No. 25-

# In the Supreme Court of the United States

MAHSA PARVIZ,

*Petitioner*,

v.

UNITED STATES,

*Respondent*.

**On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Ninth Circuit**

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

18 U.S.C. § 1028A(a)(1), titled "Aggravated identity theft," imposes a mandatory consecutive two-year prison term on one who, while committing a listed felony, "uses, without lawful authority, a means of identification of another person."

The question presented is whether, to sustain a conviction for aggravated identity theft, the government must prove that the defendant used the other person's means of identification without their consent.

## RELATED PROCEEDINGS

U.S. Court of Appeals for the Ninth Circuit: *United States v. Parviz*, No. 22-50160 (March 19, 2025)

U.S. District Court for the Central District of California: *United States v. Parviz*, No. 2:21-cr-00293-SB-1 (July 12, 2022); *United States v. Parviz*, No. 2:21-cr-00293-SB-1 (Mar. 6, 2024)

U.S. District Court for the Western District of Washington: *Parviz v. Barron*, No. 2:23-cv-1407-JHC-DWC (June 7, 2024)

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## PETITION FOR A WRIT OF CERTIORARI

Mahsa Parviz respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Ninth Circuit.

## OPINION BELOW

The opinion of the U.S. Court of Appeals for the Ninth Circuit is published at 131 F.4th 966.

## JURISDICTION

The Court of Appeals entered its judgment on March 19, 2025. The Court of Appeals denied a timely petition for panel rehearing and rehearing en banc on June 4, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## STATUTORY PROVISION INVOLVED

18 U.S.C. § 1028A(a)(1), entitled "Aggravated identity theft," provides: "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."

## STATEMENT

Petitioner Mahsa Parviz was convicted of aggravated identity theft under a theory that has been correctly rejected by the Seventh Circuit but erroneously accepted by most of the other circuits.

18 U.S.C. § 1028A, captioned "Aggravated identity theft," imposes a mandatory two-year consecutive sentence on one who, while committing a listed felo-

ny, "knowingly transfers, possess, or uses, without lawful authority, a means of identification of another person." In a unanimous en banc opinion by Judge Easterbrook, the Seventh Circuit held that to sustain a conviction under this statute, the government must prove that the defendant used the other person's identification without their consent. *United States v. Spears*, 729 F.3d 753, 758 (7th Cir. 2013) (en banc).

In most other circuits, however, the government need not prove that the other person did not consent. Even if the other person voluntarily gave their identification to the defendant and agreed that the defendant could use it—indeed, even if the other person was complicit in the offense—the defendant has still committed "aggravated identity theft" in these circuits. *See United States v. Ozuna-Cabrera*, 663 F.3d 496, 498-501 (1st Cir. 2011); *United States v. Otuya*, 720 F.3d 183, 189-90 (4th Cir. 2013); *United States v. Mahmood*, 820 F.3d 177, 187-90 (5th Cir. 2016); *United States v. Lumbard*, 706 F.3d 716, 721-25 (6th Cir. 2013); *United States v. Retana*, 641 F.3d 272, 274-75 (8th Cir. 2011); *United States v. Osuna-Alvarez*, 788 F.3d 1183, 1185-86 (9th Cir. 2015); *United States v. Hurtado*, 508 F.3d 603, 607-08 (11th Cir. 2007); *United States v. Reynolds*, 710 F.3d 434, 436 (D.C. Cir. 2013).

This case is a textbook example of the erroneous view of the statute taken by most circuits. While applying for a passport for her child, Mahsa Parviz submitted a fraudulent letter purporting to be from Bret Barker, her boyfriend. Barker allowed her to use his name, signature, and nursing license number on the letter. He helped her commit the offense. Par-

viz was convicted on two counts. One conviction, under 18 U.S.C. § 1542, was for making a false statement on a passport application. She does not challenge that conviction. But she was also convicted, improperly, of aggravated identity theft under section 1028A for using Barker's ID on the letter.

