No. 23-

In the Supreme Court of the United States

PATRICK D. THOMPSON,
Petitioner,
v.
UNITED STATES,
Respondent.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

CHRIS GAIR
Gair Gallo Eberhard
1 E. Wacker Drive
Suite 2600
Chicago, IL 60601

STUART BANNER
Counsel of Record
UCLA School of Law
Supreme Court Clinic
405 Hilgard Ave.
Los Angeles, CA 90095
(310) 206-8506
banner@law.ucla.edu

QUESTION PRESENTED

Whether 18 U.S.C. § 1014, which prohibits making a "false statement" for the purpose of influencing certain financial institutions and federal agencies, also prohibits making a statement that is misleading but not false.

RELATED PROCEEDINGS

U.S. Court of Appeals for the Seventh Circuit: *United States v. Thompson*, No. 22-2254 (Jan. 8, 2024)

U.S. District Court for the Northern District of Illinois: *United States v. Thompson*, No. 21 CR 279 (July 12, 2022)

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Patrick D. Thompson respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is published at 89 F.4th 1010 (7th Cir. 2024). The opinion of the District Court is unpublished but is available at 2022 WL 1908896.

JURISDICTION

The Court of Appeals entered its judgment on January 8, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

18 U.S.C. § 1014 provides in relevant part: "Whoever knowingly makes any false statement or report, … for the purpose of influencing in any way the action of … the Federal Deposit Insurance Corporation … shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both." The full text of the statute is reproduced in Appendix C.

STATEMENT

There is an acknowledged circuit split over whether 18 U.S.C. § 1014, which prohibits certain "false statement[s]," also prohibits statements that are misleading but not false. Below, the Seventh Circuit took the non-textual side of the split by holding that "literal truth is not a defense to a § 1014 charge." App. 12a. The Court should grant certiorari and reverse.

1. In 2011, Patrick Thompson sought to refinance the mortgages on his home and rental properties with the Washington Federal Bank for Savings. Soon after, he borrowed $110,000 from Washington Federal to make an equity contribution to the law firm he was joining. App. 3a. Thompson and Washington Federal agreed to roll that debt into the refinanced mortgages when they were issued. Washington Federal accordingly entered the $110,000 loan in its records as a mortgage loan and sent Thompson an IRS Form 1098, the form on which taxpayers report mortgage interest. *Id.* at 27a. Despite Thompson's efforts, however, Washington Federal never refinanced his mortgages. *Id.*

In 2013, Thompson borrowed another $20,000 from Washington Federal, and in 2014 another $89,000, for a total of $219,000 in loans. *Id.* at 3a.

Washington Federal failed in 2017 and was taken over by the Federal Deposit Insurance Corporation. *Id.* at 4a. The FDIC hired a firm called Planet Home Lending to collect Thompson's loans. *Id.* Planet sent Thompson an invoice in February 2018 stating that his loan balance was $269,120.58—the principal amount of $219,000 plus a bit more than $50,000 in accumulated interest. *Id.*

Soon after receiving the invoice, Thompson called Planet's customer service line. *Id.* During the call, which was recorded by Planet, Thompson initially said "I borrowed $100,000," but he quickly corrected himself. *Id.* He continued: "I mean, I borrowed the money, I owe the money—but I borrowed $100 thou—$110—I think it was $110,000 … I want to quickly resolve all this, and—and—you know, what I

owe." *Id.* at 4a-5a. He read the amount on Planet's invoice and said, "I dispute that." *Id.* at 5a

A week later, Thompson received a call from two FDIC contractors. *Id.* The contractors did not record the call, but in their log of the call they noted that "Mr. Thompson spoke about his personal debt [of] 110,000. John Gembara [the president of Washington Federal] loaned him 110,000 for home improvement, which was to be rolled up into his home loan (Bank was to do a term loan) …. He is disputing his balance and is sending us the documentation." *Id.* at 32a.

In late 2018, Thompson and the FDIC agreed to settle for $219,000, the principal amount of the loans. *Id.* at 5a. (Because Washington Federal had failed to keep proper records, the FDIC was worried that it might not be able to collect in a lawsuit. *Id.*) Thompson paid off the $219,000.

