

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OMOYOMA OKORO, Petitioner

vs.

UNITED STATES OF AMERICA, Respondent

PETITION FOR WRIT OF CERTIORARI

In the United States Court of Appeals for the Third Circuit: Appeal Number 24-2824,
On Appeal from the judgment entered in the United States District Court for the
Middle District of Pennsylvania, on Sept. 14, 2024, at 1:19-CR-183, (Wilson, J.)

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QUESTION PRESENTED (Rule 14.1(a))

The lower court misapprehended the Compulsory Process Clause of the Sixth Amendment and the Due Process Clause of the Fifth Amendment, both of which were violated by the Government when the Government's inaction or action caused the key witness to leave the United States prior to trial, thereby depriving the Petitioner of an opportunity to interview, subpoena, and/or confront this exculpatory witness.

PARTIES TO THE PROCEEDING

Pursuant to Supreme Court Rule 14.1(b), the parties to the proceeding in the court whose judgment is sought to be reviewed are:

1. Omoyoma Okoro, Petitioner, is an individual and has no corporate status or stock ticker symbol.
2. United States of America, Respondent, is a sovereign nation and has no stock ticker symbol.

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IN THE SUPREME COURT OF THE UNITED STATES

OMOYOMA OKORO, Petitioner

vs.

UNITED STATES OF AMERICA, Respondent

PETITION FOR WRIT OF CERTIORARI

Petitioner, Omoyoma Okoro, respectfully asks that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit: Appeal Number 24-2824 filed on March 18, 2026, on Appeal from the judgment entered in the United States District Court for the Middle District of Pennsylvania, on September 14, 2024, at 1:19-CR-183, (Wilson, J.)

OPINION BELOW

The opinion of the United States Court of Appeals for the Third Circuit, which was unpublished, was issued on February 24, 2026, and is attached as Appendix A. The United States Court of Appeals for the Third Circuit's judgment order and Entry of Judgment are attached as Appendix B.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254. The decision of the United States Court of Appeals for the Third Circuit, for which the petitioner seeks review, was issued on February 24, 2026. The Third Circuit's order denying the petitioner's timely request for review was filed on February 24, 2026. This petition is filed within 90 days of the Third Circuit's denial of review, under Rules 13.1 and 29.2 of this Court.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The lower court misapprehended the Compulsory Process Clause of the Sixth Amendment and the Due Process Clause of the Fifth Amendment, both of which were violated by the Government when the Government's inaction or action caused the key witness to leave the United States prior to trial, thereby depriving the Petitioner of an opportunity to interview, subpoena, and/or confront this exculpatory witness.

STATEMENT OF CASE

Petitioner was charged by Indictment on June 5, 2019, with Mail Fraud Affecting a Financial Institution, in violation of 18 U.S.C. §1341; Wire Fraud Affecting a Financial Institution, in violation of 18 U.S.C. §1343; and Bank Fraud, in violation of 18 U.S.C. §1344.

Mr. Okoro, who came to the United States on a work visa in 2013 and became a U.S. citizen in December 2018, was arrested. After a detention hearing on May 13, 2019, he was released to home confinement in the Middle District of North Carolina while awaiting trial.

The United States claimed that the acts underlying the Indictment occurred between 2007 and 2011 in the Middle District of Pennsylvania and in other countries, including Canada, the UK, South Korea, China, and Singapore. The information that eventually led to Mr. Okoro's indictment originated on August 24, 2018, when Henry Okpalefe, a convicted felon from an earlier case involving this same Attorney Scam, met with Postal Service Inspectors. He clearly hoped to gain favor with U.S. authorities and seek relief from his August 6, 2018, sentence of 324 months, which resulted from his 14 convictions in the Middle District of Pennsylvania.

During his post-sentence “proffer” with the United States, Okpalefe disclosed that he could hack into the email accounts of Omoyoma Okoro’s older brother and once-co-defendant Omoeife Okoro without their knowledge for an extended period. During this proffer, Okpalefe told investigators that he had not seen Mr. Omoyoma Okoro – your instant Defendant and the younger brother of Omoeife Okoro – since 2009, some ten years prior to this instant Indictment. Okpalefe continued during his proffer to assert that “Oma Okoro” still lives in Nigeria and that he “believes” that Oma and Siri [another unindicted Okoro sibling] have worked together with

Omoeffe Okoro on fraud schemes, including the Attorney Scheme, which gave rise to the Indictment for which this appeal concerns.

Okpalefe even claimed he is “certain” that “Omo” uses email Omaokoro2001@yahoo.co.uk and, without any basis, insisted that the “Oma” in the Attorney Scam email is “Omo” Okoro, the Petitioner. During his post-sentence allocution, agents of the United States showed Okpalefe at least 28 documents. After reviewing these documents without mentioning Omoyoma Okoro, he abruptly stated, “Omo Okoro is Efe’s brother,” despite having no contextual clues.

It is also noteworthy that Okpalefe requested a similar meeting with the United States on August 24, 2018, after receiving a 324-month sentence, which the government considered. During this post-sentence proffer, which Okpalefe disavowed on March 14, 2023, the statement was again made that “Okoro’s brother’s email address is OMAOKORO2001@yahoo.co.uk”, without context.

Petitioner argues that, based on information from or related to Okpalefe, certain emails were examined, and the government’s case against Petitioner hinges on the claim that an email from bickvick@yahoo.com to omaokoro2001@yahoo.co.uk, containing “Happy Birthday greetings,” was sent directly by Omoyoma Okoro’s wife to him at omaokoro2001@yahoo.co.uk. The United States notes that this email was sent on March 6, 2005—in the same year Omoyoma Okoro was born on March 6, 1974.

Procedurally, around September 16, 2019, the United States initiated proceedings to join Omoyoma Okoro and Omoeffe Okoro for trial in the United States District Court for the Middle District of Pennsylvania.

Omoeffe Okoro, who was indicted on similar charges on September 26, 2012, did not oppose the joinder. The United States supported its motion for joinder by claiming that the Defendants were brothers involved in the same acts or transactions that formed the basis of the offense or offenses. The court approved the joinder of the Okoro brothers on September 17, 2019.

On February 23, 2023, Omoeffe Okoro filed a motion to dismiss his indictment, citing violations of his Sixth Amendment rights under the Speedy Trial Act. Notably, he had been detained and indicted for over ten years. On March 31, 2023, the District Court granted his motion, dismissing the indictment due to a breach of his Speedy Trial rights. Shortly after the dismissal, Omoeffe Okoro, lacking any legal authorization to stay in the U.S., returned to Canada.

Because the United States failed to promptly bring Omoeffe Okoro to trial, he was dismissed from this case. As a result, Omoyoma Okoro had to proceed without the chance to have his former co-defendant and brother, Omoeffe, testify on his behalf. The unavailability of Omoeffe is solely due to the United States, which prejudiced Omoyoma by preventing him from presenting a key defense. Omoeffe would have testified that he did not associate the email omaokoro2001@yahoo.co.uk with Omoyoma. The inability to call this witness, caused by the government's violation of Omoeffe's constitutional right to a speedy trial and his subsequent departure from the U.S., constitutes a due process violation for which Omoeffe is not responsible. The potential for exculpatory testimony was lost due to this violation, thereby impacting Omoyoma's right to a fair defense.

On March 27, 2019, a Criminal Complaint was filed charging the Petitioner with conspiracy to commit bank, mail, and wire fraud under 18 U.S.C. § 371, covering the period from 2008 to 2010. Subsequently, on June 6, 2019, a five-count Indictment was issued, accusing

the defendant of conspiracy to commit mail, wire, and bank fraud, in violation of 18 U.S.C. § 1349, during approximately 2007 to 2011 (Count 1). The indictment also included charges of mail fraud (Count 2), wire fraud (Counts 3 and 4), and bank fraud (Count 5), with specific dates in January 2010. On May 13, 2019, Okoro was released under pretrial supervision.

Around September 16, 2019, the United States moved to join Omoyoma Okoro and Omoeffe Okoro in the trial in the U.S. District Court for the Middle District of Pennsylvania.

Omoeffe Okoro, who was indicted on similar charges on September 26, 2012, did not oppose the joinder. The United States argued in favor of joining the cases, claiming that the defendants were brothers who were involved in the same acts or transactions that constituted the offenses. The court approved the joinder of the Okoro brothers on September 17, 2019.

On February 23, 2023, Omoeffe Okoro petitioned the District Court to dismiss his indictment, citing violations of his Sixth Amendment rights under the Speedy Trial Act. Notably, he had been incarcerated and indicted for over a decade, and on March 31, 2023, the Court granted his motion, dismissing the indictment due to a breach of his Speedy Trial rights. Shortly after the dismissal, Omoeffe Okoro was in Canada. Omoyoma, represented by counsel, filed both pretrial and posttrial motions challenging the admissibility of evidence, the right to a speedy trial, and due process, all of which were denied.

On September 15, 2023, the defendant was convicted on Counts 1 through 5 of the Indictment after a four-day jury trial. He was sentenced on September 19, 2024, to 100 months in the Bureau of Prisons, along with restitution of \$22,565,929.18. The defendant has filed a timely appeal.

