IN THE SUPREME COURT OF THE UNITED STATES

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No. A-_____

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FRANK BELL; TYSON RHAME; AND JAMES SHAW,
APPLICANTS

v.

UNITED STATES OF AMERICA

_____

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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To the Honorable Clarence Thomas, Circuit Justice:

Pursuant to Rules 13.5 and 30.2 of this Court, Frank Bell, Tyson Rhame, and James Shaw apply for a 60-day extension of time, to and including April 7, 2025, within which to file a petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit. The judgment of the court of appeals was entered on August 14, 2024, App., infra, 1a-41a, and a petition for rehearing was denied on November 8, 2024, id. at 42a-43a. Unless extended, the time for filing a petition for a writ of certiorari will expire on February 6, 2025. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

1. This case presents the question whether a misrepresentation that is designed to induce a transaction in property, but that does not concern the price or fundamental characteristics of

the property, can give rise to a violation of the federal mail-fraud and wire-fraud statutes. See 18 U.S.C. 1341, 1343.

The federal fraud statutes are "limited in scope to the protection of property rights." Ciminelli v. United States, 598 U.S. 306, 314 (2023) (citation omitted). Consequently, a fraudulent "scheme must be one to deceive the [victim] and deprive it of something of value." Shaw v. United States, 580 U.S. 63, 72 (2016). Consistent with that principle, this Court has repeatedly rejected theories of fraud that "stray from traditional concepts of property." Cleveland v. United States, 531 U.S. 12, 24 (2000); see also, e.g., id. at 26-27 (state license); Ciminelli, 598 U.S. at 316 (right to "valuable economic information needed to make discretionary economic decisions"); Kelly v. United States, 590 U.S. 391, 401 (2020) (exercise of "regulatory rights"). This Term, the Court may further clarify the scope of the mail-fraud and wire-fraud statutes in Kousisis v. United States, No. 23-909 (argued Dec. 9, 2024), which presents the question whether a scheme to induce a transaction through a deception, but which contemplates no harm to any property interest, constitutes a scheme to defraud under the wire-fraud statute.

Several courts of appeals have further distinguished between nonfraudulent schemes that "do no more than cause their victims to enter into transactions they would otherwise avoid" and fraudulent schemes that "depend for their completion on a misrepresentation of an essential element of the bargain." United States v. Shellef, 507 F.3d 82, 108 (2d Cir. 2007); see United States v. Guertin, 67 F.4th 445, 451 (D.C. Cir. 2023). That doctrine excludes from

liability "misrepresentations about collateral matters [that] may have led to the transaction," so long as the buyer received "the product that she expected at the price she expected." United States v. Milheiser, 98 F.4th 935, 944 (9th Cir. 2024). Stated differently, "even if a defendant lies, and even if the victim made a purchase because of that lie, a wire-fraud case must end in an acquittal if the jury nevertheless believes that the alleged victims received exactly what they paid for." United States v. Takhalov, 827 F.3d 1307, 1314 (11th Cir. 2016) (internal quotation marks and citation omitted).

2. Applicants are the former owners and chief operating officer of Sterling Currency Group, a currency-exchange business that bought and sold Iraqi dinars at agreed-upon prices. The value of the dinar was set by the Iraqi central bank. App., infra, 2a-3a.

As is relevant here, a superseding indictment charged applicants with conspiracy to commit mail fraud and wire fraud, in violation of 18 U.S.C. 1349; mail and wire fraud, in violation of 18 U.S.C. 2, 1341, and 1343; and conspiracy to launder money, in violation of 18 U.S.C. 1956(h). App., infra, 8a. Applicants Bell and Rhame were also charged with making false statements, in violation of 18 U.S.C. 1001(a)(2), and applicants Rhame and Shaw were charged with money laundering, in violation of 18 U.S.C. 2 and 1957. Ibid.

