# US Supreme Court Limits Government Use of ID Theft Enhancement Act

June 12, 2023 - One of the primary areas that we focus on here at ACCESS is identity theft. Truthfully, we think that the government has been far too lenient on this topic. However, in time of government overreach and the weaponization of the DOJ, we have to agree with a recent SCOTUS ruling on limiting the use of the Identity Theft Enhancement Act; a law that requires federal judges to add a two-year mandatory sentencing enhancement to those convicted under the act.

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In the case of Dubin v. United States, David Fox Dubin was accused of Medicaid fraud. He was tried and found guilty of the crime. But the government wanted to make an example of him and wasn't simply happy with the win. So the DOJ also charged him with aggravated identity theft using the ID Theft Enhancement Act.

The argument that the government made in the case was that when Dubin submitted the fraudulent claims to Medicare, he included patient information on the forms. And that patient information constituted identity theft.

When tried for the second charge, the judge in the case didn't agree with the government but when Dubin was convicted, he said that he was bound by appellate court precedent to impose an additional two-year sentence. Dubin appealed the case, lost at the appellate level, and the Supreme Court eventually agreed to hear it.

In a unanimous ruling, the justices reversed the lower courts. Justice Elana Kagan noted that, "all healthcare fraud is done using people's names." In the court's written opinion, Kagan also stated that under the government's theory of the crime, "A lawyer who rounds up her hours from 2.9 to 3 and bills her client electronically has committed aggravated identity theft."

From this point forward, the enhancement will be restricted to actual cases that involve identity theft. And that's a good thing.

by Jim Malmberg
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