The Third Circuit of the United States Court of Appeals dismissed the petitioner's argument on its merits and upheld his sentence (Appendices A-B).

REASONS FOR GRANTING THE PETITION

The finding of the lower court, where the Government's conduct caused the key witness to leave the United States prior to trial without providing the Petitioner with an opportunity to interview, subpoena, and/or confront this exculpatory witness, is contrary to the Compulsory Process Clause of the Sixth Amendment and the Due Process Clause of the Fifth Amendment

The lower court misapprehended the Compulsory Process Clause of the Sixth Amendment and the Due Process Clause of the Fifth Amendment, both of which were violated by the Government when the Government's inaction or action caused the key witness to leave the United States prior to trial, thereby depriving the Petitioner of an opportunity to interview, subpoena, and/or confront this exculpatory witness.

The Sixth Amendment to the U.S. Constitution grants defendants in criminal cases the right to present favorable witnesses and to compel their attendance. This Court has interpreted the Compulsory Process Clause as including a defendant's right to introduce witnesses or evidence in support of their defense, emphasizing that this essential right is a vital part of our adversarial justice system. *Government of Virgin Islands v. Mills*, 956 F.2d 443, 445 (3d Cir. 1992); see *Taylor v. Illinois*, 484 U.S. 400, 408-9 (1988); and *Pennsylvania v. Ritchie*, 480 U.S. 39, 56 (1987) ("Our cases establish, at a minimum, that criminal defendants have the right to the government's assistance in compelling the attendance of favorable witnesses at trial and the right to put before a jury evidence that might influence the determination of guilt."). The Compulsory Process Clause protects the defendant's ability to present their case from unwarranted government interference, such as prosecutorial misconduct. *Mills*, 956 F.2d at 445.

This Court has analyzed the issue under both the Compulsory Process Clause of the Sixth Amendment and the Due Process Clause of the Fifth Amendment, applying the same test to both because “[t]here is apparently little, if any, difference in the analysis.” *Id.* at n.4; see also *United States v. Valenzuela-Bernal*, 458 U.S. 858, 872 (1982) (the Due Process Clause of the Fifth Amendment guarantees that a criminal defendant will be treated with the fundamental fairness essential to the concept of justice).

The lower court has held that, in order for a defendant to establish that he was convicted in violation of the Compulsory Process Clause of the Sixth Amendment and the Due Process Clause of the Fifth Amendment, the defendant must show: “First, that he was deprived of the opportunity to present evidence in his favor; second, that the excluded testimony would have been material and favorable to his defense; and third, that the deprivation was arbitrary or disproportionate to any legitimate evidentiary or procedural purpose.” *Mills*, 956 F.2d at 446. This Court has held that “sanctions will be warranted for deportation of alien witnesses if there is a reasonable likelihood that the testimony could have affected the judgment of the trier of fact.” *Valenzuela-Bernal*, 458 U.S. at 873-74.

Because Mr. Okoro and his counsel did not get the chance to question Omoeffe Okoro before his departure from the United States, evidence that his brother Omoeffe “did not associate” the email address omaokoro2001@yahoo.co.uk with his younger brother Omoyoma was not available at Petitioner’s trial. The Court examined this issue concerning a deported witness whom the defendant was unable to question. *Valenzuela-Bernal*, 458 U.S. at 866-71. In *Valenzuela-Bernal*, this Court held that the defendant must make “some plausible explanation

of the assistance he would have received from the testimony of the deported witness.” 458 U.S. at 871.

It is plausible that if Omoeffe had testified at his brother’s trial, the jury would have believed him, potentially leading to an acquittal.

The Government’s departure of Omoeffe without any notice to the Petitioner was arbitrary or disproportionate to any legitimate evidentiary or procedural purpose, and it violated the Petitioner’s right to a fair trial and his right to compulsory process for obtaining witnesses in his favor. The Government caused Omoeffe Okoro to leave the United States without any notice to the defense. It is noteworthy that Omoeffe had no legal right to stay in the United States, having arrived here by extradition from Canada.

Petitioner’s brother, Omoeffe Okoro, was his co-defendant. His case was dismissed due to a violation of the right to a speedy trial. As a result, he was legally required to leave the US and was no longer available to the Petitioner during the trial. Petitioner contends that this deprived him of a crucial witness and amounted to a due process violation.

Because Omoeffe Okoro was dismissed from the trial due to the United States’ failure to prosecute him promptly, Omoyoma Okoro had to proceed to trial without the opportunity to call his former co-defendant and brother in this case as a witness.

Omoeffe Okoro’s unavailability is entirely on the United States, and Omoyoma faces prejudice because he cannot present a proper defense, such as calling Omoeffe as a witness. The Fifth Amendment affirms a defendant’s right to due process, and the Sixth Amendment entitles him to “compulsory process for obtaining witnesses in his favor.” U.S. Const., Amdts. 5 & 6. Therefore, “when a material and favorable witness is under the government’s control, the government has a

certain degree of obligation to ensure that the witness is not rendered unavailable to the defendant.” *United States v. Hamilton*, 730 F.Supp. 1272, 1276 (S.D.N.Y. 1990).

The inability of Omoyoma Okoro to call a defense witness in a criminal case, not due to any fault of his but stemming from the United States’ infringement of a constitutional right, constitutes a due process violation. It is inherently unfair to have quasi-deported this witness without allowing the Petitioner an opportunity to interview, subpoena, or confront them. The government's actions resulting in the voluntary deportation of the witness violate due process because these exculpatory witnesses became inaccessible to the Petitioner.

In simple terms, the Government's violation of the co-defendant's speedy trial rights prevented Omoyoma Okoro from accessing exculpatory testimony, causing the witness to leave the country before trial.

The Government has held this key witness in detention for years before the trial, without giving the Petitioner a chance to interview, subpoena, or confront the witness. This conduct, which ultimately led to the witness's voluntary deportation, violates due process, as the exculpatory witnesses became unavailable to the Petitioner.

This Court has ruled that the government may deport “illegal-alien witnesses” only after making a “good-faith determination that they possess no evidence favorable to the defendant in a criminal prosecution.” *United States v. Valenzuela-Bernal*, 458 U.S. 858, 872 (1982). To show that the government violated the Petitioner's constitutional rights by deporting a witness, he needed only to make “some showing” that the witness's testimony would have been material and favorable. *Id.* at 873. To establish that this violation warrants dismissal of the indictment, the Petitioner needs only to show a “reasonable likelihood that the testimony could have affected the

judgment of the trier of fact.” Id. at 873-4. To satisfy the “reasonable likelihood” standard, he needs only to establish that the deported witnesses' testimony “might be expected to play a significant role” in [his] defense. *United States v. Nebraska Beef*, 194 F.Supp.2d 949, 960 (D.Neb. 2002), quoting *California v. Trombetta*, 467 U.S. 479, 488 (1984).

It is fundamentally unjust to keep a witness in the country without legal recourse and then charge them with another crime. Omoeffe’s quick departure to Canada, following the United States’ breach of his Speed Trial rights, made him unavailable after the District Court dismissed his case. The government's actions, which led to Omoeffe Okoro's voluntary departure—an attempted co-defendant with Omoyoma Okoro—violate due process because this exculpatory witness was then unavailable to the Petitioner, resulting in prejudice during his trial.

As a result, the Government denied Petitioner the chance to gather and present evidence and testimony in his defense during the trial. Therefore, the convictions should be declared invalid.

CONCLUSION

For the foregoing reasons, petitioner requests that this Court grant the petition for certiorari.

Dated: 5/20/26

Respectfully submitted,



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U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 24-2824

UNITED STATES OF AMERICA

v.

OMOYOMA OKORO,
Appellant

Appeal from U.S. District Court, M.D. Pa.
Judge Jennifer P. Wilson, No. D.C. Criminal No. 1:19-cr-00183-001)

Before: PORTER, FREEMAN, and CHUNG, *Circuit Judges*
Submitted Oct. 23, 2025

NONPRECEDENTIAL OPINION*

PORTER, *Circuit Judge*. Omoyoma Okoro was convicted of fraud after a jury trial. He was sentenced to 100 months in prison. He now claims that he was deprived of favorable witness testimony, convicted based on insufficient evidence, and sentenced for victim losses for which he is not responsible. For the reasons below, we will affirm the District Court's judgment.

I.

Okoro and his co-conspirators engaged in an elaborate fraud scheme through which they defrauded attorneys of millions of dollars. He was indicted for conspiracy to commit mail fraud, wire fraud, and bank fraud in violation of 18 U.S.C. § 1349 (Count

* This disposition is not an opinion of the full Court and, under I.O.P. 5.7, is not binding precedent.

