No. _____

In The

Supreme Court of the United States

PRINCEWELL ARINZE DURU,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Title 18, United State Code, Section 1028A imposes a mandatory two-year consecutive sentence on anyone who "knowingly transfers, possesses, or uses, *without lawful authority*, a means of identification of *another person*" "during and in relation to" an enumerated felony. As *Dubin v. United States*, 599 U.S. 110, 114 (2023), confirmed, for a conviction under that statute to stand, the government must prove that the transfer, possession, or use of the means of identification lies "at the crux of what makes the underlying offense criminal." Despite this, a divided Ninth Circuit panel affirmed Mr. Duru's Section 1028A conviction based his use of *his own identity* to open two bank accounts. And although those accounts were linked to a single attempted deposit from one individual, the panel affirmed the determination that the offense involved 10 or more victims under U.S.S.G. § 2B1.1(b)(2)(A)(I) based on individuals who suffered no actual loss. The questions presented are:

1. Whether 18 U.S.C. § 1028A, which applies to the use "without lawful authority, [of] a means of identification *of another person*" permits conviction based on a defendant's consensual use and sharing of his own information.

2. Whether using a means of identification to open a bank account satisfies the requirement that that use be at the "crux of what makes the underlying offense criminal."

3. Whether the term "victim" in U.S.S.G. § 2B1.1(b)(2)(A)(i) includes individuals who sustained no actual loss.

RELATED PROCEEDINGS

This case arises from the following proceedings in the Ninth Circuit Court of Appeals and the Central District of California District Court, listed here in reverse chronological order:

- Order denying panel rehearing and rehearing en banc, included as Appendix D;
- Panel Decision, reported at *United States v. Egwumba*, Nos. 22-50272, 22-50274, 2025 WL 1409495, at *1 (9th Cir. May 15, 2025), included as Appendix A;
- Judgment and Commitment Order, reported at *United States v. Egwumba*, No. 2:19-cr-00380-RGK-58 (C.D. Cal. Nov. 17, 2022) included in Appendix C.

On November 24, 2025, co-defendant George Egwumba filed a petition for certiorari docketed at No. 25-6266.

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within this Court's Rule 14.1(b)(iii).

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Petitioner Princewill Duru was convicted of aiding and abetting aggravated identity theft in violation of 18 U.S.C. § 1028A and 18 U.S.C. § 2(a) based on his use of his own identity to open two bank accounts and sharing of that information. That consensual use is not identity theft, let alone aggravated identity theft, and it is not the use of "a means of identification of another person" "without lawful authority" as Section 1028A requires. Nonetheless, Mr. Duru was convicted of violating Section 1028A and a split panel of the United States Court of Appeals affirmed his conviction. In so doing, the majority also affirmed the addition of two levels to Mr. Duru's Sentencing Guidelines calculation under U.S.S.G. § 2B1.1(b)(2)(A)(i)'s enhancement for an offense involving "10 victims or more" even though only one individual was identified as suffering any actual loss.

This petition squarely presents three issues over which courts are plainly split. First, it raises the question whether Section 1028A, which requires the use "without lawful authority, [of] a means of identification of another person," permits conviction for the consensual use of such information. The Seventh Circuit correctly concluded that it does not, while every other Circuit to address the issues has concluded that it does.

Second, even if Section 1028A does allow for such convictions, this case also raises the question whether the use of a defendant's own name to open a bank account as an ancillary part of a larger scheme—

a fungible means to a larger end—satisfies *Dubin*'s requirement that the use of that means of identification play a "central role" in and be at the "crux of what makes the underlying offense criminal." The panel's decision here, which turned on the availability of a bank account, not the underlying means of identification, conflicts with the Second Circuit's approach and with *Dubin* itself.

And third, this case also raises the question whether the term "victim" as used in U.S.S.G. § 2B1.1(b)(2)(A)(i)'s enhancement for an offense involving "10 victims or more" includes individuals who sustained no actual loss. Courts have also split on this issue, and specifically, whether (i) the term "victim" in Section 2B1.1(b)(2) is ambiguous and (ii) whether it is proper to rely on Application Notes 1 and 4(E) in interpreting the term. Here, the Ninth Circuit held that "victim" can include an individual that experienced no actual loss and that did not have their means of identification stolen. App.10a. The court reasoned that "[b]ecause the Guidelines by default apply to both actual and intended harm and § 2B1.1 does not specify otherwise, the district court could reasonably conclude that 'victims' unambiguously refers to persons upon whom defendants and their coconspirators intended to inflict pecuniary loss—whether successfully or not." App.10a. That conflicts with the Second, Fourth, Sixth, and Eleventh Circuits, all of which have held that the term "victims" in this context encompasses individuals that (i) suffered actual loss or (ii) had their means of identification used unlawfully are "victims" for purposes of Section 2B1.1(b)(2).

This Court should grant review.

OPINIONS BELOW

The unpublished memorandum decision of the United States Court of Appeals for the Ninth Circuit appears at 2025 WL 1409495 and is reproduced at App.1a-17a. The orders of judgment and commitment of the United States District Court for the Central District of California are unpublished and reproduced at App.27a-40a.

JURISDICTION

The Ninth Circuit issued its memorandum disposition affirming Mr. Duru's convictions and sentences, as well as those of his co-defendant, Mr. Egwumba, on May 15, 2025. The Ninth Circuit subsequently issued an order denying their timely petition for rehearing on September 4, 2025.

This petition is timely under this Court's Dec. 2, 2025 order extending the time to file any petition for certiorari to Jan. 2, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1028A(a)(1), entitled "Aggravated Identity Theft," provides that: "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."

U.S.S.G. § 2B1.1(b)(2)(A)(i) provides that: "If the offense—(A) (i) involved 10 or more victims; (ii) was committed through mass-marketing; or (iii) resulted in substantial financial hardship to one or more victims, increase by 2 levels…."

STATEMENT OF THE CASE

A. Legal Background

1. Section 1028A

Title 18, United State Code, Section 1028A is "a vague statute" and its application has "eluded" consistency by lower courts. *Dubin v. United States,* 599 U.S. 110, 139 (2023) (Gorsuch, J., concurring). Section 1028A, entitled "Aggravated Identity Theft," provides a mandatory two-year consecutive sentence for whoever "knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person" "during and in relation to" an enumerated felony. *Id.* As this Court has recognized, "Section 1028A(a)(1) is an enhancement, and a severe one at that." *Dubin*, 599 U.S. at 127.

In *Flores-Figueroa v. United States,* 556 U.S. 646 (2009), this Court confirmed that Section 1028A requires the Government to show that the defendant *knew* that the "means of identification" he or she unlawfully transferred, possessed, or used, in fact, belonged to "another person." *Id.* at 647, 656-57 (Breyer, J.); *see id.* at 659 (Scalia, J., and Thomas, J., concurring) (emphasizing that "[t]he statute of the

text is clear"); *id.* at 660-61 (Alito, J., concurring) (clarifying that an interpretation otherwise results in "the defendant's liability . . . depend[ing] on chance"). In so doing, the Court noted that Congress separated identity fraud from identity theft: Section 1028 addresses "Fraud and related activity in connection with identification documents, authentication features, and information," while Section 1028A's title addresses "identity *theft*." *Id.* at 655. That "Congress separated the [identity] fraud crime from the [identity] theft crime in" § 1028A suggests that § 1028A is focused on identity theft specifically, rather than all fraud involving means of identification." *Id.* (citing H.R. Rep. No. 108–528, at 4–5, U.S. Code Cong. & Admin. News 2004, pp. 779, 780–81 (identifying as examples of "identity theft" "'dumpster diving,'" "accessing information that was originally collected for an authorized purpose," "hack[ing] into computers," and "steal[ing] paperwork likely to contain personal information")).

Fourteen years later, in *Dubin v. United States,* 599 U.S. 110 (2023), the Court held that the statutory terms "uses" and "in relation to" allow for criminal liability only when "the use is at the crux of what makes the conduct criminal." *Id.* at 131. Faced with the government's expansive theory of liability which would cover "any time another person's means of identification is employed in a way that facilitates a crime," this Court concluded that the "title and terms both point to a narrower reading, *one centered around the ordinary understanding of identity theft*." *Id.* at 120. Looking to Section 1028A's title, the Court acknowledged that "'identity theft' has a focused meaning," citing two dictionary definitions of identity

theft: "'the *fraudulent appropriation and use of another person*'s identifying data or documents, as a credit card'" and "[t]he *unlawful taking and use of another person's identifying information* for fraudulent purposes; specif[ically] a crime in which someone steals personal information about and belonging to another, such as a bank-account number or driver's-license number, and uses the information to deceive others." *Id.* at 122 (citing Webster's Unabridged Dictionary xi (2d ed. 2001); Black's Law Dictionary 894 (11th ed. 2019) (defining "identity theft")) (emphasis added). And looking to Section 1028A's text, the Court concluded that Congress "employed a trio of verbs that capture various aspects of 'classic identity theft,'" not just facilitation of the underlying offense. *Id.* at 126. Accordingly, while the Court did not resolve the scope of "without lawful authority," it held, "[t]aken together, from text to context, from content to common sense, § 1028A(a)(1) is not amenable to the Government's attempt to push the statutory envelope." *Id.* at 110, n.4, 131.

Dubin, however, did not mark the end of the government's attempts to read Section 1028A expansively, or of ensuing division among the lower courts when confronted with such efforts. That in turn has led to (or aggravated) a series of circuits splits, involving mutually exclusive readings of Section 1028A's requirement that the means of identification be "of another person" and "without lawful authority." Including Mr. Duru's petition, there are presently at least four petitions for certiorari related to Section 1028A seeking to address ambiguities that remain unresolved after *Dubin*. *See, e.g., Omidi, et al. v. United States*, No. 25-160 (discussing divisions among

Circuits in defining identity theft in the context of a "use" offense); *Parviz v. United States*, No. 25-201 (explaining divisions among Circuits in applying §1028A when the defendant used another person's means of identification with, or without, their consent); *Egwumba v. United States*, No. 25-6266 (analyzing ambiguity of the term "possessing" in relation to a "means of identification" when there is no evidence the person possessing that identification sought to use it in any—much less *illegal or nonconsensual*—way).

2. U.S.S.G. § 2B1.1(b)(2)(A)(i)

For offenses involving fraud, the United States Sentencing Guidelines provide for a two-level enhancement if the offense involves "10 or more victims." U.S.S.G. § 2B1.1(b)(2)(A)(i). The Commentary to the Sentencing Guidelines defines the term "victim" as "(A) any person who sustained any part of the *actual loss* determined under subsection (b)(1); or (B) any individual who sustained bodily injury as a result of the offense." U.S.S.G. § 2B1.1 cmt. n.1. Application Note 4(E) states that, in cases involving means of identification, the term "victim" includes "any individual whose means of identification was used unlawfully or without authority." U.S.S.G. § 2B1.1 cmt. n.4(E). Circuits are split as to whether "victims" is "genuinely susceptible to multiple reasonable meanings," *Kisor v. Wilkie*, 588 U.S. 558, 581 (2019), and to what extent Application Note 4(E) permits conviction where the record fails to show 10 or more victims who sustained actual loss (or whose means of identification were used).

