No. 21-169

IN THE

Supreme Court of the United States

JAMES GATTO, AKA JIM,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

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

BRIEF FOR *AMICUS CURIAE* NEW YORK COUNCIL OF DEFENSE LAWYERS IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*

The New York Council of Defense Lawyers ("NYCDL") is a not-for-profit professional association of approximately 350 lawyers, including many former federal prosecutors, whose principal area of practice is the defense of criminal cases in the federal courts of New York. NYCDL's mission includes protecting the individual rights guaranteed by the Constitution, enhancing the quality of defense representation, taking positions on important defense issues, and promoting the proper administration of criminal justice. NYCDL offers the Court the perspective of experienced practitioners who regularly handle some of the most complex and significant criminal cases in the federal courts.

NYCDL supports Petitioner James Gatto's challenge to two key features of Second Circuit case law construing the federal mail and wire fraud ("property fraud") statutes: (1) the court's refusal to recognize that a defendant must seek to "obtain" an alleged victim's money or property; and (2) the court's development of a "right-to-control" theory of property fraud.[1] The Second Circuit's overbroad application of the federal property fraud statutes directly implicates NYCDL's core concerns with combatting the unwarranted extension of criminal statutes and promoting clear standards for the imposition of criminal liability. NYCDL is in a unique position to describe and catalog the many cases and contexts in which prosecutors have relied on the Second Circuit's

[1] Pursuant to Rule 37.6, counsel for *amicus curiae* state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. The parties have provided their written consent to the filing of this brief.

flawed property fraud jurisprudence to bring charges, increase penalties, or otherwise gain leverage over defendants whose conduct is beyond the reach of the federal property fraud statutes.

SUMMARY OF ARGUMENT

In a line of cases stretching from *McNally v. United States*, 483 U.S. 350 (1987), to *Kelly v. United States*, 140 S. Ct. 1565 (2020), this Court has made clear that the mail and wire fraud statutes are limited to the protection of property rights and are implicated only where the object of the defendant's scheme is to obtain property. The Second Circuit's jurisprudence defies these critical requirements. To be found guilty of property fraud in the Second Circuit, a defendant need not have sought to obtain, for himself or others, a victim's property. Rather, it is sufficient, as the jury in this case was instructed, for the defendant to have deprived the purported victim of "the ability to make an informed economic decision" and thereby interfered with the victim's "right to control" the use of its assets.[2]

Under this amorphous and malleable standard, all kinds of misrepresentations made in the context of a business or commercial transaction, even those that do not target a victim's property or intend to inflict economic harm, have become fair game for prosecution under the federal mail and wire fraud statutes. Freed from the need to prove a scheme to obtain property, prosecutors in the Second Circuit have creatively deployed these statutes to criminalize a wide range of deceptive conduct that they find

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[2] *See* Petition for a Writ of Certiorari, Appendix B at 89a-90a ("Pet.App.").

unethical or undesirable, but that does not constitute *property* fraud within the boundaries marked by the statutory text and this Court's teachings.

This case is a perfect illustration. In arranging for payments to the parents of student-athletes in violation of NCAA amateurism rules, Petitioner did not seek to obtain any property from the universities that were the purported victims of the government's charged wire fraud scheme (the "Universities") or deprive them of any property. To the contrary, Petitioner stood to gain only if the payments succeeded in causing the students to attend Universities sponsored by his employer, Adidas, improve their basketball teams, and thereby generate greater revenues for the Universities (and hence Adidas). But under the Second Circuit's case law, that was no defense. Petitioner's guilt was established merely for causing false information to be provided to the Universities and thereby depriving them of the ability to make an "informed economic decision." Thus was a violation of NCAA amateurism rules transformed into a federal wire fraud scheme.

The overcriminalization illustrated by this case is part of a broader pattern. It has become standard practice for prosecutors in the Second Circuit to rely on the right-to-control doctrine in property fraud cases. They have done so scores of times in recent years, in all manner of cases involving over 100 defendants, as described below and catalogued in the Appendix accompanying this brief. The widespread deployment of the doctrine in the Second Circuit is itself cause for great concern given the disproportionate number of significant white-collar prosecutions brought in New York, the nation's financial capital.

Beyond this, several Courts of Appeal have disagreed with the Second Circuit's approach, spawning a clear circuit split. Indeed, the holding in this case squarely conflicts with a Seventh Circuit decision, *United States v. Walters*, 997 F.2d 1219 (7th Cir. 1993), that reversed a property fraud conviction on substantially the same facts, precisely because the government had failed to show that the defendant schemed to obtain property from the university in question.

This Court's intervention is now needed to resolve the circuit split and overrule the Second Circuit's fundamentally mistaken conception of property fraud.

ARGUMENT

I. A DEFENDANT DOES NOT "OBTAIN" PROPERTY MERELY BY DEPRIVING ANOTHER OF THE "RIGHT TO CONTROL" USE OF ITS ASSETS

The mail and wire fraud statutes reach only a particular type of fraud: "*property* fraud." *Kelly*, 140 S. Ct. at 1571 (emphasis in original). Specifically, they prohibit any "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 and 1343.[3] Despite the use of the disjunctive, "the second phrase simply modifies the first," *Cleveland v. United States*, 531 U.S. 12, 26 (2000), such that "'the money-or-property

[3] Several other federal criminal statues use similar language and are similarly limited to property fraud. *See, e.g.,* 18 U.S.C. § 666(a)(1)(A) (federal program fraud); 18 U.S.C. § 1344 (bank fraud); 18 U.S.C. § 1347 (health care fraud).

requirement of the latter phrase' also limits the former." *Kelly*, 140 S. Ct. at 1571 (quoting *McNally*, 483 U.S. at 358). Thus, "obtaining money or property" is in all cases "a necessary element of the crime." *Carpenter v. United States*, 484 U.S. 19, 25 (1987); *see also Kelly*, 140 S. Ct. at 1572 ("the deceit must also have had the 'object' of obtaining the [victim's] money or property").

The Second Circuit's jurisprudence, and in particular its "right-to-control" doctrine, cannot be harmonized with this core element of property fraud. Because the defendant must have intended to *obtain* property from the victim, the property in question must have been *obtainable*, *i.e.*, capable of being transferred to another person. Where the supposed harm to the victim's "property rights" consists merely of its right to control how to dispose of its property, this requirement is not satisfied. In such a case, the defendant does not (and logically could not) "obtain" the alleged victim's "right to control" their property. *See Sekhar v. United States*, 570 U.S. 729, 738 (2013) (describing government's theory that a non-transferrable and non-obtainable form of property can be the object of a Hobbs Act scheme to "obtain[] . . . property" as "mak[ing] nonsense of words").

The reasoning of *Sekhar*, which construes the meaning of property in the context of the Hobbs Act, is directly applicable. In the course of reversing a Second Circuit decision, *Sekhar* held that "[o]btaining property requires 'not only the deprivation *but also the acquisition of property*.'" 570 U.S. at 734 (emphasis added) (quoting *Scheidler v. Nat'l Org. for Women, Inc.*, 537 U.S. 393, 404 (2003)). The Court acknowledged that the intangible "property" at issue in *Sekhar*—an attorney's "right to make a recommendation"—could be considered "property" in

some abstract sense, in that one could "define[] property to include anything of value." *Id.* at 737 n.5. But that right nonetheless did not qualify as "property" for Hobbs Act purposes, because "it cannot be transferred" and thus "cannot be the object of extortion under the statute." *Id.* The same is true here: the "ability to make an informed economic decision" is not "money or property" that can be "obtained," and thus is not a proper subject of the "money or property" fraud provisions.

