**15.7 Fraud in Connection with Identification Documents—Possessing**

**Another’s Means of Identification (18 U.S.C. § 1028 (a)(7))**

The defendant is charged in [Count \_\_\_\_\_\_ of] the indictment with [possessing] [transferring] [using] another person’s means of identification without lawful authority in violation of Section 1028(a)(7) 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 [transferred] [possessed] [used] a means of identification of another person;

Second, the defendant did so without lawful authority;

[Third, the defendant intended to commit [*specify unlawful activity*]; and]

*or*

[Third, the defendant aided or abetted [*specify unlawful activity*]; and]

*or*

[Third, the defendant [transferred] [possessed] [used] the means of identification in connection with [*specify unlawful activity*]; and]

[Fourth, [transfer] [possession] [use] of the means of identification of another person was in or affected commerce between one state and [an]other state[s], or between a state of the United States and a foreign country];

*or*

[Fourth, in the course of [transfer] [possession] [use], the means of identification was transported in the mail.]

**Comment**

The first, second, and third elements are drawn from 18 U.S.C. § 1028(a)(7); the fourth element is drawn from § 1028(c)(3). The unlawful activity must be a violation of federal law or be a felony under applicable state or local law. 18 U.S.C. § 1028(a)(7).

A § 1028(a)(7) conviction requires no evidence of an underlying crime. *United States v. Sutcliffe*, 505 F.3d 944, 960 (9th Cir. 2007) (“[T]he government must only prove that the defendant committed the unlawful act with the requisite criminal intent, not that the defendant’s crime actually caused another crime to be committed.”).

Section 1028(d) provides definitions for the terms: “means of identification” and “transfer.” A “means of identification” need not be a physical thing. *United States v. Barrogo*, 59 F.4th 440, 446 (9th Cir. 2023). The Ninth Circuit has held that a signature qualifies as a “means of identification.” *United States v. Blixt*, 548 F.3d 882, 887 (9th Cir. 2008). A test account (i.e., an account created to test the functionality of a software application) may qualify as a “means of identification” provided that the accounts could be used to “‘identify a specific individual.’” *United States v. Kvashuk*, 29 F.4th 1077, 1089 (9th Cir. 2022). Because Congress “intended ‘to construct an expansive definition’ of the term ‘means of identification,’” the “purpose, prerequisites, and functionality” of a name or number “does not bear on whether they ‘identify a specific individual.’” *Id*.

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.

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