No. ______________________

____

IN THE

SUPREME COURT OF THE UNITED STATES

____

JORGE LUIS MALDONADO — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JORGE LUIS MALDONADO
(Your Name)

P.O. BOX 1000
(Address)

BUTNER, NC 27509
(City, State, Zip Code)

____
(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Is the statute for 18 U.S.C. 1028A, Aggravated Identity Theft, so ambiguous and vague that it has caused conflict and confusion in District and Apellate Courts causing them to rule and decide differently?

2. Was it congress' intent in 18 U.S.C. 1028A, to charge and give more prison time to persons that possessed, used, or transferred with permission and/or consent, a means of identification of another person if they are being charged with a felony violation enumerated in same statute?

3. Can a person that knowingly helped commit a crime, an accomplice, or co-conspirator be considered and/or called a victim of that crime committed thus allowing the government to enhance defendants for such called victims?

4. Are prosecutors violating Due Process and sentencing statutes by charging vague minimum sentence offenses instead of other charges guaranteeing Judges can't sentence defendants to less time?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[XX] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

JENNIFER MALDONADO

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INDEX TO APPENDICES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[XX] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at ________________; or,
[ ] has been designated for publication but is not yet reported; or,
[XX] is unpublished.

The opinion of the United States district court appears at Appendix ____ to the petition and is

[ ] reported at ________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix ____ to the petition and is

[ ] reported at ________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the ________________ court appears at Appendix ____ to the petition and is

[ ] reported at ________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[x] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 3/2/2018

[x] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: ____________, and a copy of the order denying rehearing appears at Appendix ______.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ____________ (date) on ____________ (date) in Application No. .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from state courts:

The date on which the highest state court decided my case was ____________. A copy of that decision appears at Appendix ______.

[ ] A timely petition for rehearing was thereafter denied on the following date: ____________, and a copy of the order denying rehearing appears at Appendix ______.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ____________ (date) on ____________ (date) in Application No. ___A______.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

TABLE OF AUTHORITIES CITED

STATEMENT OF THE CASE

Petitioner Jorge Maldonado, a decorated combat veteran with two kidney transplants because of his military service, owned a tax preparation business called Maldonado Tax Service. He opened up a bank account in Bank of America to use for the business. In 2009, he let his oldest daughter, Jessica Maldonado run the business because her husband had been deported to Mexico and she had two children to maintain. Jessica ran the business out of her apartment and Mr. Maldonado let her use the Bank of America account for herself. Mr. Maldonado had a personal bank account for years with Banco Popular which he used for all his personal things. His other daughter, Jennifer Maldonado, was in college at the time and would help her sister around the apartment and with the children. Jennifer lived in a separate place with her boy-friend.

In late 2009, Mr. Maldonado saw some treasury checks arrive at his home. He gave them back to the postman to return them. He asked Jessica about them and she said it was to make sure people paid her. Mr. Maldonado told her she could not do that anymore and forbade her to keep using his business. Jessica called Mr. Maldonado's mother, her grandmother, Eleanor Rutledge, and she opened a tax business called Tax Lady 2. She let Jessica run it in 2010 and 2011. Jessica asked her father if she could still use the bank account because she paid her bills from it and he agreed with no problem. Jessica passed away on August 8, 2011 from a heart attack at age 25 and 4 weeks after giving birth. Eleanor

Mr. and Ms. Maldonado each had the same sentencing guidelines, enhancements, and offense level. Jennifer was sentenced to a total of 42 months and Jorge received double the sentence of 84 months in the custody of Bureau of Prisons. At trial it was proven and agreed that Ms. Glover and White cashed ALL the checks for a total of 1.2 million dollars. Out of that amount about 75 thousand dollars was deposited in the Bank of America account under Jorge's name. Evidence and court records show that Ms. White bought several vehicles cash, bought a home cash, and the government did not seize any of it. There was no proof of Jorge or Jennifer buying expensive things or living outside their means.

At trial, N.R.O. testified that he gave his information to D.N. so that Mr. Maldonado could file his taxes. N.R.O. stated that he was aware and gave permission to do them fraudulently. When asked by the prosecutor if he knew what was done was illegal, N.R.O. answered "Yes". The only one aware of this was Jorge and D.N. Ms. White testified under oath that Jessica was not involved and had gone to her apartment only a couple of times. Jessica's boyfriend, E.M., was shown a picture of Ms. White and testified under oath that he had seen Ms. White often at the apartment with Jessica doing taxes.