The Second Circuit has recognized that its right-to-control doctrine cannot co-exist with a requirement that the defendant seek to "obtain" property. Rather than relinquish its doctrine, however, the Second Circuit instead has chosen to simply write the "obtain" element out of the property fraud statutes. In the face of the unambiguous statutory text—which actually uses the word "obtain"—the Second Circuit has proclaimed that "the mail and wire fraud statutes do *not* require a defendant to obtain or seek to obtain property" and, thus, "do not require that the property involved in the fraud be obtainable." *United States v. Finazzo*, 850 F.3d 94, 105-07 (2d Cir. 2017) (emphasis added). On that mistaken premise, the court has held that the right-to-control doctrine survives *Sekhar* and that *Sekhar*'s obtainability requirement is limited to the Hobbs Act and does not apply to the wire fraud statute, *id.* at 107—even though both statutes require that the defendant "obtain" property. *Compare* 18 U.S.C. § 1343 ("Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property. . . .")

with 18 U.S.C. § 1951(b)(2) ("The term 'extortion' means the obtaining of property from another. . .").[4]

The right-to-control doctrine has long been on a collision course with this Court's precedent. In *Cleveland v. United States*, *supra*, the Court abrogated circuit court rulings that individuals who submitted false applications for licenses to state and local authorities committed mail or wire fraud by depriving the government of a property interest consisting of its "right to control" the issuance of licenses. In so doing, the Court held that "property" under the mail and wire fraud statutes is limited to "traditional concepts of property," 531 U.S. at 24, and that the asserted "right to control" the issuance of licenses was "far from composing an interest that 'has long been recognized as property,'" *id.* at 23 (quoting *Carpenter*, 484 U.S. at 26); *see also Sekhar*, 570 U.S. at 737 (noting that *Cleveland* held that "a 'license' is not 'property' while in the State's hands and so cannot be 'obtained' from the State" as required under the property fraud statutes).

A decade later, *Skilling v. United States*, 561 U.S. 358 (2010), limited the reach of "honest-services

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[4] The wire fraud statute, unlike the Hobbs Act, also contains the "scheme to defraud" clause; but that is of no moment in light of this Court's rulings that that clause is modified by the "obtaining money or property" clause. The Second Circuit's case law effectively incorporates only the "money or property" portion of the second clause into the first clause, while omitting the "obtaining" part. Not only is such interpretive cherry-picking plainly inappropriate, but it produces the anomalous result that "property" would mean one thing for purposes of the "scheme to defraud" clause (which would encompass non-obtainable property interests) and another thing for purposes of the "obtaining" clause (which would exclude non-obtainable property interests).

fraud," 18 U.S.C. § 1346, because it did not fit within the paradigm of traditional frauds, in which "the victim's loss of money or property *supplied the defendant's gain, with one the mirror image of the other*." 561 U.S. at 400 (emphasis added). The right-to-control doctrine cannot be reconciled with that "symmetrical" view of the mail and wire fraud statutes. This case demonstrates as much: what the Universities allegedly lost (*i.e.*, the right to control the allocation of scholarship funds) did not supply any gain to Petitioner or anyone else.

Most recently, the Court's decision in *Kelly* sounded a clear death knell for the Second Circuit's overbroad view of property fraud. Contrary to the Second Circuit's premise that a mere intent to *deprive* the victim of property suffices, *Kelly* squarely holds that the property fraud statutes are violated "*only* if an object of [the defendant's] dishonesty was to *obtain* the [victim's] money or property." *Kelly*, 140 S. Ct. at 1568 (emphasis added); *see also id.* at 1574 (emphasis added) (property fraud statutes "bar *only* schemes for *obtaining* property"). *Kelly* specifically rejected the government's argument that the defendants committed property fraud because they sought to deprive the Port Authority of the time and labor of its employees involved in carrying out the misguided lane realignment for the George Washington Bridge at issue in that case. The costs of these employees' services, while undoubtedly a loss of "property," were insufficient to sustain the defendants' convictions because those costs were merely "an incidental (even if foreseen) byproduct" of the scheme and "[n]either defendant sought to obtain the services that the employees provided." *Id.* at 1573-74.

As in *Kelly*, the prosecutions here improperly sought to fit a square peg into the narrow round hole

of property fraud. After the jury verdict in this case, the U.S. Attorney's Office announced that the convictions had "expose[d] an underground culture of illicit payments, deception and corruption in the world of college basketball" and that the defendants had "tarnished an ideal which makes college sports a beloved tradition by so many fans all over the world."[5] Whether or not such an ideal exists or was, in fact, tarnished by the actions of the defendants,[6] none of the conduct condemned in those statements falls within the ambit of the federal property fraud statutes. What the Court said in *Kelly* is equally apt here: "The evidence the jury heard no doubt shows wrongdoing—deception, corruption, abuse of power. But the federal fraud statutes at issue do not criminalize all such conduct." *Id.* at 1568. Rather, "[u]nder settled precedent," those statutes are violated "only if an object of [the defendant's] dishonesty was to obtain the [victim's] property," *id.*—the very element that Second Circuit law holds is unnecessary.

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[5] Press Release, U.S. Attorney's Office for the Southern District of New York, Oct. 24, 2018, available at https://www.justice.gov/usao-sdny/pr/adidas-executive-and-two-others-convicted-defrauding-adidas-sponsored-universities.

[6] This Court has questioned the fairness and legality of the NCAA's "ideal" of amateurism, which the NCAA has long touted to justify withholding compensation from the student-athletes who generate its revenue. *See Nat'l Collegiate Athletic Ass'n v. Alston*, 141 S. Ct. 2141, 2163 (2021); *id.* at 2168 (Kavanaugh, J., concurring) ("The bottom line is that the NCAA and its member colleges are suppressing the pay of student athletes who collectively generate *billions* of dollars in revenues for colleges every year. Those enormous sums of money flow to seemingly everyone except the student athletes.").

The Second Circuit itself describes its right-to-control theory as a separate and distinct "alternative" to the "classic" theory of property fraud, which requires a scheme to deprive the victim of money or a traditional form of property. *See United States v. Muratov*, 849 F. App'x 301, 306 (2d Cir. 2021). Consider the extraordinarily vague and capacious charging language routinely used in Second Circuit prosecutions based on this "alternative" theory:

> Property includes intangible interests such as the right to control the use of one's assets. The victim's right to control the use of its assets is injured when it is deprived of potentially valuable economic information that it would consider valuable in deciding how to use its assets. In this context, "potentially valuable economic information" is information that affects the victim's assessment of the benefits or burdens of a transaction, or relates to the quality of goods or services received or the economic risks of the transaction.[7]

In other words, a defendant may now be found guilty and sentenced to up to 30 years in prison in the Second Circuit not for scheming to obtain anyone's property, but for "injur[ing]" another's "right to control" by depriving the person of "potentially valuable economic information" that "affects [the person's] assessment" of a transaction or "relates" to its economic risks.[8] This radical reconceptualization

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[7] *See* Brief for the United States of America, *United States v. Percoco*, No. 18-2990(L), 2019 WL 4137939, at *153 (2d Cir. Aug. 28, 2019) (quoting district court's charge).

