**15.6 Fraud in Connection with Identification Documents—Possession (18 U.S.C. § 1028(a)(6))**

The defendant is charged in [Count \_\_\_\_\_\_ of] the indictment with possessing an [identification document] [authentication feature] in violation of Section 1028(a)(6) 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] [authentication feature];

Second, the [identification document] [authentication feature] was or appeared to be an [identification document] [authentication feature] of [the United States] [*specify issuing authority*];

Third, the [identification document] [authentication feature] was [stolen] [produced without lawful authority]; and

Fourth, the defendant knew the [identification document] [authentication feature] was [stolen] [produced without lawful authority].

**Comment**

The elements are drawn from 18 U.S.C. § 1028(a)(6).

Section 1028(d) provides definitions for the terms: “identification document,” “authentication feature,” “issuing authority,” and “produce.” 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). Private financial institutions do not fit within the definition of “issuing authority,” which means “‘any governmental entity or agency that is authorized to issue identification documents, means of identification, or authentication features.’” *United States v. Kirilyuk*, 29 F.4th 1128 (2022) (quoting 18 U.S.C. § 1028(d)(6)(A)).

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.

In *United States v. Fuller*, 531 F.3d 1020, 1027–28 (9th Cir. 2008), the Ninth Circuit, in a case under § 1028(a)(6), approved the use of an instruction that the identification document “was or appeared to be an identification document of the United States.” In so doing, the court rejected the argument that the language of the instruction operated to relieve the government of the burden of showing that the identification document be issued by or under the authority of the United States. *Id.* at 1028.

*Revised March 2023*