It is a strange kind of identity "theft" that can be committed by using someone's identity with their permission. The Court should grant certiorari and reverse.

1. In desperation after losing parental rights over her infant daughter, "C.P.," Mahsa Parviz twice tried to use unlawful means to get C.P. back. App. 2a. First, she forged a state court order instructing law enforcement to return C.P. to her. *Id.* at 2a n.1. In 2021, she pled guilty in state court to this offense. *Id.*

Her second effort gave rise to this case. She applied for a passport in C.P.'s name, with the goal of taking C.P. out of the country. *Id.* at 2a-3a. On the application, she falsely claimed to be C.P.'s sole legal parent. *Id.* at 3a. To avoid the requirement that C.P. appear in person to apply for the passport, she also falsely claimed that C.P. was medically unable to be present. *Id.* She supported this claim with a letter purporting to be from Bret Barker, a nurse practitioner at the Lucile Packard Children's Hospital in Palo Alto, California. *Id.* The letter said that C.P. was under Barker's care, that she was immunocompromised, and that she was unable to leave the hospital because of her medical condition. *Id.* at 4a.

Barker was Parviz's boyfriend. *Id.* He was indeed a nurse practitioner who worked at Packard Hospi-

tal, although he had stopped working there a few months before. *Id.* But he had not treated C.P., who was never a patient at the hospital. *Id.*

Barker assisted Parviz in preparing the letter. *Id.* Although Parviz wrote the letter's text and signed Barker's name to it, Barker consented to Parviz's use of his name, his signature, and his nursing license number. He was in on the scheme. He was helping his girlfriend get her daughter back. As he grudgingly admitted at trial, his "intent was to minimally help her out." ER 188.[1]

Parviz was charged with one count of making a false statement on a passport application, in violation of 18 U.S.C. § 1542, and one count of aggravated identity theft for using Barker's ID on the letter, in violation of 18 U.S.C. § 1028A(a)(1). App. 2a.

2. At trial, the government proposed a jury instruction on aggravated identity theft that stated: "the government need not establish that the means of identification was used without the other person's consent." *Id.* at 11a-12a. Parviz objected to this instruction, but the District Court overruled the objection. *Id.* at 12a. "[T]he title of this offense is misleading," the District Court recognized. ER 320. "It says aggravated identity theft, but in fact it doesn't necessarily mean that. The [Ninth Circuit] cases that were cited by the government do appear to stand pretty clearly for the proposition that [a conviction may be sustained] even if you are using identity with the consent of the person." *Id.* The District Court

[1] The abbreviation "ER" refers to the Excerpts of Record filed in the Ninth Circuit.

gave the government's proposed instruction. *Id.* at 344.

In closing argument, the prosecutor raised the issue with the jury. "Now, you might be wondering, what was Bret Barker's role in all of this?", the prosecutor acknowledged. *Id.* at 361. "What did he know? What did he consent to? How much was he in on it? The answer is that it does not matter because the Court instructed you the Government need not establish that the means of identification was used without the person's consent." *Id.* at 361-62. The prosecutor admitted: "And that's confusing, perhaps, because the crime is called aggravated identity theft, but theft is not an element of this crime." *Id.* at 362.

During deliberations, the jury was evidently troubled by the mismatch between the title of the offense and the court's instruction that it could be committed with the consent of the ostensible victim. The jury sent a note to the court that read: "For the count of aggravated identity theft, the jury would like to receive a formal definition of *legal authority* along with examples of the term." *Id.* at 391. In response, the court instructed the jury that "[w]ithout legal authority means the illegal use of the means of identification, that is, the means of identification is used to commit a crime." *Id.* at 399. The court then repeated its instruction that "[t]he Government need not establish that the means of identification of another person was used without that person's consent." *Id.* The jury returned a guilty verdict on both counts shortly thereafter.

