SUPREME COURT, STATE OF COLORADO Ralph L. Carr Judicial Center 2 East 14th Avenue Denver, CO 80203 Certiorari to the Colorado Court of Appeals Case Number 2019CA915	DATE FILED May 16, 2024 4:06 PM
Petitioner THE PEOPLE OF THE STATE OF COLORADO v. Respondent JESUS RODRIGUEZ-MORELOS	
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ANSWER BRIEF	

CERTIFICATE OF COMPLIANCE

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This brief complies with the applicable word limit and formatting requirements set forth in C.A.R. 28(g).

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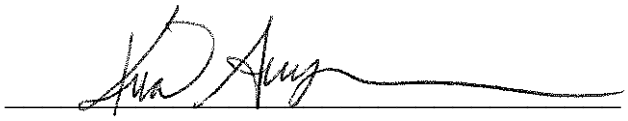

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Whether the court of appeals erred in holding that the crime of identity theft does not apply to a business entity's personal identifying information and applies only to information concerning single, identified human beings.

STATEMENT OF THE FACTS AND CASE

Sister Molly Munoz is a nun who works with United with Migrants,[1] an organization that provides assistance to the migrant community. TR 1/10/19, pp 148-49. Jesus Rodriguez-Morelos, who also went by his poet name, Pablo Castellanos, began helping Sister Molly with teaching English and assisting people with obtaining their GED certificates. Sister Molly gave Mr. Rodriguez-Morelos permission to use United with Migrants' name in connection with their work. TR 1/10/19, pp 184-85.

When Mr. Rodriguez-Morelos began teaching GED courses at a church in Aurora, he met Reverend Carol Meredith. He asked her whether he could teach a "new program designed for Latinos that didn't require" a social security number and "when [students] were done with the class they would be able to . . . get their

[1] The State's opening brief and the court of appeals' opinion calls the nonprofit United for Migrants, but the name is United with Migrants, so this brief will use the correct name. *See* OB, p 1; *People v. Rodriguez-Morelos*, 2022 COA 107M, ¶ 3.

[Certified Nursing Assistant] certificates." TR 1/10/19, p 117:20-24. Because students seemed happy with the GED program, Meredith agreed. TR 1/10/19, pp 117-18. Sister Molly was "sure" Mr. Rodriguez-Morelos told her about the Certified Nursing Assistant (CNA) classes and "[i]f he used United with Migrants[' name] [she] gave it to him." TR 1/10/19, p 157:16-18.

Many people signed up for the CNA classes. Mr. Rodriguez-Morelos also offered companion courses to the CNA classes. TR 1/9/19 AM, pp 39-41; 1/11/19, pp 149-50. After a while, Meredith began to be concerned about various aspects of the classes. For example, she testified that students were not getting receipts for their payments, there were too many students in a class, and she did not think they were being taught what they needed to learn to become CNAs. TR 1/10/19, pp 118-19. She ultimately filed a complaint with the Department of Regulatory Agencies against Mr. Rodriguez-Morelos. TR 1/10/19, pp 72:7-11, 75-76.

Mr. Rodriguez-Morelos had researched the requirements for the CNA courses and used CNA handbooks that he had ordered from a company overseeing Colorado's CNA program. TR 1/17/19, pp 36, 63-65. He believed his classes were in compliance with applicable regulations. TR 1/17/19, pp 63-64. He hired two certified nursing assistants to teach the CNA courses and a doctor to teach another course. TR 1/17/19, pp 36-37. And Mr. Rodriguez-Morelos asserted that

Sister Molly granted him permission to use United with Migrants' name for his courses. TR 1/17/19, p 80:6-15.

