No. _____

IN THE SUPREME COURT OF THE UNITED STATES

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GEORGE EGWUMBA,

Petitioner,

- v -

UNITED STATES OF AMERICA,

Respondent.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Whether the government must prove a defendant possessed a means of identification without the consent of its owner – that is, stole the identity – to sustain a conviction for a "possession" aggravated identity theft offense under 18 U.S.C. §1028A.

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INTRODUCTION

Section 1028A of Title 18 prohibits transferring, possessing, or using a "means of identification," "without lawful authority," "during and in relation to" enumerated felonies. George Egwumba was convicted of §1028A's possession offense – not a use or transfer offense – based on the allegation that he "possessed" a "means of identification" "in relation to" a wire-fraud conspiracy. The identification was a bank account number and the "possession" was based on Egwumba's having received a text message stating that number. There was no evidence Egwumba saved that number, much less that he used it to commit fraud.

On appeal, Egwumba raised an insufficiency claim because there was also no evidence the account number – which was owned by an alleged co-conspirator – was stolen or possessed without the owner's consent. *See United States v. Egwumba*, 2025 WL 1409495, *1 (9th Cir. 2025) (unpublished) (attached in appendix); *see also* 1-ER-8-11; 2-ER-106-11, 133-46; 6-ER-100-01.[1] Relatedly, Egwumba challenged the district court's jury instruction that "the government need not establish" the identification was stolen or possessed without the owner's consent. *See Egwumba*, 2025 WL 1409495, *1; *see also* 6-ER-1180. A Ninth Circuit panel rejected those claims based on *United States v. Osuna-Alvarez*, 788 F.3d 1183, 1185-86 (9th Cir. 2015) (per curiam), which held that a conviction for a "use" – not "possession" – offense under §1028A is valid "regardless of whether the means of identification was stolen or" used without the owner's consent. *Egwumba*, 2025 WL 1409495, *1.

In *United States v. Gagarin*, 950 F.3d 596, 605 & n.3 (9th Cir. 2020), the Ninth Circuit recognized that *Osuna-Alvarez* conflicts with the Seventh Circuit's unanimous *en banc* opinion in *United States v. Spears*, 729 F.3d 753 (7th Cir. 2013) (*en banc*). The relevant analysis in *Spears* was

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[1] ER denotes the excerpts of record filed in Ninth Circuit case number 22-50272, at docket #30.

subsequently endorsed by this Court in *Dubin v. United States*, 599 U.S. 110, 123 (2023), in which this Court repeatedly cited *Spears* approvingly while rejecting the mode of analysis in the Ninth Circuit's opinion in *Osuna-Alvarez*. *Id.* at 120-25. Furthermore, although the government inconsistently shifted positions in *Dubin*, this Court noted that the Solicitor General appeared to *concede* that "a defendant would not violate §1028A(a) if they had permission to use a means of identification to commit a crime." *Id*. at 128 n.8.

The Ninth Circuit denied *en banc* review in this case despite the conflict with *Spears* and this Court's analysis in *Dubin*. In other words, the Ninth Circuit has made it clear that it will not budge until this Court explicitly overrules its approach, regardless of the strong message that this Court sent in *Dubin*. The Court should therefore grant this petition to give the Ninth Circuit the crystal-clear guidance that it apparently needs.

Furthermore, *Osuna-Alvarez* dealt with §1028A's "use" offense, 788 F.3d at 1184, and in *Dubin* this Court made clear that to establish the "possession" offense – of which Egwumba was convicted – the government must show the identification was stolen. 599 U.S. at 125-26. There are two recently-filed *certiorari* petitions pending before this Court, to which the government has responded, that raise the identity theft question presented here in the context of a "use" offense. *See Omidi, et al. v. United States*, No. 25-160; *Parviz v. United States*, No. 25-201. If the Court grants the petition in either or both of those cases, Egwumba requests that the Court stay its decision about whether to grant this petition until either or both those cases are decided. If the Court denies those petitions, it should nonetheless grant the petition in this case because under *Dubin* it is clear that a §1028A possession offense requires a showing that the identity involved was possessed without the owner's consent.