[8] In 2017, the Second Circuit held that under the right-to-control doctrine, the defendant's scheme "must implicate tangible

of property fraud is completely alien to the text of the mail and wire fraud statutes and the understanding of criminal fraud that existed at the time those statutes were enacted.[9]

The Second Circuit's addition of an alternative "right-to-control" theory of liability amounts to nothing less than the judicial creation of a new form of criminal fraud. Just as it did in *McNally*, *Cleveland*, *Skilling* and *Kelly*, this Court should grant certiorari to bring the Second Circuit's erroneous interpretation of the property fraud statutes in line with the proper scope of those statutes.

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economic harm" and recommended that juries be instructed that the doctrine applies only if the scheme "could cause or did cause tangible economic harm to the victim." *Finazzo*, 850 F.3d at 111, 113 n.20. But this tangible-harm gloss—adding another requirement with no grounding in the statutory text—does nothing to cure the fatal defects inherent in the right-to-control doctrine. For one thing, there remains no requirement that the defendant seek to obtain property or that the property be obtainable. For another, the tangible-harm component is untethered to the defendant's mental state: Even potential harms to the victim that the defendant did not intend satisfy this standard. *See, e.g.,* Pet.App. 89a-90a (containing no requirement that Petitioner contemplate or intend any "tangible economic harm" to the Universities). As a result, the defendant may be convicted of property fraud for causing (or merely creating a risk of) "tangible economic harm" that was not the "object," *Kelly*, 140 S. Ct. at 1568, 1571, 1572, 1573, 1574, of his or her actions.

[9] *See, e.g.,* W. Robert Gray, Note, *The Intangible-Rights Doctrine and Political-Corruption Prosecutions Under the Federal Mail Fraud Statute*, 47 U. Chi. L. Rev. 562, 572-78 (1980) (concluding that "the contemporaneous understanding" of criminal fraud at the time the mail fraud statute was first adopted in 1872 and amended in 1909 (to include the "obtaining money or property" language) was "a scheme or artifice to trick the victim into transferring something of economic value to the defendant").

II. PROSECUTORS ROUTINELY RELY ON THE SECOND CIRCUIT'S EXPANSIVE AND ELASTIC DOCTRINE TO PROCURE CONVICTIONS WITHOUT PROVING THE ELEMENTS OF PROPERTY FRAUD

The practical effects of Second Circuit jurisprudence on white-collar prosecutions are enormous. While the right-to-control doctrine has been part of Second Circuit jurisprudence for decades, *see United States v. Wallach*, 935 F.2d 445 (2d Cir. 1991), use of the doctrine has exploded in recent years. If the mail and wire fraud statutes are the federal prosecutor's "Stradivarius," *see* Jed S. Rakoff, *The Federal Mail Fraud Statute (Part I)*, 18 Duquesne L. Rev. 771, 771 (1980), "right to control" is now the prosecutor's favorite tune to play on that instrument.

During the last decade, literally scores of prosecutions in the Second Circuit, brought against at least 112 different defendants, have been founded in whole or in part on the right-to-control doctrine. The factual scenarios in which the doctrine has been deployed are varied, far-flung, and limited only by the prosecutor's imagination. A list of the cases with accompanying descriptions of the targeted conduct is contained in the attached Appendix.[10]

In many of these cases, as in Petitioner's case, the right-to-control doctrine has enabled prosecutors to obtain convictions for conduct that does not constitute property fraud. In other cases, prosecutors have used

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[10] This list has been culled from reported decisions and a search of district court dockets. It does not purport to be a comprehensive list of all right-to-control prosecutions in the Second Circuit during the last decade.

the doctrine as a shortcut to avoid having to meet their burden of proof. In all cases, the effect is to circumvent the requirements of property fraud and make a conviction significantly more likely than if the jury had been required to find, in accordance with *Kelly* and the text of the property fraud statutes, that the object of the defendant's scheme was to obtain money or property.

We detail below several examples of how the doctrine operates in practice.

1. *Prosecutions predicated on undisclosed conflicts of interest*

Both *Finazzo*, *supra*, and *United States v. Viloski*, 557 F. App'x 28 (2d Cir. 2014), involved corporate employees who failed to disclose their receipt of kickbacks that gave them a financial interest in transactions they authorized on behalf of their employers. The transactions that generated the kickbacks did not harm the employer, which got the goods or services it paid for. The defendants in both cases were convicted under the right-to-control theory; in fact, the defendant in *Finazzo* was acquitted of mail and wire fraud based on the alternative theory that he "inten[ded] to deprive [his employer] of money." *Finazzo*, 850 F.3d at 96-97; *Viloski*, 557 F. App'x at 33. The Second Circuit nonetheless found that the defendants' failure to self-report their kickbacks deprived their employers of "potentially valuable economic information" and could have caused tangible economic harm because the employers "could have negotiated better deals for [themselves]" had they known of the kickbacks. *Finazzo*, 850 F.3d at 110-12; *Viloski*, 557 F. App'x at 34.

Finazzo and *Viloski* illustrate how the right-to-control doctrine renders the "property" element of property fraud essentially meaningless. The federal property fraud statutes criminalize schemes to "obtain" money or property, not schemes to deprive someone of the opportunity to make more money than she already is making. Any scheme that induces someone to enter into a contract on the basis of inaccurate information necessarily deprives that person of the opportunity to enter into the contract on potentially better terms. Unfaithful employees who accept kickbacks may violate state commercial bribery laws or the federal honest-services fraud statute (18 U.S.C. § 1346). But unless an object of their scheme is to cause their employer to enter into an economically disadvantageous transaction, they are not guilty of property fraud.

2. *Prosecutions predicated on exposing banks to regulatory penalties.*

Prosecutors have also brought property fraud charges against defendants for making misrepresentations that induced a U.S. bank to process transactions that allegedly violated economic sanctions programs administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"). The defendants in these cases plainly had no intention or desire to misappropriate the bank's property or cause any financial harm to the bank. Nevertheless, prosecutors indicted the defendants for bank fraud, subjecting the defendants to higher penalties (both in terms of the statutory maximums and the applicable sentencing guidelines range) than those available for OFAC violations. Relying on the Second Circuit's right-to-control doctrine, courts in the Southern District of New York upheld such charges in part on the theory that the

defendants deprived the banks of accurate information and exposed the banks to tangible economic harm in the form of an increased risk of fines and civil penalties for violating OFAC regulations. *See, e.g., United States v. Nejad*, 18-cr-224, 2019 WL 6702361, at *14-15 (S.D.N.Y. Dec. 6, 2019); *United States v. Zarrab*, 15 Cr 867, 2016 WL 6820737, at *13-14 (S.D.N.Y. Oct. 17, 2016).