B. Factual Background

This case arose out of a 252-count Indictment brought against 80 defendants, including Petitioner Princewill Arinze Duru and George Ugochukwu Egwumba, although only Mr. Duru and Mr. Egwumba ultimately proceeded to trial together. 3-ER-232-376.[1] At issue here is Count 252 [2], which alleged that between January 19, 2017, and May 19, 2017, Mr. Duru and three co-defendants aided and abetted aggravated identity theft in violation of 18 U.S.C. § 1028A and 18 U.S.C. § 2(a) in relation to a conspiracy to commit wire fraud, bank fraud, and mail fraud. 3-ER-369. The Federal Bureau of Investigation claimed to have identified over 100 victims, an "attempted loss of over $40,000,000," and actual loss of $6 million. 4-ER-670, 685-86. Of that, Mr. Duru was only connected to one victim and an intended, but not actual, loss of $25,600. 3-ER-333; *see* PSR ¶ 25.

At trial, the government's case relied on two witnesses: one victim, D.J., and a co-conspirator, Chris Igbokwe, who proffered testimony pursuant to a cooperation agreement. 5-ER-902-03. During a

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[1] ER refers to the Excerpts of Record submitted by George Egwumba in the consolidated appeal, and SER to the Supplemental Excerpts of Record submitted by Petitioner Princewill Duru.

[2] Mr. Duru was charged with three other counts: Count One, in violation of 18 U.S.C. § 1956(h) (Conspiracy to Commit Money Laundering); Count Two, in violation of 18 U.S.C. § 1349 (Attempt and Conspiracy to Commit Bank Fraud); and Count 24, in violation of 18 U.S.C. § 1343 and 18 U.S.C. § 2(a) (Aiding and Abetting-Wire Fraud). App.28a. Those are not in dispute for the purposes of this appeal.

January 2017 visit to Sacramento, California, Igbokwe claimed to have asked Mr. Duru to open bank accounts into which Igbokwe could funnel funds. 5-ER-908-11, 914-15; 6-ER-1022-23, 1029. Mr. Duru, who had no prior criminal history of any kind, initially turned Igbokwe down before finally agreeing. 5-ER-1022-23; 5-ER-908-09; 5-ER-917-18. Mr. Duru used his own identity to register a business under the name PD Enterprise on January 20, 2017, in Sacramento County. 5-ER-917-18. And just as he had registered the business PD Enterprise using his own personal information, Mr. Duru also opened an account at Bank of America and at Wells Fargo using his real name and address. 5-ER-915-9; 5-ER-924-25; 6-ER-1035; 5-ER-928-29. Igbokwe subsequently sent Mr. Duru's account information to several individuals. 5-ER-964-65, 968-72; 6-ER-1033.

The fraudster whom Mr. Duru was charged with aiding and abetting convinced, D.J., a romance fraud victim, to send money directly to banks in Central Asia and Indonesia before attempting to use Duru's U.S. bank account information. App.15a. When that individual instructed D.J. to send a $25,600 money order to Duru's U.S. bank account, those funds were frozen and returned to the fraud victim through Wells Fargo's anti-fraud measures. App.15a; 3-ER-503-16; 5-ER-929-34; 6-ER-1033; 7-ER-1317-23. The fraudster then convinced D.J. to transfer those funds directly overseas through other means. App.15a. D.J. had no contact with Mr. Duru before (or after) sending her check to him. 5-ER-934, 960. According to Igbokwe's testimony, this was the only transaction Mr. Duru was involved in with him, and Mr. Duru was not paid for it. 6-ER- 1028, 1033. In

later exchanges with Igbokwe, Mr. Duru said that he had closed the accounts and had not reopened them. SER- 159-64, 168-70. Mr. Duru was not tied to any other bank accounts.

Although the plain language of Section 1028A states that the identity theft must be "of another person" and "without lawful authority," the district court instructed the jury that "the government need not establish that the means of identification of another person was stolen or used without the person's consent or permission." 6-ER-1180.

After trial, Mr. Duru filed a Rule 29 motion challenging his conviction on the Section 1028A count. CR 1225. Using his own bank account, he argued, clearly did not meet the requirement that the "means of identification at issue belonged to another person" as required by *Flores-Figueroa*, 556 U.S. at 657. *Id.* In denying that motion, the court conceded that the Section 1028A count was grounded on the use of Mr. Duru's identity, not anyone else's. App.25a-26a. Nonetheless, the court concluded it was irrelevant that Mr. Duru consented to the use of his own identity, and affirmed his Section 1028A conviction. *Id.*

Mr. Duru, who had no prior criminal history, had a criminal history category I. PSR Summary at 4. The resulting Guidelines range was 57 to 71 months' imprisonment. *Id.* The Court then applied a 10-level increase to U.S.S.G. § 2B1.1(b)(1)(F) based on its conclusion that Mr. Duru was responsible for intended losses totaling $233,865.80 and an unknown amount of actual losses. PSR ¶ 43. It also applied a two-level increase under U.S.S.G. § 2B1.1(b)(2)(A)(i), for an

offense involving 10 or more victims, in addition to other sentencing increases. PSR ¶¶ 44-49. The district court ultimately found the appropriate total offense level was 25 and the criminal history category I, resulting in a guideline range of 57 to 71 months, with a consecutive mandatory 24 months for the Section 1028A charge. SER-38-39 (sentencing transcript). Accordingly, the district court imposed a sentence of 81 months' imprisonment: 57 months on each of Counts 1, 2, and 24, to be served concurrently, and 24 months on Count 252 of the Indictment, to be served consecutively. SER-4; SER-38-39 (Sentencing transcript). The court also imposed a three-year term of supervised release (three years on each of Counts 1, 2, and 24, and one year on Count 252, to run concurrently). SER-4.

C. The Ninth Circuit's Decision

On appeal, Mr. Duru challenged his aggravated identity theft conviction under Section 1028A in light of *Dubin*, and the application of U.S.S.G. § 2B1.1(b)(2)(A)(i)'s "involved 10 victims or more" sentencing enhancement, among other issues.

Over a partial dissent by Judge Mendoza, the Ninth Circuit panel rejected Mr. Duru's challenges. As to his challenge to Section 1028A, the court acknowledged that the instruction was error under *Dubin*, but held a proper jury instruction would not have affected the verdict. App.3a-4a. Further, it affirmed that the statute may be applied "'regardless of whether the means of identification was stolen or obtained with the knowledge and consent of its owner[.]'" App.4a. (quoting *United States v. Osuna-*

Alvarez, 788 F.3d 1183, 1185-86 (9th Cir. 2015) (per curiam) (additional citations omitted)). Finally, the panel acknowledged that "*Dubin* explicitly declined to address the statutory meaning of 'lawful authority[,]'" but found its interpretation consistent with that of *Osuna-Alvarez* and the text of the statute. *Id.* (citing *United States v. Parviz*, 131 F.4th 966, 972 (9th Cir. 2025) (additional citation omitted)).

Regarding the Sentencing Guidelines Section 2B1.1(b)(2)(A)(i) enhancement challenge, the majority found no plain error, holding that "the district court could reasonably conclude that 'victims' unambiguously refers to persons upon whom defendants and their coconspirators intended to inflict pecuniary loss—whether successfully or not." *Id.* at *4. In so holding, the Ninth Circuit court relied on *Kisor v. Wilkie*, 588 U.S. 558 573 (2019), finding that "it is not clear that 'victims' is 'genuinely ambiguous[ ]'. . . such that we may defer to the U.S. Sentencing Commission's application notes." *Id.* (citing *United States v. Castillo*, 69 F.4th 662-63 (9th Cir. 2023)). On that basis, the Ninth Circuit affirmed the two-level enhancement for 10 or more victims.

In partial dissent, Judge Mendoza would have reversed the Section 1028A conviction and the sentencing enhancement for 10 or more victims. As to the Section 1028A conviction, he concluded that "[t]here is a reasonable probability that a jury would have found Duru's account information, which did not . . . even facilitate a fraud scheme or cause its success, was not 'at the crux of' the criminal conspiracy charged in the indictment." App.12a-15a. Furthermore, he argued, the majority erred in its

Kisor analysis of the 10-or-more victims enhancement under the Sentencing Guidelines because the term "victims . . . has many possible meanings." App.15a (Mendoza, J., dissenting) (quoting *Kisor*, 588 U.S. at 581). Accordingly, he would have turned to the application notes and declined to apply the enhancement because "[t]he government did not identify 10 or more victims who sustained actual loss." *Id.* at *7 (Mendoza, J., dissenting). (There was no allegation as to Mr. Duru that—aside from at most his own—any other individual's means of identification was used unlawfully or without authority.)

D. The Petition for Rehearing

After the Ninth Circuit rejected Mr. Duru's challenges, he filed a petition for rehearing. Although Judge Mendoza would have granted the petition, the Ninth Circuit denied that petition on September 4, 2025. App.42a.

REASONS FOR GRANTING THE PETITION AND SUMMARY OF ARGUMENT

This Court should grant review to resolve persistent Circuit splits over the scope of Section 1028A and the application of U.S.S.G. § 2B1.1(b)(2)(A)(i). This case is an appropriate vehicle to resolve those issues, which present questions of law, and there is no reason to wait to address them.

The Ninth Circuit's decision affirming Mr. Duru's Section 1028A conviction implicates three issues over which circuit courts have split: whether Section 1028A criminalizes the use of one's own identity notwithstanding the statute's reference to the

means of identification "of another person," whether "without lawful authority" applies to consensual use, and post-*Dubin,* how ancillary conduct—such as possession of one's own means of identification—can ever constitute conduct that lies "at the crux of" a criminal conspiracy.

Likewise, circuit courts continue to wrestle with whether "victims" as set forth in U.S.S.G. § 2B1.1(b)(2)(A)(i) is "genuinely susceptible to multiple reasonable meanings," *Kisor v. Wilkie*, 588 U.S. 558, 581 (2019), and to what extent courts may rely on Application Notes 1 and 4(E) which clarify that the 10-or-more victim enhancement is limited to a person who has suffered actual loss or "any individual whose means of identification was used unlawfully or without authority," respectively.

The Court should grant certiorari on these questions to resolve these splits of authority. Alternatively, if this Court grants one of the pending petitions addressing these or related issues, it should at a minimum hold this petition.

I. This Court Should Grant Certiorari to Resolve the Split Over Whether Section 1028A Permits Conviction of a Defendant for The Consensual Use of His Own Information.

A. Section 1028A's Plain Meaning Prohibits a Conviction Premised on Use of the "Means of Identification of Another Person" "Without Lawful Authority" When the Only Identification Is the Defendant's Own and Is Used With His Consent.

The Court should grant certiorari to clarify this Court's interpretation of the phrase "another person" and "without lawful authority" in Section 1028A. Section 1028A provides that: "Whoever, during and in relation to any [enumerated] felony violation . . . 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." 18 U.S.C. § 1028A(a)(1). In the opinion below, the Ninth Circuit ignored the plain language of Section 1028A's "means of identification of another person" requirement by affirming Mr. Duru's conviction where he used only his own account information and not anyone else's. App.4a.

The court instructed the jury that it had to find, *inter alia*, that "a person knowingly transferred, possessed, or used, without legal authority, a means of identification of another person. Namely, in this count, the account number of a Wells Fargo account,

ending in 2899, belonging to defendant Duru." 6-ER-1180. The district court also told the jury that: "To act without legal authority means to act in a way that is contrary to the law, thus the government need not establish that the means of identification of another person was stolen or used without the person's consent or permission." 6-ER-1180 (emphasis added). And although Mr. Duru again challenged the legal sufficiency of his conviction after trial, the district court rejected those arguments, concluding that a person is liable for identity theft even where they grant someone permission to use their means of identification, but the other person uses it unlawfully. 1-ER-10-11. And the opinion below compounded this error by ignoring the plain language of Section 1028A's requirement that the means of identification used belong to "another person" and be used without their consent. App.4a.