OPINION BELOW

On May 15, 2025, the Ninth Circuit filed an unpublished opinion affirming George Egwumba's convictions for conspiring to commit wire fraud and money laundering offenses and aggravated identity theft. *See Egwumba*, 2025 WL 1409495, *1 (attached in appendix).

JURISDICTION

Egwumba filed a petition for rehearing in the Ninth Circuit, which was denied on September 4, 2025. *See* 9/24/25 Denial of Pet. for Rehearing (attached in appendix). This petition is timely under Supreme Court Rule 13 and this Court has jurisdiction under 28 U.S.C. §1254(1).

RELEVANT STATUTORY PROVISION

Section 1028A(a)(1) of Title 18 states:

> 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.

(Emphasis added.)

STATEMENT OF THE CASE

I. District Court Proceedings

Egwumba was named in three counts of a 252-count indictment that charged 80 defendants with conduct that occurred over four years. *See* 3-ER-232-376. Two of the counts in which Egwumba was named charged wire-fraud and money-laundering conspiracies, which each relied on the same 447 overt acts. *See* 3-ER-251-322. Four of the charged overt acts named Egwumba, and those occurred over a few weeks in June and July 2017. *See* 3-ER-314, 316, 318. As this overview suggests, Egwumba was a bit-player and he withdrew without engaging in fraud.

The conspiracy alleged centered on three people the government called "middlemen" – Valentine Iro, Chukwudi Igbokwe, Chuks Eroha. In exchange for a percentage of proceeds, those

men rented-out bank accounts they controlled to fraudsters abroad, who tried to convince victims to transfer funds into the accounts. Over a few weeks in 2017, Egwumba texted with Iro and Eroha about renting an account from them. Although Egwbuma received account information from Iro and Eroha on a few occasions, no related transfers were even attempted. Based on those texts, the government charged Egwumba with joining the wire-fraud conspiracy.

The government also charged Egwumba with aggravated identity theft under §1028A, which states:

> Whoever, during and in relation to any [enumerated felony] . . . knowingly *transfers, possesses, or uses,* without lawful authority, a means of identification of another person shall . . . be sentenced to a term of imprisonment of 2 years.

(Emphasis added.) The government proceeded on a theory that Egwumba "possessed" a "means of identification" in relation to the wire-fraud conspiracy. *See* 6-ER-1180-81.

The "means of identification" was a Chase bank account number belonging to Miniratu Mansaray and ending in 5027. *See* 6-ER-1181. Mansaray was an alleged co-conspirator and there is no indication the charged number was stolen or used without her consent. *See* 3-ER-241, 244-45, 261; 5-ER-830-31, 838-42, 1004-05. That wasn't an impediment to Egwumba's conviction because the district court told jurors "the government need not" show the number was stolen or used without the owner's consent. *See* 6-ER-1180.

As far as evidence of Egwumba's "possession" of the account number, that was based solely on Iro texting the number to Egwumba. *See* 5-ER-733-36; 7-ER-1281-85. There was no evidence Egwumba saved the number, much less used it. That is, the evidence showed, at most, that Egwumba "possessed" the account number for no longer than it took him to receive the text.

II. Ninth Circuit Opinion

On appeal, Egwumba raised an insufficiency challenge to his conviction because there was no evidence the 5027 account number was stolen or that he possessed it without the owner's consent. Egwumba also challenged the district court's jury instruction that "the government need not establish that the" identification was stolen or possessed without the owner's consent. 6-ER-1180. The Ninth Circuit panel in this case rejected the jury-instruction claim based on the Ninth Circuit's opinion in *Osuna-Alvarez*, 788 F.3d at 1185-86, in which the court held that a conviction for a "use" offense under §1028A doesn't require showing the identification was stolen or used without the owner's consent. *See Egwumba*, 2025 WL 1409495, *1. The panel in Egwumba's case also rejected the insufficiency claim without explanation, presumably based on *Osuna-Alvarez*. *See id.*

REASONS FOR ALLOWING THE WRIT

I. Introduction

The Court should grant this petition to resolve a circuit-conflict between the Ninth Circuit's opinion in *Osuna-Alvarez* and the Seventh Circuit's unanimous *en banc* opinion in *Spears*, the latter of which this Court cited approvingly in *Dubin*. At the very least the Court should limit *Osuna-Alvarez* to the "use" offense context presented in that case because in *Dubin* this Court made clear that to establish a "possession" offense the prosecution must show the means of identification was stolen.