APPENDIX A

1); mail fraud in violation of 18 U.S.C. § 1341 (Count 2); wire fraud in violation of 18 U.S.C. § 1343 (Counts 3 and 4); and bank fraud in violation of 18 U.S.C. § 1344 (Count 5). Okoro's case was originally joined with that of his brother and co-conspirator, Omoeffe Okoro (Omoeffe). The government later dismissed the indictment against Omoeffe on speedy trial grounds. *See United States v. Okoro*, No. 1:12-cr-241, 2023 WL 2742737 (M.D. Pa. Mar. 31, 2023). Omoeffe then, of his own accord, returned to his home country of Canada.

Okoro proceeded to trial, during which one of his co-conspirators, Henry Okpalefe, testified about Okoro's criminal activity and corroborated electronic evidence showing the same. From the first day of trial, Okoro sought to have Omoeffe testify remotely. After further investigation and discussion with counsel, the Court ruled on the second day of trial that Omoeffe could testify remotely only if he did so from a government facility in Canada, and that the government need not work with defense counsel to facilitate his testimony. The defense failed to so arrange Omoeffe's testimony. After the government rested, Omoeffe made no arrangements to testify remotely beyond telling defense counsel over the phone that he would "try to be available tomorrow." Supp. App. 823. The Court thus denied the defense's motion for Omoeffe to testify remotely. The defense then rested its case, and the jury convicted Okoro on every count of the indictment.

At sentencing, the District Court determined that Okoro's total offense level was 33. This accounted for his base offense level (7), a loss amount over \$9.5 million (+20), causing financial hardship to five or more victims (+4), and a substantial part of the

scheme committed outside the United States (+2), for a total level of 33. With zero criminal history points, an offense level of 33 yields a Guidelines range of 135 to 168 months.¹ The District Court departed downwards and sentenced Okoro to 100 months in prison followed by five years of supervised release. The Court also ordered Okoro to pay special assessments totaling \$500 and restitution of \$22,565,929.18. Okoro timely appealed.

II.²

On appeal, Okoro raises three challenges to his conviction. He argues that the government violated the Compulsory Process Clause of the Sixth Amendment and the Due Process Clause of the Fifth Amendment by deporting Omoeffe before trial. He also challenges the sufficiency of the evidence and the District Court's calculation of the loss amount. We address each issue in turn.

A.

The Sixth Amendment protects the right of a criminal defendant to offer the testimony of favorable witnesses and “to have compulsory process for obtaining

¹ Although Okoro was a zero-point offender, which ordinarily carries with it a two-level decrease, the District Court found that Okoro was disqualified from receiving that reduction under U.S.S.G. § 4C1.1(a)(6) because he personally caused financial hardship to one or more victims.

² The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 18 U.S.C. § 3742 and 28 U.S.C. § 1291. We review Compulsory Process Clause claims for harmless error. *Gov't of V.I. v. Mills*, 956 F.2d 443, 448 (3d Cir. 1992). Our standard of review on a challenge to the sufficiency of the evidence is plenary, but with substantial deference to the jury's verdict. *United States v. Boria*, 592 F.3d 476, 480 (3d Cir. 2010); see *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979). We review the District Court's findings of fact in support of its loss calculation amount for clear error. *United States v. Free*, 839 F.3d 308, 319 (3d Cir. 2016).

witnesses in his favor.” U.S. Const. amend. VI. This includes the defendant’s right to have the assistance of the government in “compelling the attendance of favorable witnesses at trial and the right to put before a jury evidence that might influence the determination of guilt.” *Pennsylvania v. Ritchie*, 480 U.S. 39, 56 (1987). To establish a compulsory process violation, Okoro must demonstrate “[f]irst, that he was deprived of the opportunity to present evidence in his favor; second, that the excluded testimony would have been material and favorable to his defense; and third, that the deprivation was arbitrary or disproportionate to any legitimate evidentiary or procedural purpose.” *Gov’t of V.I. v. Mills*, 956 F.2d 443, 446 (3d. Cir. 1992) (citing *Rock v. Arkansas*, 483 U.S. 44, 56 (1987)). A court applies harmless-error review when evaluating these claims, regardless of whether they are framed in terms of the Fifth or Sixth Amendment, as the standards are practically coextensive. *See id.* at 445 n.4, 448.

Okoro’s challenge fails at the first step because the government did not prevent him from obtaining his brother’s testimony. Okoro claims that the government “quasi-deported” Omoefe. *See* Appellant’s Br. at 19. But the government took no action to cause Omoefe to leave the country; it simply released him from prison pursuant to court order. Okoro does not allege that the government could have lawfully taken any action to compel Omoefe to remain in the country. Rather, Okoro has offered only the unsupported assertion that Omoefe is “legally unable” to return to the United States. App. at 31a.

Okoro did not alert anyone that he was seeking to present his brother’s testimony until the day of trial. His attorney did not speak to or otherwise contact Omoefe until the third day of trial. Even then, the Court tried to accommodate Okoro’s request by allowing

Omoefe to testify from a secure government location in Canada under the supervision of a government official. But Omoefe never arrived at the location. Under these circumstances, the Court was justified in denying Okoro's motion for Omoefe to testify remotely rather than waiting to see whether Omoefe's representation that he would "try to be available tomorrow" would come to fruition. *See* Supp. App. 823, 828.

As the government took no action to prevent Omoefe from testifying, it could not have "deprived [Okoro] of the opportunity to present evidence in his favor." *Mills*, 956 F.2d at 446. Further, Okoro cannot show that the evidence Omoefe would have offered—that he did not associate Okoro with one of the email addresses at issue in the fraud scheme—would have been "material and favorable" to his defense. *See id.* Indeed, while counsel proffered that Omoefe *might* give this testimony, he admitted to the Court that Omoefe had not given him "a straight answer" on this point during their conversations. Supp. App. at 674. Because Okoro cannot show what Omoefe's testimony would have been, much less how it would have held up on cross-examination, he cannot satisfy the "material and favorable" prong of *Mills*. 956 F.2d at 446. Finally, because the government did not deprive Okoro of his brother's testimony, we need not consider whether "the deprivation was arbitrary or disproportionate to any legitimate evidentiary or procedural purpose." *Id.* Okoro cannot establish the elements required for a compulsory process violation, so his claim must fail.

B.

When evaluating a sufficiency-of-evidence challenge, the Court considers "the record in the light most favorable to the prosecution and asks only whether *any*

‘reasonable juror could accept the evidence as sufficient to support the conclusion of the defendant’s guilt beyond a reasonable doubt.’” *United States v. Jacobs*, 21 F.4th 106, 112 (3d Cir. 2021) (quoting *United States v. Caraballo-Rodriguez*, 726 F.3d 418, 430–31 (3d Cir. 2013) (en banc)). This standard sets a high bar, and Okoro cannot meet it.

Okoro argues that the jury lacked the evidence it needed to conclude he was the “actual person operating and writing emails from omaokoro2001@yahoo.co.uk.”

Appellant’s Br. at 22. Even though the emails were authenticated, the testimony about them came largely from Okoro’s co-conspirator Okpalefe, who Okoro argues was not credible due to his self-serving motivation for testifying for the government.

Additionally, Okoro maintains that Okpalefe has never met him at all, much less witnessed him send an email from the address in question.

These assertions, however, cannot overcome the “no reasonable juror” standard. The testimony given by Okpalefe was detailed and comprehensive, outlining his telephone and in-person conversations with Okoro in which they discussed the attorney collection scheme. Okpalefe also showed the jury evidence that Okoro sent personal emails through omaokoro2001@yahoo.co.uk, using characteristic speech patterns and referring to family members that Okpalefe knew personally. This evidence gave the jury more than ample grounds to link Okoro to the attorney collection scheme and to find Okoro guilty. Accordingly, Okoro’s sufficiency-of-the-evidence challenge fails.

C.

At sentencing, the government must establish the loss amount (which need only be a “reasonable estimate”) by a preponderance of the evidence. *United States v. Free*, 839

F.3d 308, 319 (3d Cir. 2016). We review for clear error a District Court's factual findings supporting its calculation of the loss amount. *Id.*

The District Court found that the loss amount was \$22,565,929.18 based on a detailed spreadsheet of the losses of each of the 78 victims and the co-conspirators who caused the loss to each victim. The District Court also cited the evidence presented by the government at trial as a basis for its decision. Okoro argues that only \$6,756,632 of the loss can be attributed to him because "he was not aware of all the numerous other activities being undertaken" by his co-conspirators and thus should not be held responsible for the full extent of the loss they caused. Appellant's Br. at 26. But this is contrary to the voluminous evidence presented at trial demonstrating that Okoro frequently communicated with his co-conspirators about the larger fraud scheme and jointly engaged with them in criminal activity. Okoro's bare assertions that he did not know what exactly his co-conspirators were up to is not enough to show that the District Court clearly erred in calculating the loss amount resulting from his conspiracy.