More than two years later, Thompson was charged with two counts of violating 18 U.S.C. § 1014. *Id.* at 6a. Count 1 alleged that in his phone call with Planet Home Lending, Thompson falsely stated that "he only owed $100,000 or $110,000 to Washington Federal and that any higher amount was incorrect." *Id.* Count 2 alleged that Thompson made the same statement to the FDIC, and that he also falsely stated that the first loan was to fund home improvements. *Id.*[1]

After a jury trial, Thompson was convicted on both counts. *Id.* On count 2, the jury returned a special verdict finding that Thompson falsely stated

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[1] Thompson was also charged with and convicted of some tax offenses. He did not appeal these convictions.

that he "only owed $110,000" and that "the funds he received from Washington Federal were for home improvement." *Id.*

2. The District Court denied Thompson's motion for acquittal. *Id.* at 24a-89a. The court rejected Thompson's argument that section 1014 does not prohibit the making of statements that are misleading but not false. *Id.* at 46a-56a.

The District Court noted: "Thompson reasons that because the only evidence produced at trial was of statements that were literally true—that he borrowed $110,000 and disputed borrowing $269,000—said statements cannot sustain a conviction under Section 1014." *Id.* at 46a-47a. But the court concluded that "Thompson cites numerous cases, none of which persuade the Court that literal falsity is required for a Section 1014 charge in the Seventh Circuit." *Id.* at 47a.

The District Court acknowledged that the law was different in the Sixth Circuit, which interprets section 1014 to prohibit only statements that are false, and not statements that are merely misleading. *Id.* at 52a (citing *United States v. Kurlemann*, 736 F.3d 439 (6th Cir. 2013)). "Admittedly," the court conceded, "if *Kurlemann* were the law in the Seventh Circuit, Thompson's argument would have more traction. But *Kurlemann* is an out-of-circuit case, and Thompson has failed to direct the Court to a Supreme Court case or Seventh Circuit case that holds that a Section 1014 conviction requires a literally false statement." *Id.*

After discussing several Seventh Circuit decisions, the District Court concluded that "in the Seventh

Circuit, literal falsity is not required to sustain a conviction under Section 1014." *Id.* at 55a. The court thus did not address the government's alternative argument that Thompson's statements were literally false. *Id.* at 56a.

3. The Court of Appeals affirmed. *Id.* at 2a-23a.

The Court of Appeals held that under Seventh Circuit precedent, "§ 1014 criminalizes misleading representations." *Id.* at 9a (citing *United States v. Freed*, 921 F.3d 716 (7th Cir. 2019)). The court explained: "we need not decide whether Thompson's statements were literally true because his argument runs headfirst into our precedent." *Id.*

The Court of Appeals recognized, as had the District Court, that "the Sixth Circuit has concluded that Congress did not intend to reach misleading statements in 18 U.S.C. § 1014." *Id.* at 11a (citing *Kurlemann*, 736 F.3d at 444-48). But the Court of Appeals observed: "Because *Freed* is not merely persuasive authority, but binding precedent that has not been overruled, we must follow it." *Id.* "In this circuit," the court concluded, "literal truth is not a defense to a § 1014 charge." *Id.* at 12a.

REASONS FOR GRANTING THE WRIT

Patrick Thompson was convicted under 18 U.S.C. § 1014 for stating that he borrowed $110,000 and that he disputed owing $269,000. *Id.* at 4a-5a. These statements were not false. He *did* borrow $110,000 and he *did* dispute owing $269,000. The first statement was misleading because it omitted important contextual information—that he later borrowed an additional $20,000 and $89,000. The second state-

ment was not even misleading; it was simply true. Neither statement was false.

Does 18 U.S.C. § 1014 prohibit the making of such statements? As both courts below recognized, the circuits are divided on this question. This case provides a perfect vehicle for the Court to resolve the conflict.

I. The lower courts are divided over whether 18 U.S.C. § 1014 criminalizes the making of statements that are misleading but not false.

The decision below deepens a preexisting circuit split over whether 18 U.S.C. § 1014, which prohibits making a "false statement," also prohibits making a statement that is misleading but not false. Three circuits—the First, Sixth, and Eleventh—interpret the statute literally, to criminalize only the making of statements that are false. Four other circuits—the Fifth, Eighth, Tenth, and now the Seventh—interpret the statute more broadly, to prohibit not only false statements but also misleading statements.[2]

A. In the First, Sixth, and Eleventh Circuits, 18 U.S.C. § 1014 prohibits only false statements, not statements that are misleading.