Courts are split over whether "without lawful authority" encompasses consensual use. It does not. As this Court recognized in *Dubin*, Section 1028A is "focused on identity theft specifically, rather than all fraud involving means of identification." 599 U.S. at 121. And the Court specifically rejected the argument that Section 1028A is triggered "any time another person's means of identification is employed in a way that facilitates a crime." *Id.* at 122; *see id.* at 125 ("Generally, to unlawfully 'possess' something belonging *to another person* suggests it has been stolen.") (emphasis added).

The Ninth Circuit's reasoning in the opinion below and in *Osuna-Alvarez*, 788 F.3d 1183, on which it relied, squarely conflicts with *Dubin*, the Seventh

Circuit in *United States v. Spears*, 729 F.3d, 753, 758 (7th Cir. 2013), and indeed the government's apparent position in *Dubin*. *Parviz*, 131 F.4th at 970, *cert. pet. pending*, No. 25-201 (concluding panel was still bound by *Osuna-Alvarez* following *Dubin*); *see also Egwumba v. United States*, No. 25-6266, at *2 ("[I]n *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." (citing *Dubin*, 599 U.S. at 128 n. 8)); *Omidi, et al.*, No. 25-160, at *13-*14. In *Osuna-Alvarez*, the Ninth Circuit held that Section 1028A does not require a showing that the identification was stolen or used without the owner's consent. 788 F.3d at 1185-86. *Osuna-Alvarez* thus aligns the Ninth Circuit with the Sixth Circuit in this erroneous reading of Section 1028A. *See United States v. Prather*, 138 F.4th 963, 969–70 (6th Cir. 2025).

These circuits directly conflict with the Seventh Circuit's decision in *Spears*, which holds that 1028A does require a showing of stolen identification or use without the owner's consent. 729 F.3d at 758. Indeed, *Dubin* cited *Spears* with approval and rejected much of the reasoning underpinning *Osuna-Alvarez*. 599 U.S. at 120-25.

That conflict—and the tension between *Dubin* and *Osuna-Alvarez*—warrant granting certiorari, particularly where, as here, it is undisputed that Mr. Duru's use of his own means of identification to create a bank account in his own name and the subsequent sharing of that information was consensual. (Indeed, Mr. Duru's conviction on an aiding and abetting

theory could not stand if he had *not* agreed to the use of his information.) The Court should take the opportunity to adopt the holding of the Seventh Circuit's unanimous *en banc* opinion in *Spears*, 729 F.3d at 758, cited approvingly in *Dubin*, and hold that Section 1028A's use of "another person" and "without lawful authority" refers to a person who did not consent to the use of the "means of identification."

Nor can Mr. Duru's conviction stand based on his own use of his information, although this too is an issue over which circuit courts are split. Such a reading of Section 1028A violates the "cardinal principle of statutory construction" by treating "means of identification of another person" as a surplusage. *TRW Inc. v. Andrews*, 534 U.S. 19, 31, 122 S. Ct. 441, 449, 151 L. Ed. 2d 339 (2001). It cannot be squared with this Court's conclusion "that § 1028A(a)(1) requires the Government to show that the defendant knew that the means of identification at issue *belonged to another person*." *Flores-Figueroa*, 556 U.S. at 657 (emphasis added); *see also United States v. Gagarin*, 950 F.3d 596, 605 (9th Cir. 2020) ("The plain reading of 'another person' seems to us to be an actual 'person other than the defendant.'"); *United States v. Berroa*, 856 F.3d 141, 156 (1st Cir. 2017) (("[W]e read the term 'use' to require that the defendant attempt to pass him or herself off as another person or purport to take some other action on another person's behalf." (footnote omitted)); *Spears*, 729 F.3d at 758 ("'another person' to refer[s] to a person who did not consent to the use of the 'means of identification'"); *Dubin*, 599 U.S. at 120-25 (citing *Spears* with approval); *United States v. Zuniga-Arteaga*, 681 F.3d 1220, 1224 (11th Cir. 2012)

("it seems natural to read 'a means of identification of another person' as simply 'a means of identification of anyone other than the defendant.'"); *but see United States v. Mobley*, 618 F.3d 539, 547–48 (6th Cir. 2010) (permitting a conviction for Section 1028A when one uses his *own* social security number to submit fraudulent applications).

The Court should take the opportunity to dispel this confusion in the Circuits and reaffirm that Section 1028A does not permit a conviction for the consensual use of a defendant's own means of identification.

II. The Court Should Grant Certiorari to Resolve a Split of Authority Regarding Whether Identification Information Not Used in the Underlying Offense Plays a "Central Role" in and Is "[a]t the Crux of What Makes the Underlying Offense Criminal."

A. The Ninth and Second Circuits Disagree

In *Dubin*, this Court rejected the Fifth Circuit's interpretation of Section 1028A that permitted convictions for aggravated identity theft even "the defendant's misuse of another person's means of identification . . . was ancillary" to the defendant's violation of the underlying crime. 599 U.S.at 114. While acknowledging *Dubin*'s ruling (and the trial court's error), the Court nonetheless affirmed Mr. Duru's conviction based on the ancillary use of his means of identification, concluding that fraudsters' access to U.S. bank accounts like Duru's Wells Fargo

"was 'capable of influencing [a] person to part with money or property." App.3a.

As Judge Mendoza observed in partial dissent, however, the fraudster whom Duru was charged with aiding and abetting convinced a romance fraud victim to send money directly to banks in Central Asia and Indonesia before attempting to use Duru's U.S. bank account information. App.15a. When he then instructed D.J. to send money to Duru's U.S. bank account, those funds were frozen and returned to the fraud victim through the U.S. bank's anti-fraud measures. *Id.* That individual then convinced D.J. to transfer those funds directly overseas through other means. *Id.* This, Judge Mendoza concluded, "belies the argument that access to Duru's U.S. account was a key mover of the conspiracy because it '[made] victims believe that they were really sending money to a love interest in the United States, or a company based in the United States.'" *Id.* To the contrary, as he concluded, "[t]here is a reasonable probability that a jury would have found Duru's account information, which did not did not even facilitate a fraud scheme or cause its success, was not 'at the crux of' the criminal conspiracy charged in the indictment." *Id.*

The majority's decision conflicts with the Second Circuit, which in *United States v. Omotayo*, 132 F.4th 181 (2d Cir. 2025) correctly applied *Dubin* and found that a co-conspirator's possession of a means of identification that was never actually used was ancillary and insufficient to support a Section 1028A conviction. In so doing, it explained that it was not the invoice in question that must be "at the crux" of the fraud, but the "means of identification"—here,

an individual's name. *Omotayo*, 132 F.4th at 198. By contrast, here, the majority's reasoning turned on the existence of the bank accounts, not Mr. Duru's identity or the account information itself.

The opinion below also stands in stark contrast to post-*Dubin* treatments by other Circuits which decline to label as "crux" ancillary conduct. *See, e.g.*, *United States v. Ovespian*, 113 F.4th 1193 (9th Cir. 2024) (finding that the jury instructions were insufficient to convict the defendant of aggravated identity theft because it did not explain that "in relation to" is "context sensitive" and an explanation is "necessary" to "go beyond unhelpful text") (quoting *Dubin*, 599 U.S. at 119)); *Omotayo*, 132 F.4th at 200-01; *United States v. Jackson*, 126 F.4th 847, 868 (4th Cir. 2025) (cert. pet. filed) (noting that *Dubin* requires "a narrower reading [of § 1028A] than the Firth Circuit had previously permitted"); *United States v. Croft*, 87 F.4th 644, 651 (5th Cir. 2023) (opining on the narrow interpretation of § 1028A in *Dubin*); *United States v. Gladden*, 78 F.4th 1232, 1248 (11th Cir. 2023) (holding that, because the defendant never misrepresented who participated in the "unlawful activity," the use of another's identifying information was "merely ancillary to the deception"); *United States v. Sheppard*, 2024 WL 2815278, at *7-*8 (S.D. Fla. June 3, 2024) (appeal dismissed) (finding the defendant was not guilty of aggravated identity theft and that "the 'identity theft' requirement . . . goes to 'who' is involved, rather than just 'how' or 'when' services were provided" (quoting *Dubin*, 599 U.S. at 123)).

In contrast, post-*Dubin* decisions that resulted in the defendant's conviction present a narrow set of facts: (1) the use of a third party's identification, (2) to commit an unlawful act, (3) such that, without the identification, the unlawful act could not have occurred. *See, e.g.*, *United States v. Avenatti*, ---F.4th---, 2024 WL 959877, at *4 (2d Cir. Mar. 6, 2024) (holding the defendants' use of a third parties' identity as "at the crux" of the crime where the defendant forged his client's signature after learning that he could not steal funds from her without her signoff); *United States v. Weigand*, ---F.4th---, 2025 WL 1554931, at *3 (3d Cir. June 2, 2025) (holding that "[l]ike the hypothetical pharmacist in *Dubin*, [the defendant] misappropriated another person's identifying information to gain unauthorized access to financial systems," and that he "did not merely misrepresent the nature or extent of" who he was or his services); *United States v. O'Lear*, 90 F.4th 519, 533 (6th Cir. 2024) (holding that the defendants' use of forged signatures for billing purposes was at the "crux" of his unlawful actions); *Carter v. United States*, ---F.4th---, 2024 WL 20847, at *9 (11th Cir. Jan. 2, 2024) (finding the defendant's use of a third parties' information was "at the heart of the deception" when he used students' information to make it appear that they were enrolled at his school, which had the effect of unlawfully increasing state funding for the school); *see also United States v. Conley*, 89 F.4th 815, 825-26 (10th Cir. 2023) (discussing the Tenth Circuit's inconsistent interpretation of *Dubin*).

This more judicious reading is consistent with this Court's conclusion in *Dubin* that the statute's 2-year mandatory minimum sentencing enhancement

"is not indiscriminate but targets situations where the means of identification itself plays a key role." *Dubin*, 599 U.S. at 129. The Ninth Circuit's decision here cannot be squared with that reasoning. Here, as in *Dubin*, "from text to context, from content to common sense, Section 1028A(a)(1) is not amenable to the Government's attempt to push the statutory envelope." *Dubin*, 599 U.S. at 131. This Court should grant certiorari here to clarify *Dubin* and resolve the split between the Ninth and Second Circuits.

B. The Second Circuit's Narrower Interpretation of *Dubin* in *Omotayo* is the Correct Interpretation, in Contrast to the Ninth Circuit's Broader Interpretation in *Egwumba*.

In *Omotayo*, like here, the defendant was charged with conspiracy to commit wire fraud in a conspiracy in which members through romance scams posed as an individual and attempted to persuade the victim to issue payments to said individual. *Id.* at 185-86. In that case, however, Mr. Omotayo posed as a someone else—a project manager at the company from which Omotayo was attempting to obtain funds. *Id.* at 188-189.