* * * * *

We will AFFIRM the District Court's judgment of conviction.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

OMOYOMA OKORO

§ JUDGMENT IN A CRIMINAL CASE

§

§

§ Case Number: 1:19-CR-00183-JPW(1)

§ USM Number: 34822-057

§ Michael O. Palermo

§ Defendant's Attorney

THE DEFENDANT:

☐	pleaded guilty to count(s)	
☐	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court,	
☐	pleaded nolo contendere to count(s) which was accepted by the court	
☒	was found guilty on count(s) after a plea of not guilty	1-5

The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:1349 Conspiracy To Commit Mail Fraud, Wire Fraud, and Bank Fraud	01/01/2011	1
18:1341 Mail Fraud Affecting A Financial Institution	01/01/2011	2
18:1343 Wire Fraud Affecting A Financial Institution	01/01/2011	3
18:1343 Wire Fraud Affecting A Financial Institution	01/01/2011	4
18:1344 Bank Fraud	01/01/2011	5

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s)
- ☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

September 19, 2024

Date of Imposition of Judgment

Signature of Judge

JENNIFER P. WILSON
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

September 19, 2024

Date

APPENDIX B

AO 245B (Rev. PAM 9/19) Judgment in a Criminal Case

Judgment -- Page 2 of 7

DEFENDANT: OMOYOMA OKORO
CASE NUMBER: 1:19-CR-00183-JPW(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
One hundred (100) months. This sentence consists of a sentence 100 months on each of Counts 1 through 5 to run concurrently.

☒ The court makes the following recommendations to the Bureau of Prisons:
The court recommends placement at FCI Butner, NC.

☐ The defendant is remanded to the custody of the United States Marshal.
☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on October 4, 2024.
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

AO 245B (Rev. PAM 9/19) Judgment in a Criminal Case

Judgment -- Page 3 of 7

DEFENDANT: OMOYOMA OKORO
CASE NUMBER: 1:19-CR-00183-JPW(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: Five (5) years which consists of five years on Counts 1 and 5 and three years on Counts 2 through 4 to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
☒ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

AO 245B (Rev. PAM 9/19) Judgment in a Criminal Case

Judgment -- Page 4 of 7

DEFENDANT: OMOYOMA OKORO
CASE NUMBER: 1:19-CR-00183-JPW(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakis or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.
14. You must notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

AO 245B (Rev. PAM 9/19) Judgment in a Criminal Case

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DEFENDANT: OMOYOMA OKORO
CASE NUMBER: 1:19-CR-00183-JPW(1)

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant must cooperate in the collection of a DNA sample.
2. The defendant must apply all monies received from income tax refunds, lottery winnings, judgments, and/or other anticipated or unexpected financial gains to the outstanding court-ordered financial obligation.
3. The defendant must provide the probation officer access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.
4. The defendant must not incur new credit charges, or open additional lines of credit without the approval of the probation officer.
5. The defendant must pay the financial obligation in accordance with the Schedule of Payments sheet of this judgment. He must also notify the Court of any changes in economic circumstances that might affect the ability to pay this financial obligation.
6. The defendant must submit his person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The defendant must warn any other occupants that the premises may be subject to searches pursuant to this condition. A probation officer may conduct a search under this condition only when reasonable suspicion exists that there is a violation of a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.
7. If deported or removed, the defendant must remain outside the United States, unless legally authorized to reenter. Supervision will be on a non-reporting basis. If the defendant reenters the United States, the defendant must report to the nearest probation office within 72 hours after his return.

AO 245B (Rev. PAM 9/19) Judgment in a Criminal Case

Judgment -- Page 6 of 7

DEFENDANT: OMOYOMA OKORO
CASE NUMBER: 1:19-CR-00183-JPW(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	\$500.00	\$22,565,929.18	\$0.00	\$0.00	

- ☐ The determination of restitution is deferred until after such determination. An Amended Judgment in a Criminal Case (AO245C) will be entered.
- ☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(f), all nonfederal victims must be paid before the United States is paid.

See attached pages

- ☐ Restitution amount ordered pursuant to plea agreement \$
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- | | | |
|--|-------------------------------|--|
| ☒ the interest requirement is waived for the | ☐ fine | ☒ restitution |
| ☐ the interest requirement for the | ☐ fine | ☐ restitution is modified as follows: |

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245B (Rev. PAM 9/19) Judgment in a Criminal Case

Judgment -- Page 7 of 7

DEFENDANT: OMOYOMA OKORO
CASE NUMBER: 1:19-CR-00183-JPW(1)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payments of \$ 22,566,429.18 due immediately, balance due
☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$500.00 for Counts 1, 2, 3, 4 and 5, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. During the term of imprisonment, the restitution is payable every three months in an amount, after a telephone allowance, equal to 50 percent of the funds deposited into the defendant's inmate trust fund account. In the event the restitution is not paid in full prior to the commencement of supervised release, the defendant shall, as a condition of supervised release, satisfy the amount due in monthly installments of no less than \$200, to commence 30 days after release from confinement.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☒ Joint and Several
Restitution, if denoted in the victim list, is to be paid jointly and severally with restitution which has been imposed in the cases of Emmanuel Ekhaton (1:10CR000244-001), Kingsley Osagie (1:11CR000138-002), and Henry Okpalefe (1:12CR00240-001). Payment of interest is waived. No further payment shall be required after the sum of the amounts actually paid by all defendants have fully covered the compensable losses.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JYTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

REVISED VICTIM LIST

	Victim Name	Restitution	J & S With
1	Alpern, Myers & Stuart	\$891,572.67	Okpalefe/Ekhator/Osagie
2	Atchison, Barisione, Condotti, & Kovacevich	\$301,000.00	Okpalefe/Ekhator
3	Backer, Glenn	\$330,500.00	Okpalefe/Ekhator
4	Bartko, Gregory	\$197,530.00	Okpalefe
5	Berstein, Shur, Sawyer and Nelson	\$315,600.00	Okpalefe/Osagie
6	Bervar & Jones	\$469,500.00	Okpalefe
7	Bogart, Jeffrey	\$137,000.00	Okpalefe/Ekhator/Osagie
8	Bole, David	\$490,000.00	Okpalefe
9	Bradford, Charles	\$359,900.00	Okpalefe/Ekhator
10	Bressler, Amery & Ross PC	\$556,736.00	Okpalefe
11	Briggs, Jeffrey	\$488,000.00	Okpalefe/Ekhator
12	Brown, Marianne	\$195,000.00	Okpalefe/Ekhator
13	Bruder, Dale	\$295,000.00	Okpalefe
14	Buckley, White, Castaneda & Howell	\$182,500.00	Okpalefe
15	Bunger & Robertson	\$178,937.50	Okpalefe
16	Burney, Nathaniel	\$184,700.00	Okpalefe
17	Cameron & Mittleman LLP	\$420,570.00	Okpalefe
18	Chugh, Navneet	\$249,600.00	Okpalefe/Ekhator/Osagie
19	The Estate of Ned Cohn	\$380,550.00	Okpalefe/Ekhator/Osagie
20	Collier, Stanton	\$356,520.26	Okpalefe/Ekhator
21	Cooper & Lee LLC	\$989,461.00	Okpalefe
22	Davison Law Firm	\$315,000.00	Okpalefe/Ekhator/Osagie
23	Derosé, Aladean	\$170,613.50	Okpalefe/Ekhator
24	Dunlap, Grubb & Weaver	\$96,120.00	Okpalefe/Ekhator
25	Edwards, Angel, Palmer & Dodge	\$400,600.00	Okpalefe/Osagie
26	Ellis, Painter, Ratterree & Adams	\$275,000.00	Okpalefe/Ekhator
27	Foster, John R.	\$98,600.00	
28	Frankle, Alan	\$248,940.35	Okpalefe/Ekhator
29	Gan Law Group	\$244,278.00	Okpalefe/Ekhator/Osagie
30	GiarMarco, Mullins & Horton, P.C.	\$98,590.24	Okpalefe
31	Giefke, Madelaine	\$80,000.00	Okpalefe/Ekhator
32	Henry, McDonald & James	\$210,000.00	Okpalefe/Ekhator
33	Hoogendoorn & Talbot, Lip	\$98,590.24	Okpalefe
34	Huntley, Donald	\$186,389.21	Okpalefe/Ekhator
35	Janssen, Joseph	\$80,000.00	Okpalefe/Ekhator
36	Kupperman, Stephen	\$396,240.00	Okpalefe/Ekhator
37	Lightner, John	\$484,630.00	Okpalefe/Ekhator
38	Marengo, Christopher	\$302,780.00	Okpalefe
39	McBeth, Anthony	\$275,000.00	Okpalefe/Ekhator/Osagie
40	Methven, Bruce	\$337,400.25	Okpalefe/Ekhator/Osagie
41	Milavetz, Gallop & Milavetz	\$396,500.00	Okpalefe/Ekhator
42	Nicholas Law Firm LLC	\$863,140.00	Okpalefe
43	Nicolai Law Group PC	\$375,430.00	Okpalefe
44	Oh, Regi	\$235,000.00	Okpalefe/Ekhator

