No. 24-972

In the Supreme Court of the United States

FRANK BELL, TYSON RHAME, AND JAMES SHAW,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioners' knowing misrepresentations as to the likelihood of favorable revaluation of foreign currency constituted a scheme to defraud within the meaning of the federal property-fraud statutes.

2. Whether sufficient evidence supported Rhame's and Bell's convictions for making false statements within the jurisdiction of an agency of the United States, in violation of 18 U.S.C. 1001.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-36a) is reported at 112 F.4th 1318. The order of the district court (Pet. App. 38a-54a) is unreported. Another order of the district court (Pet. App. 55a-76a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 14, 2024. A petition for rehearing was denied on November 8, 2024 (Pet. App. 37a). On January 27, 2025, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including March 8, 2025. The petition was filed on March 7, 2025. 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 Northern District of Georgia, petitioners were each convicted on one count of conspiring to commit mail and wire fraud, in violation of 18 U.S.C. 1341, 1343, and 1349; two counts of aiding and abetting mail fraud, in violation of 18 U.S.C. 1341 and 2; and four counts of aiding and abetting a conspiracy to commit wire fraud, in violation of 18 U.S.C. 1343 and 2. Bell Judgment 1; Rhame Judgment 1; Shaw Judgment 1. Bell was additionally convicted on two counts of making false statements, and Rhame was additionally convicted on four counts of making false statements, all in violation of 18 U.S.C. 1001(a)(2). Bell Judgment 1; Rhame Judgment 1. Bell was sentenced to 84 months of imprisonment, to be followed by three years of supervised release. Bell Judgment 3-4. Rhame was sentenced to 180 months of imprisonment, to be followed by three years of supervised release. Rhame Judgment 3-4. Shaw was sentenced to 95 months of imprisonment, to be followed by three years of supervised release. Shaw Judgment 3-4. The court of appeals affirmed. Pet. App. 1a-36a.

1. Petitioners Rhame and Shaw founded and owned Sterling Currency Group, a currency-exchange business that mainly sold Iraqi dinar from 2004 until 2015. Pet. App. 2a. Petitioner Bell joined the business in 2010 and had responsibility for overseeing legal compliance. *Ibid.* The Iraqi dinar's exchange value "is pegged by the Iraqi government," and throughout the relevant timeframe there were "perennial rumors that the Iraqi government would soon 'revalue' the currency and its value would skyrocket." *Id.* at 3a (brackets omitted).

Sterling sold dinar to customers both outright and through layaway programs. Pet. App. 3a. "Layaway

purchasers paid an initial deposit equal to a percentage of their total purchase and were given a specified timeframe to pay off the remaining balance." *Ibid.* Under one of the layaway programs, customers would forfeit their deposits if they did not pay the full balances in time. *Ibid.* Purchasers testified that "their layway deposits were a bet on revaluation occurring before their balances came due, such that their earnings from the currency appreciation could be used to pay off the remaining balance." *Ibid.*

The trial evidence established that although petitioners did not actually expect a dinar revaluation to occur, they nevertheless fabricated and propagated rumors of such a revaluation through advertising and engaging with prospective customers on online currency-investing forums. Pet. App. 4a-6a. They also falsely told investors that Sterling planned to open physical exchange kiosks at airports around the country soon after a revaluation, thereby lending credence to the idea that a revaluation was likely to occur and misleading investors into believing that Sterling would provide the easiest and cheapest option to exchange dinars for dollars. *Id.* at 6a.

Ultimately, no revaluation occurred, and "purchasers who failed to pay their balances in time forfeited tens of thousands of dollars in nonrefundable deposits" to petitioners. Pet. App. 3a. As the evidence would later show, petitioners turned enormous profits—and caused concomitant losses to the victims—as a result of their misrepresentations about the prospect of an imminent revaluation. See *ibid.* ("For example, one investor lost over $57,000 on 254 nonrefundable deposits, another lost over $40,000 on 320 deposits, and a third lost over $90,000 on 125 deposits."); Bell Presentence Investiga-

tion Report (PSR) ¶ 45 (finding that "many [layaway] customers * * * lost their 5% deposit," and petitioners' business "made a pure profit because no dinar was shipped to [those] customers," netting the business "$64,025,541.49 from expired layaways").

Federal agents interviewed Bell and Rhame about their involvement with Sterling. Pet. App. 6a. Among other statements, Bell "touted Sterling's legal compliance regime and distanced himself from the so-called 'sketchy' online dinar promoters and forums." *Ibid.* Rhame "repeatedly denied ever promoting the dinar as a good investment, predicting a revaluation, or having anything to do with dinar promoters or forums." *Ibid.*

2. A grand jury in the Northern District of Georgia indicted petitioners on one count of conspiring to commit mail and wire fraud, in violation of 18 U.S.C. 1341, 1343, and 1349; five counts of aiding and abetting mail fraud, in violation of 18 U.S.C. 1341 and 2; 11 counts of aiding and abetting wire fraud, in violation of 18 U.S.C. 1343, 1349, and 2; and one count of conspiring to commit money laundering, in violation of 18 U.S.C. 1956(h). Superseding Indictment 1-13. Rhame and Shaw were also charged with 12 counts of money laundering, in violation of 18 U.S.C. 1957 and 2; and Bell and Rhame were charged with a combined six counts of making false statements to federal agents, in violation of 18 U.S.C. 1001. Superseding Indictment 13-20. The government later dismissed 20 of the fraud and money-laundering counts. See Pet. App. 7a.

