

Nos. 25-7515 and 25-7522

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT J. JESENİK, PETITIONER

v.

UNITED STATES OF AMERICA

ANDREW N. MACRITCHIE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court permissibly excluded certain testimony regarding the purported negligence of individual investor victims of the charged mail and wire fraud.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (D. Or.):

United States v. Jesenik, No. 20-cr-228 (Sept. 8, 2023)

United States v. MacRitchie, No. 20-cr-228 (Sept. 8, 2023)

United States v. Jesenik, No. 20-cr-228 (Sept. 10, 2024)

United States v. MacRitchie, No. 20-cr-228 (Sept. 10, 2024)

United States v. Jesenik, No. 20-cr-228 (May 20, 2025)

United States v. MacRitchie, No. 20-cr-228 (May 20, 2025)

United States Court of Appeals (9th Cir.):

United States v. Jesenik, No. 23-2282 (Sept. 5, 2025)

United States v. MacRitchie, No. 23-2308 (Sept. 5, 2025)

United States v. Rice, No. 23-2316 (Sept. 5, 2025)

United States v. MacRitchie, No. 24-5402 (Sept. 5, 2025)

United States v. Jesenik, No. 24-5404 (Sept. 5, 2025)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2-44) is reported at 152 F.4th 924.* An accompanying memorandum of the court of appeals (Pet. App. 49-54) is available at 2025 WL 2573385.

JURISDICTION

The judgment of the court of appeals was entered on September 5, 2025. Petitions for rehearing were denied on December 29, 2025

* Except as otherwise noted, all petition appendix citations are to the petition appendix in No. 25-7515.

(Pet. App. 67). On March 24, 2026, and March 27, 2026, Justice Kagan extended the time within which to file petitions for a writ of certiorari to and including May 28, 2026, and the petitions were filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of Oregon, petitioners Robert J. Jesenik and Andrew N. MacRitchie were each convicted on one count of conspiring to commit mail and wire fraud, in violation of 18 U.S.C. 1349, and 28 counts of wire fraud, in violation of 18 U.S.C. 1343. Jesenik Judgment 1; MacRitchie Judgment 1. Jesenik was additionally convicted on one count of making a false statement to a federally insured financial institution, in violation of 18 U.S.C. 1014. Jesenik Judgment 1. Jesenik was sentenced to 168 months of imprisonment, to be followed by three years of supervised release. Id. at 2-3. MacRitchie was sentenced to 70 months of imprisonment, to be followed by three years of supervised release. MacRitchie Judgment 2-3. The court of appeals affirmed. Pet. App. 2-44, 49-54.

1. Jesenik was the Chief Executive Officer of Aequitas, an investment management company that he founded in the 1990s. Pet. App. 8. MacRitchie joined Aequitas in 2007 as Executive Vice President and Chief Compliance Officer. Ibid. In that role, he oversaw the company's accounting, regulatory compliance, and audit

functions and was responsible for ensuring the accuracy of and approving the company's marketing materials. Id. at 18; see MacRitchie Presentence Investigation Report (PSR) ¶ 14. Between 2014 and 2016, petitioners participated in a scheme to defraud Aequitas investors. Jesenik PSR ¶ 18; MacRitchie PSR ¶ 17.

In the mid-2000s, Aequitas began purchasing trade receivables -- debts payable by a third party, such as a patient's unpaid medical bill or a student's unpaid loan. Pet. App. 8. Aequitas would purchase the debt at a discount and attempt to collect it at a profit. Trial Tr. 254-257. If the debtor defaulted and the debt was uncollectable, Aequitas retained the right under a recourse agreement to sell the debt back to the company at face value. Id. at 254-257, 633. By 2014, Aequitas's largest category of receivables was student loan debt, including debt purchased from Corinthian College. Pet. App. 10.

Aequitas solicited funding from investors and clients of registered investment advisors through several offerings, including a promissory-note program called the Private Note Program, Aequitas-affiliated investment funds, and a debt instrument called the Lux Bond program. Pet. App. 9. Between June 2014 and February 2016, Aequitas raised \$346 million in private investments, including \$167 million through the Private Note Program. Ibid.

Aequitas typically solicited investments through in-person sales pitches conducted by Jesenik and other Aequitas executives.