Still, the Second Circuit found Mr. Omotayo was not guilty of aggravated identity theft under Section 1028A because "[f]irst, the jury was instructed to apply a legal standard that is now plainly incorrect . . . . [and s]econd, even if the jury had been correctly instructed under *Dubin*, the government's evidence was insufficient to show that Omotayo's possession or

transfer of the invoice was at the crux of what made the wire fraud scheme criminal." *Id.* at 185. In so holding, the Second Circuit thoroughly analyzed *Dubin*, and concluded that it was not the invoice that must be "at the crux" of the fraud, but the "means of identification"—here, Omatayo's name. *Omotayo*, 132 F.4th at 192-203. The Second Circuit explained that following *Dubin*: [1] "the means of identification itself must be a 'key mover' in the predicate crime"; and [2] "the government must show 'more than a causal relationship, such as facilitation of the offense or being a but-for cause of its success.'" *Id.* at 194. On that basis, the Court vacated Omotayo's conviction because "[t]he invoice [using another's name] was not a central part of the conspirator's scheme[,]" but rather it was to be used as a contingency plan in the event the Bank questioned the $24,351.31 into their bank account. *Id.* at 198.

In analyzing several hypothetical scenarios posed by the government in support of their argument that the invoice was "at the crux of" the crime, the Second Circuit held, "[w]e can easily imagine that the bank would have overlooked [the employee]'s name entirely, focusing on other information in the document. And even if we presume that placing [the employee]'s name on the invoice might have marginally 'advanced' the conspirator's fraud . . . *Dubin* teaches that 'being at the crux of the criminality requires more than . . . facilitation of the offense[.]'" *Id.* (quoting *Dubin*, 599 at 114). The Second Circuit contrasted Omotayo's case to that of his co-defendant, who prepared personal identifying information—including a "real name, address, social security number, and date of birth"—to impersonate

that individual on the phone with the bank. *Id.* at 198-99. This was "essential to the fraud" as "[i]t was [the victim's] identifying information . . . that the fraudsters needed to complete this part of the plan." *Id.*

The Second Circuit's reading is the correct one. Section 1028A is "focused on identity theft specifically, rather than all fraud involving means of identification." *Dubin*, 599 U.S. at 121 (contrasting 18 U.S.C. § 1028A with § 1028). Post-*Dubin*, to convict under Section 1028A, the means of identification must (1) have been stolen; and (2) used, possessed, or transferred in a manner that was at the "crux" of the underlying offense. *Id.* at 121-22; *see id.* at 125, 127 ("Both [the statute's title and test] point toward requiring the means of identification to be at the crux of the criminality."). "[B]eing at the crux of the criminality requires more than a causal relationship . . . of the offense or being a but-for cause of its 'success.'" *Id.* at 131 (citing *id.* at 134, 136-37 (Gorsuch, J., concurring)). But that looser causal relationship was all the Ninth Circuit required here.

In dissenting on this point, Judge Mendoza correctly applied *Dubin*'s analysis of Section 1028A to Mr. Duru's facts. Section 1028A is intended to provide a sentencing enhancement for individuals who would not have been able to commit—or *attempt* to commit—fraud without stealing another's identity. *Compare Omotayo*, 132 F.4th at 200-01 (finding Mr. Omotayo could not be convicted of aggravated identity theft given the "but-for" standard from *Dubin*) with App.14a-15a (Mendoza, J., dissenting) ("[T]he facts in this case [demonstrate] that such capability of

influencing a person did not play a 'central role" in and was not 'at the crux of what makes the underlying offense criminal.'"). "There is a reasonable probability that a jury would have found Duru's account information, which did not even facilitate a fraud scheme or cause its success, was not 'at the crux of' the criminal conspiracy charged in the indictment." *Id.* Judge Mendoza understood that this was not a case of identity theft, at least not in world postulated by this Court post-*Dubin*. As he noted, "[t]here is considerable daylight between the instruction the district court gave . . . and the requirement after *Dubin* that this must have been at 'at the crux of' what makes [the conspiracy count] criminal." *Id.* (Mendoza, J., dissenting).

The Court should grant certiorari to resolve the split between the Ninth and the Second Circuits.

III. The Court Should Grant Certiorari to Resolve a Split of Authority Regarding Whether U.S.S.G. § 2B1.1(b)(2)(A)(i)'s "Involved 10 Victims or More" Can Apply To Individuals Who Suffered No Actual Loss.

For offenses involving fraud, the Sentencing Guidelines provide a two-level enhancement if the offense involves "10 or more victims." U.S.S.G. § 2B1.1(b)(2)(A)(i). Application Note 1 of the Guidelines defines the term "victim" as "(A) any person who sustained any part of the *actual loss* determined under subsection (b)(1); or (B) any individual who sustained bodily injury as a result of the offense." U.S.S.G. § 2B1.1 cmt. n.1. Application Note 4(E)

states that, in cases involving means of identification, the term "victim" also includes "any individual whose means of identification was used unlawfully or without authority." U.S.S.G. § 2B1.1 cmt. n.4(E). (There is no allegation that Application Note 4(E) applies here.)

The Circuits have split over the correct interpretation of "victim" in applying this sentencing enhancement—with courts applying *Kisor* to arrive at inconsistent conclusions regarding whether "victim" is "genuinely susceptible to multiple meanings." Moreover, the Circuits disagree as to whether the Application Notes may be used at all. Accordingly, whether a court even reaches the Commentary to the Sentencing Guidelines varies across Circuits, resulting in inconsistent application of this significant sentencing enhancement, including application of this enhancement to cases such as Mr. Duru's, where there is no evidence in the record of any victim who sustained actual loss or more than 10 victims whose means of identification were used unlawfully or without authority. Indeed, there is at least one other petition for certiorari related to post-*Kisor* application of Section 2B1.1(b)(2) and related commentary. *See, e.g., Oladokun v. United States,* No. 25-5964 (challenging Section 2B1.1(b)(2) and commentary in light of *Kisor*). The Court should also grant certiorari to resolve this circuit split.

A. Circuits Have Split Over Whether The Term "Victims" Is Ambiguous.

First, the circuit courts have split over whether the term "victims" is ambiguous and whether it is

proper to rely on the Commentary to the Guidelines, specifically Application Notes 1 and 4(E), in interpreting the meaning of that word. As the Supreme Court has recognized, ambiguity exists when a term is "genuinely susceptible to multiple reasonable meanings." *See Kisor*, 588 U.S. at 581. Where language in the Guidelines is ambiguous, it is proper to defer to the Commentary to the Guidelines.

The Ninth Circuit has held that the term "victim" in the Sentencing Guideline enhancement is ambiguous. *United States v. Aloba*, No. 22-50291, 2025 WL 1248827, at *2 (9th Cir. Apr. 30, 2025). In *Aloba*, the government argued that all individuals who had their identities misappropriated were victims. *Id.* The court explained that "[e]ven if we thought the word 'victim' could be read that broadly, it is at least ambiguous, and nothing in the structure or history of the Guidelines resolves that ambiguity in favor of the government." In light of that ambiguity, the court turned to the Commentary to the Sentencing Guidelines—specifically Application Notes 1 and 4(E). *Id.* (citing *United States v. Trumbull*, 114 F.4th 1114, 1117–18 (9th Cir. 2024)). The court then explained that pursuant to Application Notes 1 and 4(E), "a 'victim' who suffered harm in a case involving means of identification includes 'any person who sustained any part of the actual loss determined' as well as 'any individual whose means of identification was used unlawfully or without authority.'" *Id.* (citing U.S.S.G. § 2B1.1 cmt. n.1 & n.4(E); *United States v. Gonzalez Becerra*, 784 F.3d 514, 518–20 (9th Cir. 2015)).

Yet in the opinion below, the Ninth Circuit declined to follow its own precedent in *Aloba*, instead

reasoning that "it is not clear that 'victims' is 'genuinely ambiguous,' such that we may defer to the U.S. Sentencing Commission's application notes." App.10a (quoting *Kisor*, 588 U.S. at 573) (citing *United States v. Castillo*, 69 F.4th 648, 662–63 (9th Cir. 2023)). The majority here concluded that the district court did not plainly err in finding that Mr. Duru's offenses "involved 10 or more victims" because, it reasoned, "'victims' unambiguously refers to persons upon whom defendants and their coconspirators intended to inflict pecuniary loss—whether successfully or not." App.10a.

The Ninth Circuit's reading of "victims" in this case (if not *Aloba*) is consistent with the Third Circuit's view that the term is not ambiguous in the context of U.S.S.G. Section 2B1.1(b)(2). *United States v. Barkers-Woode*, 136 F.4th 496, 501 (3d Cir. 2025). In that case, the court analyzed whether the district court erred by defining "victim" under U.S.S.G. § 2B1.1(b)(2) to include "individuals whose identities are stolen." *Id.* The appellants argued that the court should not rely on Application Note 4(E), which includes in the definition of victim "any individual whose means of identification was used unlawfully or without authority." *Id.* at 501-02 (quoting U.S.S.G. § 2B1.1(b)(2) cmt. n.4(E)). The court explained that it "need not decide whether deference [to Application Note 4(E)] is appropriate because we independently hold that 'victim' is not ambiguous as to whether it includes victims of identity theft." *Id.* The court thus declined to rely on the Sentencing Guidelines Commentary.

While other Circuits have not squarely addressed whether the term "victim" is ambiguous in this context, they have nonetheless relied on Application Notes 1 and 4(E) in determining the meaning of the word "victim" in this context, and are thus in conflict with the Third Circuit and the Ninth Circuit in this case. *See United States v. Jackson*, 858 F. App'x 802, 809 (6th Cir. 2021) (relying on Application Notes 1 and 4(E) in interpreting the term "victim" in Section 2B1.1(b)(2)); *United States v. Foreman*, 797 F. App'x 867, 868 (5th Cir. 2020) (same); *United States v. Exavier*, 783 F. App'x 849, 866 (11th Cir. 2019) (same); *United States v. Melchor*, 580 F. App'x 173, 175 (4th Cir. 2014) (same); *see also United States v. Kirilyuk*, No. 19-10447, 2022 WL 993574, at *1 (9th Cir. Apr. 1, 2022) (same).

B. Circuits Have Split over the Application of Section 2B1.1(b)(2)'s Commentary Requiring a Showing of Actual Loss from 10 or More Victims.

Circuit courts also differ in requiring actual loss from ten or more victims before applying Section 2B1.1(b)(2)'s sentencing enhancement. The Second, Fourth, Sixth, and Eleventh Circuits, relying on Application Notes 1 and 4(E), have held that a victim is an individual who either (a) suffered an actual monetary loss or (b) whose means of identification was used unlawfully or without authority. *United States v. Kukoyi*, 126 F.4th 806, 813 (2d Cir. 2025); *United States v. Jackson*, 858 F. App'x 802, 809 (6th Cir. 2021); *United States v. Melchor*, 580 F. App'x 173, 174 (4th Cir. 2014); *United States v. Exavier* in a

consistent manner. 783 F. App'x 849, 866 (11th Cir. 2019). These courts hold that a victim need not suffer actual loss, but only that their means of identification was used unlawfully. That cannot be squared with the panel majority's conclusion here that Section 2B1.1(b)(2)'s enhancement applies when no "victim" suffered actual loss *and* also where there was no evidence in the record that 10 or more "victims" had their means of identification used unlawfully or without authority.

By contrast, the Second Circuit has held that if a victim does not suffer any actual loss, the enhancement applies only if 10 or more victims' means of identification was used unlawfully or without authority. *United States v. Kukoyi*, 126 F.4th 806, 813 (2d Cir. 2025) (finding no error in application of enhancement with 11 victims—nine suffering from identity theft and two suffering actual loss). The court explained that "Application Note 1 defines a 'victim' as, *inter alia*, 'any person who sustained any part of the actual loss,' and Application Note 4(E) expands that definition in 'a case involving means of identification' to include 'any individual whose means of identification was used unlawfully or without authority.'" *Id.* (quoting U.S.S.G. § 2B1.1 app. n.1., n.4(E)). The court thus concluded that "where, as here, a case involves means of identification, victims include any individuals whose identities were used without authority, 'regardless of whether [they] suffered any financial loss.'" *Id.* (quoting *United States v. Jesurum*, 819 F.3d 667, 671 (2d Cir. 2016)).

