**No.**

# In the Supreme Court of the United States

MANUEL ENRIQUE SANTANA,

*Petitioner*,

v.

UNITED STATES OF AMERICA,

*Respondent.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit**

## PETITION FOR A WRIT OF CERTIORARI


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## QUESTION PRESENTED

The federal aggravated identity theft statute imposes an additional mandatory two-year prison sentence on anyone who "knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person" during and in relation to specified felony offenses. 18 U.S.C. § 1028A(a)(1). Under the statute, "means of identification" is defined as "any name or number that may be used, alone or in conjunction with any other information, *to identify a specific individual*." *Id.* § 1028(d)(7) (emphasis added).

There is an acknowledged conflict among the courts of appeals as to whether a defendant's use of a person's name—be it typed or handwritten—constitutes the "use[]" of a "means of identification" under the aggravated identity theft statute.

The question presented is:

Whether the use of a name, without more, constitutes the use of a "means of identification of another person" under 18 U.S.C. § 1028A.

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**

**Cases—continued**

**Cases—continued**



**Statutes**

**Statutes—continued**



**Other Authorities**

## PETITION FOR A WRIT OF CERTIORARI

Petitioner Manuel Enrique Santana respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

## OPINIONS BELOW

The unpublished opinion of the court of appeals (App., *infra*, 1a-5a) is available at 2018 WL 3104395.

## JURISDICTION

The court of appeals entered its judgment on June 25, 2018. On September 18, 2018, Justice Thomas entered an order extending the time for filing a petition for a writ of certiorari to and including November 22, 2018. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

## STATUTORY PROVISIONS INVOLVED

The pertinent provisions of 18 U.S.C. §§ 1028 and 1028A are reproduced at App., *infra*, 39a-43a.

## STATEMENT

The aggravated identity theft statute, 18 U.S.C. § 1028A, imposes a mandatory two-year sentence enhancement if the government proves that the underlying offense involved "knowingly transfer[ring], possess[ing], or us[ing], without lawful authority, a means of identification of another person."

The lower courts are divided as to whether a defendant's use of a name alone constitutes the use of a "means of identification of another person" under Section 1028A. The Fourth Circuit holds that a name alone cannot constitute a "means of identification." Six other courts of appeals, including the court below, hold that the use of a name by itself is sufficient to

support a Section 1028A conviction. This conflict produces significant inconsistencies in the statute's application based entirely on the circuit in which defendants are prosecuted: individuals situated like petitioner would not be subject to criminal liability in the Fourth Circuit. Given that the question presented arises frequently in the federal district courts, this conflict is sufficiently important to warrant this Court's attention.

The holding below that a name used alone, without any other identifying information, constitutes the use of a "means of identification" under Section 1028A contradicts the statute's text, is inconsistent with the broader historical context in which the statutory regime was adopted, and upsets the traditional balance between state and federal enforcement of criminal law. Review is plainly warranted.

**A. Statutory Background.**

The statutory provision at issue in this case, 18 U.S.C. § 1028A, is titled "Aggravated identity theft." It is the second federal statute to address the crime of identity theft.

Congress adopted the first such federal statute, 18 U.S.C. § 1028, in 1982. As initially enacted, that statute made it a federal crime to, among other things, "knowingly and without lawful authority produce[] an identification document." False Identification Crime Control Act of 1982, Pub. L. No. 97-398, § 2, 96 Stat. 2009, 2009-2011. The term "identification document" was defined as a "document made or issued by or under the authority of the United States Government, a State," or another government entity that "is of a type intended or commonly accepted for the purpose of identification of individuals." *Ibid*.

In 1998, that statute was broadened to criminalize "knowingly transfer[ing] or us[ing], without lawful authority, a *means of identification* of another person" in connection with any federal crime or felony. Identity Theft and Assumption Deterrence Act of 1998, Pub. L. No. 105-318, § 3, 112 Stat. 3007, 3007 (emphasis added). Congress defined "means of identification" as "any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual" and identified various particular kinds of information that satisfy the requirement, including social security numbers, driver's license numbers, and passport numbers. *Id.*, § 3, 112 Stat. at 3008.

In 2004, Congress enacted the aggravated identity theft statute, Section 1028A. This law makes it a federal crime to "knowingly transfer[], possess[], or use[], without lawful authority, a means of identification of another person" during and in relation to specified predicate felony offenses, including bank fraud, wire fraud, and various other kinds of fraud. The preexisting definition of "means of identification" set forth in Section 1028 also applies to Section 1028A.