Pet. App. 9, 18. In the pitches, executives used marketing materials including a one-to-two-page summary of the investment called a "tear sheet," which MacRitchie approved, and a longer "pitch deck." Id. at 9; Trial Tr. 346-347; MacRitchie PSR ¶ 22. The executives' oral presentation and the written tear sheets both represented that investor funds would be used to finance the purchase of receivables. Pet. App. 14-15.

In reality, however, Aequitas overwhelmingly used new investor funds to pay its prior investors and to fund its operating expenses. Pet. App. 15. Near the end of 2015, Aequitas's new General Counsel revised the Private Note tear sheet, which another Aequitas executive described as the first time that the company provided a "full," "truthful disclosure" to investors. Trial Tr. 867. As revised, the tear sheet disclosed that Aequitas "uses proceeds from Private Note primarily to repay prior investors." Pet. App. 15. As one registered investment advisor explained, he would not have invested "a penny" of his clients' money had he read that revised disclosure, "[b]ecause that's the definition of a Ponzi scheme." Ibid. (brackets in original). Ultimately, however, the revised tear sheet was never used to market the products. Trial Tr. 869-870.

After they agreed to invest, but before their funds were released to Aequitas, investors received additional documentation, including a Private Placement Memorandum (PPM) that MacRitchie approved, and they signed a subscription agreement acknowledging

they had read the PPM. Pet. App. 9-10; Trial Tr. 668-672; MacRitchie PSR ¶ 22. Although the PPM disclosed that the company may use investor funds "to repay the principal and interest of previously issued" notes "[f]rom time to time," Pet. App. 23, the PPM also included statements that Aequitas "used and would continue to use investor funds to invest [in] new receivables" and it did not provide "the critical qualifying information that in fact most of the investors' money would be used to pay for Aequitas's operating expenses or to pay interest and principal (i.e., redemptions) to earlier investors," D. Ct. Doc. 677, at 17 (Aug. 30, 2023). When commenting on the statement in the Private Note Program PPM representing that the company may "from time to time" "use investor proceeds * * * to repay principal and interest of previously issued notes," Trial Tr. 1884, MacRitchie wrote, "Why qualify? We do this all the time," id. at 4131.

In 2014, Corinthian College stopped paying Aequitas for uncollectable debt under its recourse agreements and filed for bankruptcy, leading Aequitas to face "dire short-term cash shortfalls." Pet. App. 10. In response, the company offered investors promissory notes with short redemption periods and high interest rates, and persuaded some investors to delay redemption of their notes. Ibid. Those measures "provided only short-term relief," and "[t]he shortfalls were exacerbated by Aequitas's spending on new offices, private jets, and corporate retreats." Ibid. In 2015, the Securities and Exchange Commission began

investigating Aequitas, and in November 2015, Aequitas stopped paying Private Note Program redemptions entirely. Ibid. In January 2016, the company defaulted on its obligations, and it was placed in receivership in March 2016. Ibid.

2. Petitioners were charged on one count of conspiring to commit mail and wire fraud, in violation of 18 U.S.C. 1349; 28 counts of wire fraud, in violation of 18 U.S.C. 1343; and one count of conspiring to commit money laundering, in violation of 18 U.S.C. 1956(h). Superseding Indictment 1-10. Jesenik also was charged with one additional count of making a false statement to a federally insured financial institution, in violation of 18 U.S.C. 1014. Superseding Indictment 10-11.

a. Before trial, the government filed a motion in limine seeking to preclude the defendants from arguing that “the victims in this case are relatively sophisticated investors who could have, or should have, exercised more diligence or skepticism in their dealings with Aequitas,” or that “the victims did not actually rely on the materially false and misleading statements.” D. Ct. Doc. 325, at 28 (Jan. 10, 2023). In response, petitioners acknowledged that “a particular investor’s negligence is not a defense to fraud and proof of actual reliance on the part of the investor is unnecessary.” D. Ct. Doc. 349, at 23 (Jan. 31, 2023). The district court granted the motion, reasoning that “a victim’s negligence is not a defense to fraud.” D. Ct. Doc. 404, at 15 (Mar. 6, 2023).

b. At trial, petitioners' and their codefendant's counsel repeatedly questioned Aequitas investors and registered investment advisors about their receipt and review of Aequitas's tear sheets, PPMs, subscription agreements, and audited financial statements; in some instances, witnesses were asked about those documents' contents. See, e.g., Trial Tr. 1487-1489, 1496, 1628-1629, 1704, 1713-1715, 1720-1721, 1996-1999, 2013-2014, 3042-3043. In defending themselves against the charges, petitioners contended (among other things) that the combined set of materials collectively made "full disclosure" to investors, and thus that "there is no fraud." Pet. App. 23; see ibid. (quoting MacRitchie's counsel as arguing that "[t]here is no half-truth when the whole truth was provided").