II. The Ninth Circuit's Opinion In *Osuna-Alvarez* Conflicts With The Seventh Circuit's *En Banc* Opinion In *Spears*

Section 1028A is titled "[a]ggravated identity *theft*." The statute provides, "[w]hoever, 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 (emphasis added).

In *United States v. Osuna-Alvarez*, 788 F.3d 1183 (9th Cir. 2015), the Ninth Circuit focused on the "without lawful authority" language in §1028A and held that it did not require the identification to have been stolen or used without the consent of its owner. The Ninth Circuit explained that the identity theft title of §1028A was inconsequential and concluded, purportedly based on the statute's plain language, that "regardless of whether the means of identification was stolen or obtained with the knowledge and consent of its owner, the illegal use of the means of identification alone violates §1028A." *Id.* at 1185-86.

The Seventh Circuit's unanimous *en banc* opinion in *United States v. Spears*, 729 F.3d 753 (7th Cir. 2013), took a contrary view. Writing for that court, Judge Easterbrook explained that the "another person" language in the statute and the "aggravated identity *theft*" title of §1028A require the identification to have been stolen or used without the owner's consent. *See Spears*, 729 F.3d at 756-58. With respect to §1028A's title, he reasoned, "[a] caption cannot override a statute's text, but it can be used to clear up ambiguities." *Id.* at 756.

The Seventh Circuit in *Spears* found that the title of §1028A cleared up any ambiguities in the statute's use of the "another person" language. The title reinforced that the statute's "aggravated" two-year consecutive sentence was a recognition of "the fact that identity *theft* has a victim other than the public at large," and that the "usual victim of identity theft 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.* at 757. The Seventh Circuit also explained that its interpretation was supported by a comparison with §1028A's neighbor, 18 U.S.C. §1028, and the Solicitor General had even agreed that "'the statutory text makes clear that the *sine qua non* of a Section 1028A(a)(1)

offense is the presence of a real victim' . . . whose information has been used without consent." *Id.* at 757 (quoting Brief for the United States in *Flores-Figueroa v. United States*, No. 08-108, at 20 (Jan. 2009)).[2]

The Ninth Circuit subsequently recognized that *Osuna-Alvarez* conflicts with the Seventh Circuit's *en banc* opinion in *Spears*, and even acknowledged that *Osuna-Alvarez* mistakenly cited the *vacated* three-judge panel opinion in *Spears* to support its view. Specifically, in *United States v. Gagarin*, 950 F.3d 596 (9th Cir. 2020), the court said: "In *Osuna-Alvarez*, we cited the panel opinion in *Spears*, which was vacated by the Seventh Circuit's *en banc* decision, as consistent with our holding regarding 'without lawful authority.' We did not, however, indicate that the *Spears en banc* opinion was consistent with our holding." *Id.* at 605 n.3 (citations omitted). The Ninth Circuit further recognized a flat-out conflict with the Seventh Circuit: "Today we recognize that it would not be workable to adopt both the *Spears en banc* interpretation of 'another person' and the *Osuna-Alvarez* interpretation of 'without lawful authority.' That the cases interpreted different words in the statute cannot obscure that *Spears* made available a consent defense that *Osuna-Alvarez* squarely rejected." *Id.* (citations omitted).

Despite the conflict with *Spears*, and despite this Court's recent analysis of §1028A in *Dubin* (discussed below), the Ninth Circuit has dug in its heels in its adherence to *Osuna-Alvarez*, in this case and in a published opinion filed recently, in which that court said: "*Dubin* explicitly declined to address the statutory meaning of 'lawful authority.' Because no intervening Supreme Court or en banc decision is 'clearly irreconcilable' with *Osuna-Alvarez*, we remain bound by its construction

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[2] In *Flores-Figueroa v. United States*, 556 U.S. 646 (2009), this Court held that §1028A requires the government to prove that the defendant knew the means of identification used belonged to an actual person.

of the phrase 'without lawful authority.'" *United States v. Parviz*, 131 F.4th 966, 972-73 (9th Cir. 2025) (citations omitted).

