

No. 24A_____

In the
Supreme Court of the United States

JEFFREY BATIO,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

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

To the Honorable Amy Coney Barrett, Associate Justice of the Supreme Court and Circuit Justice for the Seventh Circuit:

1. Pursuant to Supreme Court Rules 13.5, 22, and 30, Applicant Jeffrey Batio respectfully requests a 58-day extension of time, up to and including Friday, June 14, 2024, to file a petition for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit, seeking review of that court's

decision in *United States v. Batio*, No. 21-3195, 2023 WL 8446388. The Seventh Circuit issued its decision on December 6, 2023. *See id.* That order is attached as Appendix A. The Seventh Circuit denied panel and en banc rehearing on January 18, 2024. 2024 WL 198948. That order is attached as Appendix B. The jurisdiction of this court will be invoked under 28 U.S.C. § 1254(1), and the time to file a petition for a writ of certiorari will otherwise expire on Wednesday, April 17, 2024. This Application is timely because it has been filed on March 21, 2024, more than ten days prior to the date on which the time for filing the petition is set to expire.

2. Mr. Batio was indicted in 2016 on twelve counts of mail and wire fraud under 18 U.S.C. §§ 1341 and 1343. He is a tech entrepreneur who founded one company, Xentex, in the 1990s, and two companies, Armada and Idealfuture, in the 2000s. Those companies all focused on developing multi-screen computing products, but none of them reached the point of mass marketing. Armada was funded by selling equity shares, and Idealfuture was funded through crowdfunding on the platform Indiegogo. The government's indictment alleged that the entire operation of Armada and Idealfuture was a fraudulent scheme based on wilfully misrepresenting the status of product

development, Mr. Batio's past successes, and Armada's and Idealfuture's use of funds.

During Mr. Batio's multi-week jury trial, the government presented circumstantial evidence only of the existence of a fraudulent scheme and of Mr. Batio's allegedly fraudulent intent, and while some witnesses disagreed with Mr. Batio's technical views, the witnesses also testified that he believed that his product development efforts would succeed.

A jury convicted Mr. Batio on all twelve counts, and the district court denied Mr. Batio's Rule 29 and Rule 33 motions for acquittal or a new trial. The district court also set the loss amount for sentencing purposes to cover all the funds that Mr. Batio's companies had raised while they existed, rejecting Mr. Batio's sentencing-phase arguments as well.

Mr. Batio appealed, but the court of appeals affirmed. Mr. Batio renewed his argument that the trial court improperly instructed the jury that any misrepresentation could negate his good-faith defense and that the trial court erred with respect to sentencing and restitution, in addition to his argument that the evidence did not support the more-than-a-decade scheme that was the basis for the indictment and his sentence. But the court of appeals

disagreed and affirmed Mr. Batio's conviction, sentence, and restitution judgment. App. A, *infra*, 2–3, 5.

3. Mr. Batio's briefing at the court of appeals presented important questions about whether evidence of a fraudulent scheme must be commensurate with the alleged scope of the scheme, whether a defendant's good faith in the truth of his representations can be negated categorically if he makes at least one misrepresentation, whether a court can base sentencing and restitution on the alleged scheme's full scope if the jury could have convicted on a narrower scheme, and whether restitution must be offset for legitimate business services provided to funders. The law in the Seventh Circuit on those issues makes it so that a defendant's entire business can be retroactively rendered criminal if at any point it turns fraudulent, and therefore also allows disproportionate sentencing and restitution. Additional time is needed to assess other courts' of appeals approach to the same issues, and to prepare a petition for a writ of certiorari if warranted that will enable this Court to fully consider the important implications of the question presented.

4. Mr. Batio has good cause for an extension of time to seek a writ of certiorari. Counsel for Mr. Batio was appointed by the court of appeals to handle his appeal pursuant to the Criminal Justice Act (CJA). Mr. Batio has

requested that present counsel prepare a petition for writ of certiorari. The Seventh Circuit's CJA plan states the following:

If, after consultation (by correspondence, or otherwise), the represented person requests it and there are reasonable grounds for counsel properly to do so, the appointed attorney must prepare and file a petition for writ of certiorari and other necessary and appropriate documents and must continue to represent the defendant until relieved by the Supreme Court. Counsel who conclude that reasonable grounds for filing a petition for writ of certiorari do not exist must promptly inform the defendant, who may by motion request this Court to direct counsel to seek certiorari.

Seventh Circuit CJA Plan at V(3).

Counsel Skilton is retiring prior to the present due date for the petition, and so at least one additional attorney, who was not counsel for Mr. Batio at trial or on appeal, will need to familiarize themselves with the record and law in this case. The attorneys working on this appeal have other responsibilities that make additional time necessary to research and prepare, if appropriate, a petition that will best assist this Court in evaluating this case. Those responsibilities include extensive expert discovery due April 5, dispositive motion briefing due April 16 (No. 23-cv-1690, N.D. Cal.), and appeal merits briefs due April 18 (No. 24-1020, Fed. Cir.), April 29 (No. 24-1046, Fed. Cir.), and May 17

(Nos. 23-2007, 23-2095, Fed. Cir.), as well as pre-planned and pre-paid travel outside the country the week of March 24, 2024.

Additionally, client communications in this case are logistically difficult due to Mr. Batio being incarcerated at a federal prison camp in California, with limited opportunities for privileged legal calls and frequent mail delays. Additional time is necessary for that reason as well.

5. On March 15, Assistant United States Attorney Helene B. Greenwald, who was counsel for the United States on appeal, indicated that she has no objection to this extension request.

WHEREFORE, Applicant respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for 58 days, to and including June 14, 2024.

Dated: March 21, 2024

Respectfully submitted,



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