Parviz moved for acquittal on the same ground, but the District Court denied the motion. App. 12a. Parviz was sentenced to a prison term of 37 months

for passport fraud, and another 24 months to be served consecutively for aggravated identity theft, as required by 18 U.S.C. § 1028A. *Id.* at 6a.

3. The Court of Appeals for the Ninth Circuit affirmed. *Id.* at 1a-17a.

The Court of Appeals rejected Parviz's contention that to sustain a conviction of aggravated identity theft, the government must prove that the ostensible victim's identity was used without their consent. *Id.* at 11a-13a. The court explained that "[i]n *United States v. Osuna-Alvarez*, 788 F.3d 1183 (9th Cir. 2015), we held that the language of § 1028A 'clearly and unambiguously encompasse[d] situations like the present, where an individual grants the defendant permission to possess his or her means of identification, but the defendant then proceeds to use the identification unlawfully.' *Id.* at 1185." *Id.* at 12a. The court noted that "[o]ther circuits have likewise held that 'actual theft or misappropriation of the means of identification' is not an element of aggravated identity theft." *Id.* (citing *United States v. Reynolds*, 710 F.3d 434 (D.C. Cir. 2013); *United States v. Lumbard*, 706 F.3d 716 (6th Cir. 2013); *United States v. Retana*, 641 F.3d 272 (8th Cir. 2011); and *United States v. Abdelshafi*, 592 F.3d 602 (4th Cir. 2010)). The Court of Appeals concluded that "under *Osuna-Alvarez*, the district court's instruction was correct." *Id.* at 13a.

In her petition for panel rehearing and rehearing en banc, Parviz pointed out the conflict between the Ninth Circuit's view of this issue and the Seventh Circuit's decision in *Spears*. The National Association of Criminal Defense Lawyers also emphasized

the circuit split in an amicus brief in support of the petition for rehearing. The Court of Appeals nevertheless denied panel rehearing and rehearing en banc. *Id.* at 18a.

## REASONS FOR GRANTING THE WRIT

Over the past several years, the Justice Department has persuaded most of the circuits to adopt a non-literal reading of the aggravated identity theft statute, 18 U.S.C. § 1028A(a)(1). The statute imposes a mandatory two-year consecutive sentence on one who, while committing a listed felony, uses "without lawful authority, a means of identification of another person." The quoted phrase bears only one sensible meaning—without the authority of the person who has the legal right to let others use their means of identification. If that person consents to the defendant's use of their identity, the defendant has not committed identity theft at all, much less "aggravated" identity theft. Yet most circuits—all that have addressed the issue except the Seventh Circuit—now allow defendants to be convicted of aggravated identity theft without any proof that the ostensible victim's identity was used without their consent.

The Court should grant certiorari and reverse. Using someone else's identity with their consent may be identity *fraud*, which is criminalized separately under 18 U.S.C. § 1028, but it is not identity *theft*.

## I. The circuits are split over whether, to sustain a conviction under the aggravated identity theft statute, the government must prove that the defendant used the other person's identity without their consent.

There is a well-developed circuit split on the question presented. In the Seventh Circuit, to sustain a conviction under the aggravated identity theft statute, the government must prove that the defendant used the other person's identity without their consent. In every other circuit to address the issue, by contrast, a defendant can be convicted of aggravated identity theft even where the other person consented to the defendant's use of their identity.

The Seventh Circuit is the only circuit to interpret the statute correctly. In *Spears*, the en banc court unanimously held that by criminalizing the use, "without lawful authority, [of] a means of identification of another person," the statute requires that the other person not have consented to the use. 729 F.3d at 756-58. The court concluded: "Section 1028A, we hold, uses 'another person' to refer to a person who did not consent to the use of the 'means of identification.'" *Id.* at 758.

