

No. A-_____

In the Supreme Court of the United States

MANUEL ENRIQUE SANTANA,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, applicant Manuel Enrique Santana respectfully requests a 60-day extension of time, to and including November 23, 2018, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

The Eleventh Circuit issued its decision on June 25, 2018. Unless extended, the time to file a petition for a writ of certiorari will expire by operation of Rule 30.1 on September 24, 2018. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). A copy of the Eleventh Circuit's opinion is attached.

1. Applicant was sentenced to 48 months in prison for theft of government property and, as relevant here, five counts of aggravated identity theft. Slip op. 2. Twenty-four months of applicant's sentence were independently attributable to the aggravated identity theft convictions. Judgment 3 (D. Ct. Dkt. No. 68).

In proceedings before the district court, applicant moved for acquittal of the five counts of aggravated identity theft, which the district court denied. Slip op. 4.

The Eleventh Circuit affirmed. Slip op. 4-5. The court acknowledged that, under 18 U.S.C. § 1028A, the government was required to establish that applicant “knowingly transferred, possessed, or used the means of identification” at issue. Slip op. 4. Its holding that the use of payees’ signatures constituted the use of a “means of identification” was dictated by circuit precedent: “We have held that a person’s name and forged signature is a means of identification.” *Ibid.* (citing *United States v. Wilson*, 788 F.3d 1298, 1310 (11th Cir. 2015)).

Applying *Wilson*, the court found that sufficient evidence supported the aggravated identity theft convictions. Slip op. 4-5. Specifically, the court concluded that “[t]he payee[s]’ names and signatures were plainly means of identification, and the evidence shows that [applicant] deposited checks that had the signatures of what appeared to be the payees, even though the payees testified that they did not sign the checks issued in their name.” *Id.* at 5 (citing *Wilson*, 788 F.3d at 1310).

2. Whether the use of a someone’s name and a forged signature alone is sufficiently specific to constitute a “means of identification” under 18 U.S.C. § 1028A is the subject of an acknowledged circuit split. In *Wilson*, the Eleventh Circuit itself noted that “there appears to be some conflict in the circuits” over the issue. 788 F.3d at 1310.

Two circuits have held that the use of someone’s name and a forged signature in itself constitutes a “means of identification.” In *United States v. Blixt*, 548 F.3d 882 (9th Cir. 2008), the Ninth Circuit held that “forging another’s signature constitutes the

use of that person's name and thus qualifies as a 'means of identification.'" *Id.* at 886. In *Wilson*, the Eleventh Circuit "agree[d] with the Ninth Circuit's reasoning" in *Blixt* and held the use of another's name on a United States Treasury check was sufficiently specific to qualify as a "means of identification." 788 F.3d at 1310-1311.

The Fourth Circuit reached the opposite conclusion in *United States v. Mitchell*, 518 F.3d 230 (4th Cir. 2008). The court there found that a holistic examination of Section 1028A "confirms that the distinguishing feature of a means of identification of another person is that it must identify a specific individual." *Id.* at 235. Because the use of another's "bare name may not be sufficiently unique," the court held that the use of another person's name by itself was not sufficiently specific to amount to a "means of identification." *Id.* at 235-236. Thus, although the defendant used a false driver's license and passed counterfeit checks—both in the name of Marcus Jackson—to purchase merchandise and then return it for cash refunds, the court reversed the defendant's aggravated identity theft conviction. *Id.* at 231-232.¹


3. Applicant requests this extension of time to file the petition for a writ of certiorari because undersigned counsel were recently retained and had no involvement in the trial or appellate proceedings before the district court or the Eleventh Circuit. They accordingly seek additional time to review and familiarize themselves with the record and with the issues presented here.

¹ In so holding, the Fourth Circuit found that there was not sufficient distinguishing information to identify "a *specific* Marcus Jackson, as required by the statute." 518 F.3d at 232 (emphasis added). Had applicant's case arisen in the Fourth Circuit, that court would have concluded the same about the names that were the basis for the aggravated identity theft counts here. See, e.g., Indictment 2 (D. Ct. Dkt. No. 1); Trial Tr. 245-249 (D. Ct. Dkt. No. 64).

Counsel primarily responsible for preparing the petition have responsibility for a number of other matters with proximate due dates, including the brief for appellant in *United States v. Jenkins*, No. 14-2898 (7th Cir.) (due September 21, 2018); an opposition brief in *Benisek v. Lamone*, No. 13-cv-3233 (D. Md.) (due September 24, 2018); a summary judgment hearing the U.S. District Court for the District of Maryland in *Benisek v. Lamone*, No. 13-cv-3233, on October 4, 2018; a reply brief in *Patterson v. City of New York*, No. 18-722 (2d Cir.) (due October 9, 2018); a reply brief in *United States v. Jenkins*, No. 14-2898 (7th Cir.) (due October 24, 2018); and an oral argument in the Seventh Circuit in *United States v. Jenkins*, No. 14-2898 (7th Cir.), on November 2, 2018. Accordingly, an extension of time is warranted.

For the foregoing reasons, the application for a 60-day extension of time, to and including November 23, 2018, within which to file a petition for a writ of certiorari in this case should be granted.

Respectfully submitted.

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