

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

STAMATIOS KOUSISIS and ALPHA PAINTING AND CONSTRUCTION CO.,
INC., Applicants

v.

UNITED STATES OF AMERICA,
Respondent

**APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

TO THE HONORABLE SAMUEL A. ALITO, ASSOCIATE JUSTICE OF
THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT
JUSTICE FOR THE THIRD CIRCUIT:

Pursuant to this Court’s Rules 13.5 and 30.2, applicants Stamatios Kousisis and Alpha Painting And Construction Co., Inc. (“Alpha Painting”), respectfully request a thirty (30) day extension of time to file their petition for writ of certiorari in this Court, to and including January 19, 2024.

1. Timeliness and Jurisdiction. The United States Court of Appeals for the Third Circuit issued a precedential opinion and judgment in Applicants’ consolidated appeals on April 21, 2023 (published at 66 F.4th 406). Appellants were convicted at trial of violating 18 U.S.C. §§1001 (false statements), 1343 (wire fraud), and 1349 (wire fraud conspiracy). The Circuit affirmed the judgments of conviction but vacated Applicants’ sentences and remanding for resentencing.

On September 21, 2023 the Circuit granted in part and denied in part Applicants' timely petition for rehearing. Exhibit "A," Order. It declined to reconsider its affirmance of the convictions, but granting rehearing to address Alpha Painting's statutory challenges to the forfeiture order entered against it. The Circuit also vacated its April 21, 2023 opinion and judgment.

The Circuit issued a new precedential opinion on September 22, 2023, which modified aspects of its discussion of the basis for affirming the convictions. Exhibit "B," Opinion post-rehearing. The Circuit addressed Alpha Painting's forfeiture issues in a separate, not-precedential, opinion issued September 27, 2023, and issued judgment in both matters on that date.

Because the contemplated petition for certiorari would address the Circuit's basis for affirming the fraud convictions, a topic on which the Circuit modified its opinion but denied rehearing, Applicants interpret this Court's Rules 13.1 and 13.3 to impose a deadline of December 20, 2023. This application is being filed at least ten days before that date. Rule 30.2. This Court has jurisdiction under 28 U.S.C. §1254(1).

2. Opinions Below. After granting rehearing in part and denying it in part (*see* Exhibit "A") the Third Circuit issued a precedential opinion (per McKee, J., with Greenaway, Jr. and Restrepo, JJ.) published at *United States v. Kousisis*, 82 F.4th 230 (3d Cir. 2023) (Exhibit "B"), superseding the previous opinion published at 66 F.4th 406. The Circuit also issued a not-precedential opinion addressing forfeiture, available at 2023 WL 6294144 (3d Cir. Sept. 27, 2023).

3. Reasons for Granting the Extension.

a. This case presents a substantial and important question on which the circuits are divided: whether deceit aimed at influencing a victim's spending decision, without contemplating economic injury, is property fraud under the mail and wire fraud statutes, 18 U.S.C. §§1341, 1343, 1349.

i. Here, Alpha Painting (for which Kousisis worked) and affiliated entities were the lowest bidders by millions on two federal transportation contracts, and the government acknowledged that they did high-quality work. The government accused them of winning the contracts by misrepresenting their compliance with regulatory and contractual requirements for Disadvantaged Business Enterprise participation—but also argued that non-compliance allowed them to charge less than a compliant bidder would have for the “same work.”

ii. The Third Circuit held that these facts prove a property fraud scheme because the defendants “obtained” the victim's money by fraud—though the scheme contemplated giving the contracting agency the benefit of the quality bridge repairs it bargained for, for less than it would have paid absent the scheme. *E.g., Kousisis*, 82 F.4th at 240. The Circuit held that fraudulently inducing a victim to spend money with someone it would have avoided had it known the truth, without more, deprives the victim of the money spent. *E.g., Kousisis*, 82 F.4th at 240, 242-43. The same holding underlies *United States v. Porat*, 76 F.4th 213, 219 (3d Cir. 2023),

decided after the initial *Kousisis* opinion and while the *Kousisis* rehearing petition was pending. *See Porat*, 76 F.4th at 219 (students “deprived” of tuition money spent on expected education because inflated rankings data influenced enrollment decisions).¹

iii. This holding contravenes this Court’s longstanding recognition that the mail and wire fraud statutes criminalize schemes to injure a victim’s traditionally recognized property interests, which are economic interests. Deceit that affects the victim’s spending decision is not enough. *E.g.*, *McNally v. United States*, 483 U.S. 350, 360 (1987).