The State charged Mr. Rodriguez-Morelos with identity theft[2] (Count 1), theft[3] (Counts 2-4), and criminal impersonation[4] (Count 5). CF, pp 22-24, 89-92. The jury convicted him as charged, and the court sentenced him to probation and imposed $12,215 in restitution. CF, pp 328-33, 521-22; Supp CF, pp 30-33. The court of appeals vacated his conviction for identity theft but affirmed the other convictions. *People v. Rodriguez-Morelos*, 2022 COA 107M, ¶ 92. The court of appeals affirmed the restitution order in part and reversed in part and deducted $1,560 for charges claimed for additional classes taken by a few of the students. *Id.*

[2] § 18-5-902(1)(a), a class 4 felony.
[3] Count 2- § 18-4-401(1)(a),(2)(g),(4)(a), a class 5 felony; Count 3- § 18-4-401(1)(a),(2)(f),(4)(a), a class 6 felony; Count 4- §18-4-401(1)(a),(2)(f),(4)(a), a class 6 felony.
[4] § 18-5-113(1)(b)(II), class 1 misdemeanor.

Although the court of appeals properly vacated Mr. Rodriguez-Morelos's conviction for identity theft,[5] he remains convicted of three counts of theft, a class 5 felony and two class 6 felonies, criminal impersonation, a class 1 misdemeanor, and he is responsible for $10,655 in restitution.

SUMMARY OF THE ARGUMENT

One way a person can commit identity theft is to knowingly use, without permission, the "personal identifying information" of another for financial gain. The statutory definition of "personal identifying information" is clear and unambiguous: personal identifying information must belong to a "specific individual," meaning a particular human being. According to the plain language of the statute, a person can commit identity theft using the "personal identifying information" of only a natural person. Per the statutory language, a business entity cannot have "personal identifying information," and a person thus cannot commit identity theft by using a business's "personal identifying information."

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[5] The court of appeals vacated Mr. Rodriguez-Morelos's conviction for identity theft because his use of United with Migrants' name and tax-exempt document did not constitute "personal identifying information" under section 18-5-901(13), C.R.S., which is the issue in this Court. And although the tax-exempt document he gave to some students was financial identifying information under section 18-5-901(7), C.R.S. there was no evidence in the record that he used that document to obtain a thing of value as required by section 18-5-902(1)(a), C.R.S. The latter part, whether he used that document to obtain a thing of value, is not at issue in this Court. *Rodriguez-Morelos*, 2022 COA 107M, ¶¶ 14-35.

Even assuming the plain language of the statute is ambiguous, the canons of statutory construction support Mr. Rodriguez-Morelos's interpretation that "personal identifying information" applies only to human beings. A contrary reading—that "personal identifying information" need not belong to human persons—would fail to give consistent and harmonious effect to the statutory scheme and would contravene the legislature's intent.

The State's argument essentially hinges on the statutory definition of "another." True enough, the identity theft statute defines "another" to include businesses. But that is because there are separate means to commit the offense. Namely, a person can commit identity theft by knowingly using, without permission, the financial identifying information or financial device of a business *or* natural person. In other words, the State's argument inappropriately transposes the distinct ways the legislature has defined identify theft and misreads the plain statutory text.

The legislative history the State relies on does not support its argument. Likewise, though the State urges consideration of policy-driven factors, this Court cannot undermine the legislature's role and circumvent the plain language of the statute to broaden the class of victims, no matter how sympathetic the policy reasons may seem.

In a thoughtful and well-reasoned opinion, the court of appeals vacated Mr. Rodriguez-Morelos's conviction for identity theft because his use of a business entity's name and tax-exempt document did not constitute use of "personal identifying information" of a human being under the terms of the identity theft statute.

This Court should affirm.

ARGUMENT

I. In the Identity Theft Statute, "Personal Identifying Information" Concerns Information Belonging Only to Human Beings.

a. Preservation, Standard of Review, and General Law

Mr. Rodriguez-Morelos agrees that this issue is preserved. OB, p 6. Mr. Rodriguez-Morelos also agrees that questions of statutory interpretation are reviewed de novo. OB, p 6; *McCoy v. People*, 2019 CO 44, ¶ 37.