The Seventh Circuit began with the text of the statute. The court noted that "[t]he phrase 'another person' is ambiguous: neither text nor context tells us whether 'another' means "person other than the defendant' or 'person who did not consent to the information's use.'" *Id.* at 756. But the court found that every other tool of interpretation counsels in favor of the latter definition.

First, the Seventh Circuit took note of the statute's caption—"Aggravated identity theft." *Id.* The court noted that "[a] caption cannot override a statute's text, but it can be used to clear up ambiguities." *Id.* "That § 1028A deals with identity *theft*," the court explained, "helps resolve the ambiguity in favor of the latter understanding," that "another person" means a person who did not consent to the use of their identity. *Id.* If the offense could be committed with the ostensible victim's consent, the court added, the statute would also prohibit "document counterfeiting and other forms of fraud, a crime distinct from theft." *Id.*

Second, the Seventh Circuit compared section 1028A with its immediate predecessor in Title 18, section 1028. *Id.* at 756-57. The court observed that section 1028, captioned "Fraud and related activity in connection with identification documents," prohibits several kinds of misconduct, some of which involve the fraudulent use of other people's identification documents *with* their consent. *Id.* at 757. But section 1028, the court noted, lacks the mandatory two-year consecutive sentence required by section 1028A. *Id.* The Seventh Circuit explained that one reason for the harsher sentence under section 1028A is "the fact that identity *theft* has a victim other than the public at large"—the person whose identification was used without their consent, who "may be out of pocket (if the thief uses information to buy from merchants) or may be put to the task of rehabilitating a damaged reputation or credit history." *Id.*

Third, the Seventh Circuit looked to then-recent representations by the Solicitor General as to the meaning of section 1028A. *Id.* The court noted that

in *Flores-Figueroa v. United States*, 556 U.S. 646 (2009), the Solicitor General argued that "[t]he statutory text makes clear that the *sine qua non* of a Section 1028A(a)(1) offense is the presence of a real victim." *Id.* The Seventh Circuit observed that the government's brief in *Flores-Figueroa* provided "several reasons why the Solicitor General concluded that identity-theft crimes entail a victim whose information has been used without consent." *Id.* The Seventh Circuit could barely conceal its disappointment that "[t]he United States Attorney has not explained why his position in this prosecution differs so dramatically from the Solicitor General's in *Flores–Figueroa.*" *Id.*

Finally, the Seventh Circuit explained, if there were still any ambiguity left in the statute, the Rule of Lenity would require reading the statute to prohibit only the use of another's identity without their consent. *Id.* As the court explained, "[a] reasonable person reading § 1028A(a)(1) would not conclude that Congress has definitely used the word 'another' to specify every person other than the defendant, as opposed to a person whose information has been misappropriated." *Id.* at 758.

The Seventh Circuit's thorough opinion should have been a model for other circuits, but it was not. Instead, the government has persuaded every other circuit that has addressed the issue to reject the Seventh Circuit's approach. In these circuits, a defendant commits aggravated identity theft even if the defendant has the permission of the person whose identity is being used. These circuits are:

The First Circuit: *United States v. Valdés-Ayala*, 900 F.3d 20, 34 (1st Cir. 2018) ("regardless of the

way in which the means of identification had been obtained—whether by theft or with permission—if the means of identification is subsequently used during the commission of one of several enumerated felonies and in a way that is against the law, then the use is 'without lawful authority' and is in violation of § 1028A"); *United States v. Ozuna-Cabrera*, 663 F.3d 496, 499 (1st Cir. 2011) ("regardless of how the means of identification is actually obtained, if its subsequent use breaks the law—specifically, during and in relation to the commission of a crime enumerated in subsection (c)—it is violative of § 1028A(a)(1)"); *United States v. Kasenge*, 660 F.3d 537, 541 (1st Cir. 2011) ("18 U.S.C. § 1028A(a)(1) does not require that the means of identification be stolen or otherwise illicitly procured").

