor did the Government identify any, although they did make an unsupported argument that they were seeking to use the uncharged crime evidence as impeachment. (10/24/24 p. 47). The Court mentioned that a defendant's prior convictions are not normally admissible but become admissible if he testifies (10/22/24 p. 37), but that is not relevant to the issue as these were not prior convictions, they were uncharged prior alleged bad acts. Prior convictions are governed by Federal Rule of Evidence 609, which permits their use to impeach witness. There is no similar rule of blanket admission for prior uncharged crimes or bad acts.

Sometimes specific acts of conduct may be admissible on cross-examination if probative of the truthfulness or untruthfulness of a witness. Fed. R. Evid. 608(b). The defense does not believe the threshold was met to even ask about the uncharged loans, since the Government did not have evidence that Mr. Wade was involved with or knew about those loans, as discussed above. Furthermore, another district court in this Circuit has denied the admission of very similar evidence under 608(b). In *Jenifer v Fleming, Ingram, & Floyd P.C.*, CV 106-139, 2008 U.S. Dist. LEXIS 17740 (S.D. Ga. Mar. 7, 2008), the Court wrote:

> The law is well settled that under Fed. R. Evid. 608(b), a witness may not be impeached on a collateral matter with extrinsic evidence. *United States v. Calle*, 822 F.2d 1016, 1021 (11th Cir. 1987); *United States v. Herzberg*, 558 F.2d 1219, 1223-24 (5th Cir. 1977). Moreover, prior wrongful acts that do not result in criminal convictions are ordinarily collateral matters. *Herzberg*, 558 F.2d at 1223. Here, assuming without deciding that there was some wrongful act performed in association with Plaintiff's tax returns, there has been no showing that there has been a criminal conviction regarding such acts. Therefore, evidence or testimony on the impropriety or alleged intentional fabrication of Plaintiff's tax returns is not admissible.

Furthermore, admission of evidence under 608(b) is subject to Rule 403 and "must still outweigh the danger of unfair prejudice, confusion of the issues, or misleading the jury." *First Weber Group, Inc. v. Horsfall*, 738 F.3d 767, 778 (7th Cir. 2013); *Ad-Vantage Tel. Directory Consultants v. GTE Directories Corp.*, 37 F.3d 1460, 1464 (11th Cir. 1994) (Rule 403 applies to evidence sought to be admitted under Rule 608(b)). For the reasons already discussed, prejudice far outweighed probative value here.

However, ultimately all of this is irrelevant because under rule 608(b) impeachment, "[i]f the witness denies the conduct, such acts may not be proved by extrinsic evidence and the questioning party must take the witness' answer." *United States v. Garza*, 172 Fed. Appx. 983, 989 (11th Cir. 2006). Here when the prosecutor asked Mr. Wade about the uncharged loans he denied making them or knowing about them. The only way that the prosecutor got into the details of the loan applications and the dollar amounts allegedly put in them and got that information before the jury was by reading from the documents after this denial of knowledge from Mr. Wade. The prosecutor did not take Mr. Wade's answer and used extrinsic evidence, the actual loan documents, to impeach him. This is explicitly prohibited when evidence is admitted under Rule 608(b) to impeach a witness's general truthfulness, per the plain language of the rule. *See United States v. Carthen*, 906 F.3d 1315, 1321 (11th Cir. 2018) ("Rule 608(b) provides that extrinsic evidence other than a criminal conviction is 'not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness'."). Thus, the uncharged loan evidence could not possibly have been properly admitted under Rule 608(b) as its procedures were not followed (nor did the prosecution move for admission on this basis). As there is no remaining valid basis for admission, the admission of this evidence was error.

