

No. 24-6465

IN THE SUPREME COURT OF THE UNITED STATES

LESLIE ROBERT BURK, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 11-16) that his misrepresentations about his ability to fulfill residential-construction contracts and his misuse of customer money to pay personal expenses did not constitute a "scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses" within the meaning of the wire-fraud statute, 18 U.S.C. 1343, because petitioner "entered into all the contracts with the intent to fulfill them," Pet. 16. He suggests (Pet. 11-12) that this Court hold his petition for a writ of certiorari pending a decision in Kousisis v. United States, cert. granted, No. 23-909 (argued Dec. 9, 2024), in which this Court will address whether the federal

property-fraud statutes apply to a scheme to fraudulently induce a transaction if the scheme does not (or is not designed to) impose a net pecuniary loss on the victim.

The petition in this case should not be held pending Kousisis. As the court of appeals correctly determined, the trial evidence was "sufficient for a jury to find beyond a reasonable doubt that [petitioner] had the specific intent to defraud [his] customers." Pet. App. 8. Indeed, "[t]he jury believed this evidence, but did not believe that [petitioner] was merely a businessman in over his head but trying his best." Id. at 7. Among other acts of deception, petitioner "sent the same photograph of a container to different customers * * * knowing it did not depict their container home projects but hoping to mollify the customers' concerns"; repeatedly "gave [customers] the run around, failed to return their requests for information, and even completely ghosted them"; and used "the cash received by customers" to pay "personal expenses" instead of construction costs. Ibid. That pattern of "misrepresentations, lies, delay tactics, ignoring customers, and refusing to issue refunds," id. at 3, resulted in a tangible loss to the victims, "whose total payments to [petitioner] and [his co-conspirator] * * * exceeded \$2.5 million," id. at 2.

Accordingly, petitioner's fraudulent scheme was designed to -- and in fact did -- inflict a net pecuniary harm on his victims. The resolution of the question presented in Kousisis thus would not affect the outcome here, making a hold for Kousisis

inappropriate. The petition for a writ of certiorari should therefore be denied.*

Respectfully submitted.

SARAH M. HARRIS
Acting Solicitor General

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* The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.