45	Orrick, Herrington & Sutcliffe LLP	\$473,580.00	Okpalefe/Ekhator/Osagie
46	Orrill, Cordell & Beary LLC	\$337,200.00	Okpalefe/Ekhator
47	Page, Joseph	\$98,600.00	Okpalefe/Ekhator/Osagie
48	Parker, Pollard, Wilton & Peadon	\$217,680.00	Okpalefe/Ekhator
49	Pepper Hamilton LLP	\$249,600.00	Okpalefe
50	Perrotta, Cahn & Prieto	\$185,000.00	Okpalefe
51	Peter E Perettine Law Firm	\$249,600.00	Okpalefe/Ekhator
52	Ridgeway, Robert	\$157,850.00	Okpalefe/Osagie
53	Risley, Gary	\$340,664.00	Okpalefe
54	Ropes And Gray	\$98,540.24	Okpalefe
55	Rosenfeld Law Group	\$460,950.00	Okpalefe/Ekhator
56	Rosenthal, Michael	\$293,900.00	Okpalefe/
57	Routt, Paul	\$251,225.00	Okpalefe/Osagie
58	Rudloff & Rudloff LLC	\$624,795.00	Okpalefe
59	Rueggsegger, Simons, Smith And Stern	\$455,600.00	Okpalefe/Osagie
60	Schell, Cooley LLP	\$247,750.00	Okpalefe/Ekhator/Osagie
61	Schenck, Prince, Smith & King	\$248,595.00	Okpalefe
62	Schroder, Fidlow & Titley PLC	\$334,711.00	Okpalefe/Ekhator
63	Shurtleff, Froeschener, Harris	\$392,918.00	Okpalefe
64	Spooner & Perkins	\$344,000.00	Okpalefe/Ekhator/Osagie
65	Steffensen, David	\$274,398.75	Okpalefe/Ekhator
66	Stevens & Lee	\$253,145.00	Okpalefe/Ekhator
67	Tanner, Blaine	\$250,000.00	Okpalefe/Ekhator
68	Teeple Hall, LLP	\$398,450.00	Okpalefe/Osagie
69	Waesche, Sheinbaum & O'Regan, P.C.	\$98,590.27	Okpalefe
70	Wakeman, Robert	\$354,660.00	Okpalefe/Ekhator
71	Wallace, Jordan & Ratliff & Brandt	\$180,937.70	Okpalefe/Ekhator/Osagie
72	White & Williams LLP	\$226,470.00	Okpalefe/Ekhator
73	Wu, Felix	\$227,500.00	Okpalefe
	TOTAL	\$22,565,929.18	

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	Crim. No. 1:19-CR-0183
	:	
	:	
v.	:	
	:	
	:	
OMOYOMA OKORO	:	Judge Jennifer P. Wilson

ORDER

Before the court is a motion to set aside the verdict based on newly discovered evidence filed by Defendant Omoyoma Okoro (“Okoro”). (Doc. 146.) Following a five-day jury trial, Okoro was found guilty on all counts in the indictment. Now, Okoro moves for a new trial based on newly discovered evidence – specifically, his brother’s proposed testimony that Okoro did not associate with the email address at the center of the Government’s case. For the reasons stated herein, Okoro’s motion is denied.

BACKGROUND¹

A criminal complaint was filed against Okoro on March 27, 2019. (Doc. 1.) Okoro was arrested on April 3, 2019, and released with conditions following a detention hearing on May 13, 2019. On June 6, 2019, the Government filed a five-count indictment against Okoro alleging one count of conspiracy to commit mail

¹ Because the court is writing for the benefit of the parties, the court only provides the facts necessary to resolve the pending motion.

fraud affecting a financial institution, wire fraud affecting a financial institution, and bank fraud in violation of 18 U.S.C. § 1349 (Count 1); one count of mail fraud affecting a financial institution in violation of 18 U.S.C. § 1341 and § 2 (Count 2); two counts of wire fraud affecting a financial institution in violation of 18 U.S.C. § 1343 and § 2 (Counts 3 and 4); and one count of bank fraud in violation of 18 U.S.C. § 1344 and § 2 (Count 5). (Doc. 19.)

After the indictment was returned, on September 17, 2019, the Government filed a motion for joinder of trial, along with a brief in support, to join Okoro with his brother's federal criminal case for trial. (Docs. 31, 32.) Because it was concurred in by Okoro, the court granted the Government's motion. (Doc. 33.) Trial was continued many times for a variety of reasons with a date-certain trial scheduled to begin on April 17, 2023. (Doc. 73.) However, on March 31, 2023, the court dismissed the indictment against Okoro's brother, Omoeefe Okoro ("Omoeefe"), for violation of his Sixth Amendment right to a speedy trial. *See United States v. Okoro*, No. 12-cr-241, 2023 WL 2742737 (M.D. Pa. Mar. 31, 2023). On April 3, 2023, Okoro requested to continue trial because of the changed circumstances in his case given that his brother's case was dismissed. (Doc. 78.) The court granted Okoro's request and set a new trial date on September 11, 2023. (Doc. 80.)

Following a five-day jury trial, Okoro was convicted on all five-counts in the indictment. (Doc. 120.) Okoro filed the pending motion for a new trial on February 2, 2024. (Doc. 146.) The Government filed a brief in opposition on February 21, 2024, and Okoro submitted a reply brief on April 15, 2024.

STANDARD OF REVIEW²

Federal Rule of Criminal Procedure 33 permits the filing of a motion for a new trial based on newly discovered evidence, which must be filed within three years of the jury's verdict. To succeed on a motion for new trial based on newly discovered evidence, the defendant must prove:

(a) [T]he evidence must be in fact newly discovered, i.e., [] discovered since trial; (b) facts must be alleged from which the court may infer diligence on the part of the movant; (c) the evidence relied on must not be merely cumulative or impeaching; (d) it must be material to the issues involved; and (e) it must be such, and of such nature, as that, on a new trial, the newly discovered evidence would probably produce an acquittal.

United States v. Schneider, 801 F.3d 186, 201–02 (3d Cir. 2015) (quoting *United States v. Quiles*, 618 F.3d 383, 388–89 (3d Cir. 2010)).

² The court notes that Okoro does not indicate an applicable standard of review in his motion. Under Federal Rule of Criminal Procedure 29, Okoro's post-trial motion is untimely. FED. R. CRIM. P. 29(c) (providing that a motion for judgment of acquittal must be filed within fourteen days of the verdict). However, because the motion argues that the verdict should be set aside based on newly discovered evidence, the court will examine the motion in accordance with Federal Rule of Criminal Procedure 33. FED. R. CRIM. P. 33(b) (providing that the time to file a motion for a new trial based on newly discovered evidence is three years).

DISCUSSION

In his motion, Okoro recounts the circumstances of the dismissal of Omoeffe Okoro's case. (Doc. 146, pp. 2–3.)³ In Omoeffe's case, the court held that Omoeffe's Sixth Amendment right to a speedy trial was violated as the indictment was pending approximately 10.5 years and he was in pretrial detention for nearly six years without a trial. *See United States v. Okoro*, No. 12-cr-241, 2023 WL 2742737 (M.D. Pa. Mar. 31, 2023). Thus, the court dismissed the indictment with prejudice. *Id.* Okoro submits that “[w]ithin hours of his case being dismissed, Omoeffe Okoro left the United States as his deportation was imminent.”⁴ (Doc. 146, p. 3.) Okoro provided his counsel with contact information for Omoeffe during his trial in an effort to have Omoeffe testify without entering the United States. (*Id.*) When counsel raised this idea with the court during trial, the court “voiced concern about the conditions under which Omoeffe would testify from Canadian soil and the Court’s ability to ensure his testimony would continue after his direct examination.” (*Id.*) Because conditions for remote testimony could not be established, Omoeffe did not testify at Okoro’s trial. (*Id.* at 4.)

Following the jury verdict, Okoro asked his counsel to speak with Omoeffe while “presumably” still located in Canada. (*Id.*) Counsel submits that he has

³ For ease of reference, the court uses the page numbers from the CM/ECF header.

⁴ The court notes that Omoeffe is a resident of Canada. *Okoro*, 2023 WL 2742737 at *1.

spoken to Omoeffe twice and that Omoeffe provided the electronic communication attached to Okoro's motion. (*Id.* at 4; Doc. 146-1.) Okoro summarizes the newly discovered evidence as follows: "exculpatory testimony of a witness who was *physically* unavailable for trial . . . [with] direct and personal knowledge that Omoeffe Okoro, a charged co-conspirator, did not associate the email address: omaokoro2001@yahoo.co.uk, with his brother, Omoyoma Okoro." (Doc. 146, p. 4 (emphasis in original).) Because the identity of the individual operating the omaokoro2001@yahoo.co.uk email account was one of the central issues in the case, Okoro submits that this newly discovered evidence justifies a new trial. (*Id.* at 4-5.)