These decisions run afoul of the limitations this Court has placed on the property fraud statutes. No one could plausibly contend that the defendants in these cases had as the "object" of their scheme a government investigation or enforcement action against the bank. Even if the defendants could foresee, or did foresee, such a result, at most it would be an "incidental byproduct" of the defendants' alleged misrepresentations, which is insufficient to constitute property fraud under *Kelly*.[11]

3. *Prosecutions predicated on bid-rigging for state contracts.*

Prosecutors obtained property fraud convictions at trial of several defendants alleged to have rigged bids relating to a plan by the New York state legislature to revitalize Western New York. *See United States v.*

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[11] So too in this case, the government argued that the charged scheme exposed the Universities to "tangible economic harm" in the form of possible financial penalties from the NCAA. (Tr. 49-50, 58, 1642; Indictment ¶¶ 29, 51). But it is beyond dispute that Petitioner did not intend or wish for the Universities to be penalized by the NCAA and that he would not have benefited in any way from such penalties (let alone "obtained" them for himself). Plainly the object of Petitioner's alleged scheme was not to subject the Universities to NCAA penalties. Under *Kelly*, that fact should have been dispositive. Under Second Circuit law, it was irrelevant.

Percoco, No. 16-CR-776, 2017 WL 6314146 (S.D.N.Y. Dec. 11, 2017). Executives of construction companies allegedly conspired with individuals with influence over the bid process to select their companies as "preferred developers," which gave the companies the opportunity to negotiate on an exclusive basis for construction contracts with a state-created entity. The companies ultimately were awarded contracts that they performed on time, at cost, and to specifications. Because the government was proceeding on a right-to-control theory, however, the district court ruled that it was irrelevant whether the state entity received the benefit of its bargain with the defendants. Trial tr. at 1491-92, *United States v. Percoco,* No. 16 Cr. 776 (S.D.N.Y. Jul. 24, 2018), ECF No. 807 ("Getting [the benefit of the bargain] is neither here nor there in a right-to-control case"). Rather, the defendants could properly be convicted for defrauding the alleged victim not of the value of the contract or any money or property, but of "the right to make a fully informed decision." *Id.*

Thus, through the alchemy of the right-to-control doctrine, federal prosecutors were able to bootstrap an alleged bid-rigging scheme (which is punishable under New York state criminal law, *see* N.Y. Gen. Bus. L. §§ 340-341) into a federal wire fraud case, without any proof of an intended or actual financial loss to the purported victim. Notably, at sentencing, the district judge declined to find any loss amount or order any restitution, concluding that it would be "pure speculation" to say that anyone suffered pecuniary harm. Nonetheless, the court imposed lengthy jail sentences based on the "substantial *nonmonetary* harm" allegedly sustained (Forms AO 245B at 2, *Percoco*, No. 16 Cr. 776 (S.D.N.Y. Dec. 4-12, 2018), ECF Nos. 939, 945, 946, 953)—despite the

fact that the wire fraud statute only protects "*property* rights," *McNally*, 483 U.S. at 360 (emphasis added).

4. *Prosecutions predicated on misrepresentations by job candidates.*

A recent property fraud prosecution targeted a scheme in which the City of Bridgeport's personnel director misappropriated information concerning the City's hiring process for police chief in order to ensure that his preferred candidate (the acting police chief) would get the job. *See* Info. at 1-5, *United States v. Dunn*, No. 3:20-cr-00181 (D. Conn. Oct. 5, 2020); Info. at 1-4, *United States v. Perez*, No. 3:20-cr-00180 (D. Conn. Oct. 5, 2020). While the scheme skewed the City's hiring process in favor of one candidate (who was given an advance look at the questions on the hiring exam), it did not target the City's money or property. The money budgeted for the hiring process and the police chief's salary would be spent regardless of the scheme. Nevertheless, prosecutors secured guilty pleas by casting the offense as "depriv[ing] the City of financially valuable information relevant to its decision on how to allocate the permanent police chief position and the resulting employment contract," *id.*—a theory that would turn almost any misrepresentation in an employment application, in either the public or the private sector, into a federal offense.

Evidently, the government felt it would have had difficulty proving property fraud under the traditional theory that the defendants sought to wrongly obtain money or property from the city, so it reframed the issue in right-to-control terms. This is a primary function of the right-to-control doctrine as applied in practice: to dilute the property component

of property fraud to such a degree that a misrepresentation itself—depriving an alleged victim of the ability to make an informed economic decision—becomes the gist of the offense. The doctrine relieves prosecutors of their normal burden and provides them with a convenient shortcut to avoid having to prove property fraud in the manner traditionally required under the federal fraud statutes.

5. *Prosecutions predicated on trading in the financial markets.*

In a number of high-profile cases, prosecutors have brought federal fraud charges against traders at leading financial institutions based on practices that struck prosecutors as bad faith or sharp dealing. The defendants in these cases mounted strong defenses that they did not intend to deprive their sophisticated counterparties of money or property, either because the counterparty was receiving exactly what it was entitled to under the parties' contract, *United States v. Johnson* 945 F. 3d 606, 613 (2d Cir. 2019) (trading in foreign currencies), or because the trading practice was commonplace and not prohibited by the relevant industry rules, *United States v. Allen*, 160 F. Supp. 3d 698, 702 (S.D.N.Y. 2016) (trading in derivative instruments tied to LIBOR rates).

Nevertheless, under the Second Circuit's right-to-control theory, these defenses were short-circuited because the jury was instructed that it did not have to find that the defendant sought to obtain the counterparty's money or property and could convict if the defendant's misrepresentations merely deprived the counterparty of "information necessary . . . to make discretionary economic decisions." *Johnson*, 945 F.3d at 611-12; *see also* The Court's Instructions

of Law to the Jury at 19, *United States v. Allen*, No. 14-cr-272 (S.D.N.Y. Nov. 4, 2015), ECF No. 146 (emphasis added) (instructing that a defendant acts with "specific intent to defraud" where he "intended, at least in part, to deceive one or more of his trading counterparties in order to obtain money or property *or to deprive one or more of the counterparties of material information* . . ., and thereby harm one or more victims"). Notably, the government did not seek restitution in either case.

As these examples illustrate, an important consequence of the Second Circuit's overly expansive interpretation of the federal fraud statutes is to federalize traditional areas of state law and significantly enlarge the scope of federal criminal jurisdiction. That is contrary to this Court's teachings and warrants this Court's intervention. *See Kelly*, 140 S. Ct. at 1574 (warning that if federal prosecutors "could prosecute as property fraud every lie . . . the result would be . . . a sweeping expansion of federal criminal jurisdiction"); *United States v. Sadler*, 750 F.3d 585, 591 (6th Cir. 2014) ("[l]ightly equating deceptions with property deprivation . . . would occupy a field of criminal jurisdiction long covered by the States, a consideration that has prompted the [Supreme] Court to resist like-minded readings of 'scheme to defraud' before").

III. THERE IS A CLEAR CIRCUIT SPLIT ON THE ISSUES RAISED BY PETITIONER

The lower federal courts are, and have been for some time, sharply divided over the fundamental questions regarding the scope of the property fraud statutes raised by Petitioner.

First, the Second Circuit decision below is directly at odds with the Seventh Circuit's decision in *United*

States v. Walters. In *Walters*, a sports agent who gave money and cars to college football athletes in violation of NCAA amateurism rules was prosecuted for mail fraud on the theory that the universities would not have awarded scholarship funds to the students if they had known the students were in breach of the rules. *Walters*, 997 F.2d at 1221. In reversing the agent's conviction, the Seventh Circuit, in an opinion by Judge Easterbrook, expressly held that both the "scheme to defraud" and "obtaining money or property" clauses of the mail fraud statutes "contemplate a transfer of some kind" and, accordingly, that "only a scheme to obtain money or other property from the victim by fraud violates § 1341." *Id.* at 1227. Thus, the court held, a deprivation of the alleged victim's property is "a necessary but not a sufficient condition" of property fraud. Each of these holdings is directly contrary to current Second Circuit law.