Unlike the first statute, however, the second statute imposes a mandatory two-year prison sentence. The sentence must be served consecutive to, and not concurrent with, any other sentence—including any sentence for the underlying predicate offense. 18 U.S.C. § 1028A(b)(1)-(4).

**B. Factual Background.**

Petitioner Manuel Enrique Santana was employed as a manager at the Orlando Grill, a restaurant owned and operated by his family. 2 Tr. 12-13 (D. Ct. Dkt. No. 65). The restaurant offered a check-cashing service for customers. *Id.* at 13.

Santana testified that his standard practice for cashing checks involved checking a customer's ID against a payroll or U.S. Treasury check; the customer would then endorse the check before Santana double-endorsed it. 2 Tr. 14-15, 18. Customers received an amount of credit immediately, based on the amount of the check. *Id.* at 15. After the check cleared, Santana returned any remaining balance from the check to the customer, less the credit already extended. *Ibid.* Other employees of the Orlando Grill testified to both the existence of a check-cashing policy and the accuracy of Santana's description. *Id.* at 64, 72, 80, 84.

From February to March 2014, Santana deposited several U.S. Treasury checks in three bank accounts to which he had access. 2 Tr. 98-116. Each check represented a federal tax refund to an individual or individuals; those individuals testified that they did not receive an expected refund check. *Ibid.* Each deposited check was endorsed, bearing the handwritten name of the individual named on the check, as well as Santana's name. *Id.* at 115.

**C. Proceedings Below.**

A federal grand jury charged petitioner with ten counts of theft of government property under 18 U.S.C. § 841 and five counts of aggravated identity theft under 18 U.S.C. § 1028A. With respect to the identity theft charges, the indictment specified that "[o]n or about March 7, 2014," Santana "did knowingly possess and use, without lawful authority, a means of identification of another person—that is, the names and forged signatures of other individuals—during * * * a felony * * * theft of public money." Redacted Indictment 2 (D. Ct. Dkt. No. 34).

At the conclusion of the trial, the district court instructed the jury that a "means of identification" under Section 1028A may include a "name * * * used[] alone." App., *infra*, 37a. After deliberating, the jury convicted Santana on all counts of aggravated identity theft and all counts of theft of government property.

Santana appealed and, among other things, "challenge[d] the denial of his motion for judgment of acquittal for the five counts of identity theft." App., *infra*, 3a. The Eleventh Circuit affirmed, holding that "a person's name and forged signature is a means of identification" under Section 1028A. App., *infra*, 3a.

The court of appeals based that conclusion on its prior decision in *United States* v. *Wilson*, 788 F.3d 1298 (11th Cir. 2015). (The opinion in *Wilson* is reproduced at App., *infra*, 6a-36a.)

The defendant in that case, Freddie Wilson, was charged with aggravated identity theft for "endors[ing U.S. Treasury checks] with * * * individuals' forged signatures." App., *infra*, 21a. The court of appeals relied on "the plain language of 18 U.S.C. § 1028A" to hold that "a 'means of identification' under the aggravated theft statute * * * includes a signature." App., *infra*, 20a. The court further held that "a signature is understood to be a person's written name." App., *infra*, 21a. Accordingly, Wilson's use of Treasury checks bearing other people's handwritten names "was sufficient to constitute a 'means of identification' to identify a specific individual under [Section 1028A]." *Ibid.*

Applying that decision to the present case, the Eleventh Circuit noted that it had previously "held [in *Wilson*] that a person's name and forged signature is a means of identification." App., *infra*, 3a. Citing *Wilson* again, the court of appeals further observed that

"Santana deposited checks that had the signatures of what appeared to be the payees" and that "[t]he payee's names and signatures were plainly means of identification." App., *infra*, 4a.

## REASONS FOR GRANTING THE PETITION

This case squarely presents a frequently recurring question concerning the scope of Section 1028A: whether the use of a name alone (whether typed or handwritten), without other identifying information, constitutes the use of a "means of identification" under Section 1028A.

The lower courts have reached conflicting conclusions regarding this issue, with the Fourth Circuit holding that a name alone cannot constitute a means of identification and six other circuits determining that a name alone does satisfy the statutory standard. This disagreement is producing conflicting outcomes on identical facts. The determination whether a person has committed identity theft—a charge that adds a two-year mandatory enhancement to the individual's sentence—hinges on the location of the crime. In Raleigh, North Carolina and Richmond, Virginia no identity-theft crime will have occurred; in Miami, Florida and Atlanta, Georgia, the opposite is true.