In opposition, the Government first points out that Omoeffe's email to Okoro's counsel does not reference a specific email account. Thus, at best, the court is being asked to infer that Omoeffe is referencing omaokoro2001@yahoo.co.uk. (Doc. 150, p. 1.) The email and motion are also silent as to whether Omoeffe would appear in person to testify at any future trial. (*Id.* at 2 n.1.) Given the guidance provided by the court during trial as to the steps that would be necessary to enable Omoeffe to testify remotely, the Government submits that a refusal of Omoeffe to appear in person is an additional reason that this newly discovered evidence is not likely to produce an acquittal for Okoro. (*Id.*)

The Government then specifically addresses the five-part test for obtaining a new trial based on newly discovered evidence. (*Id.* at 4–9.) The Government submits that the evidence is not new and could have been discovered if Okoro had been diligent in uncovering the evidence and presenting it during the first trial. (*Id.* at 5.) The evidence is not new because, at trial, Okoro denied that he controlled the omaokoro2001@yahoo.co.uk email account and strongly implied that Omoeffe and other members of his family did not associate him with that email account. (*Id.* at 7.) Thus, in the Government’s view, this “new” evidence was already presented to the jury. (*Id.* at 7–8.)

As to Okoro’s diligence, the Government argues that both brothers have been on notice since at least February 2020 following the filing of a motion in limine that the Government “associated them with specific email addresses and, even more to the point, intended to argue that the brothers themselves associated each other with those email addresses.” (*Id.* at 6.) Following the dismissal of Omoeffe’s case on March 30, 2023, and prior to Okoro’s trial on September 11, 2023, there were almost six months during which Okoro could have discussed the option of Omoeffe appearing to testify at trial and the substance of his testimony. (*Id.* at 6–7.) Additionally, during this time, both brothers were aware that the Government would argue at trial that Omoeffe “sent emails to the omaokoro2001@yahoo.co.uk email address under the belief that he was

communicating with his own brother.” (*Id.* at 7.) Thus, the Government submits that Okoro has failed to allege facts that show diligence on his part to discover this evidence prior to trial. (*Id.*)

Further, the Government asserts that this proposed testimony would be impeaching to both brothers. The Government states: “If Omoeffe Okoro were to testify that he did not associate Omoyoma Okoro with the relevant email address, Omoeffe Okoro would be cross-examined at great length about the numerous emails they exchanged with one another, including, for example, about their mother’s flight itinerary from Nigeria to Toronto and about their joint effort to procure a fraudulent passport for Omoyoma to travel to Canada.” (*Id.* at 8.) Thus, the Government argues that Omoeffe’s testimony would “almost certainly be harmful,” rather than helpful, to Okoro. (*Id.*)

Lastly, the Government submits that based on “a mountain of evidence showing that Omoyoma Okoro continuously operated the omaokoro2001@yahoo.co.uk email address from the early 2000s through at least 2010,” there is no basis to believe that this newly discovered evidence would be likely to produce an acquittal. (*Id.* at 2–4.) The Government then summarized the evidence presented at trial that connected Okoro to the omaokoro2001@yahoo.co.uk email address and noted that Okoro offered no

evidence to the contrary at trial, “instead simply engaging in blanket denials through counsel.” (*Id.* at 3.)

In his reply brief, Okoro acknowledges the five-part test and argues that the evidence is truly newly discovered. (*See* Doc. 156.) Okoro submits that the statement that he did not associate with the email address in question was never disclosed by Omoefe to Okoro’s counsel before or during trial. (*Id.* at 2.) He also argues that:

given the Defense theory, that being that Mr. Omoyomo [sic] Okoro was not the author and thus not controlling the email address in question, the jury would have been made aware of evidence that Defendant’s own brother was not using the account in question to contact Omoyoma Okoro – this providing a direct source of testimony on which a jury could most likely produce an acquittal of Omoyomo [sic] Okoro.

(*Id.* at 2–3.)

For the remainder of his reply brief, Okoro discusses the access of Omoefe to a courtroom in the United States. (*Id.* at 3–6.) Okoro recites the history of Omoefe’s “legal journey” and submits that it is “understandable” that Omoefe was “unwilling and legally unable to travel to the United States for his brother’s trial in September 2023 and thus provide the proffered evidence on the record.” (*Id.* at 4.) Omoefe has also expressed fear in returning to the United States based on his prior pre-trial detention experience. (*Id.*) For these reasons, Okoro argues that it is rational that Omoefe did not immediately provide this information to Okoro. (*Id.*)

Okoro further submits that it is the Government that caused Omoefe's unavailability at trial and believes Omoefe's statement is completely exonerating. (*Id.* at 5.)

Finally, Okoro distinguishes *United States v. Jasin*, 280 F.3d 355, 368 (3d Cir. 2002), in which the Third Circuit held that "a codefendant's testimony known to the defendant at the time of trial cannot be considered 'newly discovered evidence' under Rule 33, regardless of the codefendant's unavailability during trial because of invocation of his Fifth Amendment privilege." Okoro argues that Omoefe was not unavailable due to invocation of his Fifth Amendment privilege, rather, it was due to "his previous experience/treatment while in the United States." (*Id.* at 5–6.)

Analyzing the five elements required to grant a new trial based on newly discovered evidence, the court finds that Okoro fails to meet his burden. No party disputes that the fourth element is met—that the alleged newly discovered evidence is material to the issues involved in this case. Rather, this analysis hinges on whether the evidence is in fact newly discovered, whether Okoro was diligent in

obtaining this evidence, and whether the evidence would probably produce an acquittal.⁵

As to the first and second elements, the court finds that this evidence is not newly discovered and that Okoro was not diligent in obtaining or providing this evidence. Okoro denied throughout trial that he controlled the email address in question and that his family associated him with that email address. Further, as detailed by the Government, Okoro (and Omoefe) were aware that the Government associated Okoro with the omaokoro2001@yahoo.co.uk email address since at least February 2020. Between Omoefe's release on March 30, 2023, and Okoro's trial on September 11, 2023, Okoro could have made efforts to elicit and obtain this evidence in support of his defense. If, as he claimed at trial, Okoro knew his family did not associate him with that email address, he should have been diligent in securing Omoefe's testimony prior to trial.

During this six-month interval, Okoro and his counsel could have tried to make arrangements for Omoefe to testify remotely. Instead, on the first day of trial, defense counsel advised the court that Okoro would like to call Omoefe as a defense witness. Counsel represented that he just learned about this request from

⁵ The court need not address whether the evidence is exculpatory as argued by Okoro or impeaching as submitted by the Government because Okoro fails to meet other elements of the five-part test.

Okoro and that he would attempt to contact Omoeffe to arrange video testimony. On the second day of trial, Okoro again requested that Omoeffe be permitted to testify by remote means as he was in Canada. The Government objected to this request, raising concerns about the ability to assess the credibility of the witness and the lateness of the request. The court noted that there was a logistical concern because Omoeffe was not within the United States so the court could not assure the security and completeness of the testimony. The court did not rule on the request, but noted that remote testimony would not be permitted unless it was in a secure government location. On the third day of trial, defense counsel advised that he spoke with Omoeffe and obtained from him a government location from which Omoeffe could testify. Counsel contacted that government office to attempt to arrange remote testimony, but had not yet heard back. The court again deferred ruling on the request.

Finally, on the fourth day of trial, Okoro made a motion to allow Omoeffe to testify remotely from the Halton Crown Attorney Office in Ontario, Canada. As of 8:58 a.m., no response had been received from James Cappolino, the contact at the Halton Crown Attorney Office, regarding the logistics of such testimony. The Government argued that it would be prejudiced by permitting Omoeffe to testify remotely as credibility could not be properly assessed. The court permitted defense counsel additional time to reach Mr. Cappolino, however, he had not been

reached by the conclusion of the lunch break. The court then denied the motion for Omoeffe to testify remotely, applying Federal Rule of Criminal Procedure 15(a) and finding that the court was not assured that there were adequate procedural safeguards to verify that the jury would be able to adequately assess the credibility of the witness.

Regarding the fifth element, the court does not find that this evidence would probably produce an acquittal. As the Government outlined in its brief, there was a substantial amount of evidence presented that tied Okoro with the omaokoro2001@yahoo.co.uk email address. And, while the court takes counsel's representation on its face that the electronic communication attached to the post-trial motion is, in fact, from Omoeffe, there is no signature, email address, or other means of authenticating that the email is actually from Omoeffe. Additionally, the email does not mention a specific email address that Okoro is "not associated with." The email simply states that "I Omoeffe Okoro will testify for the defendant that I do to associate him with a certain email account." (Doc. 146-1.) Thus, the parties and the court are merely inferring that the email is regarding the address in question of omaokoro2001@yahoo.co.uk.

There is also the issue of whether Omoeffe would testify at a new trial. As explained above, during the trial, Okoro indicated that Omoeffe wished to testify on his brother's behalf from Canada as he could not or would not re-enter the United

States. The court identified a series of steps to ensure that the testimony would reliably continue past direct examination if Omoeffe testified on Okoro's behalf. Those conditions were not met and counsel never called Omoeffe to testify. Now, the electronic communication states: "I made my intentions to testify clear during his trial and I am willing to testify going forward." (Doc. 146-1.) This statement still provides no indication that Omoeffe would appear in the United States to testify at a trial in person or comply with conditions to ensure procedurally appropriate remote testimony if permitted by the court.