A criminal defendant has a constitutional right to due process under the law. U.S. Const. amends. VI, XIV; Colo. Const. art. II, §§ 16, 23, 25. The prosecution must prove every element of an offense beyond a reasonable doubt to support a conviction. U.S. Const. amends. V, VI, XIV; Colo. Const. art. II, § 25; *In re Winship*, 397 U.S. 358, 364 (1970). Due process includes the right to "fair warning . . . in language that the common world will understand, of what the law

intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear." *United States v. Lanier*, 520 U.S. 259, 265 (1997) (quoting *McBoyle v. United States*, 283 U.S. 25, 27 (1931)) (internal quotation marks omitted). Fair warning ensures "no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." *Bouie v. City of Columbia*, 378 U.S. 347, 351 (1964) (quoting *United States v. Harriss,* 347 U.S. 612, 617 (1954)) (internal quotation marks omitted). Fair warning reflects deference to the legislature to define crimes and penalties. *Lanier*, 520 U.S. at 265 n.5.

b. Applicable principles of statutory construction

In interpreting a statute, this Court's primary purpose is to ascertain and give effect to the legislature's intent. *People v. Cali*, 2020 CO 20, ¶ 15. This Court first looks to the plain statutory language, reading the statute as a whole and giving words and phrases their common meanings. *People v. Jones*, 2020 CO 45, ¶ 54. This Court may look to dictionary definitions to ascertain the plain and ordinary meaning of words in a statute. *Cowen v. People*, 2018 CO 96, ¶ 14. This Court construes statutory provisions in accordance with the commonly accepted technical or particular meaning of words and generally presumes that the legislature is aware of the previously expressed legal importance of the words and phrases it uses.

People v. Rockwell, 125 P.3d 410, 417 (Colo. 2005). If the plain language of the statute is clear, this Court applies its plain and ordinary meaning and looks no further. *Cowen*, 2018 CO 96, ¶ 12.

This is because "courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Id.* (quoting *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992)). Further, this Court presumes that the legislature "does not use language idly." *Robinson v. Colo. State Lottery Div.*, 179 P.3d 998, 1010 (Colo. 2008). The use of different terms shows the legislature's intent to give those terms different meanings. *Id.; see also People v. Gulyas*, 2022 COA 34, ¶ 38. This Court may not construe a statute in a manner that renders any statutory words or phrases superfluous. *People v. Rediger*, 2018 CO 32, ¶ 22. And it may not construe a statute in a way that would lead to an illogical or absurd result. *People v. Rojas*, 2019 CO 86M, ¶ 12. This Court cannot read words into a statute that are not present nor can it supply remedies not clearly provided by the statutory language. *Harrah v. People ex rel Attorney Gen. of Colo.*, 243 P.2d 1035, 1038 (Colo. 1952).

When two statutory provisions cannot be harmonized, the specific provision controls over the more general provision. *Cali*, 2020 CO 20, ¶ 17; § 2-4-205, C.R.S. (providing that if a general provision conflicts with a special or local

provision and the conflict is irreconcilable, then "the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail").

Finally, when a criminal statute is so ambiguous that it cannot be reliably given meaning, the rule of lenity demands the statute be interpreted in favor of the defendant. *Jones*, 2020 CO 45, ¶ 70.

c. Under the plain language of the statutory definition of "personal identifying information," the term "specific individual" means a human being and does not include business entities.

i. The plain language of the statute is clear and unambiguous.

As relevant here, the identity theft statute, section 18-5-902(1)(a), C.R.S. states that a person commits identity theft if he "[k]nowingly uses the personal identifying information, financial identifying information, or financial device of another without permission or lawful authority with the intent to obtain cash, credit, property, services, or any other thing of value or to make a financial payment[.]" In turn, section 18-5-901(13), C.R.S. defines "personal identifying information" as information "that may be used, alone or in conjunction with any other information, to identify a specific individual . . . ."

Looking at the plain language of the statute, the definition of "specific individual" only applies to human beings—not to business entities.

The statute does not define the term "specific individual." However, dictionary definitions elucidate the plain and ordinary meaning of the words "specific individual." *See Cowen*, 2018 CO 96, ¶ 14 ("When determining the plain and ordinary meaning of words, we may consider a definition in a recognized dictionary."). The dictionary definitions support the proposition that "specific individual" means a human being—not a business entity.

Merriam-Webster Online Dictionary defines "individual" as "a particular being or thing as distinguished from a class, species, or collection: such as (1) a single human being as contrasted with a social group or institution . . . ." or (2) "a particular person." *Individual*, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/individual. "Specific" means "constituting or falling into a specifiable category." *Specific*, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/specific.