In *United States v. Jackson*, the Sixth Circuit addressed the argument that individuals who do not

experience actual loss are not "victims." 858 F. App'x 802, 809 (6th Cir. 2021). The court explained that "[v]ictims include both those suffering 'actual loss'—including 'individuals, corporations, companies, associations, firms, partnerships, societies, and joint stock companies'—and 'any individual whose means of identification was used unlawfully or without authority.'" *Id.* (quoting U.S.S.G. § 2B1.1(b)(2)(A)(i), cmt. n.1, n.4(E)). The court noted that the defendant argued that some victims did not lose money but "d[id] not dispute that the individuals the district court named were victims of the second kind, those whose means of identification [the defendant] used unlawfully." *Id.* Thus, the Sixth Circuit recognized that for the enhancement to apply, the victim need not suffer actual harm *if* Application Note 4(E) applies and their means of identification was used unlawfully.

The Fourth Circuit reached a similar conclusion in *United States v. Melchor*, 580 F. App'x 173, 174 (4th Cir. 2014). The court there addressed the defendant's argument that the district court erred in applying the victim enhancement "because only victims who suffered a financial loss may be counted for purposes of the Guidelines." *Id.* The court explained that "[t]he application notes state that, in a case involving means of identification[,] victim means . . . any individual whose means of identification was used unlawfully or without authority.'" *Id.* (quoting U.S.S.G. § 2B1.1(b)(2) cmt. n.4(E)). It further noted that "Application Note 4(E) specifically states that this definition of victim exists independently from the general definition of victim in Application Note 1, which requires 'actual loss' or 'bodily injury.'" *Id.* (quoting U.S.S.G. § 2B1.1 cmt. n.1).

Finally, the Eleventh Circuit decided *United States v. Exavier* in a consistent manner. 783 F. App'x 849, 866 (11th Cir. 2019). The court there explained that "[a] 'victim' includes 'any person who sustained any part of the actual loss' attributed to the crime," and "[i]n cases involving means of identification, 'victim' also includes 'any individual whose means of identification was used unlawfully or without authority.'" *Id.* (quoting U.S.S.G. § 2B1.1(b)(2)(A)(i), cmt. n.1., n.4(E)).

To the contrary, here the Ninth Circuit held that "victim" can include an individual that experienced no actual loss and that did not have their means of identification stolen. App.10a. The court reasoned that "[b]ecause the Guidelines by default apply to both actual and intended harm and § 2B1.1 does not specify otherwise, the district court could reasonably conclude that 'victims' unambiguously refers to persons upon whom defendants and their coconspirators intended to inflict pecuniary loss—whether successfully or not." App.10a. That conflicts with the Second, Fourth, Sixth, and Eleventh Circuits, all of which decided that only individuals that (i) suffered actual loss or (ii) had their means of identification used unlawfully are "victims" for purposes of Section 2B1.1(b)(2). *But see United States v. Aloba*, No. 22-50291, 2025 WL 1248827, at *2 (9th Cir. Apr. 30, 2025) (relying on the Application Notes in explaining "that a 'victim" who suffered harm in a case involving means of identification includes 'any person who sustained any part of the actual loss determined' as well as 'any individual whose means of identification was used unlawfully or without authority'" (quoting U.S.S.G.

§ 2B1.1 cmt. n.1 & n.4(E))). This Court should grant review.

CONCLUSION

Based on the foregoing, this Court should grant this petition.

Respectfully submitted on this 2nd day of January, 2026.

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED MAY 15, 2025

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-50272
D.C. Nos. 2:19-cr-00380-RGK-27

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GEORGE UGOCHUKWU EGWUMBA,
AKA UGO AUNTY SCHOLAR, AKA GEORGE UGO,

Defendant-Appellant.

No. 22-50274
2:19-cr-00380-RGK-58

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PRINCEWILL ARINZE DURU, AKA ARINZE,
AKA ARNZI PRINCE WILL,

Defendant-Appellant.

Appendix A

Filed May 15, 2025

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Argued and Submitted March 25, 2025
Pasadena, California

Before: NGUYEN and MENDOZA, Circuit Judges, and KERNODLE,** District Judge.

Partial Concurrence and Partial Dissent by Judge MENDOZA.

George Ugochukwu Egwumba and Princewill Arinze Duru appeal their convictions and sentences for participating in a global fraud and money laundering network. We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm both convictions and sentences.

1. We review defendants' challenges to the district court's jury instructions on aggravated identity theft and Egwumba's related claim of prosecutorial misconduct for plain error. *See Greer v. United States*, 593 U.S. 503,

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Jeremy D. Kernodle, United States District Judge for the Eastern District of Texas, sitting by designation.

507-08 (2021) (instructions); *United States v. Dominguez-Caicedo*, 40 F.4th 938, 948 (9th Cir. 2022) (prosecutorial misconduct). We review the denial of a Rule 29 motion de novo and will uphold defendants' convictions if "the evidence [viewed] in the light most favorable to the prosecution . . . is adequate to allow any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt." *United States v. Parviz*, 131 F.4th 966, 970 (9th Cir. 2025) (quoting *United States v. Nevils*, 598 F.3d 1158, 1164 (9th Cir. 2010) (en banc)).

a. The district court instructed the jury consistently with the statute, our model jury instruction in effect at the time, and the parties' joint proposal, that the means of identification must be possessed—or in Duru's case, transferred, possessed, or used—"during and in relation to" conspiracy to commit wire fraud. 18 U.S.C. § 1028A(a)(1). However, the instruction was plainly erroneous because the court did not explain that the transfer, possession, or use must be "at the crux of what makes the underlying offense criminal." *Dubin v. United States*, 599 U.S. 110, 114 (2023).

The omission did not affect defendants' substantial rights. Neither defendant shows that if the district court had given the "crux" instruction, "there is a 'reasonable probability' that he would have been acquitted." *Greer*, 593 U.S. at 508 (quoting *United States v. Dominguez Benitez*, 542 U.S. 74, 83 (2004)). The wire fraud conspiracy was an agreement to facilitate various schemes in which fraudsters located overseas convinced victims to send money to bank accounts that money movers in the

United States controlled. The conspirators' possession of the account details was at the crux of what made the conspiracy criminal because the fraudsters' access to U.S. accounts was "capable of influencing [a] person to part with money or property." As the government argued to the jury, it "[made] the victims believe that they were really sending money to a love interest in the United States, or a company based in the United States." *Cf. United States v. Ovsepian*, 113 F.4th 1193, 1207-08 (9th Cir. 2024) (holding that conspirators' unauthorized possession of patient records, which did not induce the fraudulently procured payments, "was not at the 'crux' of the conspiracy to commit healthcare fraud" because it only potentially helped cover up the fraud in the event of an audit).

b. The district court did not plainly err by instructing, as the parties proposed, that "the Government need not establish that the means of identification of another person was stolen or used without the person's consent or permission." *See United States v. Osuna-Alvarez*, 788 F.3d 1183, 1185-86 (9th Cir. 2015) (per curiam) (holding that § 1028A applies "regardless of whether the means of identification was stolen or obtained with the knowledge and consent of its owner"); *see also Parviz*, 131 F.4th at 972 (reaffirming *Osuna-Alvarez* because "*Dubin* explicitly declined to address the statutory meaning of 'lawful authority'" (quoting 18 U.S.C. § 1028A(a)(1))). Similarly, the prosecutor did not plainly commit misconduct by arguing that Egwumba's possession of the Chase account information was without lawful authority if "the bank account was used in connection with a criminal purpose."

c. Sufficient evidence supports the jury's finding that Egwumba possessed the Chase account information. *See United States v. Romm*, 455 F.3d 990, 1000 (9th Cir. 2006) (holding that defendant "possess[es]" data if he knows it resides on his physical device and can share it with others). It makes no difference that Egwumba's possession of the account information did not contribute to a substantive wire fraud offense. He was convicted of possessing it in relation to the conspiracy to commit wire fraud, and the crux of conspiracy is a "deliberate plotting to subvert the laws." *Pinkerton v. United States*, 328 U.S. 640, 644 (1946). Conspiracy "does not require completion of the intended underlying offense." *United States v. Iribe*, 564 F.3d 1155, 1161 (9th Cir. 2009).

2. Defendants also challenge their conspiracy convictions. "We review de novo whether the district court's instructions adequately presented the defense's theory of the case" and "for abuse of discretion the formulation of an instruction that fairly and adequately covered the elements of the offense." *United States v. Keyser*, 704 F.3d 631, 642 (9th Cir. 2012).

a. The district court did not err by denying defendants' request for a multiple conspiracies instruction. Such an instruction is necessary "where the indictment charges several defendants with one overall conspiracy, but the proof at trial indicates that a jury could reasonably conclude that some of the defendants were *only* involved in separate conspiracies unrelated to the overall conspiracy charged in the indictment." *United States v. Torres*, 869 F.3d 1089, 1101 (9th Cir. 2017) (quoting *United States v.*

Anguiano, 873 F.2d 1314, 1317 (9th Cir. 1989)). Defendants identify no evidence that they were involved in separate, unrelated conspiracies.[1] "[T]he general test for a single conspiracy contemplates the existence of subagreements or subgroups," *United States v. Shabani*, 48 F.3d 401, 403 (9th Cir. 1995), and the government did not need to show that defendants "knew all of the purposes of and all of the participants in the conspiracy," *United States v. Singh*, 979 F.3d 697, 722 (9th Cir. 2020) (quoting *United States v. Kearney*, 560 F.2d 1358, 1362 (9th Cir. 1977)).

Nor did the district court's refusal to instruct on multiple conspiracies prejudice the defense. Defense counsel argued to the jury that defendants were not part of *any* conspiracy—not that they were part of a different conspiracy. Duru's counsel argued that his client was "an unwitting money mule," and Egwumba's counsel argued that there was "no agreement for [Egwumba] to do anything" and "no confirmation that he did anything." The jury disagreed, however, and sufficient evidence supports the conspiracy convictions.

b. Although the district court erroneously instructed that the "intent to defraud" element of wire fraud could be satisfied by proof of "intent to deceive *or* cheat" rather than "intent to deceive *and* cheat," *United States v. Miller*, 953 F.3d 1095, 1103 (9th Cir. 2020), the error was harmless beyond a reasonable doubt. The court also

1. Government counsel's discussion of "conspiracies" in her opening statement merely reflected that the scheme had two objects—money laundering and wire fraud—each charged as a separate conspiracy offense.

instructed that if it "misread something," the jury could "correct" the mistake because jurors would "have the actual instructions" during deliberations, and the written instructions correctly stated the law. *See United States v. Walter-Eze*, 869 F.3d 891, 911-12 (9th Cir. 2017). Moreover, the government argued to the jury that the evidence showed both "intent to deceive" and "intent to cheat," and there was ample evidence of both. *See United States v. Saini*, 23 F.4th 1155, 1165 (9th Cir. 2022) ("[T]he government's evidence showed that the two elements went hand in hand—the only objective of the scheme was to deprive victims of money through deception.").

