

From the Los Angeles Times

Supreme Court questions use of ID theft law against illegal workers

The justices appear sympathetic to an undocumented immigrant who claimed that he didn't know his fake identification had an actual person's Social Security number.

By David G. Savage

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Reporting from Washington — The Supreme Court gave a skeptical hearing Wednesday to the government's use of a strong new identity theft law against illegal workers who use fake ID cards.

Last year, U.S. immigration agents raided a meat-packing plant in Iowa and arrested 389 workers for having false documents. About two-thirds of them were charged with aggravated identity theft, which carries a mandatory two-year prison term.

Lawyers say this charge is used as a bargaining chip. Immigrants can avoid a prison term and a felony conviction if they plead guilty to a lesser charge and agree to be deported without a hearing.

The Iowa raid put a spotlight on the Bush administration's novel use of a law that was intended to punish thieves who use another person's Social Security number to steal from their bank account or credit cards.

In the immigration cases, by contrast, the illegal workers used false ID cards without knowing whether the Social Security number belonged to a real person.

The high court took up the case Wednesday of Ignacio Carlos Flores-Figueroa, an undocumented immigrant from Mexico who had worked at a steel plant in East Moline, Ill. He said he bought a forged ID card in Chicago that had a Social Security number and his name.

He was later reported to immigration agents and, when caught, he agreed to plead guilty to using false documents and entering the country illegally. Because of a previous conviction, these charges sent him to prison for four years.

The government also charged him with identity theft because his fake ID card had an actual

person's Social Security number. Flores-Figueroa disputed the charge because he said he did not realize the Social Security number was real.

There are about 1 billion combinations to any nine digit number like those used for Social Security, his lawyer, Kevin Russell, told the justices. And of those, about 400 million have been used.

Congress in 2004 strengthened the law against thieves who steal another person's identity. The two-year penalty applies to anyone who "knowingly transfers, possesses or uses . . . a means of identification of another person."

During Wednesday's argument, the justices focused on the word "knowingly."

Russell argued that Flores-Figueroa was not guilty of that charge because he did not know he had the "identification of another person." Most of the justices sounded as though they agreed.

Should someone get a longer prison term "if it just so happens that the number he picked out of the air belongs to someone else?" asked Chief Justice John G. Roberts Jr.

Toby Heytens, an assistant to the solicitor general, defended the government's broad reading of the law.

Heytens said Flores-Figueroa knew he was using a Social Security number that could belong to a real person. "There are no victimless violations," he said.

Justice Ruth Bader Ginsburg said that the law is at best "an ambiguous statute," and she questioned using it against persons who did not intend to steal another worker's identity.

The court will hand down a decision by late June.

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