Using the second definition of "individual" and combining it with the word "specific"—a specific particular person—would render the word "specific" superfluous. This Court cannot render any statutory word superfluous, *Rediger*, 2018 CO 32, ¶ 22, and it must presume that the legislature did not use the phrase "specific individual" idly. *Robinson*, 179 P.3d at 1010. Thus, this Court must use the first definition of "individual"—"a single human being as contrasted with a

social group or institution." As the court of appeals explained, "[b]y adding the adjective 'specific,' the generic notion—for example, there are approximately 740,000 single human beings who live in Denver—becomes the unique—one identified human being out of 740,000." *People v. Rodriguez-Morelos*, 2022 COA 107M, ¶¶ 21-25. This "gives voice to both the noun and the adjective: one identified human being." *Id.*, ¶ 25.

In deciding whether a corporation was entitled to immunity under several statutes which only authorize immunity for a "person," this Court noted that section 12-20-402(1), C.R.S. ("the Professions Act") repeatedly uses the word "individual" and looked to Merriam-Webster Dictionary for the definition of the word "individual." *Edwards v. New Century Hospice, Inc.*, 2023 CO 49, ¶¶ 2, 23 (noting Merriam-Webster Dictionary defines "individual" as a single human being). This Court held that a "person" under the applicable statutes, when the Professions Act used the term "individual," means a human being and rejected the argument that New Century—a corporation—was a "person" in the context of the statutes.

This Court rejected *New Century*'s reliance on section 2-4-401(8), C.R.S. which defines "person" as "any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability

company, partnership, association, or other legal entity." This Court stated that definition "applies to every statute, unless the context otherwise requires." *Edwards*, 2023 CO 49, ¶ 26 (internal alterations omitted). In this case, although the general definition under section 2-4-401(8), C.R.S. is not the most specific statute applicable, it supports Mr. Rodriguez-Morelos's interpretation because it refers to an "individual" as a human being as opposed to a business entity. *Cf. Rocky Mountain Gun Owners v. Polis*, 2020 CO 66, ¶ 69 ("A word or phrase is presumed to bear the same meaning throughout a text, while a material variation in terms suggests a variation in meaning.") (citation omitted).

And this interpretation makes sense. The term "individual" does not, in common parlance, include a corporation or business entity. Indeed, the kinds of identifying information listed in section 18-5-901(13), C.R.S. also bolsters the interpretation that "specific individual" means a particular person. Only individual persons have birth dates or biometric data, and only individual persons are issued driver's licenses, passports, social security numbers, and student identification numbers. Looking at the definition of "personal identifying information," it would be an absurd reading for "specific individual" to mean both human beings and business entities. *See Harrah*, 243 P.2d at 1038 (courts cannot read words into a

statute that are not present); *Rojas*, 2019 CO 86M, ¶ 12 (courts may not construe a statute in a way that would lead to an illogical or absurd result).

In *People v. Molina* and *People v. Perez*, this Court considered whether the prosecution must prove that an identity theft defendant knew the information he or she falsely used belonged to a *real* person. 2017 CO 7, ¶ 7; 2016 CO 12, ¶ 22. While in those cases the issue presented focused on the defendant's mens rea and whether he knew the social security number he was using belonged to a *real* person (as opposed to using a fake social security number that did not belong to any human being), this Court's analysis underpins Mr. Rodriguez-Morelos's position that "personal identifying information" such as a social security number must belong to a human being—not a business entity.

Although the State suggests the legislature "could have easily used a more exact phrase like, 'of another natural person,'" instead of "specific individual," that is a solution in search of a problem. OB, p 16. Even if the legislature had used that phrase, then the State could still argue it encompasses business entities and assert the legislature could have said "human being." The State's argument that the term "individual" is broad enough to include more than human beings fails. *See* OB, pp 16-18. When the statutory language is clear and unambiguous, the

statute must be interpreted as written without resort to interpretative rules and statutory construction. *People v. Zapotocky*, 869 P.2d 1234, 1238 (Colo. 1994).

