

DRAFT

Flores-Figueroa v. U.S.

--- U.S. --- (2009)

Decided May 4, 2009

FACTS: In 2000, Flores-Figueroa, a Mexican citizen, sought work in the United States. Initially, he gave his employer a "false name, birth date, and Social Security number, along with a counterfeit alien registration card." The numbers of the cards "were not those of a real person." In 2006, he provided different counterfeit cards, with his real name, but "numbers on both cards [that] were in fact numbers assigned to other people."

His employer forwarded the information the U.S. Immigration and Customs Enforcement, which discovered that the numbers belonged to real people. They charged him with, among other offenses, aggravated identify theft under 18 U.S.C. §1028(a)(a).

Flores moved for acquittal on that charge, arguing that the "Government could not prove that he *knew* that the numbers on the counterfeit documents were numbers assigned to other people." The Government claimed that was unnecessary, and the District Court agreed. He was convicted, and the Court of Appeals agreed.

Flores-Figueroa requested certiorari, and the U.S. Supreme Court granted review.

ISSUE:

HOLDING:

DISCUSSION: After a lengthy discussion on English grammar, the Court concluded that it was the intent of Congress to require "the Government to show that the defendant knew that the means of identification at issue belonged to another person." (The Court distinguished this case from those where the defendant used the identification to commit overt fraud or theft on the person whose identify the cards or number portray.) The decisions of the lowers courts were reversed and the case remanded for further proceedings.

NOTE: *This case involves federal identify theft, rather than state identify theft. Kentucky may rule differently in a similar situation, based upon state law.*