

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

No. _____

CARLOS RAFAEL ACOSTA-JOAQUIN,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

*PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT*

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September 25, 2018

QUESTION PRESENTED

Is a defendant guilty of social security fraud pursuant to 42 U.S.C.

§408(a)(7)(B) – which prohibits “falsely represent[ing] a number to be the social security account number assigned ... to him or to another person, when in fact such number is not the social security account number assigned ... to him or to such other person” – where the defendant accurately represents that number to be the social security number of that other person, whose identity he was using?

Petitioner, Carlos Rafael Acosta-Joaquin, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the First Circuit Court of Appeals entered in this proceeding on July 2, 2018.

OPINION BELOW

The decision of the First Circuit, United States v. Acosta-Joaquin, 894 F.3d 60 (1st Cir. 2018), appears in the Appendix hereto.

JURISDICTION

The judgment of the First Circuit was entered on July 2, 2018. This Court's jurisdiction is invoked under 28 U.S.C. sec. 1254(1).

STATUTE INVOLVED

42 U.S.C. §408. Penalties

(a) In general

Whoever –

* * *

(7) for the purpose of causing an increase in any payment authorized under this subchapter (or any other program financed in whole or in part from Federal funds), or for the purpose of causing a payment under this subchapter (or any such other program) to be made when no payment is authorized thereunder, or for the purpose of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled, or for the purpose of obtaining anything of value from any person, or for any other purpose—

* * *

(B) with intent to deceive, falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to him or to another person, when in fact such number is not the social security account number assigned by the Commissioner of Social Security to him or to such other person ...

STATEMENT OF THE CASE

In late 2005 or 2006, Petitioner, a native of the Dominican Republic, travelled to Puerto Rico. There, he bought a birth certificate and social security card in the name of Kelvin Valle-Alicea [hereinafter “Valle”]. Valle was a real person, and the social security number was the one assigned to him by the Commissioner of Social Security. Petitioner then obtained a driver’s license in Valle’s name, and eventually moved to Maine. He used the Valle name and identifying information in all aspects of his life.

In 2015, Petitioner pleaded no contest to a traffic infraction charging him – as Kelvin Valle-Alicea - with unnecessary brake or acceleration noise. He was fined \$50. As part of that process, he signed a Social Security Number Disclosure and Acknowledgment form in which he set forth Valle’s social security number, and signed the form using the Valle name. This was the basis of Petitioner’s social security number fraud conviction.

REASONS FOR GRANTING THE PETITION

This case presents an important question of federal law that has not been, but should be, settled by this Court.

The evidence was insufficient to prove a violation of 42 U.S.C. §408(a)(7)(B). Petitioner never falsely represented a number to be the social security number assigned to him. He accurately represented that number to be the social security number assigned to Valle, which it was. The First

Circuit wrongly interpreted the social security fraud statute, by admittedly not reading the statute ‘literally.’ Acosta-Joaquin, 894 F.3d at 63.

Because the language of the statute is clear, there is no reason to look beyond the plain words of the statute. Boyle v. United States, 556 U.S. 938, 950 (2009). However, were there any ambiguity about how the statute should be interpreted, other principles support Petitioner’s interpretation. The purpose of this part of the statute was to criminalize “representing a number to [be] that of a person to whom it was not issued.” H.R. Conf. Rep. 92-1605, 92d Cong., 2d Sess. (1972), reprinted in 1972 U.S.C.C.A.N. 5370, 5373. Petitioner did not represent the social security number to be that of a person to whom it was not issued. He represented the social security number to be Valle’s, which it was.

Moreover, the rule of lenity supports resolving any ambiguity in Petitioner’s favor. “[W]hen there are two rational readings of a criminal statute, one harsher than the other, we are to choose the harsher only when Congress has spoken in clear and definite language.” Scheidler v. National Organization for Women, Inc., 537 U.S. 393, 409 (2003).

The First Circuit rejected reading the statute according to its plain terms. It held that the statute contained “overly-condensed” language, Acosta-Joaquin, 894 F.3d at 64, resulting from “a drafting technique that

sought to deal in one sentence with two different possible misrepresentations.” Id. at 63. It concluded that Petitioner’s actions violated the statute when “[p]roperly read as any rational legislator would have intended.” Id.

However, where, as here, the statutory language is clear, courts cannot in essence redraft the law to impose criminal liability where a defendant’s conduct does not fall within the ambit of that statute. This Court should accept certiorari to clarify that, under the rules of statutory construction, accurately representing a social security number as that of another person, does not violate the social security fraud statute, 42 U.S.C. §408(a)(7)(B).

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Petition for Writ of Certiorari be granted.

September 25, 2018

Respectfully submitted,

/s/ Tina Schneider

TINA SCHNEIDER
Counsel for Petitioner