Lastly, the court notes that there is an inherent credibility issue with Omoeffe's proposed testimony. Omoeffe and Okoro are brothers and alleged co-conspirators in the attorney collection scheme that is the subject of the criminal charges. This creates an inherent credibility concern with Omoeffe's testimony because Omoeffe no longer risks prosecution for the attorney collection scheme as his indictment was dismissed on Sixth Amendment grounds. This credibility issue, taken with the other reasons identified by the court, lessens the likelihood that this new testimony "would probably produce an acquittal."

CONCLUSION

Therefore, the court concludes that Okoro has not met the heavy burden of proving that this alleged newly discovered evidence supports granting a new trial. For the reasons stated herein, **IT IS ORDERED THAT** the motion to set aside the verdict based on newly discovered evidence, Doc. 146, is **DENIED**.

s/Jennifer P. Wilson
JENNIFER P. WILSON
United States District Judge
Middle District of Pennsylvania

Dated: September 9, 2024

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	Crim. No. 1:19-cr-0183
	:	
	:	
v.	:	
	:	
	:	
OMOYOMA OKORO	:	Judge Jennifer P. Wilson

MEMORANDUM

Before the court is a motion to dismiss filed by Defendant O moyoma Okoro (“Okoro”) in advance of trial. (Doc. 84.) Okoro asserts that the indictment should be dismissed based on the applicable statute of limitations and because the Government violated his due process rights under the Fifth and Sixth Amendments. (*Id.*) Because the court finds that Okoro fails to meet his burden, the motion will be denied.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A criminal complaint was filed against Okoro on April 27, 2019. (Doc. 1.) Okoro was arrested on April 3, 2019, and released with conditions following a detention hearing on May 13, 2019. On June 6, 2019, the Government filed a five-count indictment against Okoro alleging one count of conspiracy to commit mail fraud affecting a financial institution, wire fraud affecting a financial institution, and bank fraud in violation of 18 U.S.C. § 1349 (Count 1); one count of mail fraud affecting a financial institution in violation of 18 U.S.C. § 1341 and § 2 (Count 2);

two counts of wire fraud affecting a financial institution in violation of 18 U.S.C. § 1343 and § 2 (Counts 3 and 4); and one count of bank fraud in violation of 18 U.S.C. § 1344 and § 2 (Count 5). (Doc. 19.)

In the indictment filed on June 6, 2019, it is alleged that Okoro was a resident of Nigeria prior to 2013. (Doc. 19, p. 1.)¹ Between on or about 2007 and 2011, within this District and elsewhere, it is alleged that Okoro conspired with others to engage in an “attorney collection scheme” to commit various crimes including mail fraud and wire fraud affecting a financial institution, and bank fraud. (*Id.* at 3–4.) It is alleged that Okoro, along with others, attempted to “fraudulently obtain more than \$60 million from approximately 150 victim lawyers and law firms, and did, in fact, fraudulently obtain more than \$20 million from more than 90 victim lawyers and law firms via the ‘attorney collection scheme.’” (*Id.* at 4.)

The indictment alleges five overt acts for the conspiracy at Count 1. On or about August 13, 2008, Okoro and “his co-conspirators caused victim attorney R.G. of the G.L.G. law firm in Carlisle, Pennsylvania to wire \$244,278 to the Korea Exchange Bank.” (*Id.* at 5.) On or about August 14, 2008, Okoro emailed “Conspirator #1 which reported that G.L.G. sent \$244,278 to the Korea Exchange Bank.” (*Id.*) On or about February 3, 2010, Okoro “received an e-mail from

¹ For ease of reference, the court uses the page numbers from the CM/ECF header.

Conspirator #1 with the subject “AZA” which contained information for several bank accounts, including Account Number 4750401-0188-24461-1 at the Bank of China.” (*Id.*) On or about February 5, 2010, Okoro and “his co-conspirators caused victim attorney J.B. to wire \$234,086 to Account Number 4750401-0188-244661-1 at the Bank of China.” (*Id.*) Lastly, on or about February 5, 2010, Okoro emailed “Conspirator #1 indicating that victim attorney J.B. wired \$234,086 to Account Number 4750401-0188-244661-1 at the Bank of China.” (*Id.* at 6.)

As to Count 2, the indictment alleges that on or about January 12, 2010, Okoro committed mail fraud affecting a financial institution by mailing a counterfeit check for \$350,000 to attorney A.M. in Harrisburg, Pennsylvania from Toronto, Canada, using DHL. (*Id.* at 6–7.) The alleged affected financial institutions are Citibank and M&T Bank. (*Id.* at 7.)

Counts 3 and 4 of the indictment allege that Okoro committed wire fraud affecting a financial institution by sending two emails dated January 5, 2010, and January 19, 2010. (*Id.* at 7–8.) Those emails were sent from Manny Chen, mcmchen9@gmail.com, to attorney A.M., atmlaw1@verizon.net. (*Id.* at 8.) The January 5, 2010 email, which provides the basis for Count 3, generally requested legal representation and a retainer agreement. (*Id.*) The January 19, 2010 email, which provides the basis for Count 4, provides instructions to wire \$275,000 to

“ABN AMRO Bank, NV Singapore, Global Vision LTD, Acct. #05 03 12 928.”

(*Id.*) Both emails are alleged to have affected Citibank and M&T Bank. (*Id.*)

Lastly, regarding Count 5, it is alleged that Okoro committed bank fraud by using false and fraudulent pretenses to cause a counterfeit Citibank check payable to attorney A.M. in the amount of \$350,000 to be deposited into attorney A.M.’s trust account at M&T Bank in Harrisburg, Pennsylvania. (*Id.* at 9–10.) The false and fraudulent pretenses further caused \$275,000 of that counterfeit check to be transferred by wire to “ABN AMRO Bank, NV Singapore, Global Vision LTD, Acct. #050312928 on or about 1/19/10.” (*Id.*)

On September 17, 2019, the Government filed a motion for joinder of trial, along with a brief in support, to join Okoro and Omoeffe Okoro’s federal criminal case for trial. (Docs. 31, 32.) Omoeffe Okoro concurred in the joinder request, but Okoro’s counsel did not respond to attempts by the Government to obtain concurrence or non-concurrence. (Docs. 31-1, 31-2.) The court granted the Government’s motion on the same day.² (Doc. 33.) Trial was continued many times for a variety of reasons with a date-certain trial scheduled to begin on April 17, 2023. (Doc. 73.) However, on March 31, 2023, the court dismissed the indictment against Omoeffe Okoro for violation of his Sixth Amendment right to a

² This case was initially assigned to Judge Sylvia H. Rambo but was reassigned to the undersigned on April 11, 2022. (Doc. 55.)

speedy trial. *See United States v. Okoro*, No. 12-cr-241, 2023 WL 2742737 (M.D. Pa. Mar. 31, 2023). On April 3, 2023, Okoro requested to continue trial because of the changed circumstances in his case now that his brother's case was dismissed. (Doc. 78.) The court granted Okoro's request and set a new date-certain for trial on September 11, 2023. (Doc. 80.)

Okoro filed the instant motion to dismiss the indictment on July 12, 2023, as well as brief in support on July 20, 2023. (Docs. 84, 85.) The Government filed a brief in opposition on August 3, 2023, and Okoro filed a reply brief on August 18, 2023.³ Thus, this motion is ripe for review.⁴

³ On August 10, 2023, Okoro filed an additional brief that is identical to his original brief in support. (*Compare* Doc. 85, *with* Doc. 90.) Because these briefs are identical, the court will only consider the original brief in support, Doc. 85, in addition to the reply brief, Doc. 91.

⁴ In his motion, Okoro requests a hearing, but does not specify why a hearing is needed. Because the court is not required to make any factual findings to resolve this motion, the court denies Okoro's request.

DISCUSSION

Okoro argues two different theories for dismissal of this case, which will be addressed in turn.⁵

A. Statute of Limitations

Okoro asserts that the overt acts alleged in the indictment are outside the ten-year statute of limitations and, thus, the indictment should be dismissed “as to the conduct and alleged loss that was outside of the ten-year statute of limitations.”

(Doc. 84, pp. 4–5; Doc. 85, pp. 2–3.)

While it is unclear whether Okoro challenges all counts in the indictment, the Government submits that all counts are within the applicable ten-year statute of limitations. (Doc. 88, pp. 4–7.) As to Count 1, the Government argues that the ten-year statute of limitations for an ongoing conspiracy does not begin to run until the “last act is done in furtherance of the conspiracy.” (*Id.* at 5.) The Government submits that the alleged conspiracy spanned from 2007 to 2011 and the indictment alleges overt acts that occurred on February 3, 2010, and February 5, 2010. (*Id.* at 5–6.) Further, the Government asserts that the evidence at trial will establish

⁵ Okoro also raised a “habeas corpus” claim arguing that the indictment was deficient under Federal Rule of Criminal Procedure 12. (Doc. 84, pp. 9–11.) However, in his reply brief, Okoro conceded this issue, stating: “The United States’ Indictment of Omoyoma on its face unquestionably states an offense against him. At this point in the proceedings that would appear to be legally enough . . . and the next step is a trial on the merits.” (Doc. 91, p. 7.) Thus, the court considers the request to dismiss the indictment based on habeas corpus relief withdrawn and will not rule on that issue.

additional acts in furtherance of the conspiracy that occurred in September 2010. (*Id.* at 6.) Regarding Counts 2 through 5, the Government acknowledges that Okoro does not seem to challenge the statute of limitations. However, to the extent he does, the Government submits that the applicable statute of limitations is ten years, and the alleged conduct took place in 2010, which was within the statute of limitations. (*Id.* at 6–7.)

