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Identity-theft statute was being misapplied

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Prosecutors around the country and locally have been using identity-theft laws to criminalize honest, working immigrants, and last week the U.S. Supreme Court said they had to stop.

The federal aggravated identity theft statute adds two years in prison to the sentence of a person who "knowingly" uses someone else's identification. In a rare result from an ideologically fractured court, the justices ruled unanimously that the government cannot use the law against people who make up Social Security numbers to gain employment ("US high court rejects law on identity theft," May 5).

This 9-0 decision upheld the not-guilty plea of Ignacio Carlos Flores-Figueroa, an undocumented immigrant from Mexico, who was a low-wage manual laborer. Flores-Figueroa had given his employer a document with his real name and a made-up Social Security number. He was arrested and pleaded guilty to entering the United States illegally and improper use of immigration documents.

He pleaded not guilty, however, to the charge of aggravated identity theft. Flores-Figueroa had neither stolen nor assumed anyone's identity. He had simply made up a random number, and paid taxes and Social Security with no hope of ever seeing benefits.

The case was similar to the "Panda Express" prosecutions that took place recently in Tucson. Marlen Yobana Moreno-Peralta, who has lived in Tucson since she was 14, was held in prison for 102 days (and separated from her infant) after making up a Social Security number to hold down a minimum-wage job. For four years, that job allowed her barely to survive below the poverty level.

She and 10 co-defendants were threatened by prosecutors with charges of "aggravated identity theft" and pleaded to a lesser offense. Most of them were deported immediately.

Local county attorneys are concerned that the Supreme Court decision would make it more difficult to prosecute undocumented aliens. Proving "knowledge" will hinder the one-stop-shopping approach to deportation. But the identity-theft laws were never intended to be relied upon as an alternative to yet-to-be-passed immigration reform. They were meant to protect us from white-collar crime.

We rarely see prosecution of the criminals who actually steal credit-card numbers.

A great portion of the cases brought under both federal and state law seem to be part of a stealth effort to expedite the deportation of aliens. It seems perverse to have a cottage industry that arrests honest, working people, and charges them with a crime for the purpose of getting a guilty plea by submitting to voluntary deportation, but which fails to enforce that same law against those individuals who are engaging in identity theft to steal.

Prosecutors have an ethical obligation to accomplish justice. They should not demonize innocent people who as a class are at the margins of justice, basic constitutional principles and fundamental fairness.

What the Supreme Court "rejected" was not the law, but the unconstitutional application of it to conduct that is not criminal and to a class of people who are subject to irrational xenophobia. We will all benefit when prosecutors follow the Supreme Court's guidance, and protect us from real criminals who steal from us by taking our identities.

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