Petitioners proceeded to trial on the remaining counts. The jury found petitioners not guilty on the money-laundering and related conspiracy charges, but guilty on all of the remaining counts. Bell Judgment 1; Rhame Judgment 1; Shaw Judgment 1. The district

court sentenced Bell to 84 months of imprisonment, Rhame to 180 months of imprisonment, and Shaw to 95 months of imprisonment, each to be followed by three years of supervised release. Bell Judgment 3-4; Rhame Judgment 3-4; Shaw Judgment 3-4.

3. The court of appeals affirmed. Pet. App. 1a-36a.

The court of appeals rejected petitioners' contention that that their victims had "received exactly the dinar they paid for" and that no fraud had occurred. Pet. App. 12a (quoting *United States* v. *Takhalov*, 827 F.3d 1307, 1315 (11th Cir. 2016), modified on rehearing, 838 F.3d 1168 (11th Cir. 2016) (per curiam)) (brackets omitted). The court observed that "the 'two primary forms' of fraudulent deception are when a fraudster lies about the price or about the characteristics of what he is selling." *Id.* at 13a (quoting *Takhalov*, 827 F.3d at 1313-1314) (emphasis omitted). The court explained that "[t]he 'characteristics' of a good are not narrowly limited to its physical properties or authenticity," but also can include aspects of the good "affect[ing its] pecuniary value to the buyer." *Ibid.* And the court observed that here, "[a] jury could reasonably have found that [petitioners] deceived investors about a core attribute of the dinar: the odds of its appreciation." *Id.* at 14a.

The court of appeals also rejected Bell's and Rhame's sufficiency challenge to their false-statement convictions, which was premised on the theory that their statements to investigators were merely ambiguous, not false. Pet. App. 23a-28a. The court explained that its "precedents preclude only prosecutions 'based on fundamentally ambiguous *questions*,'" noting that "'[p]recise *questioning* is imperative as a predicate' for criminal offenses based on perjury * * * because of the 'unfairness' of convicting a defendant when 'the ques-

tions forming the basis of the charge are vaguely and inarticulately phrased *by the interrogator*.'" *Id.* at 27a (citations and ellipsis omitted). But the court observed that "[t]he distinction between ambiguous questions and ambiguous answers is crucial: a criminal defendant escapes a perjury charge only if the federal agents asked an ambiguous question; he cannot wriggle out of the same charge through an evasive answer." *Ibid.* And the court found that here, "[t]here was nothing 'fundamentally ambiguous' about Rhame's and Bell's statements or the agents' questions," which, "when viewed in the conversations' context, are clear." *Ibid.* The court thus determined that "[t]he jury could have reasonably found, based on Rhame's and Bell's answers, that they lied to federal agents." *Ibid.*

ARGUMENT

Petitioners principally contend (Pet. 13-23) that their scheme to sell Iraqi dinar by falsely representing to customers that the dinar would imminently be revaluated (and thus appreciate in value) was not a "scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses," within the meaning of the federal property-fraud statutes, 18 U.S.C. 1341 and 1343, on the theory that "[e]very customer that purchased Iraqi dinars from petitioners' business received the dinars for the price they were quoted," Pet. 4. Additionally, Bell and Rhame seek (Pet. 24-26) this Court's review of their false-statement convictions on the same "fundamental ambiguity" ground they pressed below. The court of appeals' disposition of both issues was correct and does not conflict with any decision of this Court or another court of appeals. No further review is warranted.

1. The first question presented in the petition, about the scope of the federal property-fraud statutes, does not warrant this Court's review.

a. As a threshold matter, as petitioners acknowledge (Pet. 17), the court below previously adopted the approach that they urge, in *United States* v. *Takhalov*, 827 F.3d 1307 (11th Cir. 2016), modified on rehearing, 838 F.3d 1168 (11th Cir. 2016) (per curiam). The decision below, in turn, cited and applied *Takhalov*. See Pet. App. 12a-16a. For the reasons that the court of appeals recounted, petitioners' scheme "concern[ed] the price or fundamental characteristics of property," Pet. I, and was thus property fraud under the approach of petitioners and the court below.

b. In any event, this Court's recent decision in *Kousisis* v. *United States*, No. 23-909 (May 22, 2025), makes clear that the court below was applying an overly defendant-favorable approach. In *Kousisis*, the Court cited *Takhalov* as exemplifying an approach that the Court was rejecting. See slip op. at 4-5, *Kousisis*, *supra* (No. 23-909). The Court instead held that the federal property-fraud statutes apply to a scheme to fraudulently induce a transaction even if the scheme does not (or is not designed to) impose a net pecuniary loss on the victim. *Id.* at 1-2, 7-19. The Court explained that a defendant violates those statutes "by scheming to 'obtain' the victim's 'money or property,' regardless of whether he seeks to leave the victim economically worse off." *Id.* at 8.