The Fourth Circuit: *United States v. Otuya*, 720 F.3d 183, 189 (4th Cir. 2013) ("Simply put, one does not have 'lawful authority' to consent to the commission of an unlawful act. Nor does a 'means of identification' have to be illicitly procured for it to be used 'without lawful authority.' To excuse Otuya's act of using another person's identification to defraud Bank of America of thousands of dollars simply because a coconspirator agreed to let him do so would produce an untenable construction of the statute and an unacceptable result."); *United States v. Abdelshafi*, 592 F.3d 602, 608 (4th Cir. 2010) ("Abdelshafi came into lawful possession, initially, of Medicaid patients' identifying information and had 'lawful authority' to use that information for proper billing purposes. He did not have 'lawful authority,' however, to use Medicaid patients' identifying information to submit fraudulent billing claims. We thus find no

textual basis in the statute for Abdelshafi's assertion that identifying information must be stolen or 'misappropriated' to be used 'without lawful authority.'").

The Fifth Circuit: *United States v. Mahmood*, 820 F.3d 177, 187-88 (5th Cir. 2016) ("§ 1028A does not require actual theft or misappropriation of a person's means of identification as an element of aggravated identity theft. Rather, the statute plainly criminalizes situations where a defendant gains lawful possession of a person's means of identification but proceeds to use that identification unlawfully.").

The Sixth Circuit: *United States v. Lumbard*, 706 F.3d 716, 725 (6th Cir. 2013) ("[W]e conclude that the phrase 'without lawful authority' in § 1028A is not limited to instances of theft, but includes cases where the defendant obtained the permission of the person whose information the defendant misused.").

The Eighth Circuit: *United States v. Gatwas*, 910 F.3d 362, 365 (8th Cir. 2018) ("Theft or misappropriation of a victim's identity is not an essential element of the offense."); *United States v. Rodriguez-Ayala*, 773 F.3d 65, 68 (8th Cir. 2014) ("the government was not required to prove lack of victim's consent to prove aggravated identity theft"); *United States v. Retana*, 641 F.3d 272, 275 (8th Cir. 2011) ("the use of another person's social security number for an illegal purpose satisfied the statute as a use 'without lawful authority' regardless of whether that use occurred with or without the other person's permission"); *United States v. Hines*, 472 F.3d 1038, 1040 (8th Cir. 2007) ("Whether Hines used Miller's name without permission (as Hines claimed in his letter) or he obtained Miller's consent in exchange for illegal drugs, Hines acted without lawful authori-

ty when using Miller's identification. These actions occurred during and in relation to Hines's misuse of a social security number—they occurred while Hines misused Miller's number to defraud police.").

The Ninth Circuit (in addition to the decision below): *United States v. Gagarin*, 950 F.3d 596, 605 (9th Cir. 2020) (rejecting the Seventh Circuit's reasoning in *Spears* and holding that "even if Gagarin had Gilroy's consent, we follow our circuit precedent to hold that Gagarin used the means of identification of 'another person' by using the identification of another 'actual person.'"); *United States v. Hong*, 938 F.3d 1040, 1050 (9th Cir. 2019) ("permission to use another's identity in an unlawful scheme is not 'lawful authority' under section 1028A"); *United States v. Osuna-Alvarez*, 788 F.3d 1183, 1185 (9th Cir. 2015) ("despite its title, § 1028A does not require theft as an element of the offense").

The Eleventh Circuit: *United States v. Hurtado*, 508 F.3d 603, 607 (11th Cir. 2007) ("Nothing in the plain language of the statute requires that the means of identification must have been stolen for a § 1028A(a)(1) violation to occur.").

The D.C. Circuit: *United States v. Reynolds*, 710 F.3d 434, 436 (D.C. Cir. 2013) ("To the extent that there is a textual hook for Reynolds's stolen-information argument, it is the requirement that the use be 'without lawful authority.' But 'use[ ] ... without lawful authority' easily encompasses situations in which a defendant gains access to identity information legitimately but then uses it illegitimately.").

