

On June 9, 2017, the Iowa Supreme Court issued a decision in *State v. Martinez*, 896 N.W.2d 737 (Iowa 2017), that significantly changed the extent to which undocumented Iowans can be held criminally responsible for the use of false identity documents. While the rule announced in *Martinez* affects a fairly narrow group of cases overall, it should generally be dispositive of those cases. It is therefore important to understand when a motion to dismiss under *Martinez* may be appropriate, and what other fact patterns may also be susceptible to challenge.

The defendant in *Martinez* was charged with one count of identity theft in violation of Iowa Code § 715A.8 and one count of forgery in violation of Iowa Code § 715.2(1) after having acquired and used a driver's license under a false name. *Martinez*, 896 N.W.2d at 742. The benefit *Martinez* was alleged to have obtained to support the charge of identity theft was employment and subsequent wages. *Id.*

Upon an interlocutory appeal of a motion to dismiss, the Iowa Supreme Court held that Iowa Code § 715.2(1) is preempted on its face by federal immigration law. *Martinez*, 896 N.W.2d at 754. As a result, that section—prohibiting forgery of a document authorizing entry into the United States or providing proof of authorized stay or employment—is no longer enforceable and, if charged, should be subject to disposition on a motion to dismiss.

The Court further held that Iowa Code § 715A.8 is preempted “to the extent it regulates fraud committed to allow an unauthorized alien to work in the United States in violation of federal immigration law.” *Martinez*, 896 N.W.2d at 755. In other words, *Martinez* squarely prohibits a charge of identity theft where the only benefit alleged to have been obtained is unauthorized employment. Identity theft charged in this way should, like the forgery charge at issue here, be subject to dismissal as a matter of law.

The holding that § 715A.8 is preempted as applied to certain immigration-specific circumstances was based on the conclusion that federal immigration law is a comprehensive scheme that entirely occupies the field of immigration enforcement, and that enforcement of the Iowa statute under certain circumstances conflicts with that scheme. *Martinez*, 896 N.W.2d at 755-56. This reasoning is potentially applicable to a wider range of fraud-related offenses, where the fraudulent nature of the conduct stems exclusively from a person's immigration status. The key fact to look for in identifying this type of situation is whether the benefit sought to be obtained is otherwise unavailable to the defendant solely because of their immigration status.