Accordingly, *Kousisis* (and *Porat*) opened a circuit split. Other circuits recognize that even when deceit induces a transaction the victim otherwise would have avoided, the scheme is not “property fraud” simply because it affects how the victim uses its property. Rather, the scheme must contemplate tangible economic harm—taking more, or delivering less, economic value than the victim bargained for. *E.g.*, *United States v. Guertin*, 67 F.4th 445, 451 (D.C. Cir. 2023); *United States v. Wheeler*, 16 F.4th 805 (11th Cir. 2021); *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); *United States v. Starr*, 816 F.2d 94, 96, 99-100 (2d Cir. 1987).

¹ The Circuit Justice recently extended to January 31, 2024 the deadline by which Moshe Porat may petition for certiorari. *See Moshe Porat v. United States*, No. 23A418 (Application filed Nov. 6, 2023).

b. Unfortunately, counsel will be unable to complete the petition in this important matter by the current due date of December 20, 2023. Counsel is a sole practitioner. Though her practice is predominantly appellate, she is also engaged for district court matters presenting novel legal issues. Since the Third Circuit's rehearing decision she has had substantial and unpredictable briefing obligations in those, as well as appellate briefing deadlines that extend through December into January. For example:

i. Counsel is representing defendant KVK-Tech, Inc. in both criminal and civil matters, with an active dispute over its attorney-client privilege and the work-product doctrine ongoing in the civil matter, *Velez Enterprises LLC v. KVK-Tech, Inc., et al.*, No. 20-cv-5553 (E.D. Pa.). The district court directed substantial supplemental briefing on those issues, filed September 29, 2023, November 6, 2023, and November 27, 2023. The court recently ordered additional submission to be filed by December 12, 2023 and December 15, 2023.

ii. In another case, *United States v. Boone*, No. 22-CR-426 (M.D. Pa.), counsel researched, drafted, and filed on September 30, 2023 a motion and memorandum challenging release conditions that disarmed her non-violent client pending trial for a financial crime, contravening both the Bail Reform Act and, counsel contended, this Court's decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. ___, 142 S. Ct. 2111 (2022).

The *Boone* matter has also required ongoing attention to privilege disputes and other discovery matters, and analysis of concomitant speedy-trial issues.

iii. Counsel is also working concurrently on appellate briefs in several federal criminal appeals: an opening brief in *United States v. Diarra*, No. 22-3232 (3d Cir.), where an unopposed extension request to December 29 is pending; a reply brief in *United States v. Blanding*, No. 21-1707 (3d Cir.), a complex multi-appellant matter raising both constitutional and statutory issues, in which the government Brief was filed on November 13, 2023; and an opening brief due on January 8, 2024 in *United States v. Kail*, No. 21-10376 (9th Cir.), another appeal involving a voluminous record and novel legal issues.

4. Mr. Kousisis did not seek release pending appeal and is currently serving his term of imprisonment. Proceedings on remand are moving forward, and both he and Alpha Painting are scheduled for resentencing on April 18, 2024. Neither seeks delay for any tactical reason, nor will the requested delay prejudice the government.

WHEREFORE, for the foregoing reasons of good cause, applicants Stamatios Kousisis and Alpha Painting and Construction Co., Inc. respectfully request that the Circuit Justice enter an Order extending the time within which they may petition this Court for certiorari by thirty (30) days, to and including January 19, 2024.

Respectfully submitted,

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December 8, 2023

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing Application was served via electronic filing and first class U.S. mail upon the following:

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December 8, 2023