In light of the acknowledged circuit split, the importance of the issue, and the clear presentation of the issue in this case, the petition should be granted.

### A. The circuits are divided over whether a name alone constitutes a "means of identification."

The Eleventh Circuit recently acknowledged that there is a square conflict among the courts of appeals on the question presented, stating that there is "conflict in the circuits on whether the use of someone's

name qualifies as a 'means of identification'" under Section 1028A. App., *infra*, 18a. The Fourth Circuit's interpretation of the statute—that the use of a name alone does not constitute use of a "means of identification"—conflicts with the Eleventh Circuit rule, applied in the decision below, that a name used on a check does constitute a "means of identification" under Section 1028A.

*1. The Fourth Circuit holds that a name alone is insufficient to constitute a "means of identification."*

According to the Fourth Circuit, a name cannot constitute a means of identification under the statute because a name alone does not provide sufficient information to identify a specific individual, as required by the definition of "means of identification" in Section 1028.

In *United States* v. *Mitchell*, the Fourth Circuit held that Section 1028A was not violated by the use of counterfeit checks and a false driver's license bearing another individual's name. 518 F.3d 230 (4th Cir. 2008). The court began its analysis by noting that even though the statute defines "means of identification" broadly, the "definition's overriding requirement is that a means of identification—that is, an identifier or identifiers—must be sufficient 'to identify a specific individual.'" *Id.* at 234. The court emphasized that "[t]he definition, in other words, allows for an identifier, taken alone or together with other information, to qualify as a means of identification so long as the sum total of information identifies a specific individual." *Ibid.*

With respect to that requirement, the court held that a name alone "would likely not be sufficiently

unique to identify a specific individual because many persons have the same name." *Mitchell*, 518 F.3d at 234. A name is therefore a "non-unique identifier" unable to identify a specific individual unless it is used in conjunction with additional identifying information. *Ibid.* The court concluded that it is only "when * * * a non-unique identifier is coupled with other information to identify a specific individual, [that] 'a means of identification of another person' is created." *Ibid.*

The *Mitchell* court specifically noted that there were two individuals in the State that had driver's licenses and who could be identified by the name, city of residence, and year of birth used by the defendant. In this way, the defendant "did not couple his use of that name with a sufficient amount of correct, distinguishing information to identify a specific Marcus Jackson, as required by the statute." *Mitchell*, 518 F.3d at 232. The court held that the defendant's use of a name by itself did not satisfy the specificity criterion in Section 1028. Accordingly, neither the check nor the driver's license constituted a "means of identification" under Section 1028A.

In light of *Mitchell*'s holding, this case would have come out differently if Santana had been prosecuted in the Fourth Circuit. Santana, like the defendant in *Mitchell*, was accused of using the handwritten names of various individuals to commit fraud. By holding that Santana's use of a name alone, which may identify multiple individuals, constituted the use of a means of identification under Section 1028A, the court's decision in this case squarely conflicts with the holding in *Mitchell*.

*2. Six courts of appeals have held that a name alone is sufficient to constitute a "means of identification."*

Like the Eleventh Circuit in *Wilson*, the First, Sixth, Seventh, Ninth, and Tenth Circuits have held that use of a name alone, whether typed or handwritten, constitutes the use of a "means of identification" under Section 1028A.

In a frequently cited opinion, the Ninth Circuit held in *United States* v. *Blixt* that a signature is a name and that a name alone suffices for the purpose of applying Section 1028A. 548 F.3d 882 (9th Cir. 2008). The court observed that "[t]he Aggravated Identity Theft statute defines the term 'means of identification' in a way that makes reasonably clear that forging another's signature on a check constitutes the use of a means of identification." *Id.* at 887.

The *Blixt* court stated that the statute's definition of "means of identification" "includes the use of a name, alone or in conjunction with *any other* information, as constituting the use of a means of identification so long as the information taken as a whole identifies a specific individual." 548 F.3d at 887. It thus focused on the broad range of information that may be used to create a means of identification, in contrast to the Fourth Circuit's conclusion in *Mitchell* that the "means of identification" must be sufficiently specific to identify a particular person.