Mr. Maldonado wanted to testify at trial and made that clear to his attorney often. At a pre-trial conference the friday before trial, Judge Walker told Mr. Maldonado needed to look up the statute of limitations on statutory rape if Mr. Maldonado was going to testify. Mr. Maldonado turned to his right to look at his attorney and her comment was "that was interesting". Throughout the trial and sentencing, the Judge brought up the statutory rape as shown in transcript excerpts that are in the attached appeal brief, (Appendix B). The brief also shows and proves this was an untrue allegation and had no business being brought up. Jorge's lawyer also told him that the Judge could give me a three point enhancement if he feels he lied while testifying. With the Judge's prior comments and rulings towards Mr. Maldonado, he did not testify out of fear. This is a violation of the 5th Amendment and Due Process.

Jorge's attorney told him that since D.N. had testified and the trial was over, that they could have contact and resumed their romantic relationship. What the Court fails to mention was that Jorge and D.N. have a daughter and he had not seen her in six months. The Judge did not allow Jorge to bring up in trial about their child because he believed D.N. was underage when she had the baby and mentioned again statutory rape. D.N. was almost 19 years old when she gave birth and is currently 29 years old. The Judge revoked Jorge's bond on December 5, 2016 because of the post trial contact with D.N. and has been incarcerated.

REASONS FOR GRANTING THE PETITION

1. THE COURT SHOULD GRANT THE WRIT TO STOP THE AMBIGUITY THAT HAS CAUSED CONFLICT IN DISTRICT AND APELLATE COURTS IN THEIR INTERPRETATION OF 18 U.S.C. 1028A.

Justice Gorsuch recently said, " Today's vague laws can invite the exercise of arbitrary power by leaving the people in the dark about what the law demands and allowing prosecutors and Courts to make it up" This is exactly what has happened with 18 U.S.C. 1028A. The statute says:

> Whoever, during and in relation to any felony violation enumerated in subsection (c), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 2 years.

Many of the Courts have found this text ambiguous. United States v. Villanueva-Sotelo, 515 F.3d 1202 (DC Cir, 2007), United States v. Godin, 534 F.3d 58 (1st Cir, 2008), United States v. Dakite, Lexis 74518 (2nd Cir, 2008) The 6th and 7th circuits have held on different grounds that 1028A is ambiguous when applied to similar conduct. United States v. Miller, 734 F.3d 530, 542 (6th Cic, 2013), United States v. Spears, 729 F.3d 753 (7th Cir, 2013).

The 11th Circuit uses as its precedent, United States v. Zitron, 810 F.3d 1253 (11th Cir, 2016). This case charges aggravated identity theft that used identification information without person's consent but it is used as their precedent without regard to consent or knowledge. Court says it established the "without lawful authority" element in two ways - with testimony from Jordan that Zitron did not have permission to use his identity, and with evidence that Zitron used Jordan's means of identification for an unlawful purpose. The Court fails to mention that the unlawful purpose is already mentioned in the statute when it says "in relation to any felony violation enumerated in [1028A]" This clearly states that the statute means committing identity theft while violating a felony enumerated in 1028A(c). Many of the Circuit Courts are applying the "broader" meaning instead of the "narrower" as stated in the Rule of Lenity which requires ambiguous criminal laws to be interpreted in favor of the defendants subjected to them.

The meaning of this statute has been plainly said by some Justices of this court and the Solicitor General. In brief for the United States in Flores-Figueroa v. United States, No. 08 108 at 20 (Jan. 2009) Pages 19-22 of that brief give several reasons why the Solicitor General concluded that identity theft crimes entail a victim whose information has been used without consent. Chief Justice Roberts in Dean v. United States, 137 S.Ct 1170 (2017) says that 18 U.S.C. 1028A is that section that criminalizes the commission of identity theft during and in relation to certain predicate felonies. Justice Gorsuch stated almost the same in United States v. Smith, 756 F.3d 1179 (10 Cir, 2014).