In these circuits, it makes no difference how the defendant obtains the other person's means of identification. Even if the defendant obtains it with the

other person's consent, the defendant's use of the other person's identity constitutes aggravated identity theft.

This conflict between the Seventh Circuit and the others has been discussed for many years. *See United States v. Dumitru*, 991 F.3d 427, 433 (2d Cir. 2021) (noting that while the Seventh Circuit's view "may have some intuitive appeal, it has been rejected by other circuits"); *Gagarin*, 950 F.3d at 609-10 (Friedland, J., concurring in part) (explaining that she would find the Seventh Circuit's view persuasive were she not bound by Ninth Circuit precedent); *United States v. Adeyale*, 579 F. Appx. 196, 200 (4th Cir. 2014) (contrasting the Seventh Circuit's view with that of other circuits); *United States v. Carter*, 2024 WL 4859155, *4 (S.D.N.Y. 2024) (describing the Seventh Circuit's decision in *Spears* as the "minority view"); *United States v. Hill*, 2016 WL 6310418, *6 (E.D. Mo. 2016) (contrasting the Seventh Circuit's view with that of the other circuits); Shang-Chi Andrew Liu, *What's the Use? Interpreting the Term "Uses" in the Aggravated Identity Theft Provision*, 89 U. Chi. L. Rev. 1289, 1309-10 (2022) (contrasting the Seventh Circuit's view with that of the other circuits).

This circuit split is so well entrenched that it is not likely to be resolved without this Court's intervention.

**II. The decision below is wrong.**

The Seventh Circuit's view of the aggravated identity theft statute is correct. The statute prohibits the use of another person's means of identification without their permission. It does not prohibit the use

of another person's means of identification *with* their permission.

The text of the statute provides: "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." 18 U.S.C. § 1028A(a)(1). To violate this provision, one must:

- commit one of the offenses listed in subsection (c),
- while transferring, possessing, or using another person's means of identification,
- without the lawful authority of that person.

The text of the statute thus plainly requires the government to prove that the defendant lacked the permission of the person whose means of identification the defendant used.

The courts below interpreted the phrase "without lawful authority" to mean "while breaking the law." App. 12a; ER 399. On this theory, no one has the authority to let someone else use their identity to break the law, so even if a person has the authority to let the defendant use their means of identification, it would not be *lawful* authority if the defendant uses it to commit an offense. But this view can't be right, because it renders the phrase "without lawful authority" entirely redundant. The statute already requires the defendant to commit one of the felonies listed in subsection (c). In any case in which the statute could apply, the defendant is already breaking the law. Under this view, if the phrase "without

lawful authority" were deleted, the statute's meaning would not change.

It is far more sensible to interpret the phrase "without lawful authority" literally. The statute is violated only where the defendant lacks the lawful authority—the permission—of the person whose means of identification the defendant uses. There are many common situations in which one person has the lawful authority to use someone else's means of identification. When people pick up prescriptions at the pharmacy for bedridden friends, or when parents enroll their children in school, they use—with lawful authority—the means of identification of another person. ("Means of identification" is defined broadly to include names, social security numbers, and dates of birth. 18 U.S.C. § 1028(d)(7)(A).) The phrase "without lawful authority" excludes such uses with permission of another person's means of identification.

This interpretation of the text is reinforced by the way the statute uses the term "another person." The statute defines the offense as using, "without lawful authority, a means of identification of another person." In context, it is clear that the other person must be someone who did not give the defendant the authority to use their means of identification. The government's view is that the other person could be anyone, including someone who allowed or even encouraged the defendant to use their means of identification. But if that were the meaning Congress intended, it would have been far more natural for the statute to omit the phrase "without lawful authority." The statute could simply have prohibited "using a means of identification of another person," without

also requiring that the use be without lawful authority.

The text of the statute thus indicates that the government must prove that the defendant lacked the consent of the person whose identity the defendant used.