The First, Sixth, and Eleventh Circuits hold that 18 U.S.C. § 1014 criminalizes only false statements, not misleading ones.

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[2] In addition, the Third Circuit has acknowledged the issue but has concluded that "we need not resolve that question now." *United States v. Ryan*, 828 F.2d 1010, 1014 (3d Cir. 1987).

The leading decision on this side of the split is Judge Sutton's thorough opinion for the Sixth Circuit in *United States v. Kurlemann*, 736 F.3d 439 (6th Cir. 2013). The Sixth Circuit relied on the text of the statute, which prohibits only the making of a "false" statement. *Id.* at 445. Congress's decision to include only false statements within its prohibition, the court held, was its "way of *not* saying that the statute prohibits 'half-truths,' 'material omissions' or 'concealments.'" *Id.*

The Sixth Circuit continued:

> Whether made orally or offered through a written report, a "false statement" must be that—a statement, a "factual assertion" capable of confirmation or contradiction. *Williams v. United States,* 458 U.S. 279, 284, 102 S.Ct. 3088, 73 L.Ed.2d 767 (1982). An omission, concealment or the silent part of a half-truth, is not an assertion. Quite the opposite. Omissions are failures to speak. *See Black's Law Dictionary* 1197 (9th ed.2009). Half-truths, in which the speaker makes truthful assertions but conceals unfavorable facts, amount to one type of omission. Concealment, in which the speaker says nothing at all but has a duty to speak, amount[s] to another. No doubt, both types of omissions hold the potential to mislead and deceive. But § 1014 covers "false statements." It does not cover misleading statements, false pretenses, schemes, trickery, fraud or other types of deception.

Id.

The Sixth Circuit found additional support for its holding by comparing the language of section 1014

with that of other federal criminal statutes, some of which explicitly prohibit the omission and concealment of information in addition to the making of false statements. *Id.* at 446. "Nor is this dichotomy between 'false statements' and unspoken forms of deception a figment," the court explained. *Id.* "As a walk through Title 18 and other titles of the United States Code reveals, Congress has long honored the distinction in criminalizing many types of conduct. Other criminal statutes apply to anyone who 'falsifies, conceals, or covers up by any trick, scheme, or device a material fact,' 18 U.S.C. §§ 1001, 1035, or to anyone who makes 'any false statement or representation of fact ... or knowingly conceals, covers up, or fails to disclose any fact,' 18 U.S.C. § 1027." *Id.* The Sixth Circuit pointedly asked: "Why create 'conceal[ment]' offenses if 'falsif[ying]' or making 'any false statement' already covers the concept?" *Id.*

The Sixth Circuit found even more support for its holding by comparing the language of section 1014 with that of another set of federal criminal statutes which prohibit the making of "fraudulent" as well as "false" statements. *Id.* "Still other criminal statutes distinguish between 'false' pretenses and 'fraudulent' ones," the court observed. *Id.* "Take the mail-fraud statute. It prohibits anyone from using the postal service or interstate commerce in furtherance of 'any scheme or artifice to defraud ... by means of false or fraudulent pretenses, representations, or promises,' 18 U.S.C. § 1341; *see also id.* § 2314 (same). 'False' and 'fraudulent' representations do not cover the same thing. Fraud has long been understood to include a broader range of deceptive conduct." *Id.*

The court added that the federal securities laws likewise distinguish between false statements and omissions. "The securities laws also respect the difference between these concepts, distinguishing between 'untrue statement[s]' and 'omission[s],'" the court reasoned. *Id.* "The Securities Act of 1933 uses the classic definition of a half-truth, prohibiting 'any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.' 15 U.S.C. § 77q. And Congress has prohibited securities issuers from falsely representing that a securities 'registration statement is true and accurate on its face or that it does not contain an untrue statement of fact or omit to state a material fact.' 15 U.S.C. § 77w." *Id.*

"On this statutory record," the Sixth Circuit concluded, "two things are clear: Congress frequently differentiates between false statements and omissions, and we should not lightly merge the two." *Id.*

