SUPREME COURT OF THE UNITED STATES

No. 08–108

IGNACIO CARLOS FLORES-FIGUEROA,
PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[May 4, 2009]

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring in part and concurring in the judgment.

I agree with the Court that to convict petitioner for "knowingly transfer[ring], possess[ing], or us[ing], without lawful authority, a means of identification of another person," 18 U. S. C. §1028A(a)(1), the Government must prove that he "*knew* that the 'means of identification' he . . . unlawfully transferred, possessed, or used, in fact, belonged to 'another person.'" *Ante*, at 1. "Knowingly" is not limited to the statute's verbs, *ante,* at 4. Even the Government must concede that. See *United States* v. *Villanueva-Sotelo*, 515 F. 3d 1234, 1237 (CADC 2008) ("According to the government, this text is unambiguous: the statute's knowledge requirement extends only so far as 'means of identification'"). But once it is understood to modify the object of those verbs, there is no reason to believe it does not extend to the phrase which limits that object ("of another person"). Ordinary English usage supports this reading, as the Court's numerous sample sentences amply demonstrate. See *ante*, at 4–5.

But the Court is not content to stop at the statute's text, and I do not join that further portion of the Court's opinion. First, the Court relies in part on the principle that "courts ordinarily read a phrase in a criminal statute that introduces the elements of a crime with the word 'know-

ingly' as applying that word to each element." *Ante*, at 6. If that is meant purely as a description of what most cases do, it is perhaps true, and perhaps not. I have not canvassed all the cases and am hence agnostic. If it is meant, however, as a normative description of what courts *should* ordinarily do when interpreting such statutes—and the reference to JUSTICE STEVENS' concurring opinion in *United States* v. *X-Citement Video, Inc.*, 513 U. S. 64, 79 (1994), suggests as much—then I surely do not agree. The structure of the text in *X-Citement Video* plainly separated the "use of a minor" element from the "knowingly" requirement, wherefore I thought (and think) that case was wrongly decided. See *id.*, at 80–81 (SCALIA, J., dissenting). It is one thing to infer the common-law tradition of a *mens rea* requirement where Congress has not addressed the mental element of a crime. See *Staples* v. *United States*, 511 U. S. 600, 605 (1994); *United States* v. *United States Gypsum Co.*, 438 U. S. 422, 437–438 (1978). It is something else to expand a *mens rea* requirement that the statutory text has carefully limited.

I likewise cannot join the Court's discussion of the (as usual, inconclusive) legislative history. *Ante,* at 9. Relying on the statement of a single Member of Congress or an unvoted-upon (and for all we know unread) Committee Report to expand a statute beyond the limits its text suggests is always a dubious enterprise. And consulting those incunabula with an eye to making criminal what the text would otherwise permit is even more suspect. See *United States* v. *R. L. C.*, 503 U. S. 291, 307–309 (1992) (SCALIA, J., concurring in part and concurring in judgment). Indeed, it is not unlike the practice of Caligula, who reportedly "wrote his laws in a very small character, and hung them up upon high pillars, the more effectually to ensnare the people," 1 W. Blackstone, Commentaries on the Laws of England 46 (1765).

The statute's text is clear, and I would reverse the judgment of the Court of Appeals on that ground alone.