Every other interpretive clue also points in the same direction.

Most obviously, the statute is captioned "Aggravated identity theft." No one uses the word "theft" to describe the consensual use of someone else's property. Theft is "the taking of property without the owner's consent." *Black's Law Dictionary* 1324 (5th ed. 1979). While the title of a statute cannot override the statute's text, it can help resolve any doubts about the text's meaning. In fact, the Court has used the title of this very statute to elucidate its meaning. *See Dubin v. United States*, 599 U.S. 110, 120-21 (2023). The statute prohibits identity *theft*, not the use of someone's identity with their permission. Indeed, it prohibits *aggravated* identity theft. Using someone's ID with their permission is not identity theft at all, much less aggravated identity theft.

Moreover, section 1028A comes right after section 1028, which prohibits "[f]raud and related activity in connection with identity documents." The use of someone else's ID, with their consent, to commit an offense like passport fraud would appear to violate section 1028. *See* § 1028(a)(4) (defining the offense as "knowingly possess[ing] an identification document … with the intent such document … be used to defraud the United States"). This provision does not include the phrase "without lawful authority," so it appears to include cases in which the defendant has

the permission of the person whose ID the defendant uses. The contrast between section 1028 and section 1028A indicates that Congress has distinguished between identity *fraud* and identity *theft*. *Flores-Figueroa v. United States*, 556 U.S. 646, 655 (2009) ("Congress separated the fraud crime from the theft crime in the statute itself."). A defendant commits identity *fraud* by using someone else's ID, even with their permission, but a defendant commits identity *theft* only by using someone else's ID without their permission.

This conclusion becomes even more compelling when we consider that the purpose of the statute was to protect the victims of identity theft, who have to spend a great deal of time and money disputing charges incurred by the thieves who steal their identities. *See* H.R. Rep. No. 108-528, at 4 (2004) ("[T]he FTC breakdown of types of identity theft shows that 42% of complaints involved credit card fraud, 22% involved the activation of a utility in the victim's name, 17% involved bank accounts opened in the victim's name, 9% involved employment fraud, 8% involved government documents or benefits fraud, 6% involved consumer loans or mortgages obtained in the victim's name, and 16% involved medical, bankruptcy, securities and other miscellaneous fraud."). As the government correctly told the Court in *Flores-Figueroa*, "the *sine qua non* of a Section 1028A(a)(1) offense is the presence of a real victim." Brief for the United States at 20, *Flores-Figueroa v. United States*, 556 U.S. 646 (2009).

Under the government's current view of the statute, by contrast, identity theft would often be a victimless crime. Where, as here, the defendant uses

another person's identity with their permission, for a purpose approved by the other person, the other person is not a victim. Under the government's theory, it could even prosecute under this statute where the other person is an accomplice to the offense. After all, the government could say, the accomplice is "another person," and that is all the statute requires.

Finally, if there were any residual doubts about what the statute means, the Rule of Lenity would require interpreting it to require the government to prove that the other person did not consent to the defendant's use of their ID. A reasonable person reading the statute would have no reason to think that using someone's ID with their permission constitutes aggravated identity theft.

For these reasons, the decision below is wrong. To sustain a conviction of aggravated identity theft under section 1028A(a)(1), the government must prove that the defendant lacked the permission of the person whose means of identification the defendant used.

## III. This is an important issue, and this case is an excellent vehicle for resolving it.

This case fits an unfortunate pattern. The Justice Department has a track record of persuading the courts of appeals to interpret criminal statutes nonliterally, to sweep in more conduct than the text covers. *See, e.g.*, *Thompson v. United States*, 145 S. Ct. 821 (2025) (rejecting the government's argument that a statute prohibiting false statements also prohibits statements that are misleading but not false); *Snyder v. United States*, 603 U.S. 1 (2024) (rejecting

the government's argument that the bribery statute also prohibits gratuities); *Ciminelli v. United States*, 598 U.S. 306 (2023) (rejecting the government's argument that the wire fraud statute prohibits the deprivation of information as well as the deprivation of traditional property interests).

