

# US Supreme Court Upholds Wire Fraud Convictions, Says Economic Loss Not Required

June 3, 2025

When an executive learns that she is being investigated for fraud, her first reaction often is: “But I didn’t intend for anyone to lose money!” This entirely understandable response may well be true (and lead the executive to feel that a prosecution is unwarranted), but the US Supreme Court recently held that it does not matter – at least when it comes to meeting the elements of the federal wire fraud statute.

In an [opinion issued on May 22, 2025, in \*Kousisis v. United States\*](#), the Supreme Court held that the federal wire fraud statute does not require the government to prove the defendant caused or attempted to cause pecuniary loss to the victim of the fraud. Put another way, the Court made clear that a person may be criminally liable for fraud even though they did not intend to cause economic harm.

In so holding, the Court resolved a circuit split but did not signal a radical change in its approach to the reach of federal criminal fraud statutes. Nevertheless, the decision is somewhat at odds with other opinions from recent terms that have tightened the reins on federal fraud laws – such as [Ciminelli v. United States](#), which held that the government’s theory of fraud was an overreach, and [Snyder v. United States](#), which narrowed the reach of a federal bribery law.

Going forward, individuals and companies should be aware that federal wire fraud prosecutions may be instituted even if the victim does not pay or lose a penny more than they would have absent the misrepresentations at issue. We anticipate future litigation will focus on whether a misrepresentation satisfies the law’s materiality requirement.

## Background

The petitioners here are Stamatios Kousisis and the company for which he worked as a project manager, Alpha Painting and Construction Co. The case revolves around government bids that Kousisis and Alpha submitted – and were awarded – for painting two major landmarks in Philadelphia (a bridge and a train station).

Federal grants from the US Department of Transportation (DOT) provided much of the funding for these restoration projects. Under those grants, the Pennsylvania Department of Transportation (PennDOT) was [required to implement a disadvantaged-business program](#) to ensure the participation of entities owned and controlled by “individuals who are both socially and economically disadvantaged.” Such participation must serve a [“commercially useful function”](#) – simply passing funds through a disadvantaged business does not count.

To comply with these requirements, PennDOT mandated that bidders for the painting projects subcontract a certain percentage to disadvantaged businesses. In their bid, Alpha and Kousisis represented that Alpha would fulfill this requirement by sourcing its materials from a disadvantaged business. But, in reality, that business served as nothing more than a pass-through entity – merely “a paper pusher, funneling checks and invoices to and from Alpha’s actual suppliers.” This failed to satisfy DOT’s requirements that the disadvantaged business serve a “commercially useful function,” and contradicted the representations Kousisis made in the bid. Throughout the project, Kousisis continued to make false representations as he “falsely reported qualifying payments” to PennDOT. Alpha’s gross profit from the projects was more than \$20 million.

Following a jury trial, Kousisis and Alpha were convicted of wire fraud under [18 USC § 1343](#) and conspiracy to commit wire fraud under [18 USC § 1349](#). Section 1343 prohibits employing a scheme to “obtain falsehoods to induce a victim to enter a transaction.” The Department of Justice took the position that this did not require it to prove that the defendants intended to cause economic loss.

In both the trial court and on appeal to the US Court of Appeals for the Third Circuit, Kousisis and Alpha did not contest that their misrepresentations were material. Instead, they argued that since PennDOT was satisfied with the actual work (the painting), it did not lose the benefit of its bargain by not having a disadvantaged business participate. Therefore, they said, there was no scheme to defraud PennDOT of “money or property” under Section 1343. Both courts rejected this argument on the grounds that Alpha and Kousisis had sought to obtain – and did obtain – millions of dollars that the

government only handed over because it had been told that the supplies would be provided by a disadvantaged business.

The Supreme Court granted cert to resolve a circuit split over whether a federal fraud conviction can stand where the defendant “did not seek to cause the victim net pecuniary loss.”

## SCOTUS opinion

The Supreme Court affirmed the Third Circuit’s ruling, rejecting the petitioners’ argument that economic loss is required for a federal wire fraud conviction.

Writing for the majority, Justice Amy Coney Barrett explained that, “nder the fraudulent-inducement theory, 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.” After examining the statutory text and prior case law, Justice Barrett concluded that, “he fraudulent-inducement theory is consistent with both the text of the wire fraud statute and our precedent interpreting it.”

