No. ____

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**IN THE SUPREME COURT OF THE UNITED STATES**

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**LANI LUCAS LIMANE a/k/a LUKASZ CHAD LIMANE,**

***Petitioner***

***v.***

**UNITED STATES OF AMERICA**

***Respondent.***

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**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

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APPLICATION TO THE HONORABLE JUSTICE
SAMUEL A. ALITO, Jr., AS CIRCUIT JUSTICE

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October Term: 2023

## APPLICATION FOR AN EXTENSION OF TIME

To the Honorable Samuel A. Alito, Jr., as Circuit Justice for the United States Court of Appeals for the Fifth Circuit: Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3 of the Rules of this Court, Applicant Lani Lucas Limani a/k/a hereby requests a 60-day extension of time within which to file his Petition for a Writ of Certiorari. If granted, Applicant's Petition will be due on August 9, 2024. This request is unopposed.

## JUDGMENT FOR WHICH REVIEW IS SOUGHT

The U.S. Court of Appeals for the Fifth Circuit issued its opinion on February 15, 2024, (attached hereto as Exhibit A). Applicant's petition for rehearing was denied on March 12, 2024 (attached here to as Exhibit B). The Fifth Circuit's opinion is unreported.

## JURISDICTION

This Court will have jurisdiction over any timely-filed petition for certiorari in this case pursuant to 28 U.S.C. § 1254(1). Pursuant to Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for a writ of certiorari is currently due to be filed on or before June 10, 2024. In accordance with Rules 13.5 and 30.2, this application is being filed more than 10 days in advance of that filing deadline.

## BACKGROUND

The appeal below was a consolidated appeal from four separate judgments imposing terms of incarceration on Applicant. Applicant challenged two of the

judgments rendered by the District Court, and, as the sentences in all four cases were impacted by his challenges to the two judgments, he sought to have all four judgments vacated and the case remanded for re-sentencing.

Applicant first challenged his plea of guilty to a charge of aggravated identity theft in violation of 18 U.S.C. § 1028A(a)(1). The pertinent Indictment charged that he committed aggravated identity theft "during and in relation to" the felony described in 18 U.S.C. § 1029(a)(5) – commonly referred to as "access device fraud." The offense of "access device fraud" under § 1029(a)(5) is one of several "enumerated" felonies that may serve as an element of aggravated identity theft in violation of 18 U.S.C. § 1028A(a)(1):

> (c) DEFINITION.—For purposes of this section, the term "felony violation enumerated in subsection (c)" means any offense that is a felony violation of—...
>
> (4) any provision contained in this chapter (relating to fraud and false statements), other than this section or section 1028(a)(7)...

18 U.S.C. § 1028A(c)(4) [emphasis added]. The record reflects that Applicant entered his plea of guilty after being informed that the qualifying enumerated offense was not the enumerated offense charged in the Indictment - "access device fraud" under § 1029(a)(5) - but, instead, wire fraud in violation of 18 U.S.C. § 1343.

There are at least three issues with Applicant's plea of guilty to a charge of aggravated identity theft.

First, Applicant could not have entered a knowing and voluntary plea of guilty to the charge of aggravated identity theft. The record is clear that Applicant was given to believe that he was entering a plea of guilty to the charge of aggravated

identity theft predicated on the qualifying enumerated offense of wire fraud [18 U.S.C. § 1343] when, in fact, the pertinent Indictment charged him with aggravated identity theft in connection with the purported qualifying enumerated offense of "access device fraud" in violation of § 1029(a)(5). In other words, Applicant pled guilty to a charge of aggravated identity theft that was not set forth in the Indictment. This Court has made clear that a criminal defendant cannot be convicted of a charge that is not set forth in the Indictment:

> "It is ancient doctrine of both the common law and of our Constitution that a defendant cannot be held to answer a charge not contained in the indictment brought against him."

*Schmuck v. United States*, 489 U.S. 705, 109 S.Ct. 1443, 103 L.Ed.2d 734 (1989).

Second, even the specific charge of aggravated identity theft based on "access device fraud" in violation of § 1029(a)(5) could not have supported Applicant's conviction for aggravated identity theft because the charge of access device fraud, *as described in the Indictment* and incorporated into the separate charge of aggravated identity theft, was also an offense in violation of 18 U.S.C. § 1028(a)(7). As reflected in the underscored portion of § 1028A(c)(4) above, the latter offense is expressly excluded from the list of enumerated offenses that can support a charge of aggravated identity theft.

