

# Privacy and Security Alert: Supreme Court Upholds Requirement that the Government Prove Knowledge of Identity Theft

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On May 4, 2009, the Supreme Court held that the federal law prohibiting “aggravated identity theft”<sup>1</sup> requires the Government to prove beyond a reasonable doubt that the defendant knew the identification at issue belonged to another person. *Flores-Figueroa v. United States*, 556 U.S. \_\_\_\_ (2009). The 9-0 decision resolved a split between the First, Ninth, and D.C. Circuits, which held that the *mens rea* requirement “knowingly” applied to the defendant’s knowledge that the identification at issue belonged to another person, and the Fourth, Eighth, and Eleventh Circuits, which reached the opposite conclusion. As a result, federal prosecutors will no longer be able to threaten illegal immigrants with the two-year mandatory minimum sentence that accompanies a guilty verdict of “aggravated identify theft.”<sup>2</sup>

## Flores-Figueroa’s Prosecution

Ignacio Flores-Figueroa, a citizen of Mexico residing in the United States, provided his employer with false identification information to secure employment. Although the false information he originally provided did not belong to another person, in 2006, Flores-Figueroa provided a new social security and alien registration card to his employer. The identifying numbers on the new documents belonged to another person. After his employer reported the new documents to U.S. Immigration and Customs Enforcement, the United States charged Flores-Figueroa with “aggravated identity theft” as well as other offenses.

## Flores-Figueroa’s Defense and Trial Court Verdict

Prior to his bench trial, Flores-Figueroa moved for a judgment of acquittal on the “aggravated identity theft” count. In support of his motion, he argued that the Government could not prove that he knew the numbers on his counterfeit documents belonged to other people. The court rejected his motion, holding that the statute did not require the Government to prove his knowledge. Subsequently, the court found Flores-Figueroa guilty.

On appeal, the Eighth Circuit Court upheld the district court’s decision. The Supreme Court granted *certiorari* to determine whether 18 U.S.C. § 1028A(a)(1) 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.”

# The Supreme Court's Interpretation of the Aggravated Identity Theft Statute

The Government argued both that the statute's legislative history supported the Eighth Circuit's holding and that, if the decision was reversed, it would make it impractical for the Government to enforce the statute in most cases. Rejecting all of the Government's arguments, the Supreme Court interpreted the statute, based on its "ordinary meaning," to require the Government to prove the defendant's knowledge of all elements of the crime, including that the counterfeit identification belonged to another person.

## Implications of the *Flores-Figueroa* Decision

*Flores-Figueroa* practically eliminates the prosecution of illegal workers for "aggravated identity theft," and calls into question the application of any criminal statute where the *mens rea* requirement was not applied to each element of the offense.

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### Endnotes

<sup>1</sup> 18 U.S.C. § 1028(A)(a)(1) (2009).

<sup>2</sup> *Id.*

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