Utilizing similar reasoning, the Eleventh Circuit in *Wilson* held that "the use of a person's name and forged signature sufficiently identifies a specific individual to qualify as a 'means of identification' under the aggravated identity theft statute." App., *infra*, 19a. Citing *Blixt*, the court agreed that "'[b]y using the

word 'any' to qualify the term 'name,' the statute reflects Congress's intention to construct an expansive definition' that includes a signature." App., *infra*, 20a.

Cases in the other circuits have similarly held that a name used alone, without other identifying information, constitutes a means of identification. *United States* v. *Morel*, 885 F.3d 17 (1st Cir. 2018); *United States* v. *Thomas,* 763 F.3d 689 (7th Cir. 2014); *United States* v. *Porter*, 745 F.3d 1035 (10th Cir. 2014); *United States* v. *Miller*, 734 F.3d 530 (6th Cir. 2013).

Importantly, each of these decisions fails to square its holding with the statutory text's requirement that a "means of identification" be able to identify a specific individual. Each court's inquiry ends with the observation that the statutory definition includes the word "name" in the list of identifiers that may constitute a means of identification.

Like the Eleventh Circuit in *Wilson*, these courts did not assess whether a name, absent additional information, can satisfy the statute's requirement that the means of identification be able to identify a specific person. That approach conflicts with the Fourth Circuit's reasoning that a name used *alone* would likely fail to identify a specific individual, as required by the statute—and that a name satisfies the statutory standard only when it is used in conjunction with other information that provides the necessary specificity.

### B. The question presented is important.

The question presented is self-evidently important. Federal district courts frequently are obligated to determine whether "means of identification" under Section 1028A may be satisfied by the use of a

name alone, whether typed or handwritten, with significant disagreement in their conclusions.[1]

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[1] See*, e.g.*, *United States* v. *Halali*, 2017 WL 3232566, at *6 (N.D. Cal. July 28, 2017); *United States* v. *Michael*, 2017 WL 1684529, at *1 (W.D. Ky. May 1, 2017), rev'd and remanded, 882 F.3d 624 (6th Cir. 2018); *United States* v. *Tomasino*, 2017 WL 752151, at *1 (D.R.I. Feb. 27, 2017); *United States* v. *Robinson*, 2016 WL 7406980, at *2 (N.D. Cal. Dec. 22, 2016); *United States* v. *Williams*, 2016 WL 4815801, at *1 (M.D. Fla. Sept. 14, 2016); *Tinoco* v. *United States*, 2016 WL 5957622, at *1 (E.D.N.C. Sept. 8, 2016), report and recommendation adopted in part, 2016 WL 5947269 (E.D.N.C. Oct. 13, 2016); *United States* v. *Silvers*, 2016 WL 3906649, at *8 (N.D. Ind. July 18, 2016); *United States* v. *Thomas*, 227 F. Supp. 3d 981, 982 (N.D. Ill. 2016); *United States* v. *Willis*, 2016 WL 9000785, at *2 (N.D. Ga. Jan. 20, 2016), aff'd, 678 F. App'x 964 (11th Cir. 2017); *United States* v. *Barnette*, 2015 WL 3879875, at *4 (W.D. Va. June 23, 2015); *United States* v. *Lawrence*, 2015 WL 856866, at *1 (S.D. W. Va. Feb. 27, 2015); *United States* v. *Reeves*, 2014 WL 7408854, at *9 (N.D. Ohio Dec. 30, 2014), aff'd, 636 F. App'x 350 (6th Cir. 2016); *United States* v. *White*, 2014 WL 12703725, at *3 (M.D. Fla. Nov. 26, 2014), aff'd, 654 F. App'x 956 (11th Cir. 2016); *United States* v. *De La Cruz*, 2014 WL 3925497, at *1 (D. Mass Aug. 12, 2014); *United States* v. *Duong*, 2014 WL 2159274, at *2 (N.D. Cal. May 23, 2014); *United States* v. *Camick*, 2014 WL 1356056, at *7-8 (D. Kan. Apr. 7, 2014); *United States* v. *Johnson*, 2013 WL 6002717, at *2 (D. Conn. Nov. 12, 2013); *United States* v. *Jenkins*, 2013 WL 3245206, at *5 (M.D. Ga. June 26, 2013); *United States* v. *Recker*, 2013 WL 785643, at *12 (N.D. Iowa Mar. 1, 2013); *United States* v. *Franklin*, 2011 WL 3424448, at *1 (C.D. Cal. Aug. 5, 2011), aff'd, 501 F. App'x 629 (9th Cir. 2012); *United States* v. *Sola-Cordova*, 789 F. Supp. 2d 281, 283 (D.P.R. 2011); *United States* v. *Mellor*, 2010 WL 3585892, at *1 (W.D. Va. Sept. 9, 2010); *United States* v. *Lewis*, 2010 WL 3468668, at *1 (N.D. Fla. Sept. 1, 2010), aff'd*,* 443 F. App'x 493 (11th Cir. 2011); *United States* v. *Griffiths*, 2010 WL 2652341, at *1 (N.D. Fla. July 1, 2010); *United States* v. *Forest*, 2010 WL 2399554, at *1 (D. Me. June 11, 2010); *United States* v. *Wilcox*, 2010 WL 55964, at *7 (W.D. Mich. Jan. 4, 2010); *United States* v. *Hanson*, 2009 WL 2460887, at *5 (C.D. Cal. Aug. 6, 2009).

