

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

No. A-__

MOSHE PORAT,
Applicant,

v.

UNITED STATES OF AMERICA,
Respondent.

**APPLICATION TO THE HON. SAMUEL A. ALITO, JR.
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

Pursuant to Supreme Court Rule 13(5), Moshe Porat hereby moves for an extension of time of 59 days, to and including March 1, 2024, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be January 2, 2024.

In support of this request, Applicant states as follows:

1. The United States Court of Appeals for the Third Circuit issued an opinion in this case on August 7, 2023. (Exhibit 1). On September 20, 2023, Applicant petitioned for rehearing or rehearing en banc. On October 3, 2023, the petition was denied. (Exhibit 2). This Court has jurisdiction under 28 U.S.C. § 1254(1).

2. This case presents a substantial and important question of federal law: whether deceit to induce a transaction, without more, is sufficient to prove wire fraud (18 U.S.C. § 1343)—regardless of whether fair value is exchanged for the “victim’s” money or property.

3. Moshe Porat, the former dean of Temple University’s Fox School of Business, was convicted of federal fraud because Temple submitted false data to organizations that publish educational rankings, and thereby obtained inflated rankings. Below, the Third Circuit concluded that it was irrelevant whether students received the *education* they were promised so long as the “false, inflated rankings” were intended to induce students to enroll and pay tuition. *United States v. Porat*, 76 F.4th 213, 219 (3d Cir. 2023) (holding that Porat was validly “convicted for depriving [students] of *tuition money*”). That holding was consistent with similar pronouncements in *United States v. Kousisis*, where the Third Circuit affirmed a fraud conviction because the defendants “set out to obtain millions of dollars that they would not have received but for their fraudulent misrepresentations.” 66 F.4th 406, 417 (3d Cir. 2023); *see also id.* (deceit aimed at “obtaining millions of dollars” sufficed to prove fraud even if victim received what it paid for).

4. This Court, however, has held that the federal mail and wire fraud statutes are “limited in scope to the protection of property rights,” *McNally v. United States*, 483 U.S. 350, 360 (1987), and that consequently the object of fraud must be “loss to the victim.” *Kelly v. United States*, 140 S. Ct. 1565, 1573 (2020); *see also, e.g., Pasquantino v. United States*, 544 U.S. 349, 356 (2005) (scheme constituted mail

fraud in part because it “inflict[ed] an economic injury.”). For that reason, other circuits have uniformly held that even when deceit leads to an exchange of money or property, there is no fraud if the purported victim receives the full benefit of the bargain—*i.e.*, “exactly what they paid for.” *United States v. Shellef*, 507 F.3d 82, 108-09 (2d Cir. 2007); *see also, e.g., United States v. Guertin*, 67 F.4th 445, 451 (D.C. Cir. 2023); *United States v. Takhalov*, 827 F.3d 1307, 1313-14 (11th Cir. 2016); *United States v. Sadler*, 750 F.3d 585, 590-92 (6th Cir. 2014); *United States v. Bruchhausen*, 977 F.2d 464, 467 (9th Cir. 1992).

5. This case will provide the Court an opportunity to clarify the scope of the fraud statutes and decide whether a monetary transaction induced by deceit, without more, is sufficient to prove federal fraud even if the “victim” receives the full benefit of the bargain. Moreover, this case will offer the Court a chance to consider whether consumers have a property right in reputational rankings, such that deception for the purpose of inflating rankings can support a fraud conviction. Given the ubiquity of rankings that can influence a wide variety of purchasing decisions in higher education and many other sectors, and recent revelations regarding their myriad flaws, this is a question of exceptional importance.

6. Between now and the current due date of the petition, Counsel of Record, Alexandra A.E. Shapiro, has substantial briefing obligations in several other complex cases. This includes a reply brief due on November 22, 2023 in *United States v. Jho (Hwa)*, No. 23-6333 (2d Cir.), a reply brief due on November 28, 2023 in *United States v. Percoco (Aiello)*, No. 18-3710 (2d Cir.), an opening brief due on December 15, 2023

in *United States v. Chastain*, No. 23-7038 (2d Cir.), and an opening brief due on December 21, 2023 in *United States v. O'Sullivan*, No. 23-7076 (2d Cir.). In addition, Counsel has an opening brief due on January 5, 2024, shortly after the current due date for the petition, in *United States v. Smith*, No. 23-2840 (7th Cir.).

7. This extension is necessary to allow Applicant sufficient time to prepare a petition that fully addresses the complex issue presented by this appeal.

WHEREFORE, for the foregoing reasons, Applicant requests that an extension of time to and including March 1, 2024, be granted within which Applicant may file a petition for a writ of certiorari.

Respectfully submitted,

/s/ Alexandra A.E. Shapiro

ALEXANDRA A.E. SHAPIRO
Counsel of Record
SHAPIRO ARATO BACH LLP
1140 Avenue of the Americas,
17th Floor
New York, NY 10036
(212) 257-4880
ashapiro@shapiroarato.com

Attorneys for Applicant

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