Parviz also cited opinions from several other circuits as supporting the Ninth Circuit's interpretation of §1028A. *Id.* at 972 (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); *United States v. Abdelshafi*, 592 F.3d 602 (4th Cir. 2010)). All of these opinions were decided before *Dubin*, and even before the Seventh Circuit's *en banc* opinion in *Spears*. Furthermore, the D.C. Circuit's opinion in *Reynolds* did not really support the Ninth Circuit's interpretation, as it only reviewed for plain error and simply stated that §1028A applies to "situations in which a defendant gains access to identity information legitimately but then uses it illegitimately – *in excess of the authority granted*." *Reynolds*, 710 F.3d at 436 (emphasis added).

Even if these pre-*Dubin* opinions from other circuits establish that the Ninth Circuit's view is the majority one, that is all the more reason to grant this petition. As discussed below, this Court's opinion in *Dubin* endorsed the Seventh Circuit's approach. In other words, the "majority" view, which approves of a two-year, mandatory consecutive sentence for defendants who have not actually committed *aggravated* identity *theft*, should be corrected as soon as possible.

III. The Ninth Circuit's Approach Conflicts With *Dubin*, In Which This Court Endorsed The Seventh Circuit's Approach In *Spears*

In *Dubin v. United States*, 599 U.S. 110 (2023), this Court held that, to establish a §1028A violation, the use of a person's means of identification must be at the "crux" of the underlying fraud offense. In doing so, this Court explained that the title of §1028A is "aggravated identity *theft*," and the statutory language "connote[s] theft" and that the means of identification "has been stolen." *Id.* at 125. The statutory language "not only connote[s] theft, but identity theft in particular[,]" and the

"ordinary understanding of identity theft" is "a crime in which someone [1] steals [2] personal information about and [3] belonging to another." *Id.* This language in *Dubin* strongly indicates that the means of identification must have been stolen or used without consent.[3]

Furthermore, in conducting its analysis, this Court cited and adopted the Seventh Circuit's view of identity *theft* as stated in the *en banc* opinion in *Spears*. *See Dubin*, 599 U.S. at 123 (citing the *en banc* opinion in *Spears* to reason that "[t]his central role played by the means of identification, which serves to designate a specific person's identity, explains why we say that the 'identity' has been stolen"). The Court in *Dubin* also explained why the Ninth Circuit's analysis in *Osuna-Alvarez* led to the wrong conclusion. *Osuna-Alvarez* casually dismissed the defendant's reliance on the "[a]ggravated identity theft" title of §1028A. *See Osuna-Alvarez*, 788 F.3d at 1185. In *Dubin*, however, a primary explanation for this Court's interpretation of §1028A was that the statute's title makes clear that it was meant to cover identity *theft*, and it is within this discussion of the title that this Court approved of the Seventh Circuit's approach in *Spears*. *See Dubin*, 599 U.S. at 120-23.

Importantly, the Ninth Circuit's analysis in *Osuna-Alvarez* only focused on the words "without lawful authority" in §1028A, and it did so in isolation. *See Osuna-Alvarez*, 788 F.3d at 1185. *Dubin* rejected the government's similar interpretive approach, which sought to read the words in §1028A "in isolation." *Dubin*, 599 U.S. at 117. Instead, the title of §1028A and each of its elements must be read together, as all of the terms together provide the context for the statute's meaning. *Id.* at 118-19 (the statute's terms cannot be "taken alone" and instead "[r]esort to context" is "especially necessary"). The complete context of §1028A requires a "narrower reading" of the statute limited to identity *theft*. *Id.* at 120-22.

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[3] "'[S]tealing' can, of course, include situations where something was initially lawfully acquired." *Dubin*, 599 U.S. at 122 n.6.