One witness, Aequitas investor Robert Zamarripa, testified that he received the PPM "[a]t some point" but did not read it "in detail." Trial Tr. 1488; see id. at 1432, 1452-1453, 1487-1488. He similarly stated that he read the subscription agreement only "very briefly, if at all" before investing. Id. at 1495. The relevant PPM and subscription agreement were offered into evidence, and defense counsel was permitted to ask Zamarripa whether he reviewed the documents or had them explained to him, but the district court sustained the government's objection to questioning Zamarripa about the substantive content of the documents. Id. at 1498-1501, 1505-1508. The district court instructed the jury that it was "sustaining the objections" because

"under the criminal law of mail fraud and wire fraud, we don't blame the victim," and, "as I will instruct you more fully at the end of the trial, in criminal cases, the victim's negligence, or not, is irrelevant." Id. at 1508-1509.

At a subsequent sidebar, petitioners' counsel maintained that the questioning was relevant to probe petitioners' "intent to defraud" and the witness's credibility. Trial Tr. 1522-1526, 1532. The district court acknowledged that asking a witness "what they heard and what they relied upon is relevant to materiality," and that "it is fair to ask them if they read the PPM and/or the subscription agreement." Id. at 1527. But once a witness "says they didn't read something," the court explained, "asking them how they would now understand it" is "both irrelevant and insufficiently probative" under Federal Rule of Evidence 403. Ibid.

During cross-examination of a subsequent witness, in response to the government's concern that counsel's questioning attacked the "adequacy of" the witness's "due diligence," the district court explained that it allowed the questioning because, although "it may have a corollary effect" on the "issue of whether the investor acted responsibly or negligently," the court "viewed [the questioning] as a challenge to the credibility of the witness." Trial Tr. 1765-1767. "[W]hen the credibility of a witness is being challenged," the court maintained, "I allow that type of cross-

examination, even if it may have the secondary effect of implying that there was inadequate due diligence.” Id. at 1767.

c. During the conference on jury instructions, the district court addressed the instruction it intended to give regarding investor negligence. Trial Tr. 5738-5739. The court made clear that the instruction would not “preclude[] the [petitioners] from arguing, [l]ook at all the things we gave them,” including the “PPMs” and the “audited financials,” or that the provision of those documents is “circumstantial evidence” that petitioners “had no intent to defraud.” Id. at 5738 (internal quotation marks omitted). The court also made clear that while the instruction would “prevent” petitioners “from arguing that negligence by the investor disproves materiality,” it “doesn’t prevent [petitioners] from arguing it disproves intent to defraud.” Id. at 5739. MacRitchie’s counsel responded, “I think that’s right,” ibid., and later reaffirmed that “[w]e agree [that] the negligence by an investor is not a defense to fraud,” id. at 5761.

When defining the materiality element of the fraud charges, the district court ultimately instructed the jury that:

It is not a defense to a charge of mail or wire fraud or a charge of conspiracy to commit mail or wire fraud that an investor or registered investment advisor may have been gullible, careless, naïve, or negligent or even that an investor or registered investment advisor intentionally disregarded information.

Pet. App. 40-41.

d. The jury found petitioners guilty on the fraud-conspiracy count and the substantive wire-fraud counts, and found Jesenik guilty on the false-statement count, but acquitted petitioners of conspiring to commit money laundering. See D. Ct. Doc. 640 (May 15, 2023); D. Ct. Doc. 644 (May 15, 2023). The district court sentenced Jesenik to 168 months of imprisonment, to be followed by three years of supervised release, and sentenced MacRitchie to 70 months of imprisonment, to be followed by three years of supervised release. Jesenik Judgment 2-3; MacRitchie Judgment 2-3.