Other circuits have also divided on the question of whether the property fraud statutes are limited to schemes to obtain property via a transfer from the alleged victim, with the Sixth and Ninth Circuits holding that they are, *see Monterey Plaza Hotel Ltd. P'ship v. Local 483 of the Hotel Emps. Union*, 215 F.3d 923, 926-27 (9th Cir. 2000); *United States v. Baldinger*, 838 F.2d 176, 180 (6th Cir. 1988), and the Third and Tenth Circuits agreeing with the Second Circuit that mere intent to deprive the victim of a property interest is sufficient, *see United States v. Hedaithy*, 392 F.3d 580, 601-02 & n.21 (3d Cir. 2004); *United States v. Welch*, 327 F.3d 1081, 1108 & n.27 (10th Cir. 2003). Thus as one federal judge recently noted, on the issue of whether the defendant must have intended to obtain money or property, "the circuit courts currently stand divided." *Center for*

Immigration Studies v. Cohen, 410 F. Supp. 3d 183, 192 n.2 (D.D.C. 2019); *see also United States v. Males*, 459 F.3d 154, 158-59 (2d Cir. 2006) (acknowledging the circuit split). This divide has persisted for years and shows no sign of abating. For this reason alone, certiorari should be granted.

The circuits are also divided as to whether the "right to control" constitutes a valid "property" interest within the meaning of the property fraud statutes. In a well-reasoned opinion by Judge Sutton, the Sixth Circuit has held that the "right to control" property and "the right to accurate information" related to that property are "ethereal" and "not the kind of 'property' rights safeguarded by the fraud statutes." *United States v. Sadler*, 750 F.3d 585, 591 (6th Cir. 2014). Similarly, the Ninth Circuit has declined to recognize the right-to-control doctrine, holding legally insufficient an indictment that charged the defendant with defrauding manufacturers of their "right to make business decisions based on truthful information and representations." *United States v. Bruchhausen*, 977 F.2d 464, 467-68 (9th Cir. 1992); *see also United States v. Zauber*, 857 F.2d 137, 146-47 (3d Cir. 1988) (rejecting government's argument that defendants' deception deprived victim of "control over its money" and concluding that "such a theory is too amorphous to constitute a violation of the mail fraud statute as it is currently written").

These conflicts in legal doctrine make outcomes in criminal prosecutions arising from the same basic facts dependent on the jurisdiction in which the case is brought. This case is one clear example of that—in light of *Walters*, Gatto would not have been convicted in the Seventh Circuit. *See also, e.g., Bruchhausen*, 977 F.2d at 468 n.4. (expressly disagreeing with the

outcome in a Second Circuit decision, *United States v. Schwartz*, 924 F.2d 410 (2d Cir. 1991), that had relied on the right-to-control doctrine). This Court should grant certiorari to provide uniformity across the lower federal courts on these issues of profound significance concerning the scope of the widely-used federal property fraud statutes.

CONCLUSION

For the foregoing reasons and those stated in the petition, the petition for a writ of certiorari should be granted.

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APPENDIX

Appendix

Federal property fraud prosecutions relying on the right-to-control doctrine in Second Circuit courts since 2010

	Case Caption / Number of Defendants charged under RTC doctrine	RTC allegation by government	Disposition/ Status of property fraud charges	Other charges RTC defendants found guilty of/pled guilty to
1	USA v. Perez, Docket No. 3:20-cr-00180 (D. Conn. Oct 5, 2020) USA v. Dunn, Docket No. 3:20-cr-00181 (D. Conn. Oct 5, 2020) 2 RTC defendants	Defendant Dunn, the Acting Personnel Director for the City of Bridgeport, while overseeing the examination process for filling the City's permanent police chief position, directed changes to the scoring system and provided exam questions to defendant Perez, a candidate for the position, causing Perez to be selected for the position, thereby depriving the City of financially valuable information relevant to its decision of how to allocate the police chief position and employment contract	Both defendants pled guilty to conspiracy to commit wire fraud	Both defendants pled guilty to making false statements to the FBI

2	USA v. Weigand et al, Docket No. 1:20-cr-00188 (S.D.N.Y. Mar 5, 2020) 3 RTC defendants	Defendants, the CEO and two consultants of a California marijuana company, disguised marijuana transactions as transactions in other goods so that U.S. banks would process marijuana-related transactions they otherwise would have declined	Two defendants were found guilty of conspiracy to commit bank fraud; a third defendant pled guilty to the same charge On appeal to Second Circuit	None
3	USA v. Hild, Docket No. 1:19-cr-00602 (S.D.N.Y. Aug 26, 2019) 1 RTC defendant	Defendant, the CEO of a company that originated, serviced, and securitized reverse mortgages, deprived lenders of the right to control their assets by misrepresenting information the lenders used to determine how much money to loan the company	Defendant was found guilty of wire fraud, bank fraud, and conspiracy to commit wire and bank fraud; motion to acquit or for new trial is pending	Defendant was found guilty of securities fraud, conspiracy to commit securities fraud

4	USA v. Ahuja et al, Docket No. 1:18-cr-00328 (S.D.N.Y. May 7, 2018) 3 RTC defendants	Defendants, three officers of an investment firm that managed hedge funds, mismarked the monthly value of certain securities held by firm-managed funds, causing investors to pay higher management and performance fees and to forestall redemptions, thereby depriving the investors of the right to control their assets	Two defendants were found guilty of conspiracy to commit wire fraud On appeal to Second Circuit	Two defendants were found guilty of conspiracy to commit securities fraud; the third defendant pled guilty to the same charge

5	USA v. Nejad et al, Docket No. 1:18-cr-00224 (S.D.N.Y. Mar 19, 2018) 2 RTC defendants	Defendants allegedly caused wire transfer beneficiary information to be omitted from transfer orders in order to route payments from a Venezuelan state-owned energy company through banks in the U.S. for the benefit of Iranian entities and individuals, in violation of OFAC sanctions, thereby depriving the banks of the right to control their assets by inducing them to process transactions they otherwise would not have processed	After being found guilty of, among other charges, bank fraud and bank fraud conspiracy, the lead defendant's indictment was dismissed with prejudice due to *Brady* violations Charges against a second defendant remain pending	Before the indictment against lead defendant was dismissed, he also was found guilty of conspiracy to defraud the U.S., conspiracy to violate IEEPA, and money laundering

6	USA v. Evans et al, Docket No. 1:17-cr-00684 (S.D.N.Y. Nov 7, 2017) USA v. Sood, Docket No. 1:18-cr-00620 (S.D.N.Y. Aug 27, 2018) 4 RTC defendants	Three defendants, assistant college basketball coaches, received payments from the fourth defendant, a financial adviser, in exchange for the coaches' agreement to pressure student-athletes under their control to retain the services of the financial advisor once the student-athletes entered the NBA All four defendants were charged with wire fraud under a right-to-control theory for participating in scheme to bribe players to attend universities	None	The financial advisor pled guilty to conspiracy to commit bribery, honest services wire fraud, and Travel Act offenses, as well as to bribery of an agent of a federally funded institution The basketball coaches pled guilty to conspiracy to commit bribery