3. We review Duru's preserved challenges to the district court's evidentiary rulings for abuse of discretion and his unpreserved challenges for plain error. *See United States v. Baker*, 58 F.4th 1109, 1124 (9th Cir. 2023).

a. The district court did not abuse its discretion in admitting Duru's WhatsApp chats with his brother and "Izu. Ebenator." The chats were direct evidence of the conspiracy, *see* Fed. R. Evid. 404(b)(2), and the messages from Duru's brother were admissible as co-conspirator statements made in furtherance of the conspiracy, *see id.* R. 801(d)(2)(E). There was "some evidence, aside from the proffered statements, of the existence of the conspiracy and the defendant's involvement." *United States v. Mikhel*, 889 F.3d 1003, 1049 (9th Cir. 2018) (quoting *United States v. Gordon*, 844 F.2d 1397, 1402 (9th Cir. 1988)). Duru's brother messaged Duru, "I wanted you to help in the Kudon stuff," and Chukwudi Igbokwe, who used the name Chris Kudon, testified that he worked with Duru's brother

to commit romance fraud. The messages from Ebenator were admissible not "to prove the truth of the matter asserted," Fed. R. Evid. 801(c)(2), but as non-hearsay that contextualized Duru's own statements. *See United States v. Barragan*, 871 F.3d 689, 705 (9th Cir. 2017).

b. The district court did not abuse its discretion in admitting Agent Anderson's testimony that Ebenator's reference to "small money" meant "[f]raud money." Anderson established the foundation for her knowledge. *See* Fed. R. Evid. 602. She reviewed more than 100,000 of the conspirators' messages, which were "primarily in English," and she "was able to understand" the Nigerian pidgin words through contextual clues.

The district court did not plainly err in admitting Agent Anderson's testimony about an exchange in which Duru's brother sought to contact one of Duru's associates "to make them receive MoneyGram." Anderson testified that Duru's response—"Him still dey fear"—meant that "the guy" was "still fearful" of the risk from moving money. This testimony referred to the associate's state of mind, not Duru's scienter.

4. We review the district court's interpretation of the Sentencing Guidelines de novo, its factual findings for clear error, and its application of the Guidelines for abuse of discretion. *United States v. Campbell*, 937 F.3d 1254, 1256 (9th Cir. 2019). Sentencing issues to which defendants did not object are reviewed for plain error. *See United States v. Hackett*, 123 F.4th 1005, 1010 (9th Cir. 2024). We review a sentence's substantive reasonableness for abuse

of discretion. *United States v. Thompson*, 130 F.4th 1158, 1164 (9th Cir. 2025).

a. The district court did not plainly err by relying on the Guidelines commentary's definition of "loss" as "the greater of actual loss or intended loss." U.S.S.G. § 2B1.1 cmt. n.3(A) (2021);[2] *see Hackett*, 123 F.4th at 1015. In determining the intended loss, the district court properly considered "the pecuniary harm that the defendant purposely sought to inflict," even if "impossible or unlikely to occur." U.S.S.G. § 2B1.1 cmt. n.3(A)(ii) (2021).

The district court did not clearly err in finding that Egwumba tried to obtain a bank account that could accommodate a fraudster's anticipated $2 million wire fraud. Given that Egwumba expected a share of the victim's $2 million loss for his role as a middleman, the district court did not abuse its discretion in determining that Egwumba intended a loss of more than $1.5 million. *See* U.S.S.G. § 2B1.1(b)(1) (2021).

The district court did not clearly err in finding that Duru registered a fraudulent business and used it to open two bank accounts to receive and steal funds deposited by fraud victims. In particular, Duru agreed to look out for an anticipated $136,000 deposit from one fraud victim and expressed hope that "God will make it go through." Duru expected to receive a share of that and other deposits for his role as a money mover. The district court did not

2. "U.S.S.G." refers to the U.S. Sentencing Commission's Guidelines Manual.

abuse its discretion in finding that Duru intended a loss of more than $150,000.

b. The district court did not plainly err in finding that defendants' offenses "involved 10 or more victims." U.S.S.G. § 2B1.1(b)(2)(A)(i) (2021). Defendants rely on the definition of "victims" in the Guidelines commentary,[3] but it is not clear that "victims" is "genuinely ambiguous," *Kisor v. Wilkie*, 588 U.S. 558, 573 (2019), such that we may defer to the U.S. Sentencing Commission's application notes. *See United States v. Castillo*, 69 F.4th 648, 662-63 (9th Cir. 2023) (holding that it is "impermissible to defer to" commentary interpreting an "unambiguous" Guidelines provision). The Guidelines provide that "[u]nless otherwise specified," the "specific offense characteristics . . . shall be determined on the basis of . . . all harm that resulted from" the defendant's and his coconspirators' acts and omissions "and all harm that was the object of such acts and omissions." U.S.S.G. § 1B1.3(a), (a)(3). Because the Guidelines by default apply to both actual and intended harm and § 2B1.1 does not specify otherwise, the district court could reasonably conclude that "victims" unambiguously refers to persons upon whom defendants and their coconspirators intended to inflict pecuniary loss—whether successfully or not.

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3. As relevant here, the commentary defined "victim" as either "any person who sustained any part of" the "reasonably foreseeable pecuniary harm . . . from the offense" or any individual aggravated identity theft victim "whose means of identification was used unlawfully or without authority." U.S.S.G. § 2B1.1 cmt. nn.1, 3(A)(i) & 4(E) (2021).

c. The district court did not plainly err in finding that the conspiracy to commit money laundering "involved sophisticated laundering." U.S.S.G. § 2S1.1(b)(3)(B). The conspiracy involved both "fictitious entities" and "layer[ed] . . . transactions." *Id.* cmt. n.5(A)(i), (iii).

d. The district court did not plainly err in finding that "a substantial part of a fraudulent scheme was committed from outside the United States." U.S.S.G. § 2B1.1(b)(10)(B). Defendants were aware that money was coming into the United States from victims overseas and that some of the coconspirators were located in Nigeria.

e. The district court did not abuse its discretion in declining to apply a minor role adjustment to Duru's Guidelines range. Duru argues that his role was "far less than that of any of the three middlemen," but the district court properly considered Duru's culpability relative to "the average level of culpability of *all* of the participants in the crime." *Dominguez-Caicedo*, 40 F.4th at 961. It was not clearly erroneous to find that he was not "plainly among the least culpable of those involved in the conduct of [that] group." *Id.* at 960 (quoting U.S.S.G. § 3B1.2 cmt. n.4). Most of his coconspirators were money movers and fraudsters, and Duru does not show that his role differed substantially from those of the other money movers.

f. The district court did not abuse its discretion in declining to apply a downward departure merely because "most [of] the sentences imposed on other defendants were 3 years or less." Duru's 57-month sentence on the conspiracy and wire fraud counts was at the low end of

the Guidelines range, and "the equalization of sentences is an improper ground for departure if the court is attempting to equalize the sentences of co-defendants who are convicted of committing different offenses, even if their behavior was similar." *United States v. Banuelos-Rodriguez*, 215 F.3d 969, 978 (9th Cir. 2000) (en banc) (emphasis omitted).

AFFIRMED.

MENDOZA, Circuit Judge, concurring in part and dissenting in part:

I concur with the majority with respect to sections 1(b), 1(c), 2, 3, 4(a), 4(c), 4(d), 4(e), and 4(f). I respectfully dissent as to sections 1(a), regarding defendants' convictions for aggravated identity theft under 18 U.S.C. § 1028A(a)(1), and 4(b), regarding the district court's application of U.S.S.G. § 2B1.1(b)(2)(A)(i) (2021).

1. I agree with my colleagues that the district court erroneously instructed the jury on aggravated identity theft, 18 U.S.C. § 1028A(a)(1), because the court did not convey that defendants' transference, possession, or use of a means of identification must have been "at the crux of what makes the underlying offense criminal." *Dubin v. United States*, 599 U.S. 110, 114 (2023). However, unlike my colleagues, I believe there is " 'a reasonable probability the jury's verdict would have been different' had the jury been properly instructed." *United States v. Teague*, 722 F.3d 1187, 1192 (9th Cir. 2013) (quoting *United States v. Jenkins*, 633 F.3d 788, 807 (9th Cir. 2011)).

There is considerable daylight between the instruction the district court gave—that account information was possessed (for Egwumba) or transferred, possessed, or used (for Duru) "during and in relation to the offense of Conspiracy to Commit Wire Fraud, as charged in Count Two of the indictment"—and the requirement after *Dubin* that this must have been "at the crux of" what makes Conspiracy to Commit Wire Fraud as charged in Count Two of the indictment criminal. 599 U.S. at 114. *Dubin* is clear that the transference, possession, or use of account information must be more than "ancillary" to the offense, *id.* at 129, and that "being at the crux of the criminality requires more than a causal relationship, such as 'facilitation' of the offense or being a but-for cause of its 'success.'" *Id.* at 131. Following *Dubin*, a jury must find that the account information "is a key mover" of or plays a "central role" in the criminality. *Id.* at 123.

Count Two of the indictment describes the manner and means of the charged conspiracy as follows:

> coconspirators, would identify a potential victim of a BEC fraud, escrow fraud, romance scam, or other fraudulent scheme.
>
> i. As to a potential BEC fraud and escrow fraud victim, this would be done in part by hacking into the email system of either the potential BEC fraud victim or a party with whom the potential BEC fraud victim was communicating, intercepting communications, and directly communicating with the potential victim.

> ii. As to a potential romance scam victim, this would be done by employing false and fraudulent personas to virtually meet a potential victim on online dating or social media platforms and attempting to cultivate relationships such that the potential victim would incorrectly believe herself or himself to be in a relationship or to be friends with the false and fraudulent persona.

In my view, there is a reasonable probability a jury would not have found that Egwumba's mere possession of "the account number for a Chase account ending in 5027, belonging to Miniratu F. Mansaray" was a "key mover" of or played a "central role" in the criminal conspiracy described in the indictment. *Id.* at 114, 123.

Regarding Duru's conviction for aiding and abetting aggravated identity theft, I believe there is a reasonable probability that a jury would not have found that a person's activity was "at the crux of" the criminal conspiracy charged in the indictment when that person used "the account number for a Wells Fargo account ending in 4899, belonging to Princewill A. Duru." My colleagues say fraudsters' access to U.S. bank accounts like Duru's Wells Fargo "was 'capable of influencing [a] person to part with money or property.'" Maj. at 3. This may be true but, even if it is, the facts in this case lead me to think that such capability of influencing a person did not play a "central role" in and was not "at the crux of what makes the underlying offense criminal." *Id.* at 114, 123.

The fraudster whom Duru was charged with aiding and abetting convinced a romance fraud victim to send money directly to banks in Central Asia and Indonesia before the fraudster attempted to use Duru's U.S. bank account information. When the fraudster instructed the fraud victim to send money Duru's U.S. bank account, those funds were frozen and returned to the fraud victim through the U.S. bank's anti-fraud measures. The fraudster then convinced the fraud victim to transfer those funds directly overseas through other means. This belies the argument that access to Duru's U.S. account was a key mover of the conspiracy because it "[made] victims believe that they were really sending money to a love interest in the United States, or a company based in the United States."

In *Dubin*, the Supreme Court instructed that "being at the crux of the criminality requires more than a causal relationship, such as 'facilitation' of the offense or being a but-for cause of its 'success.'" 599 U.S. at 131. There is a reasonable probability that a jury would have found Duru's account information, which did not did not even facilitate a fraud scheme or cause its success, was not "at the crux of" the criminal conspiracy charged in the indictment.