The theory that the defense opened the door is also unavailing. The defense asked Ms. Granados about an email that Mr. Wade sent Ms. Granados with his drivers license, social security card, and a void check. Ms. Granados said she forwarded this email to another woman who, according to hearsay from her husband, was working on a business PPP loan for Mr. Wade. Ms. Granados did not claim she knew this from Mr. Wade or that Mr. Wade said anything to her about intending for her to forward the email for a business loan. This question may have opened the door for the Government to ask Ms. Granados what she did with the email, but it did not open the door to substantive testimony about the contents of the Wade Funeral Home PPP loan, and certainly did not open the door to testimony about the separate multimillion dollar EIDL loans.

The foregoing demonstrates that the erroneous admission of the uncharged loan evidence is a valid, non-frivolous legal issue on appeal. It is likely to succeed because this inadmissible evidence was so prejudicial given its substance along with the subject matter of the case, and the Government explicitly relied on it as evidence of guilt in closing. They had very little to rebut Mr. Wade's defense that he did not have knowledge of the fraud their own witness Ms. Granados was undisputedly committing, and so they used this extrinsic, inadmissible evidence that Mr. Wade had supposedly attempted to defraud the Government on other loan applications, despite having no admissible evidence that he had anything to do with those other loan applications. This Court should therefore find that the requirements of 18 U.S.C. § 3143(b)(1)(B) have been met and allow Mr. Wade to remain at liberty while the Eleventh Circuit decides this issue.

2. Error in Failing to Give a Standard Good Faith Jury Instruction As the Defense Requested..

Prior to trial, the Court advised the defense that if they ultimately wanted a good faith instruction there would need to be a factual basis for it, usually the testimony of the defendant. (10/7/24 p 7). The prosecutor said that they did not believe the good faith defense was applicable to the false statement counts in any event, and the Court said it would deal with it later. (10/7/24 p. 8).

After Mr. Wade did testify, and said as outlined above that he relied on Haylee Granados to accurately complete the charged PPP loan application, and when the parties were discussing the jury instructions, the Court said that it had not heard testimony that would raise the good-faith defense, and the defense said "it would be our position that based upon the trust that Mr. and Mrs. Wade had with the Riveros that we believe that there's at least . . . Well, they trusted them. They were long-time friends, business—not partners but they did a lot of business together, and they made representations to them that they believed, that they relied on in good faith." (10/21/24 pp. 196-97). The Court said it did not think the good faith defense had been raised. (10/21/24 p. 197). The Government again said it did not believe that good faith applied to the false statement counts because "[t]here's no intent to defraud in the false statements and therefore the good-faith defense would not apply". (10/21/24 p. 197). The Government did not object to a good faith instruction on the other counts. The next day, the Court revisited the good faith defense issue and asked if the parties had any cases and said it was willing to listen if the defense had anything new. (10/22/24 p. 66). The defense attorneys did not say anything and the Court said "All right. Hearing no argument on that issue, we will remove the good-faith defense instruction." (10/22/24 p. 67). The Court read the jury instructions without a good faith instruction. (10/22/24 pp. 145-46) (portion of instructions where good faith appeared in written instructions, showing Court did not read it). The written jury instructions filed after trial do include the good faith instruction, though undersigned counsel does not know if the jury received that version of the instructions as they deliberated. (D.E. 186 p. 18).

Mr. Wade intends to argue on appeal that it was error to refuse to give the requested good faith jury instruction. This is a standard jury instruction. 11th Circuit Pattern Jury Instructions S17. Standard jury instructions, particularly as to defenses, are supposed to be given if there is any evidence to support them. This is what the 5h Circuit, which at the time was the federal appellate court covering Florida, said in *United States v. Goss*, 650 F.2d 1336, 1344 (5th Cir. 1981) ("We have often held that, if there is any evidentiary support whatsoever for a legal defense, and the trial court's attention is specifically directed to that defense, the trial judge commits reversible error by refusing thus to charge the jury. . . . On the record presented we cannot say that there was no evidentiary basis upon which the defendants could rest a good faith defense."). The *Goss* Court reversed for failure to give the good faith instruction. *Goss* has not been overruled, although the Eleventh Circuit in *United States v. Andreatta*, 737 Fed. Appx. 925, 932 (11th Cir. 2018) noted that cases since *Goss* have not used the "any evidence" standard and look to whether the good-faith instruction was duplicative of other instructions given in determining if error was harmless. Therefore the failure to give the instruction has been found harmless error if the substance was covered by other instructions, as occurred in *Andreatta* (although "the government conceded at oral argument it should not have objected to the good-faith instruction, and the District Court 'would have been wiser' to give the requested instruction", *Andreatta* at 932).