3. The court of appeals affirmed. Pet. App. 2-58. Among other things, the court rejected petitioners' contention that the district court's treatment of evidence of purported investor negligence precluded them from presenting a complete defense. Id. at 35-44. The court stated that in United States v. Lindsey, 850 F.3d 1009 (9th Cir. 2017) -- a case involving mortgage fraud -- the court had established "a bright-line rule against evidence of individual lender behavior to disprove materiality," on the view that "evidence of individual lender behavior can easily touch on lender negligence, intentional disregard, or lack of reliance -- none of which is a defense to mortgage fraud." Pet. App. 38-39 (quoting Lindsey, 850 F.3d at 1017). The court explained that a defendant instead "may seek to disprove materiality through generally accepted standards" because, unlike individual behavior, "[t]he way the entire market has historically treated a statement

or requirement says a lot about that statement or requirement's natural capacity to influence a decision by market participants.'" Id. at 39 n.11 (quoting Lindsey, 850 F.3d at 1017).

Perceiving "no reason to adopt a different rule in this case," the court found petitioners' arguments regarding the preclusion of evidence about investor negligence or nonreliance "foreclosed by Lindsey." Pet. App. 38-39. The court also rejected petitioners' related challenge to the materiality instruction, which had been drawn from the language in Lindsey. Id. at 41. The court observed that the instruction "did not indicate that the written disclosures were irrelevant." Ibid. And the court rejected petitioners' contention that the district court improperly limited their cross-examination of Mr. Zamarripa. Id. at 39-40.

The court of appeals observed that the district court had "admitted PPMs, subscription agreements, and audited financials"; that "several investors admitted that those documents were material to their decisions"; and that the district court "also admitted defense expert testimony about these documents, and allowed extensive questioning of investors who had read them about their contents." Pet. App. 40. The court of appeals additionally observed that defense counsel had elicited testimony about investors' "lengthy experience in the financial industry," about registered investment advisors' "due diligence obligations," and that some advisors' "former clients blamed them for their financial losses" and "two had been sued for negligence." Ibid.

The court of appeals further observed that petitioners “were allowed to cross-examine investors about their claims that they had not read the PPMs and that they were unaware of Aequitas’ financial difficulties,” and were permitted “to ask investors questions relevant to credibility, ‘even if it may have the secondary effect of implying that there was inadequate due diligence.’” Pet. App. 40. And after recounting all of that admitted evidence, the court of appeals found that the district court’s evidentiary rulings “did not prevent the defendants from urging legitimate disclosure-based defense theories.” Ibid.

ARGUMENT

Petitioners contend (25-7515 Pet. 16-19; 25-7522 Pet. 7-11) that the district court erroneously precluded their use at trial of evidence of investor behavior to defend against their fraud offenses. Petitioners misconstrue the district court’s rulings, and the court of appeals correctly rejected petitioners’ contentions. The court of appeals’ decision does not conflict with any decision of this Court or another court of appeals. And this case would be a particularly poor vehicle in which to consider the question presented because any error was harmless. This Court has previously denied petitions for writs of certiorari presenting similar issues. See Johnson v. United States, 592 U.S. 1082 (2020) (No. 19-1412); Palamarchuk v. United States, 590 U.S. 980 (2020) (No. 19-7469); Shevtsov v. United States, 590 U.S. 971 (2020) (No. 19-7361); Kuzmenko v. United States, 590 U.S. 971 (2020) (No. 19-

7368); New v. United States, 590 U.S. 971 (2020) (No. 19-7729); Raza v. United States, 585 U.S. 1017 (2018) (No. 17-1314). It should follow the same course here.

1. The court of appeals correctly affirmed the district court's evidentiary and instructional rulings regarding the purported negligence of individual victims of petitioners' fraud offenses. Pet. App. 38-42.

a. The federal wire fraud statute prohibits using a wire to execute a "scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises." 18 U.S.C. 1343. The federal mail fraud statute likewise prohibits using the mail for the purpose of executing a "scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises." 18 U.S.C. 1341. In Neder v. United States, 527 U.S. 1 (1999), this Court explained that Congress intended to incorporate into those statutes the common-law requirement of materiality. Id. at 20-25. The Court also observed that the Second Restatement of Torts provides that a matter is material if:

(a) a reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question; or

(b) the maker of the representation knows or has reason to know that its recipient regards or is likely to regard the matter as important in determining his choice of action, although a reasonable man would not so regard it.

Id. at 22 n.5 (quoting 3 Restatement (Second) of Torts § 538(2), at 80 (1977)). And the Court made clear that “[t]he common-law requirements of ‘justifiable reliance’ and ‘damages’ * * * plainly have no place in the federal fraud statutes.” Id. at 24-25.