Similarly, the State asserts that because the non-exhaustive list of information in the personal identifying information statute includes a few pieces of information that could pertain to a business entity, then "specific individual" must necessarily include business entities. *See* OB, pp 18-21 (arguing that the inclusion of the examples of name, password, and pass code could apply to a business entity). But this argument fails. Although a business entity does have a name and could have a password and a pass code, that is not dispositive evidence that the legislature intended to include business entities in the definition of "specific individual."

A human being also has a name and could just as likely have a password and a pass code. And, as discussed above, the other examples in the list only pertain to human beings and do not pertain to business entities. § 18-5-901(13), C.R.S. The State is correct that this is a non-exhaustive list, as indicated by the words "including but not limited to." *See id.* But the inclusion of three examples—name, password, and pass code—that *could* apply to a business entity does nothing to further the State's assertion that the legislature intended business entities to be

encompassed within the definition of "specific individuals" who have their personal identifying information stolen under the identity theft statute.

ii. Interpreting "specific individual" to mean a human being does not render any part of the meaning of the phrase "of another" superfluous.

Again, a person commits identify theft if he "[k]nowingly uses the personal identifying information, financial identifying information, or financial device of another" for enumerated purposes. § 18-5-902(1)(a), C.R.S. Under section 18-5-901(11), C.R.S., "[o]f another" means "that of a natural person, living or dead, or a business entity . . . ."

It is therefore clear that a person *can* commit identity theft against a business entity, which falls within the definition of "another." Specifically, a person can commit identity theft of a business entity by knowingly using its financial identifying information or financial device.

Section 18-5-901(6), C.R.S. defines "financial device" as "any instrument or device that can be used to obtain cash, credit, property, services, or any other thing of value or to make financial payments . . . ."

Section 18-5-901(7), C.R.S. defines "financial identifying information" as:

> [A]ny of the following that can be used, alone or in conjunction with any other information, to obtain cash, credit, property, services, or any other thing of value or to make a financial payment:

> (a) A personal identification number, credit card number, banking card number, checking account number, debit card number, electronic fund transfer card number, guaranteed check card number, or routing number; or
> (b) A number representing a financial account or a number affecting the financial interest, standing, or obligation of or to the account holder.

No language in the definition of either "financial device" or "financial identifying information" limits those terms to information concerning only human beings. *Rodriguez-Morelos*, 2022 COA 107M, ¶ 19. Thus, the legislature did not use the phrase "of another" in the identity theft statute idly: because "of another" relates to personal identifying information, financial identifying information, *and* financial device(s), it is the proper phrase.

But the definition of "of another" that encompasses business entities only applies to financial identifying information and financial devices. With respect to "personal identifying information," it is clear that the term "specific individual" means a human being. This Court must presume that the legislature "does not use language idly," and the use of different terms shows the legislature's intent to give those terms different meanings. *See Robinson*, 179 P.3d at 1010; *see also Gulyas*, 2022 COA 34, ¶ 38.

In sum, a person can commit identity theft against a "specific individual"—a human being—by knowingly using their personal identifying information without

authority to obtain a thing of value. A person can commit identity theft against a person *or business entity* by knowingly using either a financial device or financial identifying information to obtain a thing of value.

The State contends that the court of appeals' "interpretation cannot be reconciled with the legislature's plain wording in the identity-theft statute that an offender also commits identity theft if the offender uses the [personal identifying information] of a business entity . . . ." OB, p 14. But the State wholly ignores the court of appeals' sound reasoning that the terms financial identifying information and financial device are not limited to information concerning only human beings. *Rodriguez-Morelos*, 2022 COA 107M, ¶ 19. Defendants may be charged with identity theft if they use financial identifying information or a financial device belonging to a business entity, but they may not be charged with identify theft for using the personal identifying information of a business entity. *Id.* at ¶¶ 19, 26.

d. Even assuming the statute is ambiguous, rules of statutory construction support the conclusion that "specific individual" means a human being.

Because the plain language of the term "specific individual" is clear, this Court applies its plain and ordinary meaning and looks no further. *See Cowen*, 2018 CO 96, ¶ 12. "[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Id.* (citation omitted).

However, if this Court disagrees, the following rules of statutory construction support Mr. Rodriguez-Morelos's position.

i. The statutory definitions of identity theft and personal identifying information do not conflict, but if this Court determines they cannot be harmonized, then the specific provision—defining personal identifying information—prevails.