2. I would find the district court plainly erred by applying a two-level enhancement for an offense that "involved 10 or more victims" under U.S.S.G. § 2B1.1(b)(2)(A)(i) (2021). This Guidelines provision is "genuinely susceptible to multiple reasonable meanings," *Kisor v. Wilkie*, 588 U.S. 558, 581 (2019), because the term "victims," which is not defined in the Guidelines, has many possible meanings.

See United States v. Aloba, No. 22-50291, 2025 WL 914116, at *2 (9th Cir. Mar. 25, 2025) (interpreting the word "victim"). In light of this ambiguity, I would turn to the Guidelines commentary to aid with determining which meaning of "victims" is operative in this provision. *See United States v. Trumbull*, 114 F.4th 1114, 1117-18 (9th Cir. 2024) (deferring to the commentary's reasonable interpretation when there is genuine ambiguity).

Application Note 1 defines "victim" as "(A) any person who sustained any part of the actual loss determined under subsection (b)(1); or (B) any individual who sustained bodily injury as a result of the offense." U.S.S.G. § 2B1.1 cmt. n.1. Application Notes 4(E) specifies that, in a case involving a means of identification, "victim" includes "any individual whose means of identification was used unlawfully or without authority." U.S.S.G. § 2B1.1 cmt. n.4(E).

The government did not identify any individuals who sustained actual loss from Egwumba's actions. The government did identify 15 individuals whose passwords and login credentials—which are means of identification—were found in Egwumba's possession. However, the government did not identify anyone whose means of identification "was *used* unlawfully or without authority." U.S.S.G. § 2B1.1 cmt. 4(E) (emphasis added). As to Duru, the government did not identify 10 or more victims who sustained actual loss.

Because the record does not show 10 or more victims attributable to Egwumba or Duru's actions, I would find

the district court plainly erred by applying a two-level enhancement for an offense that "involved 10 or more victims" under U.S.S.G. § 2B1.1(b)(2)(A)(i) (2021).

For these reasons I respectfully dissent in part.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, FILED JULY 14, 2022

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES – GENERAL

Case No. 2:19-cr-00380-RGK

USA,

v.

IRO, *et al.*

Filed July 14, 2022

Present: The Honorable R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE

U.S.A. v. Defendants:	Present	Cust	Bond
27) George U. Egwumba		Y	
58) Princewill A. Duru		Y	

Attorneys for Defendants:	Present	App	Ret
27) Oliver P. Cleary	N	Y	
58) Vitaly B. Sigal	N	Y	

Proceedings: **(IN CHAMBERS) Order Re: Defendants' Motions for Judgment of Acquittal [DEs 1225, 1244]**

Appendix B

I. INTRODUCTION

On June 27, 2019. the United States of America (the Government") filed 'in indictment against eighty defendants, including George Ugochukwu Egwumba ("Egwumba") and Princewill Arinze Duru ("Duru"). (*See* ECF No. 30.) The indictment charged both defendants with conspiracy to engage in money laundering (Count 1) and conspiracy to commit wire fraud (Count 2). It separately charged Egwumba with aggravated identity theft (Count 197), and Duru with wire fraud (Count 24) and aiding and abetting aggravated identity theft (Count 252). Of the eighty defendants charged in the indictment, only Egwumba and Duru proceeded to trial, where a jury fog Ind them guilty on all counts. (*See* Egwumba Verdict Form, ECF No. 1238; Duru Verdict Form, ECF No. 1240.)

Presently before the Court are Egwumba and Dun's Motions for Judgment of Acquittal under Federal Rule of Criminal Procedure ("Rule") 29. (ECF Nos. 1225, 1244.) For the following reasons, the Court **DENIES** the Motions.

II. FACTUAL BACKGROUND

The Government alleges the following facts:

All eighty defendants participated in a conspiracy to engage in numerous types of fraud, such as business email compromise fraud[1], romance scams, elder fraud,

1. Business email compromise fraud occurs "when a hacker gains unauthorized access to a business email account . . . and

and computer malware fraud. The scheme was centered around three "middlemen": Valentine Iro Chukwudi Christogunus Igbokwe ("Igbokwe"), and Chucks Eroha ("Eroha"). These central middlemen would connect fraudsters with money launderers, whose role was to open fraudulent bank accounts or to make fraudulent wire transfers.

Egwumba participated in the scheme by working with Iro and Eroha to receive bank account numbers. Once received, he would transmit the account numbers to fraudsters who would deposit illicit funds into the accounts. Egwumba also personally engaged in computer malware fraud. Duna, on the other hand, worked primarily with Igbokwe. His role was to fraudulently open bank accounts and utilize money transmitting services to receive and launder illicit funds.

III. JUDICIAL STANDARD

Rule 29(a) provides that "the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." Fed. R. Crim. P. 29(a). "[T]here is sufficient evidence to sustain a conviction if, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v.*

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then uses the compromised email account or a separate fraudulent email account to communicate with personnel from a victim company, attempting to trick them into making an unauthorized wire transfer." (Indictment ¶ 14.)

Magallon-Jimenez, 219 F.3d 1109, 1112 (9th Cir. 2000). A court considering the sufficiency of the evidence "must respect the exclusive province of the jury to determine the credibility of the witnesses, resolve evidentiary conflicts, and draw reasonable inferences from proven facts, by assuming that the jury resolved all such matters in a manner which supports the verdict." *United States v. Ramos*, 558 F.2d 545, 546 (9th Cir. 1977). Circumstantial evidence and inferences drawn from it are sufficient to sustain a conviction. See, e.g., *United States v. Reyes-Alvarado*, 963 F.2d 1184, 1187 (9th Cir. 1992).

IV. DISCUSSION

The Court addresses each Defendant's Motion in turn:

A. Egwumba

Egwumba argues that no reasonable jury could have convicted him on Counts 1, 2, and 197. The Court addresses each count below.

1. Count 1: Money Laundering Conspiracy

In order to find Egwumba guilty on Count 1, the jury was required to find that a conspiracy existed to commit at least one of the two crimes alleged to be the objects of the agreement—either laundering monetary instruments in violation of 18 U.S.C. § 1956(a)(1)(B)(i) ("Money Laundering"), or engaging in monetary transactions in property derived from unlawful activity in violation of 18 U.S.C. § 1957 ("Criminally Transacting"). (*See* Jury Intrs.,

Instr. No. 17, ECF No. 1229.) At trial, the jury found that Money Laundering, but not Criminally Transacting, was the object of the conspiracy. (*See* Egwumba Verdict Form at 2.) Egwumba argues that because the elements of each alleged object are "largely the same," the jury could only have found Egwumba guilty if it found that both crimes were the object of the conspiracy. (Egwumba Mot. at 10.) Because the jury only found one object, says Egwumba, the "verdict shows they were confused." (*Id.*)

The Court finds no confusion or inconsistency in the jury's verdict. While the two alleged objects of the conspiracy contain similar elements, they are not identical crimes. For example, one element of Money Laundering is that the defendant must know that a certain financial transaction was "designed . . . to conceal or disguise the nature, location, source, ownership, or control of the proceeds." (Jury Instrs., Instr. No. 18.) Criminally Transacting contains no such requirement. (*Id.*, Instr. No. 19.) Likewise, Criminally Transacting requires a showing that the property involved in a transaction had a "value greater than $10,000," and that the transaction "occurred in the United States," neither of which are elements of Money Laundering. (*Id.*) The Court is aware of no case law (and Egwumba has presented none) that requires a jury in situations such as this to fmd that both underlying crimes were the object of the conspiracy, merely because they are similar. Accordingly, no acquittal is warranted on Count 1.[2]

2. Egwumba argued an additional ground for acquittal for the first time in his Reply brief—that there was insufficient evidence. (*See* Egwumba Reply at 1–3. ECF No. 1254.) But courts

2. Count 2: Wire Fraud Conspiracy

Egwumba next argues that the evidence at trial shows that, at most, he was present with or associated with persons engaging in wire fraud, but "there is a dearth of evidence that he jonied the conspiracy." (Egwumba Mot. at 12.) The Court disagrees.

The Government offered evidence of WhatsApp messages from Egwumba, wherein Egwumba asked for bank accounts to receive funds that were, according to testimony from Special Agent Kimberly Anderson (the lead case investigator), fraudulently obtained. (*See*, *e.g.*, Trial Ex. 8 (asking coconspirator Iro for a bank account in which to deposit $2 million, and asking what percentage cut each conspirator will receive).) There was also evidence showing that Egwumba took a keen monetary interest in the conspiracy, with numerous WhatsApp messages showing Egwumba negotiating with Ito or Eroha for a larger cut of the proceeds. (*See*, *e.g.*, Trial Exs. 4, 6, 8.) Finally, the Government presented evidence that Egwumba himself used computer viruses to defraud victims, and that he had software on his computer

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"need not consider arguments raised for the first time in a reply brief." *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007). Even the Court were to consider the argument, there was more than enough evidence presented at trial for a reasonable jury to find that Egwumba conspired to launder monetary instruments. (*See*, *e.g.*, Trial Exs. 141, 142 (payments from victim to co-conspirator, subsequently withdrawn as cash for the purpose of hiding the money's source); Trial Exs. 2–5 (messages from Egwumba discussing bank account information for fraud proceeds).)

designed to access victims' sensitive financial information. (*See* Trial Exs. 1, 108, 109, 116.)

Viewing the evidence in the light most favorable to the prosecution, a reasonable jury could have found that Egwumba actively joined in the wire fraud conspiracy. The Court fords acquittal on this Count unwarranted.

3. Count 197: Aggravated Identity Theft

Finally, Egwumba argues that he could not reasonably be convicted of aggravated identity theft because he never "used" someone else's identity as that term is defined by statute. *See* 18 U.S.C. § 1028A. Specifically. although he passed along a Chase Bank account owned by Miniratu Mansaray (a co-conspirator) to a fraudster, Egwumba never represented that he was, in fact, Mansaray. But an identity theft conviction does not require a defendant "assum[e] an identity or pass[] oneself off as a particular person." *United States v. Harris*, 983 F.3d 1125, 1128 (9th Cir. 2020). All that must be shown is that the defendant used someone else's identity "during and in relation to [a] predicate felony." *Id.* So long as a person has used another's identity in a manner "central to the fraud [that] furthered and facilitated its commission," that person is subject to liability under the statute. *United States v. Gagarin*, 950 F.3d 596, 604 (9th Cir. 2020) (cleaned up). Here, the evidence showed that Mansaray's Chase Bank account was central to the fraud—it was the account that received the fraudulent proceeds. Because Egwumba used Mansaray's identification for an unlawful purpose in a manner that furthered and facilitated the fraud, it was reasonable for the jury to convict him of Count 197.

B. Duru

Duru's Motion argues for acquittal as to only Count 252, aiding and abetting aggravated identity theft. He notes that the evidence at trial showed that he opened a bank account under the name "PD Enterprise," and then provided the account information to co-conspirator Igobkwe. The account information was then used to perpetrate a romance scam, wherein a victim wired $25,600 to the account. He argues that that a conviction for aggravated identity theft requires that someone "knowingly . . . use[d], without lawful authority, *a means of identification of another*," 18 U.S.C. § 1028A (emphasis added), and because his own identity was used. no reasonable jury could find him guilty.