Black's Law Dictionary defines identity theft as: the unlawful <u>taking</u> and use of another person's identifying information for fraudulent purposes. It also defines aggravated as: made worse or more serious by circumstances such as violence, the presence of a deadly weapon, or the intent to commit another crime. Statutes should be interpreted in accordance with their ordinary meaning, unless the statute <u>clearly</u> expresses an intention to the contrary. <u>United States v. Ron Pair Enters, Inc</u>, 489 US 235 (1989). This Court Should grant certiorari in this case because an important issue, a question of federal law, is subject to an intractable split of authority in the lower courts, there has been serious misapplications of a <u>mistated</u> Rule of Law, and it has not been, but should be, resolved by this Court. U.S. Sup. Ct. Rule 10.

2. THE COURT SHOULD GRANT THE WRIT TO MAKE CLEAR CONGRESS' INTENT IN 18 U.S.C. 1028A TO STOP CONFLICTS IN LOWER COURTS.

Chief Justice Roberts said " Those of us who make use of legislative history believe that clear evidence of congressional intent may illuminate ambiguous [statutory] text" United States v. Hayes, 129 S.Ct. 1079 (2009). Although there has been cases and publications that state Congress' intent, because it has not been addressed by this court, there is still confusion, confliction, and people wrongfully being charged and convicted. All this Court has to do is go to H.R. Rep No 108 528 at 3 (2004), or U.S.C.C.A.N. at 779. It states that 1028A was enacted to "provide enhanced penalties for persons who steal identities to commit terrorist acts, immigration violations, firearms offenses, and other serious crimes". The examples in the legislative history involve people injured when a third party used their names or financial information without their consent. Congress separated the fraud crime from the theft crime in the statute itself by giving 18 U.S.C. 1028 and 1028A different titles and placing rules in different sections. United States v. Spears, 697 F.3d 592 (7th Cir. 2012) This Court should grant certiorari in this case, a question of federal law, is subject to split in lower courts and it has not been, but should be, resolved by this Court. U.S. Sup. Ct. Rule 10.

3. THIS COURT SHOULD GRANT THE WRIT BECAUSE ACCOMPLICES, AND PEOPLE THAT HELPED COMMIT CRIMES ARE BEING USED AS VICTIMS TO ENHANCE DEFENDANTS CHARGED IN THOSE SAME CRIMES COMMITTED.

Victim is defined as: A person harmed by a crime, tort, or other wrong. Accomplice is defined as: Someone who is in <u>any</u> way involved with another in the commission of a crime, whether as a principal in the First, or Second degree or as an accessory. (Black's 10th Ed.). In this case, N.R.O. testified that he gave his information knowing that it would be used for something illegal. As stated by the Apellate Court in this case, evidence was put forth at trial that these "victims" were really consenting accomplices. These were all people that could have been charged by the government but instead decided to not charge them and call them victims and enhance Mr. and Ms. Maldonado even though the only "victim" owed restitution is the Internal Revenue Service. Because of this misapplied rule of law, far departed from usual judicial proceedings as accomplices are not considered victims in these types of cases. This has not been, but should be, resolved by this Court. U.S. Sup. Ct. Rule 10

4. THIS COURT SHOULD GRANT THE WRIT TO MINIMIZE DUE PROCESS VIOLATIONS AND SENTENCING MANIPULATION BY PROSECUTORS USING 18 U.S.C. 1028A AND ITS VAGUE STATUTE TO GUARANTEE MINIMUM TIME IN PRISON.

Judge Torruella said that 18 U.S.C. 1028A was enacted to address Congress' concern that identity thieves under prior law would often receive short prison sentences or be sentenced to probation and afterward "go on to use false identities to commit much more serious crimes". The legislative history cited by the government only shows that congress, in passing 18 U.S.C. 1028A, intended to enhance criminal penalties for identity theft. United States v. Vidal-Reyes, 562 F.3d 53 (1st Cir, 2009). As shown in this case, Mr. Maldonado was charged with 18 U.S.C. 1028A even though prosecutors knew that personal identification information was given with consent and knowledge for its intended use. Because Mr. Maldonado had no prior criminal record, prosecutors wanted to guarantee that he would not get a very short sentence. This abuse of power and discretion is a very serious misapplication of mistated Rule of Law that only this Court could resolve. For this reason, this court should grant certiorari. U.S. Sup. Ct. Rule 10.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

J Maldonado

Date: 5/2/2018