Section 18-5-902, the identity theft statute, and section 18-5-901(13), the definition of "personal identifying information" do not conflict, but to the extent the State argues they cannot be harmonized, when two statutory provisions cannot be harmonized, the specific provision controls over the more general provision. *Cali*, 2020 CO 20, ¶ 17; § 2-4-205 (providing that if a general provision conflicts with a special or local provision and the conflict is irreconcilable, then "the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail"). The statutory provision defining "personal identifying information" is more specific than the more general provision of "identity theft." This is clear because the term "personal identifying information" is used in the "identity theft" statute. Accordingly, if this Court were to determine the two provisions cannot be harmonized, the language of "specific individual" in the "personal identifying information" statute prevails over the language of "of another" in the identify theft statute.

ii. The doctrine of in pari materia *supports the conclusion that the term "specific individual" means a human being.*

Under the doctrine of *in pari materia*, statutes relating to the same subject matter must be construed together in order to gather the legislature's intent from the whole of the enactments. *Walgreen Co. v. Charnes*, 819 P.2d 1039, 1043 n.6 (Colo. 1991) (citing *Black's Law Dictionary* 791 (6th ed. 1990)). When this Court construes the various parts of the identity theft statutory scheme, interpreting "specific individual" as a human being creates a single harmonious whole to the scheme. *See Union Pac. R.R. Co. v. Martin*, 209 P.3d 185, 189 (Colo. 2009). To the contrary, if this Court were to interpret "specific individual" to mean "another," that is, a human being or a business entity, it would render the term "specific individual" meaningless. *See Rediger*, 2018 CO 32, ¶ 22. The legislature's use of different terms signals its intent to afford those terms different meanings. *Robinson*, 179 P.3d at 1010; *Carlson v. Ferris*, 85 P.3d 504, 509 (Colo. 2003).

iii. The State's argument that the court of appeals interpreted the class of victims too narrowly without a good reason for doing so fails.

The State argues that the court of appeals did not have "a good reason" for interpreting the class of victims so "narrowly." OB, p 25. But it is the legislature's prerogative to define who is a victim for purposes of criminal offenses. *See e.g.*, *People v. Yascavage*, 101 P.3d 1090, 1095 (Colo. 2004) (discussing how

legislature intended to broadly define victim for purposes of tampering statute); *People v. McKinney*, 99 P.3d 1038, 1041 (Colo. 2004) (discussing how legislature defined victims under the at-risk statutes); *see also Martin v. People*, 27 P.3d 846, 848 (Colo. 2001) ("It is for the legislature, not the courts, to decide what laws best serve the public interest . . . ."); *see also* § 18-1-102(1)(a) (stating purpose of criminal code is "[t]o define offenses, to define adequately the act and mental state which constitute each offense, to place limitations upon the condemnation of conduct as criminal when it is without fault, and to give fair warning to all persons concerning the nature of the conduct prohibited and the penalties authorized upon conviction").

The court of appeals properly relied on canons of statutory interpretation, looked at the plain meaning of the words in the statute, and correctly declined to read words into the statute that are not present. *See Harrah*, 243 P.2d at 1038. Thus, the State's argument that the court of appeals needed a "good reason" to interpret the phrase "specific individual" as a human being fails. The State attempts to make a policy argument but that does not defeat the plain language of the statute. The court of appeals correctly relied on the plain language of the statute to reach its result. When the plain language of the statute is clear, courts

must end the inquiry there and look no further. *Cowen*, 2018 CO 96, ¶ 12; *Zapotocky*, 869 P.2d at 1238.

It would threaten separation of powers principles, and undermine the legislature's role as the peoples' representatives, for the court of appeals to interpret the language of the statute contrary to the plain language in order to broaden the class of victims. *See People v. Montgomery*, 669 P.2d 1387, 1389 (Colo. 1983) ("[C]ourts cannot, under the pretense of deciding a case, assume or usurp power vested in either the legislative or executive branch of government."); *Krol v. CF & I Steel*, 2013 COA 32, ¶ 28 n.6 (holding the court must apply the plain language and cannot read an operative phrase out of the statute to legislate from the bench) (citing *Scoggins v. Unigard Ins. Co.*, 869 P.2d 202, 205 (Colo. 1994) ("We will not judicially legislate by reading a statute to accomplish something the plain language does not suggest, warrant or mandate.")).