7	USA v. Gatto et al., Docket No. 1:17-cr-00686 (S.D.N.Y. Nov 7, 2017) 4 RTC defendants	Defendants made and concealed payments to high school student-athletes in exchange for the student-athletes' commitment to play basketball for certain universities, rendering the student-athletes ineligible under NCAA rules and thereby depriving the universities of the right to control the allocation of scholarship awards (this is the case that is the subject of the amicus brief)	Three defendants were found guilty of wire fraud and conspiracy to commit wire fraud; the government dismissed all charges against the fourth defendant Petition for certiorari is pending	None

8	USA v. Connors Person et al, Docket No. 1:17-cr-00683 (S.D.N.Y. Nov 7, 2017) 1 RTC defendant	Defendant, an assistant men's basketball coach at Auburn University, solicited and received payments from a financial advisor that were facilitated by another defendant, an operator of a clothing company patronized by professional athletes, in exchange for agreeing to pressure student-athletes to retain the services of the financial advisor once the student-athletes entered the NBA, while representing to Auburn that Defendant did not know of any NCAA violations, thereby depriving Auburn of its right to control the use of its assets	Wire fraud charge dismissed as a result of guilty plea to bribery conspiracy charge	Defendant pled guilty to conspiracy to commit bribery

9	USA v. Blazer, Docket No. 1:17-cr-00563 (S.D.N.Y. Sep 15, 2017) 1 RTC defendant	Defendant made payments to student-athletes to retain him as a financial advisor or business manager once they became professional athletes and concealed the payments from the universities who granted scholar-ships to the student-athletes, thereby depriving the universities of their right to control the allocation of athletic scholarships	Defendant pled guilty to wire fraud	Defendant pled guilty to securities fraud, aggravated identity theft, and making false statements

10	USA v. Percoco et al, Docket No. 1:16-cr-00776 (S.D.N.Y. Nov 22, 2016) 6 RTC defendants	The RTC defendants (a person with authority over the awarding of publicly funded contracts under the "Buffalo Billion" initiative and executives of construction companies hoping to win such contracts) rigged the bidding process so that the companies were given preferred-developer status, thus depriving the state-created entity awarding the contracts of its right to control the allocation of contract awards	Four defendants were found guilty of wire fraud and conspiracy to commit wire fraud; one defendant pled guilty to wire fraud and wire fraud conspiracy; one defendant had all charges against him dropped	One defendant was also found guilty of conspiracy to commit honest services wire fraud; one defendant was found guilty of making false statements to federal officers

11	USA v. Johnson et al, Docket No. 1:16-cr-00457 (E.D.N.Y. Aug 16, 2016) 2 RTC defendants	Defendants "ramped the fix" when buying British pounds to be resold to trading counterparty, driving up the price in a manner consistent with the parties' contract and to an extent they believed the counterparty would find tolerable, but in violation of an oral promise to the counterparty, thus depriving the counterparty of its right to control its assets	One defendant was found guilty of wire fraud and conspiracy to commit wire fraud; the other defendant remains in the UK	None

12	USA v. Jergensen et al, Docket No. 8:16-cr-00235 (N.D.N.Y. Jul 28, 2016) 2 RTC defendants	Defendants, the principals of a company that brokered financing agreements for construction and energy projects, misappropriated money from a client for whom they agreed to obtain financing for a construction project, thereby depriving the client of the right to control its assets	Both defendants were found guilty of conspiracy to commit wire fraud	None
13	USA v. Seabrook et al, Docket No. 1:16-cr-00467 (S.D.N.Y. Jul 7, 2016) 1 RTC defendant	Defendant received tens of thousands of dollars in bribes each year from a co-conspirator in exchange for Defendant's union investing millions of dollars in the co-conspirator's hedge fund, depriving the union of its right to control the use of its retirement fund assets	The RTC wire fraud charge was dismissed on the government's motion	Defendant was found guilty of honest services wire fraud and conspiracy to commit same

14	USA v. Peralta, Docket No. 1:16-cr-00354 (S.D.N.Y. May 24, 2016) 1 RTC defendant	Defendant solicited and obtained money from investors by falsely representing that he would use the investors' money to purchase and re-sell wholesale quantities of liquor, thereby depriving the investors of information that, if known, might have caused them not to invest with Defendant	Defendant pled guilty to wire fraud	None

15	USA v. Noze et al, Docket No. 3:16-cr-00100 (D. Conn. May 18, 2016) 6 RTC defendants	Defendants staged fake car crashes to collect insurance benefits, thereby depriving the insurance companies of information necessary to determine whether to pay Defendants' claims	Two defendants were found guilty of wire fraud, mail fraud, and conspiracy to commit wire and mail fraud; two other defendants pled guilty to wire fraud; two other defendants pled guilty to conspiracy to commit wire and mail fraud	None

16	USA v. Mitchell et al, Docket No. 1:16-cr-00234 (E.D.N.Y. May 2, 2016) 9 RTC defendants	Defendants induced investors to buy shares of an LED lighting company by, among other things, orchestrating the trading of the company's stock to create the appearance of genuine trading volume in the stock, thereby depriving the investors of information necessary to decide whether to trade in the company's stock	One defendant was found guilty of conspiracy to commit wire fraud	One defendant was found guilty of securities fraud, conspiracy to commit same, and money laundering conspiracy; six defendants pled guilty to securities fraud; two defendants pled guilty to conspiracy to commit securities fraud

17	USA v. St. Lawrence et al, Docket No. 7:16-cr-00259 (S.D.N.Y. Apr 6, 2016) 2 RTC defendants	Defendants induced investors to buy bonds from the Town of Ramapo's local development corporation by misrepresenting the balance of the Town's general operating fund and the development corporation's ability to make its bond payments, thereby depriving investors of information needed to decide whether, and at what yield, to invest in the development corporation's bonds	One defendant was found guilty of wire fraud	One defendant was found guilty of securities fraud and conspiracy to commit same; the other defendant pled guilty to securities fraud and conspiracy to commit same

18	USA v. Marshak, Docket No. 3:16-cr-00011 (D. Conn. Jan 21, 2016) 1 RTC defendant	Defendant convinced the recipients of U.S. government-funded contracts to falsely certify to the Department of Defense that their contract prices either did not include a commission or did not include any foreign-made content, thereby depriving the Department of Defense of information necessary to determine whether to approve the contracts	Defendant pled guilty to wire fraud and mail fraud	Defendant also pled guilty to major fraud against the United States

19	USA v. Zarrab et al, Docket No. 1:15-cr-00867 (S.D.N.Y. Dec 15, 2015) 3 RTC defendants	Defendants, including defendant Halkbank, a Turkish state-owned bank, conspired to evade US sanctions against Iran by withholding information that funds transfers were payments to and on behalf of Iran; same conduct defrauded U.S. correspondent banks by depriving them of the right to control their assets by inducing them to participate in funds transfers they otherwise would have declined	One defendant pled guilty to, and the other was found guilty of, bank fraud and conspiracy to commit bank fraud	One defendant pled guilty to, and the other was found guilty of, conspiracy to defraud the U.S., conspiracy to violate IEEPA and ITSR, and conspiracy to commit laundering

