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***IN THE SUPREME COURT OF THE UNITED STATES***

STAMATIOS KOUSISIS and ALPHA PAINTING AND CONSTRUCTION CO.,  
INC., Applicants

v.

UNITED STATES OF AMERICA,  
Respondent

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**APPLICATION (SECOND) FOR EXTENSION OF TIME TO FILE  
PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

TO THE HONORABLE SAMUEL A. ALITO, ASSOCIATE JUSTICE OF  
THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT  
JUSTICE FOR THE THIRD CIRCUIT:

Pursuant to this Court’s Rules 13.5 and 30.2, applicants Stamatios Kousisis and Alpha Painting And Construction Co., Inc. (“Alpha Painting”), respectfully request a thirty (30) day extension of time to file their petition for writ of certiorari in this Court, to and including February 20, 2024<sup>1</sup>.

1. Timeliness and Jurisdiction. The United States Court of Appeals for the Third Circuit issued a precedential opinion and judgment in Applicants’ consolidated appeals on April 21, 2023 (published at 66 F.4th 406). Appellants were convicted at trial of violating 18 U.S.C. §§1001 (false statements), 1343 (wire fraud), and 1349 (wire fraud conspiracy). The Circuit affirmed the judgments of conviction

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<sup>1</sup> Thirty days falls on February 18, 2024, a Sunday. February 19 is federal holiday.

but vacated Applicants' sentences and remanding for resentencing.

On September 21, 2023 the Circuit granted in part and denied in part Applicants' timely petition for rehearing. Exhibit "A," Order. It declined to reconsider its affirmance of the convictions, but granting rehearing to address Alpha Painting's statutory challenges to the forfeiture order entered against it. The Circuit also vacated its April 21, 2023 opinion and judgment.

The Circuit issued a new precedential opinion on September 22, 2023, which modified aspects of its discussion of the basis for affirming the convictions. Exhibit "B," Opinion post-rehearing. The Circuit addressed Alpha Painting's forfeiture issues in a separate, not-precedential, opinion issued September 27, 2023, and issued judgment in both matters on that date.

Because the contemplated petition for certiorari would address the Circuit's basis for affirming the fraud convictions, a topic on which the Circuit modified its opinion but denied rehearing, Applicants interpreted this Court's Rules 13.1 and 13.3 to impose a deadline of December 20, 2023, but determined that an extension was necessary and filed an application for extension on December 8, 2023. The application was granted on December 12, 2023 extending the time to file to January 19, 2024.

Unfortunately, unexpected developments have required this second application, as described at ¶3.b, below. This application is being filed at least ten days before the current due date. Rule 30.2. This Court has jurisdiction under 28 U.S.C. §1254(1).

2. Opinions Below. After granting rehearing in part and denying it in part (*see* Exhibit “A”) the Third Circuit issued a precedential opinion (per McKee, J., with Greenaway, Jr. and Restrepo, JJ.) published at *United States v. Kousisis*, 82 F.4th 230 (3d Cir. 2023) (Exhibit “B”), superseding the previous opinion published at 66 F.4th 406. The Circuit also issued a not-precedential opinion addressing forfeiture, available at 2023 WL 6294144 (3d Cir. Sept. 27, 2023).

3. Reasons for Granting the Extension.

a. This case presents a substantial and important question on which the circuits are divided: whether deceit aimed at influencing a victim’s spending decision, without contemplating economic injury, is property fraud under the mail and wire fraud statutes, 18 U.S.C. §§1341, 1343, 1349.

i. Here, Alpha Painting (for which Kousisis worked) and affiliated entities were the lowest bidders by millions on two federal transportation contracts, and the government acknowledged that they did high-quality work. The government accused them of winning the contracts by misrepresenting their compliance with regulatory and contractual requirements for Disadvantaged Business Enterprise participation—but also argued that non-compliance allowed them to charge less than a compliant bidder would have for the “same work.”

ii. The Third Circuit held that these facts prove a property fraud scheme because the defendants “obtained” the victim’s money by fraud—though the scheme contemplated giving the contracting agency the

benefit of the quality bridge repairs it bargained for, for less than it would have paid absent the scheme. *E.g.*, *Kousisis*, 82 F.4th at 240. The Circuit held that fraudulently inducing a victim to spend money with someone it would have avoided had it known the truth, without more, deprives the victim of the money spent. *E.g.*, *Kousisis*, 82 F.4th at 240, 242-43. The same holding underlies *United States v. Porat*, 76 F.4th 213, 219 (3d Cir. 2023), decided after the initial *Kousisis* opinion and while the *Kousisis* rehearing petition was pending. *See Porat*, 76 F.4th at 219 (students “deprived” of tuition money spent on expected education because inflated rankings data influenced enrollment decisions).<sup>2</sup>