Consistent with that understanding, the court of appeals explained in United States v. Lindsey, 850 F.3d 1009 (9th Cir. 2017), which involved charges of fraud in the mortgage industry, that a “false statement is material if it objectively had a tendency to influence, or was capable of influencing, a lender to approve a loan,” even if the false statement did not in fact “‘induc[e] any actual reliance.’” Id. at 1015 (citation omitted); see Neder, 527 U.S. at 25. The court further stated that “a victim’s intentional disregard of relevant information is not a defense to wire fraud and thus evidence of such disregard is not admissible as a defense to mortgage fraud.” Lindsey, 850 F.3d at 1016. The court emphasized, however, that defendants are not “powerless to challenge the materiality of false statements made in connection with securing mortgages.” Ibid.

“Among other things,” Lindsey continued, “defendants can disprove materiality through evidence of the lending standards generally applied in the mortgage industry.” 850 F.3d at 1016. “For example, defendants can offer testimony about the types of information, such as household income or assets, that lenders typically consider, as well as evidence of how much weight the industry generally gives to statements about such information.”

Ibid. "As long as defendants do not stray into evidence of the behavior of individual lenders -- for instance, evidence of specific prior bad loans or particular mistakes by underwriters -- defendants may attack materiality though industry practice."

Ibid.

b. Petitioners err in suggesting that the court of appeals in this case approved a broad "blanket preclusion of defense use of investor behavior," 25-7515 Pet. 21, or "a categorical bar against all evidence of individual investor behavior to disprove any element" of mail or wire fraud, 25-7522 Pet. 8 (emphasis omitted). Although the decision below stated that evidence of an individual victim's "negligence, intentional disregard, or lack of reliance" is irrelevant, it found that the district court's evidentiary rulings "did not prevent [petitioners] from urging legitimate disclosure-based defense theories." Pet. App. 39-40.

Petitioners were permitted, among other things, to probe the fact that the written disclosures were provided to investors, to question whether investors had reviewed the disclosures, to identify the disclosures' content, and to elicit from several investors admissions "that those documents were material to their decisions." Pet. App. 40. In practice, nothing precluded petitioners from presenting evidence, or arguing to the jury, that a reasonable investor would have completely digested every document provided, or would have placed weight solely on the PPMs and financial information that (purportedly) would have revealed

the full truth, and attached no weight to the misleading statements in the marketing materials. Nor did anything preclude petitioners from arguing that they lacked intent to defraud because they subjectively expected investors to divine the truth, notwithstanding their misstatements. See, e.g., id. at 42.

Petitioners accordingly are incorrect in asserting that the court of appeals has precluded a defendant's use of any evidence of investor behavior in support of his defense. 25-7515 Pet. 8, 21; 25-7522 Pet. 8. The panel in Lindsey made clear that a defendant must "be allowed to prove lender behavior to some extent," and can seek to "disprove materiality through evidence of the * * * standards generally applied" in the industry. 850 F.3d at 1016-1017. The court of appeals foreclosed "evidence of the behavior of individual [victims]" only when it risks touching on victim "negligence, intentional disregard, or lack of reliance." Ibid. (emphasis added). And the courts below in this case likewise permitted petitioners to elicit and rely on evidence of investor behavior where the court viewed such evidence as relevant to a permissible defense. As the court of appeals recognized, petitioners "were permitted to argue that the written disclosures" (such as the PPMs) "were accurate" and "material to investors"; to argue that "their provision of written disclosures to investors was evidence of good faith"; and "to attack the investors' credibility" when they claimed not to have read the disclosures. Pet. App. 41-42; see also id. at 24.

Petitioners claim that the district court prevented them from probing investors' credibility and "prohibited cross-examination of potential investors about disclosure documents once they claimed not to have received them." 25-7515 Pet. 10-11; see id. at 18, 23-24; see also 25-7522 Pet. 8. But they cite only the cross-examination of a single witness, Mr. Zamarripa. And the district court excluded that cross-examination on relevancy and related grounds based on the witness's claimed lack of knowledge about the substance of documents he had not read. See pp. 7-8, supra.

