

24-6865

No.

ORIGINAL

Supreme Court, U.S.
FILED

DEC 17 2024

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Brian Alfaro

— PETITIONER

(Your Name)

vs.

United States of America

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Western District of Texas San Antonio Division

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Brian Alfaro

(Your Name)

29 Greens Shade

(Address)

San Antonio, TX 78216

(City, State, Zip Code)

210-979-1295

(Phone Number)

QUESTION(S) PRESENTED

1. Does the "timing" of the taking of earned profits—regardless of contract violations—constitute a criminal offense if no financial harm is caused to the plaintiffs, and the defendant delivered honest contracted services?
2. Did the district court's denial of juror requests for information (Juror notes 86 and 87) during deliberations, and the subsequent sealing of the response, violate the Defendant's Fifth Amendment rights to procedural due process and fair trial procedures?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Honorable Fred Biery, United States District Judge, Western District of Texas, San Antonio Division

Greg Surovic (trial counsel)

Robert Almonte (trial counsel)

Joseph H. Gay, Jr. (appellate counsel)

United States Attorney's Office San Antonio, Texas

RELATED CASES

Kelly v. United States, No. 18-1059. Argued January 14, 2020—Decided May 7, 2020

Cleveland v. United States, No. 99-804. Argued October 10, 2000—Decided November 7, 2000

McNally v. United States, No. 86-234, Supreme Court of the United States, Argued April 22, 1987—Decided June 24, 1987

United States, v. Louis Ciminelli, No. 16-CR-776 (VEC) District Court, S.D. New York. Judgement entered December 4, 2018

Ciminelli v. United States, No. 21-1170, Supreme Court of the United States, Argued November 28, 2022—Decided May 11, 2023

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A The United States Court of Appeals for the Fifth Circuit dated on April 7,2022

APPENDIX B United States District Court Western District of Texas San Antonio Division
Re-Sentencing Judgement in a Criminal Case (For Offenses Committed On or
After November 1, 1987) (For Remand from 5th Circuit of Appeal File April 29, 2022

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Cleveland v. United States	531 U.S. 12, 19, 121 S.Ct. 365, 148 L.Ed.2d 221.
Kelly v. United States	590 U.S. ___, ___, 140 S.Ct. 1565, 1571, 1574, 206 L.Ed.2d 882 (2020).
McNally v. United States	483 U.S. 350, 107 S.Ct. 2875, 97 L.Ed.2d 292,
Ciminelli v. United States	598 U.S. 306

STATUTES AND RULES

- 18 U.S.C. 1341 (Mail Fraud Statute)
- 18 U.S.C. 1346 (Honest Services and Property Fraud)
- 18 U.S.C. 1343 (Right-To-Control Theory)

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at USCA5 No. 20-51054; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at No. 5:18-CR-879-1; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 7,2022.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

Defendant, Brian Alfaro, was convicted of seven counts of mail fraud for taking of "earned profits" in a manner that violated the terms of the contract. However, forensic evidence presented at trial and an analysis of the financial transactions shows no financial harm to plaintiffs. The plaintiffs did not suffer any financial loss, nor were their property rights "wronged" by the Defendant. The Defendant did provide honest services, which included drilling oil wells for the plaintiffs, and the profits he received were his rightful earnings.

The conviction against the Defendant for mail fraud under 18 U.S.C. 1341 was in error because the charges were based on the intangible concept of the "timing" of the taking of earned profits rather than any legitimate financial harm caused to the plaintiffs. The Supreme Court's decision in Ciminelli v. United States (2023) and other precedents show that intangible property interests, like the "timing" of payments, cannot be grounds for a criminal fraud conviction without evidence of financial wrongdoing or injury.

Furthermore, the District Court's denial of juror requests for information—specifically, juror notes 86 and 87—during deliberations undermines the fairness of the trial and could have led to a different verdict. The Court sealed this information, depriving jurors of the details necessary to understand the full scope of criminal fraud. This omission was the equivalent of asking an average person to bake a cake without giving them a recipe and violated the Defendant's rights to due process under the Fifth Amendment.

REASONS FOR GRANTING THE PETITION

The issues raised in this case are of critical importance for ensuring fair business practices and protecting the rights of individuals facing criminal prosecution for alleged criminal fraud. If allowed to stand, this decision will set a dangerous precedent where businesses and individuals can be criminally charged for taking earned profits, even if no actual harm or financial wrongdoing occurred. The failure to provide jurors with critical information further underscores the need for review.

CONCLUSION

Petitioner prays that this Court grants certiorari and overturns the decision of the Fifth Circuit, allowing for a more fair and just review of the facts and constitutional issues in this case.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Brian Alfaro

Date: March 15, 2025