The case proceeded to trial, where the government argued, inter alia, that applicants misrepresented the likelihood that a revaluation in the dinar would occur and that, once the revaluation

occurred, Sterling Currency Group would establish currency exchanges at airports. App., infra, 5a-7a, 18a-20a. At the close of the evidence, applicants requested a jury instruction stating that "[p]roving intent to deceive alone, meaning deception without the intent to cause loss or injury, is not sufficient to prove intent to defraud." Id. at 9a-10a. The district court rejected that instruction and instead instructed the jury that acting "with 'intent to defraud' means to act knowingly and with the specific intent to deceive or cheat someone, usually for personal financial gain or to cause financial loss to someone else." Id. at 10a.

The jury convicted applicants of the relevant fraud, conspiracy, and false-statement charges. Applicants moved for judgments of acquittal and a new trial, arguing that the government had failed to prove intent to harm and that the jury instruction on that issue was improper. App., infra, 11a. While those motions were pending, the Eleventh Circuit amended its pattern jury instructions, adding language similar to part of applicants' requested instruction. See Eleventh Circuit Pattern Jury Instructions, Criminal Cases O50.1 (2019 rev.) <tinyurl.com/11cir-juryinstr>. The district court denied the motions.

4. On appeal, applicants argued in relevant part that the government did not prove, and the district court did not instruct the jury that it was obligated to find, that applicants intended to deprive another of money or property. As applicants explained, the evidence was insufficient to show that their alleged misrepresentations addressed an essential element of the bargain, be-

cause statements about a potential revaluation and plans for airport exchanges did not concern the price or characteristics of the dinar. The jury instructions were erroneous, applicants further argued, because they permitted the jury to convict applicants of the fraud counts without finding an intent to deprive another of money or property. See App., infra, 14a, 23a.

The court of appeals affirmed. App., infra, 1a-41a. Although the court acknowledged that intent to defraud "requires the intent to harm victims by misrepresenting 'the value of the bargain,'" it reasoned that a "deception need not have a calculable price difference or result in a different tangible good or service being received to constitute fraud." Id. at 14a-15a (citation and emphasis omitted). The court then held that a jury reasonably could have found that applicants' communications about the dinar's potential appreciation and plans for airport exchanges concerned "core attribute[s] of the dinar," id. at 16a, and that applicants had lied about those issues, id. at 16a-22a. The court underscored that it had "never held that the federal fraud statutes are categorically inapplicable to fraudulent inducement schemes," and it stated that "fraudulent inducements about a collateral but still material matter are punishable under the federal statutes." Id. at 18a.

5. Counsel for applicants respectfully request a 60-day extension of time, to and including April 7, 2025, within which to file a petition for a writ of certiorari. The issues in this case overlap substantially with the question presented in Kousisis:

namely, whether a scheme to induce a transaction through a deception, but which contemplates no harm to any property interest, qualifies as a scheme to defraud. Extending the time to file the petition would increase the likelihood that the Court will have issued its decision in Kousisis before the petition is due. That would allow applicants to take the decision into account when preparing the petition, including determining whether a request for vacatur and remand for reconsideration in light of Kousisis would be appropriate.

In addition, counsel has a number of competing obligations before and soon after the current deadline of February 6, 2025, including several arguments and briefing deadlines. See Teradata Corp. v. SAP SE, No. 23-16065 (9th Cir.) (petition for rehearing due January 23); City of New York v. Exxon Mobil Corporation, No. 24-1568 (2d Cir.) (reply brief due January 31); County Commissioners of Boulder County v. Suncor Energy USA, Inc., No. 2024SA206 (Colo.) (oral argument on February 11); OWLink Technology, Inc. v. Cypress Technology Co., No. 23-4314 (9th Cir.) (oral argument on February 13); Johnson v. United States, No. 24-675 (cert. reply due March 12). Additional time is therefore needed to prepare and print the petition in this case.

Respectfully submitted,

KANNON K. SHANMUGAM
Counsel of Record
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300

Counsel for Frank Bell

DAVID OSCAR MARKUS
MARKUS/MOSS PLLC
40 N.W. Third Street,
Penthouse One
Miami, FL 33128
(305) 379-6667

Counsel for Tyson Rhame

JEFFREY S. BUCHOLTZ
KING & SPALDING LLP
1700 Pennsylvania Avenue,
N.W.
Washington, DC 20006
(202) 737-0500

Counsel for James Shaw

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