20	USA v. Shkreli et al, Docket No. 1:15-cr-00637 (E.D.N.Y. Dec 14, 2015) 2 RTC defendants	Defendants Shkreli and Greebel caused Retrophin, a biopharmaceutical company founded by Shkreli, to enter into, and pay for, settlement agreements and sham consulting agreements with disgruntled investors in Shkreli-founded hedge funds without disclosing the agreements to Retrophin's board of directors, thereby depriving Retrophin of the right to control its assets	Greebel was found guilty of conspiracy to commit wire fraud in relation to Retrophin; Shkreli was acquitted of the same charge	Greebel and Shkreli both were found guilty of conspiracy to commit securities fraud, and Shkreli was found guilty of securities fraud

21	USA v. Murgio et al, Docket No. 1:15-cr-00769 (S.D.N.Y. Nov 5, 2015) 4 RTC defendants	Defendants disguised the fact that they were operating a Bitcoin exchange service from banks and credit card companies that processed the service's transactions, thereby depriving the banks and credit card companies of their right to control their assets by misrepresenting potentially valuable economic information	One defendant was found guilty of wire fraud, bank fraud, and conspiracy to commit wire and bank fraud; another defendant pled guilty to those same charges; a third defendant pled guilty to wire fraud and wire fraud conspiracy; a fourth defendant pled guilty to conspiracy to commit wire fraud and bank fraud	Three defendants were found guilty of conspiracy to commit financial institution bribery and making corrupt payments with intent to influence an officer of a financial institution; two defendants were found guilty of conspiracy to operate, and the operation of, an unlicensed money transmitting business; one defendant was found guilty of conspiracy to operate an unlicensed money transmitting business and conspiracy to obstruct the examination of a financial institution

22	USA v. Shapiro et al, Docket No. 3:15-cr-00155 (D. Conn. Sep 3, 2015) 2 RTC defendants	Defendants, traders on a bond-trading desk that purchased and sold residential mortgage-backed securities, misrepresented price negotiations with contemporaneous, third-party counterparties to customers, depriving the customers of potentially valuable economic information, leading to larger spreads that resulted in higher profits for Defendants' company	One defendant was found guilty of conspiracy to commit wire fraud and securities fraud; the jury failed to reach a verdict on that charge against the other defendant, and a re-trial has not yet taken place	None

23	USA v. Tuzman et al, Docket No. 1:15-cr-00536 (S.D.N.Y. Aug 12, 2015) 1 RTC defendant	Defendant conspired to have a hedge fund buy stock of Defendant's company to artificially inflate its price and trading volume, which Defendant failed to report to the company's shareholders, thereby depriving the shareholders of potentially valuable economic information about their investment in the company	Defendant was found guilty of wire fraud and wire fraud conspiracy	Defendant also was found guilty of securities fraud, securities fraud conspiracy, and making false statements in SEC reports and to auditors

24	USA v. Durante et al, Docket No. 1:15-cr-00171 (S.D.N.Y. Mar 17, 2015) 6 RTC defendants	Defendants manipulated the stock of a publicly traded company by controlling a majority of the company's public shares and trading them between each other in order to artificially inflate the stock price and trading volume, which induced investors to trade in the company's stock while depriving them of information necessary to determine whether to do so	Two defendants were found guilty of wire fraud and wire fraud conspiracy; two defendants pled guilty to wire fraud and wire fraud conspiracy	Two defendants were found guilty of securities fraud and securities fraud conspiracy; one of those defendants was also found guilty of aggravated identity theft and investment advisor fraud; four defendants pled guilty to securities fraud conspiracy; three defendants pled guilty to securities fraud; and money laundering; two defendants pled guilty to money laundering; four defendants also pled guilty to other charges

25	USA v. Lillemoe et al, Docket No. 3:15-cr-00025 (D. Conn. Feb 20, 2015) 3 RTC defendants	Defendants presented altered documents, such as copies of bills of lading falsely marked "original," to U.S. banks to induce them to make loans to foreign banks, exposing the U.S. banks to the possibility of litigation for accepting improper documentation, thereby depriving the banks of information necessary to make the discretionary economic decision as to whether to enter into the transaction	Two defendants were found guilty of wire fraud and wire fraud conspiracy; the third defendant was acquitted of all charges	None

26	USA v. Williams Scott & Associates, LLC et al, Docket No. 1:14-cr-00784 (S.D.N.Y. Dec. 1, 2014) 5 RTC defendants	Defendants, a debt collection agency, its principal, and three of its employees, made false representations in order to convince victims to pay purported debts, thereby depriving the victims of accurate information necessary to make an informed economic decision	The principal was found guilty of conspiracy to commit wire fraud; two employees pled guilty to the same charge; a nolle prosequi was entered as to the company	A third employee was found guilty of possession and use of a controlled substance

27	USA v. O'Garro, No. 3:14-CR-00227 (D. Conn. Nov. 20, 2014) 1 RTC defendant	Defendant, the operator of an insurance brokerage, submitted applications with falsified insurance policy information in order to obtain financing for insurance premium payments purportedly owed by shell entities he controlled, thereby depriving the financing company of information needed to determine whether to finance the insureds' premium payments	Defendant was found guilty of mail and wire fraud	None

28	USA v. Robson et al, Docket No. 1:14-cr-00272 (S.D.N.Y. Apr 28, 2014) 7 RTC defendants	Defendants, employees of Rabobank, made USD and Yen LIBOR submissions to the trade association responsible for setting LIBOR rates that may have reflected the rate at which Rabobank could borrow unsecured funds but were skewed to favor Rabobank's positions in derivative trades tied to LIBOR, thereby depriving the Rabobank traders' counterparties of the right to control their assets by withholding information necessary to determine whether to enter into the derivatives transactions (this case is referred to in the brief as United States v. Allen, 160 F. Supp. 3d 698, 702 (S.D.N.Y. 2016)	Two defendants were found guilty of wire fraud and conspiracy to commit wire fraud and bank fraud; five defendants pled guilty to conspiracy to commit wire fraud and bank fraud	None

29	USA v. Carpenter et al, Docket No. 3:13-cr-00226 (D. Conn. Dec 12, 2013) 2 RTC defendants	Defendants, life insurance brokers, submitted life insurance applications that disguised the fact that the policies were intended to be sold to third-party investors, which deprived the life insurance companies of potentially valuable economic information and caused them to issue policies they would not otherwise have issued due to the companies' policies against issuing stranger-originated life insurance (STOLI) policies	One defendant was found guilty of mail and wire fraud and mail and wire fraud conspiracy; the other defendant died during the pendency of the proceedings and the charges against him were dismissed	One defendant was found guilty of illegal monetary transactions, money laundering, conspiracy to commit money laundering, and aiding and abetting the substantive offenses

30	USA v. Davis et al, Docket No. 1:13-cr-00923 (S.D.N.Y. Nov 22, 2013) 2 RTC defendants	Defendants, the owner of a subcontractor and the subcontractor company itself, which had won a contract to perform work on the World Trade Center from the Port Authority of New York and New Jersey, submitted an application that contained misrepresentations regarding the ownership, control, and profit-sharing of a joint venture the subcontractor had formed with a minority-owned and woman-owned business enterprise, depriving the Port Authority of information necessary to make the discretionary economic decision of whether to allow the joint venture to perform the WTC contract	Both defendants were found guilty of wire fraud and wire fraud conspiracy, but their convictions were vacated after the district court granted their motions for acquittal	None