Under 18 U.S.C. § 3293, the statute of limitations for offenses under 18 U.S.C. §§ 1344, 1341 or 1343 if the offense affects a financial institution, or a conspiracy to commit these offenses, is ten years. For a conspiracy offense, the statute of limitations begins to run “when the conspirators commit the last overt act in furtherance of the conspiracy.” *United States v. Hoffecker*, 530 F.3d 137, 157 (3d Cir. 2008) (citing *United States v. Jake*, 281 F.3d 123, 129 n.6 (3d Cir. 2002)).

Regarding Count 1, the indictment alleges a conspiracy that took place between on or about 2007 and 2011 under Section 1349 to violate Sections 1341 and 1343, mail and wire fraud affecting a financial institution, and 1344, bank fraud. (Doc. 19, pp. 3–6.) The indictment alleges five overt acts on dates ranging from August 13, 2008, through February 5, 2010. (*Id.* at 5–6.) The conduct that occurred ten years prior to the indictment, i.e. after June 6, 2009, is squarely within the statute of limitations. Furthermore, the alleged conduct that occurred prior to June 6, 2009, is properly included because the statute of limitations did not begin

to run until the last overt act alleged in furtherance of the conspiracy took place, which is alleged to have occurred on February 5, 2010. Therefore, the conduct alleged in Count 1 is within the statute of limitations, and dismissal of this count is not required.

Count 2 alleges a violation of Section 1341, mail fraud affecting a financial institution, on or about January 12, 2010. (Doc. 19, pp. 6–7.) Counts 3 and 4 allege a violation of Section 1343, wire fraud affecting a financial institution, on or about January 5, 2010, and January 19, 2010. (*Id.* at 7–8.) Lastly, Count 5 alleges a violation of Section 1344, bank fraud, on or about January 19, 2010. (*Id.* at 9–10.) Thus, the conduct alleged in Counts 2 through 5 of the indictment, which was filed on June 6, 2019, clearly falls within the applicable ten-year statute of limitations such that dismissal of Counts 2 through 5 is not required.

B. Due Process

Next, Okoro asserts that his due process rights have been violated because the Government deported his brother and former co-defendant, Omoefe Okoro, to Canada upon his release from custody. He asserts that his brother would have been a witness on his behalf at trial. (Doc. 84, pp. 6–8; Doc. 85, pp. 3–6.) Citing the Fifth and Sixth Amendments, Okoro submits that because Omoefe Okoro was a material witness for Okoro and under the Government’s control, the Government had an obligation to ensure that Omoefe Okoro was not made unavailable for trial.

(Doc. 84, p. 7; Doc. 85, pp. 4–5.) Okoro argues that there was a reasonable likelihood that Omoefe Okoro would have played a significant role in Okoro’s defense. (Doc. 84, pp. 7–8; Doc. 85, pp. 5–6.) Now, because Omoefe Okoro is unavailable, Okoro asserts that his due process rights have been violated if his indictment is not dismissed. (Doc. 84, pp. 7–8; Doc. 85, pp. 5–6.)

In opposition, the Government argues that Okoro “has not asserted that he has made any effort to secure Omoefe Okoro’s testimony at trial and that Omoefe Okoro is actually unavailable despite such efforts.” (Doc. 88, p. 7.) Additionally, the Government submits that Omoefe Okoro’s “unavailability” is no fault of the Government. (*Id.*) Rather, the Government litigated Omoefe Okoro’s motion to dismiss, but the court dismissed the indictment with prejudice and ordered Omoefe Okoro released from custody. (*Id.*) Omoefe Okoro immediately and voluntarily returned to Canada without the Government’s involvement. (*Id.* at 7–8.) Finally, the Government submits that even if the Government’s actions resulted in Omoefe Okoro’s absence, that absence is not sufficient to warrant dismissal without Okoro making “some plausible showing of how the testimony would have been both material and favorable to his defense.” (*Id.* at 8–10 (quoting *United States v. Chavez*, No. 19-3913, 2021 WL 4429837, at *3 (3d Cir. Sept. 27, 2021)).)

The Fifth Amendment guarantees that a defendant shall not “be deprived of life, liberty, or property, without due process of law.” U.S. CONST. amend. V.

And the Sixth Amendment entitles a defendant to, among other rights, a “compulsory process for obtaining witnesses in his favor.” U.S. CONST. amend. VI. The United States Supreme Court examined these concepts in the context of a deported potential witness in *United States v. Valenzuela-Bernal*, 458 U.S. 858 (1982). The Court held that:

The mere fact that the Government deports such witnesses is not sufficient to establish a violation of the Compulsory Process Clause of the Sixth Amendment or the Due Process Clause of the Fifth Amendment. A violation of these provisions requires some showing that the evidence lost would be both material and favorable to the defense.

Id. at 872–73. Further, there must be “a reasonable likelihood that the testimony could have affected the judgment of the trier of fact.” *Id.* at 874. Ultimately, the Court concluded that without an “effort to explain what material, favorable evidence the deported [potential witnesses] would have provided for his defense,” the defendant could not establish a violation of the Fifth or Sixth Amendments. *Id.*

Initially, the court observes that the Government did not deport Omoefe Okoro, and Okoro provides no evidence to the contrary. Indeed, Omoefe Okoro self-deported to Canada on April 1, 2023, the day after the court ordered dismissal of his charges and immediate release from detention. *See* Doc. 88-1; *United States v. Okoro*, No. 12-cr-241, 2023 WL 2742737 (M.D. Pa. Mar. 31, 2023). Thus, there is no evidence that the Government deported Omoefe Okoro, nor does Okoro point

to any authority that would have permitted the Government to prohibit Omoeffe Okoro from leaving the United States under the circumstances presented.

Applying the standard established in *Valenzuela-Bernal* to the case at hand, Okoro has not made any “effort to explain what material, favorable evidence” Omoeffe Okoro would have provided in support of Okoro’s defense. *See Valenzuela-Bernal*, 458 U.S. at 874. Further, the Government’s skepticism that Omoeffe Okoro would be willing to appear as a witness in Okoro’s case given the history of Omoeffe Okoro’s criminal case and the potential consequences for testifying on his brother’s behalf is reasonable and not unduly speculative.

In sum, Okoro has neither established that the Government is at fault for removing Omoeffe Okoro from the United States nor that the lost testimony is material and favorable to Okoro’s defense. Therefore, the court will deny the motion to dismiss on the Constitutional grounds.⁶

⁶ In his reply brief, Okoro raises a Sixth Amendment violation and Speedy Trial Act violation. (Doc. 91, pp. 3–6.) The court will not address this argument because it was raised for the first time in Okoro’s reply brief and the Government did not have an opportunity to respond. However, the court notes that Okoro’s situation is vastly different from that of his brother, Omoeffe Okoro, who was extradited from Canada in 2017 and detained pending trial until the court granted his motion to dismiss on March 31, 2023. *See United States v. Okoro*, No. 12-cr-241, 2023 WL 2742737 (M.D. Pa. Mar. 31, 2023).

CONCLUSION

For the reasons state herein, the court will deny Okoro's motion to dismiss the indictment. An appropriate order follows.

s/Jennifer P. Wilson
JENNIFER P. WILSON
United States District Judge
Middle District of Pennsylvania

Dated: August 30, 2023

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OMOYOMA OKORO, Petitioner

vs.

UNITED STATES OF AMERICA, Respondent

On PETITION FOR WRIT OF CERTIORARI
In the United States Court of Appeals for the Third Circuit: Appeal 24-2824

CERTIFICATE OF SERVICE

I, Michael O. Palermo, Jr., Esq., certify that on 5/22/26, a copy of the Petition for Writ of Certiorari and a copy of the Motion for Leave to Proceed In Forma Pauperis in the above-entitled case, and a copy of this Certificate, were mailed first-class, postage prepaid, to: Patrick Bannon, Esq. Office of United States Attorney, Middle District of Pennsylvania, 235 N Washington Ave., PO Box 309, Suite 311, Scranton, PA 18503; and to the United States Court of Appeals for the Third Circuit, 21400 United States Courthouse, 601 Market Street, Philadelphia, PA 19106-1790. I further certify that all parties required to be served have been served.



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mop@palermolawoffices.com
Attorney for Petitioner Okoro

No. _____

In the Supreme Court of the United States

OMOYOMA OKORO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I, Michael O. Palermo, Jr., certify the petition for a writ of certiorari contains 3075 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury the foregoing is true and correct.

This 22nd day of May, 2026.



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