
Supreme Court Rules Wire Fraud Statute Does Not Require Financial Injury

On May 22, 2025, the United States Supreme Court issued a decision in *Kousisis v. United States*, resolving a circuit split on whether the federal wire fraud statute, 18 U.S.C. § 1343, requires proving that the defendant sought to inflict financial injury on the victim of the fraud. The Court held that § 1343 imposes no such requirement—actionable wire fraud occurs when the defendant engages in fraudulent conduct designed to extract money or property from the victim, regardless of whether the defendant caused, or intended to cause, the victim to suffer economic loss. Under the ruling in *Kousisis*, a defendant may be convicted of wire fraud when the defendant fraudulently induces someone to enter a transaction, even though the victim suffers no resulting financial harm.

Factual and Procedural Background

The defendants in *Kousisis* were an industrial painting company (Alpha) and its manager (Kousisis).¹ They secured government contracts for painting projects in Philadelphia, and the contracts required the defendants to subcontract a portion of the project to a “disadvantaged business”—i.e., a business owned and operated by socially or economically disadvantaged individuals.² In its bids on the projects, Alpha represented to the Pennsylvania Department of Transportation (PennDOT) that it would buy painting supplies from a disadvantaged business.³ In reality, however, the defendants orchestrated a scheme in which they used a disadvantaged business merely as a “pass-through” for purchases made from non-qualifying suppliers.⁴ Alpha completed the project and received payment from PennDOT, netting \$20 million in profit.⁵

After the scheme came to light, defendants were charged with wire fraud under § 1343, which prohibits any “scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises.”⁶ The government prosecuted the defendants using the so-called “fraudulent inducement theory,” which posits that “a defendant commits federal fraud whenever he uses a material misstatement to trick a victim into a contract that requires handing over her money or property—regardless of whether the fraudster, who often provides something in return, seeks to cause the victim *net* pecuniary loss.”⁷ After the jury returned a guilty verdict, defendants moved for acquittal. They argued that their work on the project met PennDOT’s expectations, and that because

¹ Slip op. at 1 (majority opinion).

² *Id.* at 2-3.

³ *Id.* at 3.

⁴ *Id.* at 3-4.

⁵ *Id.* at 4.

⁶ *Id.* at 1, 5 (quoting 18 U.S.C. § 1343).

⁷ *Id.* at 1-2 (emphasis in original).

PennDOT received the full monetary benefit of the contract, the government could not prove that defendants schemed to defraud PennDOT of “money or property,” as required by the federal wire fraud statute.⁸ The District Court denied defendants’ motion, and the Third Circuit affirmed the convictions.⁹

The Third Circuit’s ruling fell on one side of a circuit split over whether defendants may be convicted of wire fraud when they did not seek to cause the victim economic loss. The Seventh, Eighth, and Tenth Circuits had also upheld such convictions, while the Second, Sixth, Ninth, Eleventh, and D.C. Circuits had not.¹⁰ The Supreme Court granted certiorari to settle the question and, in a decision delivered by Justice Barrett, unanimously ruled that neither economic loss nor intent to inflict economic loss is required to support a wire fraud conviction under § 1343.

Majority Opinion

Starting with the text of 18 U.S.C. § 1343, the Court explained that the statute nowhere requires proving actual or intended economic loss. To support a wire fraud conviction, “a defendant must (1) ‘devis[e]’ or ‘inten[d] to devise’ a scheme (2) to ‘obtai[n] money or property’ (3) ‘by means of false or fraudulent pretenses, representations, or promises.’”¹¹ The statute is thus “agnostic about economic loss”—it “does not so much as mention loss, let alone require it.”¹² The Court explained that defendants’ scheme fit cleanly within the statute’s prohibition: They made false representations about complying with the disadvantaged business requirement, and the object of their scheme was to obtain money from PennDOT.¹³ The fact that defendants intended to provide PennDOT painting services in exchange for its payments—and therefore did not seek to inflict economic harm—was irrelevant under the statute. As the Court explained, “a defendant violates § 1343 by scheming to ‘obtain’ the victim’s ‘money or property,’ regardless of whether he seeks to leave the victim economically worse off.”¹⁴

The Court next addressed defendants’ argument that, because § 1343 uses the words “defraud” and “fraudulent,” it incorporates the common law meaning of fraud, which, according to defendants, required establishing economic loss.¹⁵ The Court agreed that when Congress uses a term with a well-settled common law meaning, that meaning carries over to the statute.¹⁶ The Court concluded, however, that economic loss was not an established component of common law fraud. Surveying treatises and precedent, the Court explained that, at common law, fraud requires proving an injury, but the injury need not involve financial loss.¹⁷ In actions to rescind a contract or prosecutions for false pretenses, for example, economic loss was not required—rather, “it was the deception-induced deprivation of

⁸ *Id.* at 4.

⁹ *Id.*

¹⁰ *Id.* at 4-5 (citing *United States v. Leahy*, 464 F.3d 773, 787-89 (7th Cir. 2006); *United States v. Granberry*, 908 F.2d 278, 280 (8th Cir. 1990); *United States v. Richter*, 796 F.3d 1173, 1192 (10th Cir. 2015); *United States v. Shellef*, 507 F.3d 82, 108-09 (2d Cir. 2007); *United States v. Sadlar*, 750 F.3d 585, 590-92 (6th Cir. 2014); *United States v. Bruchhausen*, 977 F.2d 464, 467-68 (9th Cir. 1992); *United States v. Takhalov*, 827 F.3d 1307, 1312-14 (11th Cir. 2016); *United States v. Guertin*, 67 F.4th 445, 450-52 (D.C. Cir. 2023)).