The Sixth Circuit noted that this Court respected the distinction between false statements and omissions in *Williams v. United States*, 458 U.S. 279 (1982). *Id.* In *Williams*, the Court held that section 1014 does not prohibit the writing of a bad check. As the Sixth Circuit described *Williams*, "[e]ven though the checks amounted to a writing, even though they omitted the fact that his bank account held insufficient funds, even though his signature on the checks *implicitly* communicated that the account contained sufficient funds to cover the check and even though Williams clearly intended to defraud the banks, that did not suffice to establish what the statute re-

quired—a false statement." *Kurlemann*, 736 F.3d at 447 (citing *Williams*, 458 U.S. at 284). The Sixth Circuit concluded: "After *Williams,* a false-statement prosecution under § 1014 cannot generally be premised on implied representations. It must turn on true-or-false representations later shown to be false." *Id.*

Finally, the Sixth Circuit concluded that the same result was commanded by the rule of lenity. "Not only does this reading of § 1014 comport best with the statute's text, its relationship with related statutes, and upper-court and lower-court case law, but it also adheres to the rule of lenity," the court noted. *Id.* at 448. "As *Williams* itself explained, 'when choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite.' *Williams,* 458 U.S. at 290, 102 S.Ct. 3088. The only thing 'clear and definite' here is that Congress did not proscribe concealment, half-truths or omissions in § 1014." *Id.*

The Eleventh Circuit took the same view in *United States v. Thorn*, 17 F.3d 325 (11th Cir. 1994). In *Thorn*, "the alleged false statement was the failure to disclose [in a title insurance policy] that [a] mortgage was still outstanding." *Id.* at 327. The Eleventh Circuit held that the defendant could not be prosecuted under section 1014, because the statute prohibits only false statements, not the failure to disclose information. *Id.* at 327-28. "Thorn made no statement in the title policy regarding the Frank mortgage," the court concluded. *Id.* at 328. "The failure to list that mortgage … did not constitute an im-

plied statement that the Frank mortgage had been released or subordinated." *Id.*

The First Circuit agrees that "one cannot be convicted under 18 U.S.C. § 1014 if the statement claimed to be false is, in fact, literally true." *United States v. Attick*, 649 F.2d 61, 63 (1st Cir. 1981) (Breyer, J.).

In these three circuits, section 1014's prohibition of "false" statements is literally that—a prohibition of statements that are false. It is not a prohibition of omissions, failures to disclose, or statements that are misleading.

B. In the Fifth, Seventh, Eighth, and Tenth Circuits, 18 U.S.C. § 1014 prohibits misleading statements as well as false statements.

Four circuits, now including the Seventh in the decision below, interpret section 1014 to prohibit the failure to disclose information, where the failure to disclose renders a statement misleading but not false.

In *United States v. Greene*, 578 F.2d 648, 657 (5th Cir. 1978), the Fifth Circuit affirmed a conviction under section 1014 for failing to disclose that certain equipment mentioned in a bill of sale was subject to a lien, an omission that made the bill of sale misleading but not false. The Fifth Circuit held that the failure to disclose this information "would certainly constitute a materially false statement within the meaning of 18 U.S.C. § 1014." *Id. See also United States v. Trice*, 823 F.2d 80, 86 (5th Cir. 1987) ("[A] false statement or report for purposes of section 1014 can include the failure to disclose material infor-

mation needed to avoid deception in connection with a loan transaction.").

The Eighth Circuit likewise holds that "omissions may constitute a false statement where honest statements would otherwise be made. The literal truth of information that is actually submitted does not shield the intentional omission of material information from prosecution under § 1014." *United States v. Wells*, 63 F.3d 745, 752 (8th Cir. 1995), *vacated on other grounds*, 519 U.S. 482 (1997). In *Wells*, the alleged false statement was an "agreement to avoid telling the banks about Copytech's financial responsibility to service the copiers under the CMP contracts." *Id.* at 751. The Eighth Circuit noted: "The appellants claim that withholding information cannot support a conviction under § 1014, only affirmative assertions of facts can. We disagree." *Id.*

The Tenth Circuit takes the same view. In *United States v. Haddock*, 956 F.2d 1534, 1551 (10th Cir. 1992), the alleged false statement was the omission of a loan from a financial statement. The Tenth Circuit held that "[f]ailure to list outstanding loans on a form financial statement or loan application constitutes a false statement under § 1014." *Id. See also United States v. Copus*, 110 F.3d 1529, 1535 (10th Cir. 1997) ("Although there is no direct evidence that Mr. Copus explicitly lied to Mr. Beerwinkle about his interest in the cattle under inspection, direct evidence of an overt lie is not required. … [T]he jury might reasonably have concluded that Mr. Copus, without a discouraging word, led Mr. Beerwinkle to cattle intending to leave him with the impression that he owned more cattle than he actually did.").

