

No. 24-5785

IN THE SUPREME COURT OF THE UNITED STATES

BERNARD ROSS HANSEN,
DIANE RENEE ERDMANN,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT

PETITIONERS' REPLY

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PETITIONERS' REPLY

The government contends that the resolution of *Kousisis v. United States*, No. 23-909 “would not affect the outcome here, making a hold for *Kousisis* inappropriate.” Memorandum for the United States in Opposition (“Opp.”) at 3. The government is wrong.

First, the government emphasizes that in Petitioners’ case, some NWTM customers suffered actual pecuniary loss after the Mint declared bankruptcy. *See* Opp. at 2-3. The import of pecuniary loss is unclear, however, since the question presented in this case, as in *Kousisis*, addresses *mens rea* rather than actual harm. *See Kousisis*, Brief for Petitioner at i (asking “[w]hether a scheme to induce a transaction in property through deception, *but which contemplates no harm to any property interest*, constitutes a scheme to defraud under the federal wire fraud statute”) (emphases added). Notably, the government similarly miscasts the question presented in *Kousisis* in terms of actual loss, a parallel with Petitioners’ case that only underscores the overlap between the two. *See Kousisis*, Brief for the United States at i (reframing the question presented as “[w]hether petitioners’ convictions for wire fraud . . . required proof of net pecuniary loss”); *accord* Opp. at 2.

Second, the government contends that unlike in *Kousisis*, Petitioners’ “fraudulent scheme was designed to . . . inflict a net pecuniary harm on their victims[,]” arguing that the jury, district court, and court of appeals all so found. Opp. at 2-3. It is true that Petitioners’ jury was instructed on the Ninth Circuit’s conjunctive “deceive and cheat” formulation of federal criminal fraud. *See id.* The crux of Petitioners’ claim for relief, however, is that the jury was wrongly permitted—and encouraged—to find that Petitioners “cheated” their customers by inducing the exchange of money through deception alone, without regard to the compelling evidence that NWTM intended for customers to receive their orders or a refund. Petitioners have consistently challenged the overbroad definition of “cheat” that the government employed in its case. Because the jury instructions permitted a general verdict on the same overbroad theory the Court is assessing in *Kousisis*, a defense victory in *Kousisis* should inure to Petitioners’ benefit as well. *See, e.g., Yates v. United States*, 354 U.S. 298, 312 (1957) (a verdict should be set aside if it “is supportable on one ground,

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but not on another, and it is impossible to tell which ground the jury selected”).

Respectfully submitted,

Dated: November 26, 2024

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