Third, Applicant pled guilty to the substantive offense of wire fraud in a separate count. As an enumerated offense set out in 18 U.S.C. § 1028A(c)(5), wire fraud is a lesser included offense of aggravated identity theft. Accordingly, if wire fraud is used as the qualifying enumerated offense (as the Fifth Circuit allowed), the

Fifth Amendment's double jeopardy clause barred Applicant from being convicted of both aggravated identity theft and wire fraud.

Counsel also believes that the Fifth Circuit did not properly apply the standard announced by this Court in *United States v. Dominguez Benitez*, 542 U.S. 74 (2004) in determining that there was no plain error impacting Applicant's plea of guilty to the charge of aggravated identity theft.

In addition to the foregoing, there is a separate substantial question as to whether the Fifth Circuit properly affirmed the District Court's judgment stacking terms of imprisonment following its revocation of Applicant's terms of supervised release.

## REASONS JUSTIFYING AN EXTENSION OF TIME

The undersigned counsel of record was appointed to represent Applicant under the Criminal Justice Act [18 U.S.C. § 3006A]. Counsel has commenced drafting the Petition, but has not yet finalized a draft for Applicant's review.

Counsel is currently involved in several other matters that have converged to absorb virtually all of the 90-day period since the denial of the petition for rehearing.

First, counsel was preparing for a June trial in a civil case pending in the Northern District of Texas [*Amin v. United Parcel Service, Inc.*, 3:19-CV-2578-X]. That case unexpectedly settled last week.

Second, counsel represents appellants in four currently-pending appeals in the United States Court of Appeals for the Fifth Circuit, two of which are appeals from jury trials that require extensive briefing. Counsel was not involved at the District

Court level in either of the jury trials that resulted in the judgments that are the subject of these appeals. The records on appeal in both jury trial cases are extensive – one is approximately 9,000 pages in length; the other is approximately 4,000 pages in length. Counsel recently completed and filed his opening brief in one of those appeals [*United States v. Bobbi Stroud*, Case No. 22-11208]. Currently, he is in the process of preparing his opening brief in the other; that brief is due in June [*United States v. Vargas Velez*, Case No. 24-40019].[1]

Third, counsel communicates with Applicant primarily through the mail.[2] Counsel wishes to give Applicant the opportunity to understand the arguments being advanced in his Petition, to ask questions of counsel and to review the final version of the Petition before it is filed. There is some degree of complexity involved in the arguments being advanced; accordingly, counsel seeks the sixty-day extension to ensure that Petitioner has adequate time to fully comprehend the substance of the arguments being advanced on his behalf.

Counsel recognizes that it is difficult to secure review in this Court, and wishes to take the time necessary to do a thorough job on the Petition. He owes it to his

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[1] Counsel is also sole counsel for defendants in two criminal cases pending in the United States District Court for the Eastern District of Texas, and sole counsel for an additional civil case pending in the United States District Court for the Northern District of Texas.

[2] Applicant is currently incarcerated at the Federal Correctional Institution in Talladega, Florida. He is serving significant terms of imprisonment on his challenged aggravated identity theft conviction and stacked revocation sentences – an aggregate of 215 months.

client and to the Court to present the best case he can to persuade the Court to grant Applicant's Petition. To do that, he respectfully requests the additional time.

The undersigned counsel of record for Applicant/Petitioner Limane has conferred with counsel for the United States. The United States does not oppose the requested extension of time.

## CONCLUSION

For all the foregoing reasons, Applicant Limane respectfully requests a 60-day extension of time within which to file a petition for a writ of certiorari. If granted, Applicant's Petition will be due on August 9, 2024.

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# EXHIBIT A

# OPINION OF THE FIFTH CIRCUIT

# United States Court of Appeals for the Fifth Circuit

No. 23-10112
CONSOLIDATED WITH
No. 23-10114
Summary Calendar

United States Court of Appeals
Fifth Circuit
**FILED**
February 15, 2024
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee*,

*versus*

LANI LUCAS LIMANE,

*Defendant—Appellant*,

CONSOLIDATED WITH

Nos. 23-10115, 23-10117

UNITED STATES OF AMERICA,

*Plaintiff—Appellee*,

*versus*

LUKASZ CHAD LIMANE,

*Defendant—Appellant*.

