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U.S. Supreme Court Clarifies Scope of Federal Fraud Statutes: Deception Alone Can Support Wire Fraud Convictions

By J. Gregory Deis, Glen A. Kopp, Kelly B. Kramer, Hiral D. Mehta, Gina M. Parlovecchio, Findley Penn-Hughes, Micayla R. Brugellis and Samuel Tope-Ojo*

In this article, the authors examine a recent decision by the U.S. Supreme Court that makes clear that a pertinent issue in future wire fraud prosecutions will be whether the misrepresentation was material to the victim's decision to enter the transaction.

The U.S. Supreme Court has issued a unanimous decision in *Kousisis v. United States*,¹ providing clarity on the scope of the federal wire fraud statute, 18 U.S.C. § 1343. In a opinion authored by Justice Amy Coney Barrett, the Court held that a defendant may be convicted of wire fraud for inducing a victim to enter into a transaction under materially false pretenses—even if the defendant did not intend to cause, and the victim did not suffer, a net economic loss.

The Court's decision confirms that the government can continue to bring wire fraud prosecutions under a fraudulent inducement theory as long as there are material misrepresentations, regardless of whether the victim ultimately suffered a financial loss or the defendant sought to cause the victim financial loss. The *Kousisis* decision stands in contrast to recent Supreme Court decisions that have narrowed the reading of federal criminal fraud statutes, including most recently in *Thompson v. United States*² and *Ciminelli v. United States*.³

The Court's decision comes on the heels of the recent White-Collar Enforcement Plan announced by the Department of Justice (DOJ) on May 12, 2025, prioritizing “Fraud that victimizes US investors, individuals, and markets including, but not limited to, Ponzi schemes, investment fraud, elder fraud, servicemember fraud, and fraud that threatens the health and safety of consumers.”

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¹ *Kousisis v. United States*, 605 U.S. ____ (2025).

² *Thompson v. United States*, 604 U.S. ____ (2025).

³ *Ciminelli v. United States*, 598 U.S. 306 (2023).

THE CASE: *KOUSISIS V. UNITED STATES*

The case arises from misrepresentations made by the defendants to secure government contracts. Specifically, Stamatios Kousisis and Alpha Painting and Construction Co. secured two major government contracts for a bridge and train station restoration in Philadelphia. The U.S. Department of Transportation provided a large portion of the project funding. The relevant federal regulations required a portion of the work to be subcontracted to a disadvantaged business enterprise (DBE). In their bids, Kousisis and Alpha represented that they would obtain paint supplies from a certified DBE, Markias, Inc. In reality, Markias acted only as a pass-through and did not supply any materials. Despite this, Alpha completed the projects to the satisfaction of the Pennsylvania Department of Transportation (PennDOT) and earned over \$20 million in gross profit.

The government charged Kousisis and Alpha with wire fraud and conspiracy to commit wire fraud, pursuant to 18 U.S.C. §§ 1343 and 1349, respectively, on the theory that the defendants fraudulently induced PennDOT to award them the restoration contracts by making material misrepresentations about DBE participation. The defendants were convicted after trial of three counts of wire fraud and one count of conspiracy to commit wire fraud. Kousisis and Alpha moved for a judgment of acquittal, contending that because PennDOT received the full economic value of their work, there was no scheme to defraud PennDOT of “money or property” as required by the statute. The district court denied the motion, and the U.S. Court of Appeals for the Third Circuit affirmed the convictions.

THE SUPREME COURT’S DECISION

The Supreme Court held that a defendant who induces a victim to enter into a transaction under materially false pretenses may be convicted of federal fraud, even if the defendant did not seek to cause the victim economic loss. The Court’s decision, which resolves a circuit split, overturns contrary precedent in the Second, Sixth, Ninth, Eleventh, and District of Columbia Circuits. The decision endorses the theory of fraudulent inducement by emphasizing that the wire fraud statute does not require proof of net economic loss to the victim:

In short, the wire fraud statute is agnostic about economic loss. The statute does not so much as mention loss, let alone require it. Instead, a defendant violates § 1343 by scheming to “obtain” the victim’s “money or property,” regardless of whether he seeks to leave the victim economically worse off. A conviction premised on a fraudulent inducement thus comports with § 1343.

The Court’s reasoning focused on the statutory text, noting that Section 1343 does not mention economic loss, and explained that the common law did

not require economic loss in all fraud cases. At common law, it was enough that the victim was induced to part with property under materially false pretenses, even if the property received was of equal value.

The Court reaffirmed that materiality of the misrepresentation is a necessary element of wire fraud, which serves as a limiting principle to prevent the statute from criminalizing every misstatement. The misrepresentation must be material, meaning that “the defendant knew (or should have known) that the recipient would likely deem it important” in the victim’s decision to enter the transaction. The Court also differentiated this case from those involving mere regulatory interests or intangible rights, highlighting that the statute is limited to schemes targeting money or property.

IMPLICATIONS FOR BUSINESSES AND WHITE COLLAR DEFENSE

The Supreme Court’s decision makes clear that a pertinent issue in future wire fraud prosecutions will be whether the misrepresentation was material to the victim’s decision to enter the transaction. The “grey area” of “materiality,” i.e., whether the misstatement was material in the victim entering into the transaction, will likely be the focus of both prosecution and defense strategy. Defendants can no longer argue that there was no fraud simply because the victim received the benefit of the bargain or suffered no net economic loss. If a contract or transaction was obtained through a material lie, wire fraud liability may attach.

The decision in *Kousisis* is a departure from the recent trend of Supreme Court opinions narrowing the reading of widely used federal criminal laws in the fraud and corruption sphere. For example, the Supreme Court’s ruling in *Thompson* limited the reach of 18 U.S.C. § 1014 (which makes it a crime to, inter alia, make a false statement to certain federal agencies) by holding that the statute criminalizes only “false” statements, not merely “misleading” ones.

Likewise, in *Ciminelli*, the Court limited the reach of 18 U.S.C. §§ 1343 and 1349—the same fraud statutes considered in *Kousisis*—by rejecting the so-called “right to control” theory, and holding that the statutes are limited to schemes targeting “traditional property interests,” such as money and tangible property. While *Thompson* and *Ciminelli* narrowed the scope of federal prosecutions, *Kousisis* affirms a broader reading of the wire fraud statute, so long as the misrepresentation is material and the object is money or property.

Companies—especially those doing business with the government or subject to set-aside or DBE requirements—should ensure that all representations in bids, certifications, and compliance documents are accurate and complete. Good performance on a contract will not insulate a company from fraud

liability if the contract is later found to have been obtained through a material misrepresentation. The DOJ's recent whistleblower initiatives further increase the risk that internal misconduct will be reported and prosecuted.

Furthermore, the DOJ's newly announced white-collar enforcement priorities include federal program fraud. Thus, companies should invest in robust compliance programs and internal reporting mechanisms to detect and remediate potential fraud before it becomes the subject of a government investigation.