This Court must decline the temptation to expand the scope of a statute beyond the legislature's intent, no matter how sympathetic the alleged victim. *See Jones*, 2020 CO 45, ¶ 69 (declining to extend the child abuse statute to include an unborn fetus simply because the victim is sympathetic when principles of statutory construction did not support that conclusion); *People v. Weeks*, 2021 CO 75, ¶¶ 40-41 (concluding that the plain and ordinary meaning of the statute may preclude

victims from getting restitution if the court and prosecution miss the statutory deadlines and although that is an "undesirable" result, this Court must follow the plain language of the statute).

The State finds the court of appeals' conclusion undesirable or unwise. That does not make it absurd. *See People v. Butler*, 2017 COA 117, ¶ 35 ("To the extent that [the defendant's] policy arguments may highlight shortcomings in the statute, that does not mean the result is absurd or illogical."). Ultimately, the State invites this Court to rewrite the statute to further favored policy goals. This Court should decline that invitation. *Cf. People v. Ramirez*, 2018 COA 129, ¶ 32 ("While the result mandated by the statutory language likely is undesirable to almost everyone, that does not give us a license to improve or rewrite the statute."); *Dep't of Transp. v. City of Idaho Springs*, 192 P.3d 490, 494 (Colo. App. 2008) ("Courts may not rewrite statutes to improve them.").

The State argues that the court of appeals' "interpretation deprives all [of the victims the State lists—various stakeholders of business entities] protection from identity thieves, for no discernible reason . . . ." OB, p 28. But if a person uses the name, password, or pass code of a business entity without permission and with the intent to obtain some other financial gain, they are hardly immune from any type of

prosecution.[6] There are many other charges that person could face based on that conduct, including theft under section 18-4-401, C.R.S., and criminal impersonation under section 18-5-113, C.R.S. The conduct is well within the ambit of criminal law. It just is not identity theft.

e. This Court does not need to look to the legislative history, but even if it does, the legislative history does not support the State's argument.

Only if when looking at the plain language of the statute, reading the statute as a whole and giving words and phrases their common meanings, the language is ambiguous, then does this Court look to extrinsic aids of construction such as the statute's legislative history. *Jones*, 2020 CO 45, ¶ 55. But even still, the legislative history does not support the State's position.

The State cites to a district attorney's comment during testimony at the legislative hearing. OB, p 29 (citing Hearing on H.B. 06-1326 before the Subcommittee of the House Judiciary Committee, 65th General Assembly, Second Session (Feb. 23, 2006)). The district attorney told a story about a couple who gave their social security numbers, drivers' licenses, and other information to a

[6] Indeed, United with Migrants' tax-exempt document was financial identifying information under section 18-5-901(7), C.R.S. *Rodriguez-Morelos*, 2022 COA 107M, ¶ 29. But the court of appeals concluded there was insufficient evidence to prove that Mr. Rodriguez-Morelos used the document with the intent to obtain cash or any other thing of value. *Rodriguez-Morelos*, 2022 COA 107M, ¶ 35.

woman at a church booth who was posing as an agent from a mortgage company. OB, p 29.

The clear upshot of the district attorney's story was that the woman used the *personal identifying information* of one of the individuals in the couple. She used her social security number, date of birth, and driver's license to open credit cards, take out a loan, buy a car, and buy a house. Hearing on H.B. 06-1326 before the Subcommittee of the House Judiciary Committee, 65th General Assembly, Second Session (Feb. 23, 2006), 4:22-7:13. According to the district attorney, the woman used the mortgage company's name without permission. OB, p 29. But even in this example, there is nothing to show the mortgage company—a business entity—was the "specific individual" whose personal identifying information (its name) was stolen. That would be analogous to the State's argument here: that Mr. Rodriguez-Morelos used United with Migrants' name (its personal identifying information) in violation of the identity theft statute. The district attorney's anecdote does not further the State's argument in any way.