No. 23-10112
c/w Nos. 23-10114, 23-10115, 23-10117

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Appeals from the United States District Court
for the Northern District of Texas
USDC Nos. 3:19-CR-620-1, 3:20-CR-28-1,
3:21-CR-539-1, 3:21-CR-600-1

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Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:*

In this consolidated appeal, Lani Limane appeals two criminal judgments and two judgments imposed after the district court had revoked his supervised release in two earlier cases. On appeal, Limane challenges, for the first time, his guilty-plea conviction of aggravated identity theft and the imposition of 12 terms of imprisonment in one of the revocation cases.

Regarding his guilty plea to aggravated identity theft, Limane has failed to establish any clear or obvious constructive amendment of his indictment because, in this case, he pleaded guilty to the same conduct for which he was indicted. *See United States v. Chaker*, 820 F.3d 204, 213 (5th Cir. 2016); *United States v. Robles-Vertiz*, 155 F.3d 725, 729 (5th Cir. 1998). In other words, the government maintained a single theory of conviction on the aggravated-identity-theft count because the indictment alleged, and Limane admitted at rearraignment, that Count 8 was based on his fraudulent transmission, by wire communication, of former Company A employees' access devices. *See Chaker*, 820 F.3d at 211; *United States v. Reasor*, 418 F.3d 466, 474–77 (5th Cir. 2005).

Limane's assertions of plain errors under Federal Rule of Criminal Procedure 11 are similarly unpersuasive, as the record establishes that the district court ensured Limane's understanding of the elements of aggravated identity theft at rearraignment. *See United States v. Vonn*, 535 U.S. 55, 58–59

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* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

(2002); *United States v. Jones*, 969 F.3d 192, 198 (5th Cir. 2020); *United States v. De Nieto*, 922 F.3d 669, 677 (5th Cir. 2019). Contrary to Limane's contention that the crime charged in Count 8 constituted a different crime from the one to which he pleaded guilty, the record establishes that Counts 1 and 7 were based on the same fraudulent scheme, and Limane confirmed his understanding of that scheme at rearraignment. Further, the facts admitted by Limane establish the essential elements of aggravated identity theft. *See De Nieto*, 922 F.3d at 677; *Dubin v. United States*, 599 U.S. 110, 114 (2023); *United States v. Avalos-Sanchez*, 975 F.3d 436, 440 (5th Cir. 2020). Limane's novel factual-basis challenge does not establish plain error. *See United States v. Alvarado-Casas*, 715 F.3d 945, 951–52 (5th Cir. 2013).

As for the revocation sentence, Limane maintains that the district court erred by imposing more terms of imprisonment than allowed. *See United States v. Greer*, 59 F.4th 158, 161–62 (5th Cir. 2023); 18 U.S.C. § 3583(e)(3). The record shows, however, that the original sentencing court imposed 12 concurrent terms of supervised release, so the district court here did not err in imposing 12 consecutive terms of imprisonment upon revoking those terms of supervision. *See United States v. Gonzalez*, 250 F.3d 923, 928–29 (5th Cir. 2001).

Finally, Limane urges us to vacate his other two judgments to the extent that his theories above are successful. Because we reject those contentions, we decline to vacate the remaining judgments.

Accordingly, the judgments are AFFIRMED.

# EXHIBIT B

# ORDER DENYING PETITION FOR REHEARING

# United States Court of Appeals for the Fifth Circuit

No. 23-10112
CONSOLIDATED WITH
No. 23-10114

United States Court of Appeals
Fifth Circuit
FILED
March 12, 2024
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

LANI LUCAS LIMANE,

*Defendant—Appellant,*

CONSOLIDATED WITH

Nos. 23-10115, 23-10117

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

LUKASZ CHAD LIMANE,

*Defendant—Appellant.*

No. 23-10112
c/w Nos. 23-10114, 23-10115, 23-10117

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Appeals from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CR-620-1
USDC No. 3:20-CR-28-1
USDC No. 3:21-CR-539-1
USDC No. 3:21-CR-600-1

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ON PETITION FOR REHEARING

Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.