¹¹ *Id.* at 7 (quoting § 1343) (alterations in original).

¹² *Id.* at 8.

¹³ *Id.* at 7.

¹⁴ *Id.* at 8.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 9-13.

property—not economic loss—that common-law courts generally deemed injurious.”¹⁸ Because the common law did not uniformly require proof of economic loss, the Court declined to read such a requirement into § 1343.¹⁹

The Court noted that its holding was supported by prior rulings, two of which—*Carpenter v. United States*, 484 U.S. 19 (1987) and *Shaw v. United States*, 580 U.S. 63 (2016)—rejected the argument that fraud requires proving economic loss.²⁰ The Court also disagreed with defendants that accepting the fraudulent inducement theory would infringe on prior federal fraud precedent.²¹ For example, defendants contended that the fraudulent inducement theory would improperly permit a fraud conviction based on an attempt to interfere with the state’s regulatory power. The Court dismissed that argument, explaining that under § 1343, the object of the fraudulent scheme must be to obtain “money or property,” not to alter regulatory action.²²

Finally, the Court rejected defendants’ contention that endorsing the fraudulent inducement theory would open the door to fraud convictions whenever someone intentionally misrepresented facts to induce another party to enter a transaction. First, the Court emphasized that to come within § 1343’s reach, the misrepresentation must also be “material,” and the materiality requirement “substantially narrows the universe of actionable misrepresentations.”²³ Second, the Court explained that the fraudulent inducement theory only “criminalizes a particular species of fraud: intentionally lying to induce a victim into a transaction that will cost her money or property.”²⁴ The Court acknowledged that the wire fraud statute is “undeniably ‘broad,’” but concluded that “it is up to Congress—if it so chooses—to change it.”²⁵

Concurring Opinions

Justices Thomas, Gorsuch, and Sotomayor wrote concurring opinions.

In his concurrence, Justice Thomas reasoned that the defendants’ misrepresentations about using a disadvantaged business likely fell short of § 1343’s materiality requirement.²⁶ Justice Thomas noted that the core objective of the contract was for the defendants to provide services to PennDOT, and defendants’ failure to satisfy the disadvantaged business requirement did not impact the ultimate work product.²⁷ Justice Thomas closed his opinion by urging lower courts to apply a “demanding approach to materiality” to “ensure that federal wire-fraud prosecutions cannot be used to target benign, everyday misstatements.”²⁸

Justice Gorsuch, concurring in part and in the judgment, raised concerns about the majority’s finding that a defendant can be guilty of wire fraud so long as the defendant obtained money or property from the victim.²⁹ In Justice

¹⁸ *Id.* at 9-11.

¹⁹ *Id.* at 13.

²⁰ *Id.* at 16.

²¹ *Id.* at 16-19.

²² *Id.* at 16-17.

²³ *Id.* at 19.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Slip op. at 1 (Thomas, J., concurring).

²⁷ *See, e.g., id.* at 6-7.

²⁸ *Id.* at 12.

²⁹ Slip op. at 1-2 (Gorsuch, J., concurring in part and in the judgment).

Gorsuch's view, proving that the victim gave up money or property is not enough—under traditional conceptions of fraud, the government must also prove that the victim did not receive the full benefit of the bargain.³⁰ To illustrate that point, Justice Gorsuch gave the example of a babysitter who was hired after lying to parents about not having a criminal record, but who performed exemplarily as a babysitter. In that scenario, Justice Gorsuch suggested there is no violation of § 1343—even though the parents parted with money—because they received exactly what was promised.³¹ Justice Gorsuch distinguished the babysitter scenario from the facts in *Kousisis* on grounds that PennDOT did *not* receive what it had bargained for (projects completed by disadvantaged businesses).³² Justice Gorsuch directed lower courts to disregard, as dicta, the majority's suggestion that defendants can be liable for wire fraud, even when the victim received the full benefit of the bargain.³³

Justice Sotomayor concurred in the judgment but wrote that the majority opinion's analysis extended unnecessarily beyond the question raised on appeal—i.e., whether § 1343 requires proof of economic loss.³⁴ She also disagreed with Justice Thomas, reasoning that defendants' misrepresentations about using a disadvantaged business were material.³⁵

Implications

Kousisis resolves a circuit split on whether the federal wire fraud statute requires proving that the defendant sought to inflict economic harm on the victim of the fraud. Under the Court's holding, there is no such requirement, and defendants may be convicted when they fraudulently induce a victim to give up money or property in a transaction, regardless of whether the defendant sought to or did inflict economic harm. As noted above, the majority emphasized that the “materiality” standard plays a critical role in separating actionable from nonactionable conduct, and whether the government has satisfied the materiality requirement is likely to garner enhanced attention in § 1343 prosecutions going forward.

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If you have any questions about the issues addressed in this alert, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Sesi Garimella (partner) at 212.701.3073 or sgarimella@cahill.com; or Ben Albert (counsel) at 212.701.3054 or balbert@cahill.com; or email publications@cahill.com.

³⁰ *Id.* at 3-10.

³¹ *Id.* at 1.

³² *See id.* at 11.

³³ *Id.* at 10-12.

³⁴ Slip op. at 1-4 (Sotomayor, J., concurring in the judgment).

³⁵ *Id.* at 4-8.