The government has been just as creative in interpreting the aggravated identity theft statute. *See Dubin*, 599 U.S. at 122 ("The Government's broad reading, covering any time another person's means of identification is employed in a way that facilitates a crime, bears little resemblance to any ordinary meaning of 'identity theft.'"). The Court observed in *Dubin* that "[t]he Government has, by its own admission, wielded § 1028A(a)(1) well beyond ordinary understandings of identity theft." *Id.* at 115. In *Dubin*, the Court corrected one of the government's erroneous interpretations of the statute by holding that the statutory phrase "in relation to" is satisfied only "where use of the means of identification is at the crux of the underlying criminality." *Id.* at 122.

The present case involves a different non-literal construction of the aggravated identity theft statute, one that is equally unsupported by the statute's text. In *Dubin*, the Court noted the issue in our case but did not address it. The Court explained:

> [T]he Government has advanced a medley of shifting and inconsistent readings of "without lawful authority," another element of § 1028A(a)(1). Sometimes the Government has claimed that a defendant would not violate § 1028A(a)(1) if they had permission to use a means of identification to commit a crime. See Brief for United States 32 ("everyone is pre-

> sumed to have permission to use other people's names" in certain ways to facilitate crimes, such as addressing a letter); *id.*, at 31–32 (a defendant can have "lawful authority" to use a coconspirator's name to commit bank fraud). Other times the Government has argued that no one ever has permission to commit a crime. App. 32 (a person "can't give someone [else] permission" to use their name to facilitate a crime); Tr. of Oral Arg. 91–92 (doctor would violate § 1028A(a)(1) even if patient granted permission to use his name in the fraud). The Court need not, and does not, reach the proper interpretation of "without lawful authority."

*Id.* at 129 n.8.

The issue is squarely presented in our case. It arises frequently. Nearly every circuit has addressed it. The circuit split has lingered for more than a decade. There is nothing to be gained from further percolation. Everything that can be said on either side has already been said. It is time for the Court to step in.

The question presented has real-world importance. The government brings several hundred prosecutions under section 1028A every year.[2] It is easy to see why the government prefers prosecuting cases as identity *theft* under section 1028A rather than as identity *fraud* under section 1028. Section 1028A carries a mandatory two-year consecutive sentence, but section 1028 does not. Defendants like Mahsa Parviz, who used another person's ID with

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[2] Bureau of Justice Statistics, Federal Criminal Case Processing Statistics Data Tool, https://fccps.bjs.ojp.gov.

their permission, are forced to spend two years longer in prison than Congress intended them to, because of the government's non-literal construction of section 1028A. Some defendants are even forced to spend two years in prison when they would otherwise not have received prison sentences at all. *See Dubin*, 599 U.S. at 127 ("Section 1028A(a)(1) is an enhancement, and a severe one at that. It adds a 2-year mandatory prison sentence onto underlying offenses that do not impose a mandatory prison sentence of any kind. … This prevents sentencing judges from considering the severity of the offense, even if the amount of money involved was quite small or there are other mitigating factors.").

This case is a perfect vehicle. It was litigated explicitly on the theory that the government need not prove that the means of identification was used without the other person's consent. We know this theory was crucial to the outcome, because the jury interrupted its deliberations to ask the trial court for more information about it. There are no threshold issues preventing the Court from reaching the question presented. It is hard to imagine a better vehicle coming along.

## CONCLUSION

The petition for a writ of certiorari should be granted.[3]

Respectfully submitted,

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[3] The same issue is present in *Omidi v. United States*, No. 25-160 (pet. for cert. filed Aug. 1, 2025), which would also be an appropriate vehicle. If the Court grants certiorari in *Omidi*, it should hold our petition until *Omidi* has been decided.