And the State also relies on the district attorney's following statement:

> We talked about financial identifying information, personal identifying information, and there's a definition of "another" *that's important* because the victims of identity theft are actual living people, you know, living person, they could be a dead person, or *definitely a*

> *business entity*. So "of another" is a *business entity*, a living person, a dead person.

Hearing on H.B. 06-1326 before the Subcommittee of the House Judiciary Committee, 65th General Assembly, Second Session (Feb. 23, 2006), 14:04-30 (emphasis in Opening Brief, OB, p 29). But, as discussed above, *supra*, pp 15-17, the phrase "of another" in the identity theft statute applies to three things: 1) personal identifying information, 2) financial identifying information, and 3) financial device(s). Personal identifying information must belong to a specific individual—meaning a human being, who is either alive or dead. *Rodriguez-Morelos*, 2022 COA 107M, ¶¶ 20-24; *see* § 18-5-901(13). Financial identifying information and financial devices, on the other hand, could belong to human beings or business entities. So when the district attorney says "another" means a living person, a dead person, or a business entity, he is correct. And the statutory language supports this: under section 18-5-901(11), C.R.S., "of another" means "that of a natural person, living or dead, or a business entity." Because the witness' statement defines "another" in the same way that section 18-5-901(11), C.R.S. does, that does not support the State's argument that "specific individual" in the personal identifying information statute includes business entities.

The State asserts, "[s]ignificantly, nowhere in his comments did the district attorney distinguish between types of victims when referring to [personal identifying information.]" OB, p 30. But just because he did not specifically say that the definition of personal identifying information says "specific individual" does not mean that is not the case.

To the contrary, the district attorney's comments support the argument that personal identifying information belongs to a "specific individual" meaning a human being. Neither the district attorney then, nor the State now, contend that the mortgage company, whose name was used when the woman pretended to be an agent, was a victim of identity theft because its personal identifying information (its name) was used.

Statements made before a legislative committee are not conclusive proof of legislative intent. *Rockwell*, 125 P.3d at 419. But even if statements made before a legislative committee *were* conclusive proof of legislative intent, there are no statements in the legislative history that support the State's position.

f. To the extent the statute remains ambiguous, the rule of lenity cuts in favor of the defendant.

When the legislature's intent cannot be ascertained using canons of statutory construction, "ambiguity in the meaning of a criminal statute must be interpreted in favor of the defendant." *Jones*, 2020 CO 45, ¶ 70 (quoting *People v. Summers*,

208 P.3d 251, 258 (Colo. 2009)). As discussed above, the statutes at issue are not ambiguous. And even if this Court disagrees, the canons of statutory construction and the legislative history support the interpretation that the personal identifying information of a "specific individual" means a human being.

But if this Court disagrees with that as well and is unable to discern the legislature's intent, then it must resort to the rule of lenity and interpret the statute in Mr. Rodriguez-Morelos's favor. *See id.* Application of the rule here is mandated to preserve Mr. Rodriguez-Morelos's due process rights to notice and fair warning. *Yates v. United States*, 574 U.S. 528, 547-48 (2015) (rule of lenity ensures that criminal statutes will provide fair warning concerning conduct rendered illegal); *United States v. Santos*, 553 U.S. 507, 514 (2008) (rule "vindicates the fundamental principle that no citizen should be held accountable for a violation of a statute whose commands are uncertain, or subjected to punishment that is not clearly prescribed . . . and keeps courts from making criminal law in [legislature's] stead.").

CONCLUSION

For the reasons and authorities presented, the court of appeals properly vacated Mr. Rodriguez-Morelos's conviction for identity theft because his use of United with Migrants' name and tax-exempt document did not constitute "personal

identifying information" under section 18-5-901(13), C.R.S. And although the tax-exempt document he gave to some students was financial identifying information under section 18-5-901(7), C.R.S., there was no evidence in the record that he used that document to obtain a thing of value as required by section 18-5-902(1)(a), C.R.S.

Mr. Rodriguez-Morelos respectfully requests this Court affirm the court of appeals' opinion.

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CERTIFICATE OF SERVICE

I certify that, on May 16, 2024, a copy of this Answer Brief was electronically served through Colorado Courts E-Filing on Wendy J. Ritz of the Attorney General's Office.