

To be guilty of aggravated identity theft, alien who uses false ID document must know that the ID belongs to another person.

Flores-Figueroa v. United States (U.S.S.C. 2009)

This case involves a situation which occurs on a regular basis in the underground illegal immigrant community. The alien, a citizen of Mexico with no legal authority to live and work in the United States, used a fake Social Security number and Lawful Permanent Resident card to obtain work. The identity documents bore an assumed name, but neither the Social Security number or the Lawful Permanent Resident card actually belonged to a real person. They were both made up. Six years later the alien obtained new counterfeit identity documents which were in his own name. This time, however, both the Social Security and Lawful Permanent Resident alien numbers belonged to a real person. The alien was not aware that these two identity numbers belonged to another person. He presented the new identity documents to his employer, who became suspicious and reported him to federal authorities. The government determined that the identity numbers belonged to other persons.

At trial, the alien was convicted of misuse of immigration documents and illegal entry into the United States. The government also charged him with aggravated identity theft. The alien argued he was not guilty of aggravated identity theft because the government had not shown he knowingly used the identity of another person. The alien's argument, although seemingly incongruent, actually made sense under an analysis of the text of the statute, which states a person is guilty of aggravated identity theft if he "knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person".

The alien contended it is not enough to establish he used a fake identification document; rather, it is also necessary to prove he used the false identification document knowing it belonged to another person. That is, a fake identification document could be fake in the sense that the name, number, or issuing authority could be completely fictitious. On the other hand, a false identity document could contain a valid name or number that actually belongs to a real individual, but is used by a different person. This first is identity fraud. The second is identity theft. This was the primary legal question posed by the alien: Did the government prove the latter?

The U.S. Supreme Court, in a unanimous decision, ruled in favor of the alien. It found the word "knowingly" in the statute applied to the entire sentence, and to each and every element of the offense. That is, for a conviction of aggravated identity theft to stand, the person must also have known the identity document he was using without authority belonged to another person. The false use of an identity document is, by itself, not sufficient to sustain a conviction for aggravated identity theft.

The Court found the language of the statute was ambiguous. There is more than one logical and reasonable reading of the statute; however, the most logical and grammatical consistent reading of the statute compels that the government must establish the person using the fake identity documents know such documents belonged to another person. For these reasons,

the alien's conviction of aggravated identity theft, which carried a sentence of two years, was vacated.