**15.4 Fraud in Connection with Identification Documents—Possession of**

**Identification Document to Defraud United States (18 U.S.C. § 1028(a)(4))**

The defendant is charged in [Count \_\_\_\_\_\_ of] the indictment with possessing [an identification document] [an authentication feature] [a false identification document] for use in defrauding the United States in violation of Section 1028(a)(4) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly possessed [an identification document] [an authentication feature] [a false identification document]; and

Second, the defendant intended the [identification document] [authentication feature] [false identification document] to be used to defraud the United States.

[In determining whether the defendant possessed an identification document, you should not count any that were issued lawfully for the use of the defendant.]

**Comment**

The first and second elements are drawn from 18 U.S.C. § 1028(a)(4) in light of 18 U.S.C. § 1028(c)(2).

Violation of a federal, state, or local law is not an essential element of an offense under § 1028(a)(4). *United States v. McCormick*, 72 F.3d 1404, 1407 (9th Cir. 1995) (affirming trial court’s instruction that government must prove (1) that defendant knowingly possessed false identification document, and (2) that he did so with intent to defraud United States).

Section 1028(d) provides definitions for the terms: “identification document,” “authentication feature,” and “false identification document.” An “authentication feature” need not be a physical thing affixed to or imprinted on another physical thing. *United States v. Barrogo*, 59 F.4th 440, 446 (9th Cir. 2023) (holding non-physical PIN constituted “authentication feature” even though it was not physically on EBT card).

Section 1028(b) provides for various enhanced statutory maximum penalties in certain circumstances such as when particular types of identification documents are involved or when their use occurs in connection with certain other criminal conduct. In the event that such enhanced penalties are charged, a special verdict form may need to be submitted to the jury regarding the presence or absence of such facts.

*See* Instruction 4.13 (Intent to Defraud).

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