This disagreement among the lower courts means that Section 1028A's application varies based on geographic location. Because the statute imposes a mandatory two-year prison sentence in addition to any sentence for the underlying offenses, this variation significantly impacts those who are convicted under Section 1028A. When a case involves the use of a name alone, some individuals will serve two additional years in prison, while others will not. This Court should intervene to ensure uniformity in the numerous cases that arise in federal courts presenting this issue.

### C. The use of a name alone is not the use of a "means of identification" under Section 1028A.

The aggravated identity theft statute makes it a crime to "transfer[], possess[], or use[]" a "means of identification of another person" during and in relation to certain felony offenses. 18 U.S.C. § 1028A(a)(1). A "means of identification" is "any name or number that may be used, alone or in conjunction with other information, *to identify a specific individual*." *Id.* § 1028(d)(7) (emphasis added). Because a name alone—whether typed or handwritten—is not sufficient to identify a specific individual, it is not a "means of identification" under the statute. Therefore, Santana did not violate Section 1028A.

#### *1. A name alone cannot identify a specific individual*

The aggravated identify theft statute makes clear that certain categories of information can by themselves "identify a specific individual" and thus constitute a "means of identification." 18 U.S.C. § 1028(d)(7). The statute lists many such examples:

- Social Security numbers;
- State- or government-issued driver's license or identification numbers;
- alien registration numbers;
- government passport numbers;
- employer or taxpayer identification numbers;
- unique biometric data, such as fingerprints, voice prints, retina or iris images, or other unique physical representations;
- unique electronic identification numbers, addresses, or routing codes; and
- telecommunication identifying information or access devices.

*Ibid.* Because each of these is unique—that is, belongs to only *one* person—it can identify a specific individual.

Other kinds of information, however, "identify a specific individual," and thus constitute a "means of identification," only when used "in conjunction with" "other information." 18 U.S.C. § 1028(d)(7). The statute lists two such examples: names and dates of birth. *Id.* § 1028(d)(7)(A). Knowing someone's name or date of birth would narrow an inquiry to a particular class of persons—for instance, all Jane Does or all persons born on June 1, 2000—neither one alone is unique because many persons bear the same name or have the same date of birth. For that reason, names and dates of birth must be used "in conjunction with other information" to constitute "means of identification" under the statute. They are insufficient by themselves to satisfy the statutory test.

Further, whether a name is handwritten or typed has no bearing on whether it is a "means of identification" under 18 U.S.C. § 1028A. Under the statute, information constitutes a "means of identification" only when it can "identify a specific individual." A handwritten name can no more identify a specific individual than a typed name can because each conveys the *exact same* information: a first and a last name. Thus, in this case, the cursive names handwritten on Treasury checks were not "means of identification" under Section 1028.

*2. The historical context of Section 1028 and Section 1028A supports this interpretation*

This interpretation is also compelled by the historical context in which Congress enacted 18 U.S.C. § 1028 and 18 U.S.C. § 1028A. While the Court need not consult this broader historical background to decide the question presented, that history supports the conclusion that use of a name alone is not sufficient to support a conviction under Section 1028A.

Names were not included as a "means of identification" in the original statutory definition. As enacted in 1982, the statute instead referred instead to "identification document[s]" and defined that term to mean

> a document made or issued by or under the authority of the United States Government, a State, political subdivision of a State, [or] a foreign government * * * which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

False Identification Crime Control Act of 1982, Pub. L. No. 97-398, § 2, 96 Stat. 2009, 2009-2011. Thus, the

federal identity theft regime was initially concerned only with formal identity documents issued by a government entity that identified a specific individual.