iii. This holding contravenes this Court’s longstanding recognition that the mail and wire fraud statutes criminalize schemes to injure a victim’s traditionally recognized property interests, which are economic interests. Deceit that affects the victim’s spending decision is not enough. *E.g.*, *McNally v. United States*, 483 U.S. 350, 360 (1987). Accordingly, *Kousisis* (and *Porat*) opened a circuit split. Other circuits recognize that even when deceit induces a transaction the victim otherwise would have avoided, the scheme is not “property fraud” simply because it affects how the victim uses its property. Rather, the scheme must contemplate tangible economic harm—taking more, or delivering less,

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<sup>2</sup> The Circuit Justice recently extended to January 31, 2024 the deadline by which Moshe Porat may petition for certiorari. *See Moshe Porat v. United States*, No. 23A418 (Application filed Nov. 6, 2023).

economic value than the victim bargained for. *E.g.*, *United States v. Guertin*, 67 F.4th 445, 451 (D.C. Cir. 2023); *United States v. Wheeler*, 16 F.4th 805 (11th Cir. 2021); *United States v. Sadler*, 750 F.3d 585, 590-92 (6<sup>th</sup> Cir. 2014); *United States v. Bruchhausen*, 977 F.2d 464, 467 (9<sup>th</sup> Cir. 1992); *United States v. Starr*, 816 F.2d 94, 96, 99-100 (2d Cir. 1987).

b. Unfortunately, counsel will be unable to complete the petition in this important matter by the current due date of January 19, 2024. Counsel is a sole practitioner. Though her practice is predominantly appellate, she is also engaged for district court matters presenting novel legal issues. Since this Court granted the application for a January 19 deadline, counsel has had unexpected and time-consuming obligations arise in several matters, in addition to the appellate deadlines she had expected. For example:

i. A very recent development in *United States v. Kail*, No. 21-10376 (9<sup>th</sup> Cir.), will require counsel's substantial attention over the next two to three weeks. The opening Brief in *Kail* is currently due January 8, 2024. Just yesterday counsel learned that an issue raised under Fed.R.App.P. 10(c) in December is disputed. That will require counsel to marshal supporting materials from trial counsel regarding the proceedings below, and to address the government's position on legal matters as well.

Counsel currently expects that this will delay the filing in *Kail* by approximately three weeks, to January 29.<sup>3</sup>

ii. The *Kail* appeal also involves a voluminous record and novel legal issues, and the appellant has been in close communication with counsel about the drafting of the opening Brief. That process consumed substantial amounts of counsel's time through December as well, even before the Fed.R.App.P. 10 issue arose. Moreover, counsel cannot finish drafting the *Kail* Brief until the Fed.R.App.P. 10 issue is resolved.

iii. In *United States v. Boone*, No. 22-CR-426 (M.D. Pa.), a privilege dispute that had previously ripened stretched into mid-December when the government made a follow-up demand for the production of non-privileged Electronically Stored Information, which presented unforeseeable (to counsel) technological complications. With no in-house information technology resources in her solo practice, counsel worked personally on resolving that issue.

iv. The *Boone* matter is also requiring ongoing attention to discovery issues and concomitant speedy-trial matters, in preparation for pretrial motions due on February 12, 2024.

v. Counsel has also been working concurrently on appellate briefs in two other federal criminal appeals: an opening brief in *United*

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<sup>3</sup> As this issue arose very recently, counsel has not yet determined the exact amount of the additional time she will request from the Ninth Circuit.

*States v. Diarra*, No. 22-3232 (3d Cir.), filed December 29; and a reply brief due February 3 in *United States v. Blanding*, No. 21-1707 (3d Cir.), a complex multi-appellant matter raising both constitutional and statutory issues.

4. Mr. Kousisis did not seek release pending appeal and is currently serving his term of imprisonment. Proceedings on remand are moving forward, and both he and Alpha Painting are scheduled for resentencing on April 18, 2024. Neither seeks delay for any tactical reason, nor will the requested delay prejudice the government.

WHEREFORE, for the foregoing reasons of good cause, applicants Stamatios Kousisis and Alpha Painting and Construction Co., Inc. respectfully request that the Circuit Justice enter an Order extending the January 19 deadline by which they may petition this Court for certiorari by thirty (30) days, to and including February 20, 2024.

Respectfully submitted,

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January 4, 2024

## CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing Application was served via electronic filing and first class U.S. mail upon the following:

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January 4, 2024