Here, petitioners' fraudulent scheme was designed to obtain their customers' money through false representations about the prospects of the dinar's revaluation, regardless of whether petitioners ultimately provided those customers the dinars they had purchased.

Kousisis makes clear that such conduct violates the federal mail- and wire-fraud statutes.

c. Even if a net pecuniary loss *were* required, petitioners' scheme imposed one. While the victims may have received the dinars they paid for, those dinars were worth much less than they had been led to believe. As the court explained, petitioners' falsehoods about an imminent revaluation of the dinar "deceived investors about a core attribute of the dinar: the odds of its appreciation." Pet. App. 14a. Petitioners' "fraud was no different from a lottery scam" in which a customer who is "promised a one-in-ten chance of winning the jackpot" "has been defrauded if his actual odds of winning are one-in-a-million." *Ibid.* And "[b]elief in the revaluation was a crucial incentive for" some customers, who placed deposits with petitioners to purchase dinar as "a bet on revaluation occurring before their balances came due, such that their earnings from the currency appreciation could be used to pay off the remaining balance." *Id.* at 3a.

When "no revaluation occurred," those customers "forfeited tens of thousands of dollars in nonrefundable deposits" to petitioners, some of whom used the money to fund a "lavish lifestyle." Pet. App. 3a, 8a; see *id.* at 3a (listing examples of three customers who lost more than $57,000, $40,000, and $90,000, respectively); Bell PSR ¶ 45 (petitioners' business netted more than $64 million from forfeited deposits between 2012 and 2015). Petitioners recognized the fraudulent nature of their scheme. See, *e.g.*, Pet. App. 19a (e-mail between petitioners questioning whether "it is ok to make millions of dollars in false promises to our customers"); *ibid.* ("we are risking serious jail time as promoters of a ponzi scheme"); *ibid.* ("I do not like making money under false

pretenses" or by "swindling people"). Accordingly, petitioners' fraudulent scheme was designed to—and in fact did—inflict a net pecuniary loss on their victims.*

2. The second question presented in the petition for a writ of certiorari likewise does not warrant further review.

Petitioners contend (Pet. 25) that the decision below is "inconsistent with" this Court's decision in *Bronston* v. *United States*, 409 U.S. 352 (1973). But the court of appeals cited *Bronston* and applied it in stating that "'[p]recise questioning is imperative as a predicate' for criminal" liability here. Pet. App. 27a (quoting *Bronston*, 409 U.S. at 362) (emphasis omitted). On the facts of this case, however, the court of appeals found "the agents' questions" "clear" and found "ample evidence to prove the falsity of [Bell's and Rhame's] statements" in response. *Ibid.* Clear questions that are met with responsive but false answers, outside the context of a trial, do not raise the concern this Court expressed in *Bronston* at the prospect of criminalizing "an unresponsive answer, true and complete on its face" by a witness at trial, and thereby leaving "[w]itnesses * * * unsure of the extent of their responsibility for the misunderstandings and inadequacies of examiners." 409 U.S. at 359.

Petitioners also posit (Pet. 24) "tension" between the decision below and the "decisions of other courts of appeals that have considered the ambiguity of answers when reviewing convictions under Section 1001 or simi-

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* For both that reason and the Court's reasoning in *Kousisis*, it is unnecessary and would be inappropriate to grant, vacate, and remand the petition for a writ of certiorari in light of *Kousisis*. Cf. Pet. 26-28 (requesting in the alternative that this Court hold the petition pending a decision in *Kousisis*).

lar provisions." But the court of appeals here likewise considered both the questions and the answers, finding that "[t]here was nothing 'fundamentally ambiguous' about" *either* "Rhames's and Bell's statements *or* the agent's questions." Pet. App. 27a (emphasis added). That some courts in some cases have looked to ambiguity in a defendant's answers in assessing falsity indicates at most that an answer's veracity is "viewed in the conversations' context"—which is precisely how the court of appeals here viewed Rhames's and Bell's statements. *Ibid.*; cf. *Thompson* v. *United States*, 145 S. Ct. 821, 828 (2025) ("We agree with the parties that at least some context is relevant to determining whether a statement is false under § 1014."); *Thompson*, 145 S. Ct. at 829 (Alito, J., concurring) ("[I]n considering whether a statement is 'false,' judges and juries must view the statement in 'the context in which it is made.'") (citation omitted). And petitioners have not purported to identify any decision from any appellate court that would dictate an outcome in their favor on the facts of this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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