

Second Circuit vacates fraud conviction in first crypto ‘insider trading’ case

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In *United States v. Chastain* (<https://bit.ly/4pJqequ>), No. 23-7038, 2025 WL 2165839 (2d Cir. July 31, 2025), the United States Court of Appeals for the Second Circuit (<https://www.ca2.uscourts.gov/>) vacated wire fraud and money laundering convictions in what the government described as its first crypto insider trading case.

The case involves a former employee of OpenSea, an online non-fungible token (“NFT”) marketplace, who allegedly used confidential information about which NFTs would be featured on OpenSea’s homepage to purchase those NFTs before they were promoted, then sold them after a post-promotion price bump for a profit.

At trial, the United States District Court for the Southern District of New York (<https://www.nysd.uscourts.gov/>) instructed the jury that property protected by the wire fraud statute need not have commercial value, and the defendant could be convicted of wire fraud by failing to abide by societal mores.

On appeal, the Second Circuit held that both instructions were prejudicial error that warranted a new trial. The Second Circuit’s decision follows the United States Supreme Court’s (<https://www.supremecourt.gov/>) recent lead in curtailing the reach of the federal wire fraud statute. The decision also has broader implications for the crypto industry, as it limits the situations in which prosecutors can sidestep the debate of whether a digital asset is a security or commodity by pursuing wire fraud in lieu of securities or commodities fraud charges.

Nathaniel Chastain worked as a product manager for the NFT marketplace giant, OpenSea. In that role, Chastain was responsible for deciding which NFTs to feature on OpenSea’s website — an action that typically caused the showcased NFT to increase in value. The government alleged that Chastain purchased fifteen NFTs that he then featured on OpenSea’s website and sold after prices rose to pocket \$57,000 in profits. This, prosecutors argued, amounted to “insider trading” and wire fraud under 18 U.S.C. § 1343.

To be found guilty of wire fraud, a defendant must (1) devise or intend to devise a scheme (2) to obtain money or property (3) by means of false or fraudulent pretenses, representations,

or promises. *Kousisis v. United States* (<https://bit.ly/42VOYSC>), 145 S. Ct. 1382, 1391 (2025).

The phrase “money or property” encompasses “property rights” that are both tangible and intangible. *Carpenter v. United States* (<https://bit.ly/4nZwYix>), 484 U.S. 19, 25 (1987). However, the wire fraud statute reaches only traditional property interests, which are those that had “long been recognized as property when the wire fraud statute was enacted.” *Ciminelli v. United States* (<https://bit.ly/42fULIV>), 598 U.S. 306, 314 (2023).

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Chastain was convicted of wire fraud and money laundering in connection with his NFT transactions and purported concealment of the proceeds. On appeal, the Second Circuit addressed whether confidential business information qualifies as a traditional property interest even if it lacks commercial value to the business, as the jury had been instructed.

The Court held that property must be shown to have commercial value to satisfy the federal wire fraud statute. The majority reviewed decisions protecting a newspaper’s pre-publication information and a law firm’s confidential client information, finding that the misappropriated information in those cases was the entities’ “stock-in-trade” and central to their business model.

By contrast, OpenSea did not charge for its NFT feature information and evidence submitted by the government suggested that the information was merely tangential to

OpenSea's business. Since the jury could have ignored such evidence under the district court's erroneous instruction, the Second Circuit held that Chastain was prejudiced by the instruction and entitled to a new trial.

The Court also considered if the instruction that the jury could convict if Chastain "conducted himself in a manner that departed from traditional notions of fundamental honesty and fair play in the general and business life of society" was prejudicial error. In concluding that it was, the court held that the legal standard was incorrect and allowed the jury to improperly convict based on the government's "view of integrity" in business conduct rather than the misappropriation of "property rights only." It added that under such a standard, "almost any deceptive act could be criminal" (quoting *Ciminelli*).

Chastain is the latest decision to impose limitations on prosecutors' use of the federal wire fraud statute after two recent Supreme Court decisions set the stage. In *Kelly v. United States* (<https://bit.ly/3KJqAyg>), 590 U.S. 391 (2020), the Supreme Court held that, for purposes of the federal wire fraud statute, the subject property must be an "object of the fraud," not an "incidental byproduct of the scheme."

In *Ciminelli*, the Supreme Court rejected the Second Circuit's longstanding "right to control" theory of fraud, which had enabled prosecutors to argue that a right to valuable economic information needed to make discretionary economic decisions was property protected by 18 U.S.C. § 1343. Collectively, these decisions represent a return to core principles, requiring that for fraud to be actionable it must entail the intentional deprivation of a victim's valuable property.

With NFTs taking center stage in *Chastain*, the decision matters for the crypto industry, too. Some experts hypothesized that

prosecutors would turn to the federal wire fraud statute to crack down on insider trading in the space since United States Department of Justice (<https://www.justice.gov/>) policy (<https://bit.ly/3WcRnEN>) now directs prosecutors not to pursue securities or commodities fraud charges that would require litigating whether the digital asset is a security or a commodity and the Securities and Exchange Commission (<https://www.sec.gov/>) embarks on its ambitious "Project Crypto" (<https://bit.ly/4mBp79B>) to develop a new regulatory framework. *Chastain* serves as another check on prosecutorial creativity when using the federal wire fraud statute to police crypto.

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Notably, the decision in *Chastain* was not unanimous. The dissenting judge read the case law differently and called the majority's decision a "novel addition to our law" that "ignores unambiguous and binding Second Circuit and Supreme Court precedents which hold that confidential business information, standing alone and without any separate showing of commercial value, is properly considered property for purposes of the wire fraud statute."

Nonetheless, the majority decision in *Chastain* means that prosecutors in the influential Second Circuit will have to navigate yet another limitation on their go-to fraud fighting statute.

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