

July 18, 2024

**VIA Electronic Filing**

Honorable Scott S. Harris  
Clerk of Court  
Supreme Court of the United States  
1 First Street, NE  
Washington, D.C. 20543

**Re: Petitioner's Request to Defer Consideration of the Petition for a Writ of  
Certiorari, *Binday v. United States*, No. 23-1290**

Dear Mr. Harris:

Petitioner Michael Binday respectfully requests that this Court defer consideration of his petition for a writ of certiorari until *Kousisis v. United States*, No. 23-909, is fully briefed, heard, and decided. In support of this request, Mr. Binday states the following:

Mr. Binday's petition for a writ of certiorari presents the question of whether this Court's decision in *Ciminelli v. United States*, 598 U.S. 306 (2023), was a constitutional determination that placed particular conduct or persons covered by the fraud statutes beyond the State's power to punish and thus must be given retroactive effect.<sup>1</sup> On June 17, 2024, this Court granted the petition for a writ of certiorari in *Kousisis v. United States*, No. 23-909, which raises the substantially similar question of "[w]hether deception to induce a commercial exchange can constitute mail or wire fraud, even if inflicting economic harm on the alleged victim was not the object of the scheme," and, more specifically, whether criminalizing such acts "comports with *Ciminelli*, its predecessors," and the constitutional principles of "federalism and due process" that

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<sup>1</sup> Mr. Binday's petition for a writ of certiorari also presents a second question: "When a person has challenged a judicial construction of a criminal statute at trial, on direct appeal, and in a 2255 motion as unconstitutional, and lower courts reject his contentions, is he foreclosed by section 2255(h) from raising the same issue in a later in time motion after this Court vindicates his position?" He respectfully submits that this question, too, should be resolved after *Kousisis* is fully briefed, heard, and decided.

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underlie *Ciminelli*. Petition for a Writ of Certiorari at i, 7, *Kousisis v. United States*, No. 23-909 (Feb. 20, 2024).

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 *Kousisis* is fully briefed, heard, and decided so that the Court may have the benefit of complete presentation of the overlapping *Ciminelli* issue before resolving Mr. Binday's petition.

For these reasons, Mr. Binday respectfully submits that his request to defer consideration of his petition for a writ of certiorari should be granted.

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We would appreciate if you would circulate copies of this letter to the Members of the Court.

Very truly yours,



David W. Shapiro  
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Attorneys for Petitioner Michael Binday