In 1998, the Identity Theft and Assumption Deterrence Act revised the statutory definition to list specific types of identify documents and identifying information, preceded by the general reference to "any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual." Identity Theft and Assumption Deterrence Act of 1998, Pub. L. No. 105-318, § 3(a)-(h)(1), 112 Stat. 3007, 3007-3009.

This amendment retained the statute's focus on formal identity documents and other unique identifiers, but it also ensured that other equally specific information would be encompassed by the statute. Certainly Congress expressed no intent to drastically expand the federal identity theft regime to reach every misuse of a name alone.

At the time Section 1028A was enacted in 2004, the "growing problem of identity theft" was understood to involve the misuse of uniquely identifying personal information. H.R. Rep. No. 108-528, at 3 (2004). The House committee report contains an extended list of examples of identity theft. Of the ten scenarios described, not one involves the use of a name alone. *Id.* at 5-6. Instead, these examples depict the theft of unique personal information, like Social Security numbers (*id.* at 6) or credit card information (*id.* at 5).

These examples are consistent with the evolution of the definition—restricting the reach of this criminal statute to the use of information that identifies a specific person.

*3. Interpreting Section 1028A to encompass the use of a name alone will federalize numerous crimes traditionally policed by the States*

The Court has held that Congress must convey its purpose clearly before the Court will interpret a federal law to alter the balance between "federal crimes and conduct readily denounced as criminal by the states." *United States* v. *Bass*, 404 U.S. 336, 337 (1971). In *Bass* and subsequent decisions, the Court has refused to construe a statute as a plenary ban on fraud unless Congress has included in the statute's text a clear congressional statement requiring such an interpretation. *Loughrin* v. *United States*, 573 U.S. 351 (2014); *Bond* v. *United States*, 572 U.S. 844 (2014); *Jones* v. *United States*, 529 U.S. 848 (2000).

Interpreting the statutory definition of "means of identification" to encompass the use of a name alone will have just such an effect. Because there is no indication of congressional intent to alter the federal-state balance, that construction of the statute must be rejected.

Section 1028's definition of "means of identification" applies both to the offense created by Section 1028 and to the one created by Section 1028A. While Section 1028A requires a predicate felony offense involving a federal element, Section 1028 has no parallel requirement. If the "means of identification" definition were construed to include use of a name alone, it would expand the reach of Section 1028 far into the States' domain—swallowing up everyday fraud offenses that have long been the purview of state law.

For instance, Section 1028 applies to anyone who "knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that * * * constitutes a felony under any applicable State or local law." If "means of identification" is read to include a name alone, whether typed or handwritten or both, then any person who uses another person's name in violation of a state law has also committed a federal crime. For example, under Section 1028, a person signing another's name to cash a check at a state bank could be federally prosecuted and imprisoned for up to fifteen years.

Indeed, any use of a name in committing a fraud in violation of state law would automatically become a federal felony. But the use of forged names to commit fraud is routine, and is routinely the province of state law.

Certainly there is no clear evidence of congressional intent to intrude so dramatically into the States' domain. This Court has held that a broad, general definition by itself does not constitute a clear congressional statement that the statute should extend to areas traditionally policed by the state. See *Bond*, 572 U.S. at 844.

This is especially true if the federal statutory provision in question contains qualifying words that can limit the scope of its application. See *Jones* v. *United States*, 529 U.S. 848 (2000). Section 1028's "means of identification" definition contains precisely such qualifying words: it requires that the information be able to identify a specific individual.

Nor does the legislative history of Section 1028A provide a clear statement of such intent. In *Rewis* v. *United States*, the Court noted that an expansive construction of the Travel Act would "alter sensitive federal-state relationships, could overextend limited federal police resources, and * * * transform relatively minor state offenses into federal felonies" based solely on geographic location. 401 U.S. 808, 812 (1971). The Court emphasized that the absence of any discussion of that result in the legislative history "strongly suggests that Congress did not intend that the Travel Act should apply to criminal activity solely because that activity is at times patronized by persons from another State." *Ibid*.

That same reasoning applies here. An expansive interpretation of the definition of "means of identification" would drastically extend the reach of Section 1028A, with the result that the mere use of another person's name would transform state offenses into federal felonies. Given the absence from the legislative history of any indication that Congress intended that result, the term "means of identification" should be interpreted narrowly.

For this reason as well, therefore, "means of identification" must be interpreted to exclude the use of a name alone.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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