

IN THE  
**Supreme Court of the United States**

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MICHAEL BINDAY,  
*Petitioner,*  
v.  
UNITED STATES,  
*Respondent.*

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**MOTION TO DEFER CONSIDERATION  
OF THE PETITION FOR A WRIT OF CERTIORARI**

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Petitioner Michael Binday, pursuant to Supreme Court Rule 21, respectfully requests that this Court defer consideration of his petition for a writ of certiorari until the petitions in *Aiello v. United States*, No. 21-1161; *Kaloyerros v. United States*, No. 21-1169; and *Ciminelli v. United States*, No. 21-1170, are distributed and reviewed by the Court. In support of this motion, Mr. Binday states the following:

Mr. Binday's petition for a writ of certiorari presents the question whether the United States Court of Appeals for the Second Circuit's "right to control" theory of fraud – which treats the deprivation of complete and accurate information bearing on one's economic decision as a form of "property" fraud – is a valid basis for a conviction under the federal mail and wire fraud statutes, 18 U.S.C. §§ 1341, 1343. Currently pending before the Court are three other petitions that present the same or a substantially similar question regarding the validity of the Second Circuit's "right to control" theory of fraud. *See Aiello v. United States*, No. 21-1161; *Kaloyerros*

*v. United States*, No. 21-1169; *Ciminelli v. United States*, No. 21-1170. For each of those petitions, the United States has moved to extend the time to file a response and thus appears to be prepared to respond to the petitions. Because the United States has waived the right to respond to Mr. Binday's petition, he respectfully requests that the Court defer consideration of his petition until the three other petitions are distributed so that the Court may have the benefit of full briefing on the "right to control" issue before resolving Mr. Binday's petition.

## CONCLUSION

For the foregoing reasons, Mr. Binday's motion to defer consideration of the petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "David W. Shapiro".

David W. Shapiro

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**PROOF OF SERVICE**

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Diana Abad hereby declares under penalty of perjury under the laws of the United States that she emailed a copy of this motion to Respondent at the address below:

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Executed on March 29, 2022

/s/ Diana Abad

Diana Abad