Unlike *Osuna-Alvarez*, where the Ninth Circuit limited its analysis to the "without lawful authority" language, *Dubin* concluded that such language had to be read together with the "use," the "in relation to," and the "another person" language in §1028A, all of which make clear that stealing another person's identity must be at the crux of the underlying offense. *Id.* at 123-25 (statute covers using "a means of identification belonging to 'another person'" and "to unlawfully 'possess' something belonging to another person suggests it has been stolen"). The unanimous *en banc* opinion in *Spears* relied on the "another person" language together with the title of §1028A, *see Spears*, 729 F.3d at 756-57, the same analysis that this Court adopted in *Dubin* while relying on *Spears*. *See Dubin*, 599 U.S. at 122-25. The Ninth Circuit has reasoned that *Dubin* is not *clearly* irreconcilable with *Osuna-Alvarez* because those cases interpreted "different statutory language" with the latter only focusing on the "without lawful authority" language in §1028A. *See Parviz*, 131 F.4th at 972-73. The fundamental flaw with *Osuna-Alvarez*, however, is that the Ninth Circuit essentially limited its analysis to that language.

Finally, although the government inconsistently shifted positions in *Dubin*, it appeared to *concede* that "a defendant would not violate §1028A(a)(1) if they had permission to use a means of identification to commit a crime." *Dubin*, 599 U.S. at 128 n.8. For example, one part of the government's brief in *Dubin* conceded that a "defendant can have 'lawful authority' to use a co-conspirator's name to commit bank fraud . . . ." *Id.* Obviously, if the government agrees that the Ninth Circuit's interpretation is wrong, this Court should grant review, and the Solicitor General should direct government attorneys to cease advocating an erroneous interpretation of the statute. Even if the government has not clearly conceded the issue and instead has waffled with shifting positions, that simply demonstrates the current confusion and the need for clear guidance from this Court, particularly given the severe two-year mandatory consecutive sentence that hangs in the

balance. *See Dubin*, 599 U.S. at 127-28. For all of these reasons, this Court should grant review, reverse the Ninth Circuit, and confirm the Seventh Circuit's approach in *Spears*.

IV. The Court Should Grant This Petition To At Least Limit *Osuna-Alvarez* To "Use" Offenses

At the least, the Court should grant this petition to limit *Osuna-Alvarez's* reach to the §1028A offense it addressed, which was "use," not "possession," of an identification. 788 F.3d at 1184. That is because *Dubin* explicitly said that to establish a "possession" offense under §1028A the government must show the identity was stolen. Specifically, when comparing the "use" offense to the "possession" and "transfer" offenses in §1028A, this Court said:

> The two neighboring verbs here, "transfers" and "possesses," are most naturally read in the context of §1028A(a)(1) to connote theft. . . . Section 1028A(a)(1) covers unlawful possession or transfer of a means of identification belonging to "another person." Generally, to unlawfully "possess" something belonging to another person suggests it has been stolen. . . . The government, at argument, agreed: these two verbs "refer to circumstances in which the information is stolen." [Citation omitted.]
>
> "Transfer" and "possess" not only connote theft, but identity theft in particular. The verbs point to (1) theft of a (2) means of identification belonging to (3) another person. That tracks ordinary understandings of identity theft . . . .

Dubin, 599 U.S. at 125. To resolve the obvious conflict with this clear language, this Court should grant this petition to, at the very least, limit *Osuna-Alvarez* to the §1028A "use" offense involved in that case.

V. This Case Presents An Ideal Vehicle For Review And This Court Should Not Wait For Further "Percolation"

This case is an ideal vehicle for review. The evidence strongly suggests that Mansaray consented to the use of her account and account number as part of the fraud conspiracy charged, and thus that Egwumba did not steal the account number nor possess it without Mansaray's consent. Furthermore, the Ninth Circuit has made it clear in this case and others (including *Parviz* and *Omidi*)

that it is not changing its interpretation, despite *Dubin*. Thus, the circuit-split is not disappearing regardless of any further "percolation." That is, the Ninth Circuit is not budging, and there is no reason for the Seventh Circuit to change its interpretation given that *Dubin* supports it. This Court has also noted the government's shifting positions on the issue. *See Dubin*, 599 U.S. at 128 n.8. If the government cannot agree on a clear position, there is not much hope that further "percolation" will do anything more to frame the issue for this Court. In short, the confusion and conflict has gone on long enough.

CONCLUSION

Egwumba requests that the Court grant this petition for a writ of certiorari.

Respectfully submitted,

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Date: November 24, 2025

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