When investor witnesses had read the documents, by contrast, the district court "allowed extensive questioning * * * about their contents," Pet. App. 40, and when witnesses' credibility was challenged, the court allowed cross-examination about investors' individual practices, even if that questioning "may have the secondary effect of implying that there was inadequate due diligence" on the part of the investor. Ibid.

c. Jesenik argues that by allowing for the exclusion of evidence of individual victims' purported negligence, the court of appeals has created an "asymmetry" that allows the government to "selectively elicit and rely on investor behavior that supports its case" but "prohibit[s]" the defense "from doing the same." 25-7515 Pet. 4; see id. at 16, 22-23. But an individual victim's idiosyncratic, negligent, or unreasonable response says nothing about the response an objective, reasonable person would have.

Evidence that one person, or even many people, did not digest additional documentation beyond the marketing materials cannot alone establish that a “reasonable” investor would have attached no weight to the marketing materials (or that a defendant would expect no weight to be attached). The standard of reasonableness must instead be shown through, for example, the standards and practices of investors who are reasonable.

Petitioners’ reliance (25-7515 Pet. 17; 25-7522 Pet. 11) on this Court’s decision in Universal Health Services, Inc. v. United States ex rel. Escobar, 579 U.S. 176 (2016), accordingly is misplaced. That case, which concerned the False Claims Act’s prohibition against knowingly presenting “false or fraudulent claim[s]” to the government for payment, 31 U.S.C. 3729(a)(1)(A), involved the application of the standard of materiality for common-law fraud, which is incorporated into the federal fraud statutes as well, see Universal Health Servs., 579 U.S. at 187, 193 n.5 (citing Neder, 527 U.S. at 22 n.5). The Court explained that proof of materiality can include evidence of the defendant’s knowledge of the federal government’s “consistent[]” or “regular[]” practices in paying claims. Id. at 195. Specifically, if the government regularly refuses to pay claims that fail to satisfy a certain requirement, that can indicate the requirement’s materiality; conversely, if the government regularly pays such noncompliant claims despite knowledge of the deficiency, that can indicate the requirement’s immateriality. See ibid.

The admissibility of such evidence when a false claim is presented to the government does not suggest that evidence of individual investors' putative "negligence" was admissible here. Because the federal government in a False Claims Act case "represents the entire market for issuing federal government contracts," the government's own past conduct is analogous to "the weight the entire * * * industry gives to that type of statement." Lindsey, 850 F.3d at 1017; see United States v. Raza, 876 F.3d 604, 621 (4th Cir. 2017) (differentiating Universal Health Services on the same ground), cert. denied, 585 U.S. 1017 (2018). In other words, proof of the federal government's practices is ipso facto proof of "industry" practices. Here, by contrast, any testimony that a particular investor negligently disregarded certain disclosures would not show that petitioner's misrepresentations were incapable of influencing a reasonable decisionmaker.

Petitioners similarly err in arguing (25-7515 Pet. 17-18; 25-7522 Pet. 10-11) that the decision below conflicts with this Court's decision in Kousisis v. United States, 605 U.S. 114 (2025). The Court there reiterated the standard definition of materiality in fraud cases. Id. at 131. It did not suggest that an individual victim's idiosyncratic attachment of weight to a particular type of misstatement could be used to prove that a reasonable actor would attach no weight to that statement.

2. Petitioners are incorrect in suggesting (25-7515 Pet. 19-22; 25-7522 Pet. 11-13) that the decision below conflicts with the decisions of other courts of appeals. Consistent with the Court's decision in Neder, the courts of appeals uniformly recognize that "a fraud victim's negligence" or "susceptibility" to fraud "is not a defense to criminal charges under the federal fraud statutes." Lindsey, 850 F.3d at 1014-1015 (citation and internal quotations omitted); see, e.g., United States v. Brien, 617 F.2d 299, 311 (1st Cir.), cert. denied, 446 U.S. 919 (1980); United States v. Thomas, 377 F.3d 232, 240-243 (2d Cir. 2004); United States v. Coyle, 63 F.3d 1239, 1244 (3d Cir. 1995); United States v. Colton, 231 F.3d 890, 903 (4th Cir. 2000); United States v. Kreimer, 609 F.2d 126, 132 (5th Cir. 1980); United States v. Betts-Gaston, 860 F.3d 525, 532-533 (7th Cir. 2017), cert. denied, 583 U.S. 1058 (2018); United States v. Kock, 66 F.4th 695, 705 (8th Cir. 2023); United States v. Joseph, 108 F.4th 1273, 1282 (10th Cir. 2024), cert. denied, 145 S. Ct. 2863 (2025); United States v. Svete, 556 F.3d 1157, 1165 (11th Cir. 2009); United States v. Maxwell, 920 F.2d 1028, 1036 (D.C. Cir. 1990); see also United States v. Higgins, No. 22-3538, 2023 WL 6536752, at *3 (6th Cir. Oct. 6, 2023).