31	USA v. Tagliaferri, Docket No. 1:13-cr-00115 (S.D.N.Y. Feb 19, 2013) 1 RTC defendant	Defendant, who operated an investment firm, accepted fees from companies in exchange for investing client funds in the companies without reporting the receipt of such fees to his clients, engaged in cross-trading without disclosing the cross-trades to clients, and disguised an equity investment of client funds in a third-party company as a loan, all of which deprived his clients of information necessary to control their assets	Defendant was found guilty of wire fraud	Defendant was found guilty of investment advisor fraud, securities fraud, and Travel Act offenses

32	USA v. Huff et al, Docket No. 1:12-cr-00750 (S.D.N.Y. Sep 27, 2012) 3 RTC defendants	Defendants conspired to purchase an Oklahoma insurance company by falsely representing to an Oklahoma state regulator that the source of financing for the purchase was one defendant's bank, when in fact the purchase was financed by a loan from a second defendant's investment firm and backed by the Oklahoma insurance company's assets, thereby depriving (i) the Oklahoma state regulator of information that if known, would have caused it not to approve the purchase, and (ii) the second defendant's investment firm of information necessary to decide whether to issue the loan for the purchase of the insurance company	Two defendants pled guilty to conspiracy to commit wire fraud; one defendant pled guilty to conspiracy to commit bank bribery and wire fraud	One defendant also pled guilty to corrupt interference with Internal Revenue Code, aiding preparation of false tax returns, and willful failure to file taxes; another defendant pled guilty to fraud on bank regulators, conspiracy to commit same, and conspiracy to commit bank bribery

33	USA v. Kurniawan, Docket No. 1:12-cr-00376 (S.D.N.Y. May 9, 2012) 1 RTC defendant	Defendant induced a financing company to loan him $3 million by misrepresenting the amount of outstanding personal debt he had, the amount of his annual expenses, and his immigration status, depriving the financing company of information necessary to control its assets	Defendant was found guilty of mail fraud and wire fraud	None
34	USA v. Balboa, Docket No. 1:12-cr-00196 (S.D.N.Y. Mar 1, 2012) 1 RTC defendant	Defendant, a portfolio manager of a hedge fund, directed two co-conspirators to provide the hedge fund's independent valuation agent with inflated prices for certain illiquid securities in order to inflate the hedge fund's NAV, thereby depriving the hedge fund's investors of information necessary to control their assets	Defendant was found guilty of wire fraud and wire fraud conspiracy	Defendant was found guilty of securities fraud, securities fraud conspiracy, and investment advisor fraud

35	USA v. Binday et al, Docket No. 1:12-cr-00152 (S.D.N.Y. Feb 15, 2012) 3 RTC defendants	Defendants, life insurance brokers, submitted life insurance applications that disguised the fact that the policies were intended to be sold to third-party investors, which deprived the life insurance companies of potentially valuable economic information and caused them to issue policies they would not otherwise have issued due to the companies' policies against issuing stranger-originated life insurance (STOLI) policies	All three defendants were found guilty of mail fraud, wire fraud, and conspiracy to commit mail and wire fraud	Two defendants also were found guilty of conspiracy to obstruct justice through destruction of records

36	USA v. Mazer et al, Docket No. 1:11-cr-00121 (S.D.N.Y. Feb 10, 2011) 1 RTC defendant	Defendant orchestrated a kickback scheme while serving as a manager on New York City's CityTime payroll system modernization project in which he caused consultants to be hired by a CityTime subcontractor through two staffing companies controlled by co-conspirators from whom he solicited kickbacks, thus depriving New York City of the right to control its assets by withholding information related to the scheme	Defendant was found guilty of wire fraud	Defendant was found guilty of conspiracy to defraud New York City, bribery and conspiracy to commit same, conspiracy to violate the Travel Act, and conspiracy to commit money laundering

37	USA v. Ghavami et al, Docket No. 1:10-cr-01217 (S.D.N.Y. Dec 9, 2010) 3 RTC defendants	Defendants, employees of UBS Financial Services, conspired to rig the bidding on investment agreements offered by issuers of municipal bonds, by, among other things, sharing bid information, thereby depriving the municipal bond issuers of the right to control their assets by causing them to make decisions on which bids to accept based on misleading information	Two defendants were found guilty of wire fraud and wire fraud conspiracy; one defendant was found guilty only of wire fraud conspiracy	All three defendants were found guilty of conspiracy to defraud the United States

38	USA v. Carollo et al, Docket No. 1:10-cr-00654 (S.D.N.Y. Jul 27, 2010) 3 RTC defendants	Defendants conspired to rig the bidding on investment agreements offered by issuers of municipal bonds by, among other things, paying kickbacks in exchange for information on competing bidders' bids, thereby depriving the municipal bond issuers of the right to control their assets by causing them to make decisions on which bids to accept based on misleading information	All three defendants were found guilty of conspiracy to commit wire fraud and to defraud the IRS (under 18 U.S.C. § 371) All three convictions were reversed by the Second Circuit on other grounds	None

39	USA v. Finazzo et al, Docket No. 1:10-cr-00457 (E.D.N.Y. Jun 08, 2010) 2 RTC defendants	Defendants, a merchandise manager for an apparel retailer and an owner of an apparel supplier, conspired to cause the apparel retailer to use the supplier in exchange for kickbacks from the supplier to the merchandise manager, without reporting the kickbacks to the apparel retailer, thereby depriving the apparel retailer of the right to control its assets	One defendant was found guilty of mail fraud, wire fraud, and conspiracy to commit mail fraud, wire fraud, and to violate the Travel Act; the other defendant pled guilty to conspiracy to commit mail fraud, wire fraud, and to violate the Travel Act	None

40	USA v. Viloski et al, Docket 5:09-cr-00418 (N.D.N.Y. Aug 5, 2009) 3 RTC defendants	Defendants, a broker and consultant for real estate transactions by Dick's Sporting Goods, an employee of Dick's, and an intermediary, caused consulting fees paid by Dick's to the broker to be paid as kickbacks to the Dick's employee, thereby depriving Dick's of the right to control the use of its assets by failing to disclose the kickbacks to Dick's, which could have caused Dick's tangible economic harm because, had Dick's known of the kickback, it could have negotiated better deals for itself	One defendant was found guilty of mail fraud and conspiracy to commit mail and wire fraud; one defendant pled guilty to wire fraud and conspiracy to commit mail and wire fraud; a third defendant pled guilty to conspiracy to commit mail and wire fraud	One defendant also was found guilty of concealment money laundering, conspiracy to commit same, and making false statements to federal officials; another defendant pled guilty to conspiracy to commit money laundering; a third defendant pled guilty to conspiracy to commit money laundering and conspiracy to commit securities fraud

41	United States v. Jabar, No. 1:09-cr-00170 (W.D.N.Y. May 21, 2009) 2 RTC defendants	Defendants stated in a grant application to a United Nations agency that they would use the grant funds to establish a radio station in Iraq, but then used some of the grant funds to pay personal expenses, depriving the UN of information that might have caused it not to issue the grant, though Defendants ultimately built the radio station using UN grant funds and their own money	Defendants' wire fraud and wire fraud conspiracy convictions were vacated after the district court granted their post-trial motions for acquittal	Both defendants were found guilty of making false statements