### The wire fraud statute does not mention economic loss

Justice Barrett observed that the petitioners’ argument “rests on the premise that a scheme cannot constitute wire fraud if, as here, the defendant provides something—be it money, property, or services—of equal value in return.” Tellingly, there is no mention of “loss” in the wire fraud statute. Rather, Justice Barrett explained, Section 1343 refers to “obtain money or property,” which means “to gain or attain possession” of it – and “ thing is no less ‘obtained’ simply because something **else** is simultaneously given in return.” As such, “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.” (Citations omitted.)

### Economic loss not required at common law

The majority also rejected the petitioners’ arguments that economic loss was part of “fraud” at common law, such that the references to “fraud” in Section 1343 draw in a common law loss requirement. While recognizing that, “hen Congress uses a term with origins in the common law, we generally presume that the term ‘brings the old soil with it,’” Justice Barrett emphasized that this principle only applies where the term at common law had a “settled meaning.” (Citation omitted.) After examining multiple variations of “fraud” at common law, the majority concluded that at common law there was no “generally applicable rule that all fraud plaintiffs must plead and prove economic loss.” As such, the majority declined to “read such a requirement into the wire fraud statute.”

### Fraudulent inducement theory consistent with SCOTUS precedent

The majority similarly rejected a series of arguments where the petitioners insisted that the fraudulent inducement theory runs counter to other Supreme Court precedent. Among other things, Justice Barrett noted that the Court has “twice **rejected** the argument that a fraud conviction depends on economic loss,” namely in *Carpenter v. United States*, 484 U.S. 19 (1987) and *Shaw v. United States*, 580 U.S. 63 (2016).

The majority also reiterated that, “o matter the underlying theory of fraud, § 1343 requires that ‘money or property’ have been an object of the fraudster’s scheme.” It distinguished other types of schemes invoked by the petitioners, such as those that seek to “alter the exercise of regulatory power” or those that “target[] some kind of intangible interest,” such as “a citizen’s interest in ‘impartial government.’” (Citations omitted.)

### Limiting principles: Materiality, ‘particular species of fraud’

Finally, Justice Barrett acknowledged the petitioners’ concern that endorsing the fraudulent inducement theory could result in broad liability. According to Alpha and Kousisis, under that theory, “every intentional misrepresentation designed to induce someone to transact in property would constitute property fraud.” They urged that this would “threaten[] fair notice” and “encroach into States’ police powers.”

However, the majority was “not persuaded” for two reasons. First, the “materiality requirement substantially narrows the universe of actionable misrepresentations” – in other words, even an intentional misrepresentation must pass a materiality threshold to be within the reach of the federal fraud statutes. Second, the fraudulent inducement theory only “criminalizes a particular species of fraud: intentionally lying to induce a victim into a transaction that will cost him money

or property.” As such, it is “not so imprecise as to risk encroachment on States’ authority or to ‘create traps’ for the ‘unwary.’” (Citation omitted.)

Justice Barrett concluded by observing that while the language of Section 1343 is broad, “Congress enacted the wire fraud statute, and it is up to Congress—if it so chooses—to change it.”

## Takeaways

The *Kousisis* decision holds that defendants may be criminally liable for wire fraud even if they do not seek to cause the victim to lose money. Going forward, individuals and companies – including government contractors – should be mindful of this ruling. As Justice Sotomayor warned in her concurrence in the judgment: “When a defendant tricks a victim out of their money by promising one thing and delivering something materially different, it is no defense to say that the delivered items are of equal economic value.” We anticipate future fraud prosecutions will focus on the law’s materiality requirement, which the defendants did not contest in this case.

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A disadvantaged business enterprise is [defined under the relevant federal law](#) as a “for-profit small business” that is “at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged,” and that is similarly “controlled by one or more of the socially and economically disadvantaged individuals who own it.”

The opinion of the Court was joined by Chief Justice John Roberts and Justices Clarence Thomas, Samuel Alito, Elena Kagan, Brett Kavanaugh and Ketanji Brown Jackson. There was no dissent, though several justices wrote separately: Justice Thomas concurred, Justice Neil Gorsuch concurred in part and in the judgment, and Judge Sonia Sotomayor concurred in the judgment.

Under the US Sentencing Guidelines, whether the victim suffered a monetary loss or the defendant intended a monetary loss remains a – if not **the** – critical factor in determining the sentence after a conviction. *Kousisis* does not impact the role of loss at sentencing.

## Contributors



**Andrew Goldstein**  
[Bio](#)



**Kathleen R. Hartnett**  
[Bio](#)



**John H. Hemann**  
[Bio](#)



**Carlton Forbes**  
[Bio](#)



**Patrick Hayden**  
[Bio](#)



**Samantha Kirby**  
[Bio](#)

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