Duru is incorrect. He was not charged with directly committing identity theft; rather, he was charged under a theory of aiding and abetting. The Government, therefore, needed to show that: "(1) someone else committed the [identity theft]; (2) the defendant aided that person with respect to at least one element of the offense; (3) the defendant acted with the intent to facilitate the offense; and (4) the defendant acted before the crime was completed." (Jury Instrs., Instr. No. 26.) The evidence at trial—that Igbokwe had Duru open a bank account and transfer the information to him, then used that account to receive funds from a romance scam—was sufficient for a reasonable jury to find that Duru intentionally aided in the commission of the crime. The fact that Duru consented to the use of his identity is no bar, because "§ 1028A does not require theft as an element of the offense." *United*

States v. Osuna-Alvarez, 788 F.3d 1183, 1185 (9th Cir. 2015). Rather a person is liable for identity theft even in situations "where an individual grants [someone] permission to possess his or her means of identification, but the [person] then proceeds to use the identification unlawfully." *Id.*

Accordingly, acquittal is not warranted on Count 252.

V. CONCLUSION

For the foregoing reasons, the Court **DENIES** the Motions for Judgment of Acquittal.

IT IS SO ORDERED.

APPENDIX C — JUDGMENT AND PROBATION/ COMMITMENT ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, FILED NOVEMBER 17, 2022

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Docket No. 2:19-cr-00380-RGK-58 JS3

UNITED STATES OF AMERICA

vs.

PRINCEWILL ARINZE DURU
AKAS: ARINZE; ARNZI PRINCE WILL

Defendant.

Social Security No. [redacted]
(Last 4 digits)

JUDGMENT AND PROBATION/ COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
NOV	15	2022

COUNSEL Vitaly Sigal, CJA
(Name of Counsel)

PLEA ☐ **GUILTY**, and the court being satisfied that there is a factual basis for the plea. ☐ **NOLO CONTENDERE**

☐ **NOT GUILTY**

FINDING There being a finding/verdict of **GUILTY**, defendant has been convicted as charged of the offense(s) of:

Conspiracy to Engage in Money Laundering, in violation of 18 U.S.C. § 1956(h), as charged in Count 1 (One) of the Indictment;

Conspiracy to Commit Wire Fraud, in violation of 18 U.S.C. § 1349, as charged in Count 2 (Two) of the Indictment;

Wire Fraud, Aiding and Abetting, in violation of 18 U.S.C. § 1343 and 18 U.S.C. § 2(a), as charged in Count 24 (Twenty-Four) of the Indictment; and

Aggravated Identity Theft, Aiding and Abetting, in violation of 18 U.S.C. § 1028A and 18 U.S.C. § 2(a), as charged in Count 252 (Two Hundred Fifty-Two) of the Indictment.

Appendix C

JUDGMENT AND PROB/COMM ORDER

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that:

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of: **81 (Eighty-One) MONTHS. This term consists of 57 months on each of Counts 1, 2, and 24, to be served concurrently, and 24 months on Count 252 of the Indictment, to be served consecutively to the terms imposed on Counts 1, 2, and 24.**

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three years. This term consists of three years on each of Counts 1, 2, and 24 and one year on Count 252 of the Indictment, all such terms to run concurrently under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the United States Probation & Pretrial Services Office and Second Amended General Order 20-04, including the conditions of probation and

supervised release set forth in Section III of Second Amended General Order 20-04.

2. The defendant shall not commit any violation of local, state, or federal law or ordinance.

3. During the period of community supervision, the defendant shall pay the special assessment and fine in accordance with this judgment's orders pertaining to such payment.

4. The defendant shall cooperate in the collection of a DNA sample from the defendant.

5. The defendant shall apply all monies received from income tax refunds, lottery winnings, inheritance, judgments and any other financial gains to the Court-ordered financial obligation.

6. The defendant shall comply with the immigration rules and regulations of the United States, and if deported from this country, either voluntarily or involuntarily, not reenter the United States illegally. The defendant is not required to report to the Probation & Pretrial Services Office while residing outside of the United States; however, within 72 hours of release from any custody or any reentry to the United States during the period of Court-ordered supervision, the defendant shall report for instructions to the United States Probation Office located at: the 300 N. Los Angeles Street, Suite 1300, Los Angeles, CA 90012-3323.

7. The defendant shall not be employed by, affiliated with, own or control, or otherwise participate, directly or indirectly, in the conduct of the affairs of any financial institution insured by the Federal Deposit Insurance Corporation.

8. The defendant shall not obtain or possess any driver's license, Social Security number, birth certificate, passport or any other form of identification in any name, other than the defendant's true legal name, nor shall the defendant use, any name other than the defendant's true legal name without the prior written approval of the Probation Officer.

9. The defendant shall not engage, as whole or partial owner, employee or otherwise, in any business involving loan programs, telemarketing activities, investment programs or any other business involving the solicitation of funds or cold-calls to customers without the express approval of the Probation Officer prior to engaging in such employment. Further, the defendant shall provide the Probation Officer with access to any and all business records, client lists, and other records pertaining to the operation of any business owned, in whole or in part, by the defendant, as directed by the Probation Officer.

10. The defendant shall submit the defendant's person, property, house, residence, vehicle, papers, computers, cell phones, other electronic communications or data storage devices or media, email accounts, social media accounts, cloud storage accounts, or other

areas under the defendant's control, to a search conducted by a United States Probation Officer or law enforcement officer. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. Any search pursuant to this condition will be conducted at a reasonable time and in a reasonable manner upon reasonable suspicion that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation.

The drug testing condition mandated by statute is suspended based on the Court's determination that the defendant poses a low risk of future substance abuse.

It is ordered that the defendant shall pay to the United States a special assessment of $400, which is due immediately. Any unpaid balance shall be due during the period of imprisonment, at the rate of not less than $25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program.

It is ordered that the defendant shall pay to the United States a total fine of $5,000, which shall bear interest as provided by law. The fine shall be paid in full immediately.

The defendant shall comply with Second Amended General Order No. 20-04.

The Court recommends that the Bureau of Prisons designate defendant in the Eastern District of California

and has no objection to defendant's placement in a camp facility.

Defendant advised of his right of appeal.

Bond exonerated.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

11/17/2022	s/ Gary Klausner
Date	U. S. District Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

11/17/2022	By s/ J. Remigio
Filed Date	Deputy Clerk

The defendant must comply with the standard conditions that have been adopted by this court (set forth below).

Appendix C

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant must not commit another federal, state, or local crime;

2. The defendant must report to the probation office in the federal judicial district of residence within 72 hours of imposition of a sentence of probation or release from imprisonment, unless otherwise directed by the probation officer;

3. The defendant must report to the probation office as instructed by the court or probation officer;

4. The defendant must not knowingly leave the judicial district without first receiving the permission of the court or probation officer;

5. The defendant must answer truthfully the inquiries of the probation officer, unless legitimately asserting his or her Fifth Amendment right against self-incrimination as to new criminal conduct;

6. The defendant must reside at a location approved by the probation officer and must notify the probation officer at least 10 days before any anticipated change or within 72 hours of an unanticipated change in residence or persons living in defendant's residence;

7. The defendant must permit the probation officer to contact him or her at any time at home or elsewhere and must permit confiscation of any contraband prohibited by law or the terms of supervision and observed in plain view by the probation officer;

8. The defendant must work at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons and must notify the probation officer at least ten days before any change in employment or within 72 hours of an unanticipated change;

9. The defendant must not knowingly associate with any persons engaged in criminal activity and must not knowingly associate with any person convicted of a felony unless granted permission to do so by the probation officer. This condition will not apply to intimate family members, unless the court has completed an individualized review and has determined that the restriction is necessary for protection of the community or rehabilitation;

10. The defendant must refrain from excessive use of alcohol and must not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;

11. The defendant must notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;

12. For felony cases, the defendant must not possess a firearm, ammunition, destructive device, or any other dangerous weapon;

13. The defendant must not act or enter into any agreement with a law enforcement agency to act as an informant or source without the permission of the court;

14. The defendant must follow the instructions of the probation officer to implement the orders of the court, afford adequate deterrence from criminal conduct, protect the public from further crimes of the defendant; and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

☒ The defendant must also comply with the following special conditions (set forth below).

STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant must pay interest on a fine or restitution of more than $2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment under 18 U.S.C. § 3612(f)(1). Payments may be subject to penalties for default and delinquency under 18 U.S.C. § 3612(g). Interest and penalties pertaining to restitution,

however, are not applicable for offenses completed before April 24, 1996. Assessments, restitution, fines, penalties, and costs must be paid by certified check or money order made payable to "Clerk, U.S. District Court." Each certified check or money order must include the case name and number. Payments must be delivered to:

United States District Court,
Central District of California
Attn: Fiscal Department
255 East Temple Street, Room 1178
Los Angeles, CA 90012

or such other address as the Court may in future direct.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant must pay the balance as directed by the United States Attorney's Office. 18 U.S.C. § 3613.

The defendant must notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence address until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. § 3612(b)(1)(F).

The defendant must notify the Court (through the Probation Office) and the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. § 3664(k). The Court may also accept such notification from the government or

the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution under 18 U.S.C. § 3664(k). See also 18 U.S.C. § 3572(d)(3) and for probation 18 U.S.C. § 3563(a)(7).

Payments will be applied in the following order:

1. Special assessments under 18 U.S.C. § 3013;
2. Restitution, in this sequence (under 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid):
   Non-federal victims (individual and corporate),
   Providers of compensation to non-federal victims,
   The United States as victim;
3. Fine;
4. Community restitution, under 18 U.S.C. § 3663(c); and
5. Other penalties and costs.

CONDITIONS OF PROBATION AND SUPERVISED RELEASE PERTAINING TO FINANCIAL SANCTIONS

As directed by the Probation Officer, the defendant must provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant must

not apply for any loan or open any line of credit without prior approval of the Probation Officer.

When supervision begins, and at any time thereafter upon request of the Probation Officer, the defendant must produce to the Probation and Pretrial Services Office records of all bank or investments accounts to which the defendant has access, including any business or trust accounts. Thereafter, for the term of supervision, the defendant must notify and receive approval of the Probation Office in advance of opening a new account or modifying or closing an existing one, including adding or deleting signatories; changing the account number or name, address, or other identifying information affiliated with the account; or any other modification. If the Probation Office approves the new account, modification or closing, the defendant must give the Probation Officer all related account records within 10 days of opening, modifying or closing the account. The defendant must not direct or ask anyone else to open or maintain any account on the defendant's behalf.

The defendant must not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of $500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

Appendix C

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to _____

Defendant noted on appeal on _____

Defendant released on _____

Mandate issued on _____

Defendant's appeal determined on _____

Defendant delivered onto _____ to _____

at _____
the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

_____ By _____
Date Deputy Marshal

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED SEPTEMBER 4, 2025

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-50272
D.C. No. 2:19-cr-00380-RGK-27

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GEORGE UGOCHUKWU EGWUMBA,
AKA UGO AUNTY SCHOLAR, AKA GEORGE UGO,

Defendant-Appellant.

No. 22-50274
D.C. No. 2:19-cr-00380-RGK-58

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PRINCEWILL ARINZE DURU, AKA ARINZE,
AKA ARNZI PRINCE WILL,

Defendant-Appellant.

Appendix D

Before: NGUYEN and MENDOZA, Circuit Judges, and KERNODLE,* District Judge.

The panel has voted to deny the petitions for panel rehearing. Judge Mendoza would grant the petitions.

Judge Nguyen has voted to deny the petitions for rehearing en banc, and Judge Kernodle has so recommended. Judge Mendoza would grant the petitions. The full court has been advised of the petitions for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 40.

The petitions for panel rehearing and the petitions for rehearing en banc are denied.

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* The Honorable Jeremy D. Kernodle, United States District Judge for the Eastern District of Texas, sitting by designation.