Petitioners err in asserting (25-7515 Pet. 20; 25-7522 Pet. 12) that the decision below conflicts with the Fourth Circuit's decision in United States v. Raza. The Fourth Circuit there -- in the course of affirming the defendants' fraud convictions, see

Raza, 876 F.3d at 606-607 -- cited the Ninth Circuit's reasoning in Lindsey approvingly and described that decision as "reach[ing] the same conclusion" as the Fourth Circuit's own precedent, id. at 619-621. Consistent with the circuit consensus, the Fourth Circuit agreed that "the correct test for materiality" does not turn on the conduct of "a renegade [victim] with a demonstrated habit of disregarding materially false information." Id. at 621. Petitioners emphasize (25-7515 Pet. 20; 25-7522 Pet. 12) that the Fourth Circuit in Raza suggested that the Ninth Circuit had "barred the evidentiary use of a lender's past lending practices on the materiality issue," while the Fourth Circuit saw no need to "go so far" in that case. 876 F.3d at 621. As explained, however, pp. 14-17, supra, that understanding overreads Lindsey's holding. In any event, petitioners identify no particular evidence that might be excluded under the Ninth Circuit's precedent but permissible in other circuits.

MacRitchie is likewise incorrect in asserting a conflict with the Second Circuit's decision in United States v. Litvak, 889 F.3d 56 (2018). See 25-7522 Pet. 11-12. Consistent with the decision below, the court in Litvak explained that when assessing "the views of a hypothetical, reasonable investor in the market at issue" to determine materiality, an individual witness's "indisputably idiosyncratic and unreasonable viewpoint is not * * * probative of the views of a reasonable, objective investor." 889 F.3d at 68-69.

Petitioners also suggest (25-7515 Pet. 20; 25-7522 Pet. 12) that the decision below and in Lindsey depart from other circuits by categorically rejecting the potential applicability of Universal Health Services in the context of a criminal fraud prosecution. But that suggestion rests on petitioners' mistaken view (discussed above) that Universal Health Services supports their position here. Lindsey itself did not deem Universal Health Services categorically irrelevant; the court instead considered that decision and described its own holding as "faithful to" that decision. 850 F.3d at 1017.

In each of the decisions of other circuits that petitioners cite, each panel merely cited Universal Health Services for its definition of "materiality." See United States v. Clark, 140 F.4th 395, 418 (7th Cir. 2025); United States v. Palin, 874 F.3d 418, 422-423 (4th Cir. 2017), cert. denied, 584 U.S. 917, and 584 U.S. 955 (2018); United States v. Ferriero, 866 F.3d 107, 120-122 (3d Cir. 2017), cert. denied, 583 U.S. 1121 (2018). None of those decisions addressed the extent to which particular investors' behavior could be considered when evaluating materiality. See Palin, 874 F.3d at 423 ("We do not believe the Supreme Court intended to broadly 'overrule' materiality standards that had previously applied in the context of criminal fraud.").

3. At all events, this case would be an unsuitable vehicle for addressing the question presented because any error was harmless. As the court of appeals detailed, the district court's

"evidentiary rulings did not prevent" petitioners "from urging legitimate disclosure-based defense theories." Pet. App. 40. The district court admitted the relevant documents that contained the additional disclosures to investors; several investors "admitted those documents were material to their decisions"; the court "admitted defense expert testimony about the[] documents"; the court "allowed extensive questioning of investors who had read them about their contents"; petitioners "were allowed to cross-examine investors about their claims that they had not read" the documents; and petitioners "were allowed to attack the investors' credibility." Id. at 40-42.

Petitioners also were permitted to argue that the written disclosures (such as the PPMs) "were accurate" and "material to investors," and to argue that "their provision of written disclosures to investors was evidence of good faith." Pet. App. 41-42. Petitioners thus were not prevented from mounting their preferred defense, and they identify no specific testimony that was excluded that might have altered the jury's assessment of the falsity or materiality of their statements or of their intent to defraud.

CONCLUSION

The petitions for writs of certiorari should be denied.

Respectfully submitted.

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