Here the defense position is that the other instructions on intent, which included definitions of specific intent to defraud, knowledge, and willfulness, did not adequately cover what the good faith instruction did and under the specific facts of this case the failure to give the instruction was reversible error. Admittedly, in *Andreatta* the Eleventh Circuit relied on the same other intent instructions to say that not giving the good faith instruction was not reversible error, but the facts in *Andreatta* were not the same as this case. In *Andreatta* the good faith claim was that the defendant relied on her boss saying she could use other corporate employees corporate credit cards for personal expenses in exchange for having sex with the boss. The boss testified and denied this happened. *Andreatta* at 926-28. Here the good faith claim is that Mr. Wade relied on a person (Haydee Granados) who held herself out as an expert in PPP loans, and completed at least 18 other PPP loans for other people besides the Wades, and who testified and acknowledged that she was the one who uploaded the fraudulent documents for the PPP loan. This seems to be substantially more evidence of legitimate good faith than existed in *Andreatta*.

The good faith instruction would have told the jury that "an honestly held opinion or honestly formed belief cannot be fraudulent intent", even if that belief is mistaken, and that "evidence of a mistake in judgment, an error in management, or carelessness can't establish fraudulent intent". (D.E. 186 p. 18). This is far more defense-friendly (in addition to being legally accurate) language than that "knowingly" means "voluntarily and intentionally and not because of mistake of by accident" or that "willfully" means voluntarily and purposely, with intent to disobey the law. (D.E. 186 p. 20). The good faith language excuses honest opinions and beliefs, not just mistakes, and the "faith" language directly applies to the facts of this case where Mr. Wade put his faith in a purported expert in the subject matter.

Even if the government was correct that the good faith defense did not apply to the false statements counts, it did apply to the other specific intent/willfulness counts. It is therefore still the case that, if the Eleventh Circuit agrees with the defense, the result would be a reversal and an order for a new trial, at least on some counts. Thus the requirements of 18 U.S.C. § 3143(b)(1)(B) are satisfied and this Court should stay the jail sentence and permit Mr. Wade to remain at liberty pending the disposition of his appeal by the Eleventh Circuit.

Conclusion.

For the foregoing reasons, Mr. Wade respectfully requests that the Court grant him permission to remain at liberty pending the disposition of his pending appeal. The requirements of 18 U.S.C. § 3143 are satisfied. Mr. Wade is not any risk of flight or danger to the community, and he has legitimate, non-frivolous appellate issues. The defense does not expect or ask the Court to change or disagree with its own rulings, but because there is a reasonable likelihood of success on appeal and other judges could disagree with those rulings, and the appeal is clearly not being brought for purposes of delay or frivolity, this Court should grant this motion. If the appeal is unsuccessful, Mr. Wade will have to surrender to serve the 90-day jail sentence. But if it is successful, he will never be able to get that time away from his wife, daughter, business, and community back. The facts, as well as the equities, therefore weigh in favor of granting this motion.

Respectfully submitted,

s/ Daniel Tibbitt______
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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August, 2025, I electronically filed the foregoing with the Clerk of Court for the Southern District of Florida using the CM/ECF system, and served a copy on counsel for the government, Assistant United States Attorney David Snider, as well as all persons registered for electronic service through the CM/ECF system.

s/ Daniel Tibbitt______
Daniel Tibbitt