

PUBLICATION

Supreme Court Endorses "Fraudulent Inducement Theory": How the *Kousisis v. United States* Ruling Widens the Road for Fraud Prosecutions

Authors: Lindsay E. Ray, John S. Ghose, Megison M. Hancock, William E. Wildman, III

May 28, 2025

If a defendant uses material misrepresentations to induce a party to enter a contract, but does not economically harm the induced party, has the defendant committed fraud? The Supreme Court has decided: Yes.

On May 22, 2025, The Supreme Court released its decision in *Kousisis, et al. v. United States*, 605 U.S. ____ (2025), where it endorsed the "fraudulent-inducement theory" in connection with federal wire and mail fraud. In an opinion delivered by Justice Barrett, the Supreme Court held that a defendant who induces a party to enter into a transaction under materially false pretenses may be convicted of federal fraud, regardless of whether the defendant intended to cause (let alone caused) economic loss.

I. Background and Lower Court Proceedings

The Pennsylvania Department of Transportation (PennDOT) awarded two government contracts to Alpha Painting and Construction Co. (Alpha), managed by Stamatios Kousisis (Kousisis) (collectively, Petitioners) for painting projects in Philadelphia. In large part, the U.S. Department of Transportation (DOT) funded these projects. To win the contract, the DOT required: (1) the contractor to partner with a certain percentage of disadvantaged business enterprises (DBE) as sub-contractors; and (2) that the DBEs perform a "commercially useful function." During the bidding process, Kousisis represented that Alpha would partner with Markias, Inc., a pre-qualified DBE. In reality, Markias was merely a "pass-through" entity used to funnel checks and invoices between Alpha and its actual suppliers, which did not qualify as a DBE. After the completion of the projects, PennDOT learned of Kousisis and Alpha's deception, and a grand jury indicted them for conspiracy and wire fraud under 18 U.S.C. §§ 1343 and 1349.

At trial, a jury convicted Kousisis and Alpha of three counts of wire fraud and one count of conspiracy to commit wire fraud. Kousisis and Alpha moved for an acquittal, arguing that, because PennDOT ultimately received the full economic benefit of the contract, the Government could not prove that Kousisis and Alpha had either conspired to defraud or in fact defrauded PennDOT under Section 1343. On appeal, the Third Circuit disagreed with Kousisis and Alpha, affirming the trial court's conviction.¹ The Supreme Court thereafter granted certiorari to settle a near even circuit split on the issue presented: whether a federal fraud conviction can stand when a defendant did not intend to cause financial harm to the victim. The Supreme heard oral argument on December 9, 2024.

II. The Supreme Court's *Kousisis* Decision

Justice Barrett, joined by Chief Justice Roberts, Justices Thomas, Alito, Kagan, Kavanaugh, and Jackson (with Justice Gorsuch concurring in part and Justices Gorsuch and Sotomayor concurring in judgment) agreed with the government that the Petitioners conspired to commit and then committed fraud when they deceptively promised to sub-contract with a DBE and were awarded the government contract. Even though PennDOT received the monetary "benefit of its bargain" – the completed painting project at the negotiated price – the Supreme Court held that Petitioners concocted a scheme aimed at lining their pockets based on false representations and thus were guilty of fraud under Section 1343.

In reaching this conclusion, the Court emphasized the statutory language that wire fraud occurs when a defendant uses the wires to execute a "scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises."² Pointing to the precedent established in *Ciminelli*,³ the Court rejected Petitioners' argument that a federal fraud conviction cannot stand unless the defendant sought to cause net pecuniary loss and instead found that the fraudulent inducement theory is consistent with both the text of Section 1343 and *Ciminelli*. The Supreme Court further discussed and emphasized the following:

- **Intent:** The Supreme Court rejected the argument that a defendant must intend to cause financial harm. The Court engaged in a lengthy discussion on the common law meaning of fraud and whether "loss" was a required element, ultimately deciding that the common law did *not* establish a general rule requiring economic loss in all fraud cases. Rather, it is sufficient that the defendant had a goal of obtaining a benefit through false or fraudulent representations.
- **More than Money:** In its Opinion, the Court rejected Petitioners' arguments that an acquittal was warranted because they did not intend to inflict financial harm. Instead, the Court followed the precedent established in *Ciminelli* that a scheme may still constitute wire fraud even if the defendant provides "something of value" in return, and not necessarily monetary payment. This broadens many courts' interpretations of fraudulent transactions to clearly extend beyond those involving only monetary exchanges.
- **Materiality:** The Court rejected Petitioners' arguments that an endorsement of the fraudulent inducement theory would allow the government to allege that "every intentional misrepresentation designed to induce someone to transact in property would constitute property fraud." Acknowledging this broad interpretation, the Court suggested that a "demanding materiality requirement" will substantially narrow the "universe of actionable misrepresentations." In doing so, the Court's Opinion assures us that "the boundaries of the fraudulent inducement theory are not so imprecise as to risk encroachment on the State's authority or to create 'traps' for the 'unwary.'"

III. Assessing *Kousisis*' Practical Implications

Ultimately, the *Kousisis* decision does expand the scope of federal white-collar prosecutions. Because the Court resolved the circuit split by affirming the Third Circuit's decision, *Kousisis* effectively forecloses any argument that monetary or pecuniary "loss" is a required element of a fraud case brought under 18 U.S.C. § 1343. This means that the fraudulent inducement theory now stands as grounds by which prosecutors may pursue white-collar prosecutions in the Second, Sixth, Ninth, Eleventh, and D.C. Circuits, now aligning with the pre-existing precedent of the Third, Seventh, Eighth, and Tenth Circuits.

As noted above, the *Kousisis* Court pointed to a heightened "materiality" standard as an effective "backstop" through which defendants may argue potential limitations to federal wire fraud cases. In doing so, there is bountiful case law evaluating materiality in the government contracts space – under cases brought pursuant to the False Claims Act (FCA)⁴ – that defendants and their counsel may well reference to articulate materiality arguments in the future. However, until "materiality" disputes make it up to the Supreme Court in wire fraud cases (the parties did not dispute materiality here), or until Congress clarifies the language of the federal wire fraud statute, defendants are left only with the *Kousisis* Court's reasoning that "materiality" will be the "demanding" standard by which such charges must be established.

On a related note, as we [recently discussed](#) on May 19, 2025, the DOJ recently launched a new [Civil Rights Fraud Initiative](#). The initiative effectively deploys the FCA to pursue entities that receive federal funds and falsely certify that their Diversity, Equity, and Inclusion (DEI) programs comply with federal civil rights laws. The *Kousisis* Court's decision validating the fraudulent inducement theory of fraud makes clear that prosecutors

may still have the leeway to bring the novel sort of cases contemplated in the Deputy Attorney General's memorandum, which signals a dramatic escalation in FCA enforcement and represents the DOJ's clearest statement yet that it intends to treat violations of civil rights laws as fraud on the federal government. Such cases may now be prosecuted as wire fraud under Section 1343 if the government is able to show that the DEI certification is material to the government contract, as was the DBE requirement in *Kousisis*.

Also on the horizon, prosecutors, bolstered by the *Kousisis* Opinion and its validation of the *Ciminelli* Court's reasoning, may further expand the pursuit of wire fraud prosecutions when "something of value" beyond money is obtained through false or fraudulent representations. On this front, DOJ's FCPA Resource Guide⁵ may be a helpful resource to those who may face accusations of wire fraud based upon the exchange of intangible benefits or other items "of value," as the FCPA prohibits the provision of "anything of value" to bribe or otherwise influence a foreign official. The government's interpretation of "anything of value" in the FCPA context is notoriously broad, so, if prosecutions for wire fraud are similarly expanded, there may well be an increase in wire fraud cases going forward on this basis as well.

With extensive government enforcement, investigations, and litigation experience, Baker Donelson has the tools to help clients navigate the ever-changing landscape of federal fraud statutes. If you have any questions, please contact a member of Baker Donelson's [Government Enforcement and Investigations Team](#).

¹ *United States v. Kousisis*, 82 F.4th 230 (3d Cir. 2023), *cert. granted*, 144 S.Ct. 2655 (2024).

² 18 U.S.C. § 1343.

³ *Ciminelli v. United States*, 598 U.S. 306, 312 (2023).

⁴ 31 U.S.C. § 3729.

⁵ <https://www.justice.gov/criminal/criminal-fraud/file/1292051/dl?inline>