In the decision below, the Seventh Circuit joined this side of the split. "In this circuit," the Seventh Circuit declared, "literal truth is not a defense to a § 1014 charge." App. 12a. Rather, because Thompson omitted contextual information from his statements, and because the omission rendered the statements misleading (but not false), "these representations were therefore 'false statements' according to this court's understanding of § 1014." *Id.* at 10a.

Both courts below acknowledged this circuit split. *Id.* at 11a (recognizing the conflict with the Sixth Circuit's decision in *Kurlemann*), 52a (same). In its briefing below, the United States also acknowledged the split and urged the Seventh Circuit not to follow *Kurlemann*. U.S. 7th Cir. Br. at 39-40.

The circuits are thus divided four to three. A split of this magnitude will never be resolved without this Court's intervention.

II. The decision below is wrong.

Certiorari is also warranted because the Seventh Circuit erred in holding that section 1014 prohibits the making of misleading statements along with false ones.

"[S]tatutory interpretation must begin with, and ultimately heed, what a statute actually says." *Groff v. DeJoy*, 600 U.S. 447, 468 (2023) (brackets and internal quotation marks omitted). The text of section 1014 could not be any clearer: It punishes a person who "knowingly makes any false statement," 18 U.S.C. § 1014, not a person who makes a true but misleading statement by failing to supply contextual information. The statute does not prohibit all forms of deception or every kind of fraudulent behavior. It

prohibits one thing only, the making of a false statement.

The specificity of what section 1014 prohibits becomes even clearer when one compares it with other federal criminal statutes, which explicitly prohibit misleading statements as well as false ones. For instance, 18 U.S.C. § 1515(b) criminalizes "making a false or misleading statement." The word "misleading" in section 1515(b) would be pointless if "false" and "misleading" meant the same thing. *See also* 18 U.S.C. § 1365(b) (punishing one who "renders materially false or misleading the labeling of, or container for, a consumer product"); 18 U.S.C. § 1038(a)(1) (making it a crime to "convey false or misleading information").

Likewise, when Congress wants to prohibit fraudulent statements along with false ones, Congress does so explicitly. For example, 18 U.S.C. § 1001 prohibits the making of "any materially false, fictitious, or fraudulent statement." The term "fraudulent" in section 1001 would be meaningless if "false" and "fraudulent" were synonyms. *See also* 18 U.S.C. § 1035(a)(2) (prohibiting the making of "any materially false, fictitious, or fraudulent statements"); 18 U.S.C. § 1341 (prohibiting "false or fraudulent pretenses, representations, or promises"); 18 U.S.C. § 2314 (prohibiting "false or fraudulent pretenses, representations, or promises").

And when Congress wants to prohibit the concealment of information in addition to the making of a false statement, Congress does that explicitly as well. For instance, 18 U.S.C. § 1027 punishes one who "makes any false statement or representation of fact, knowing it to be false, or knowingly conceals,

covers up, or fails to disclose any fact the disclosure of which is … necessary to verify, explain, clarify or check for accuracy and completeness any report." If making a false statement included the omission of contextual information, every word after "false" in the quoted passage would be redundant. *See also* 15 U.S.C. § 77q(a)(2) (making it unlawful "to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading").

In short, Congress knows how to prohibit misleading statements, fraudulent statements, and omissions when it wants to. Congress specifically prohibits them by name. In section 1014, by contrast, Congress prohibited only false statements. The obvious inference is that section 1014 does not criminalize the making of statements that are merely misleading or fraudulent because the speaker omitted contextual information. Rather, the statute criminalizes only statements that are false.

This is the method the Court used in *United States v. Wells*, 519 U.S. 482 (1997), to decide that materiality is not an element of the offense described in section 1014. First, the Court explained, the statute itself does not mention materiality or require that false statements be material. *Id.* at 490. Second, the Court added, other federal criminal statutes *do* include a requirement of materiality. *Id.* at 492 ("When Congress originally enacted § 1014 as part of its recodification of the federal criminal code in 1948, 62 Stat. 752, it explicitly included materiality in other provisions involving false representations."). The

Court accordingly concluded that Congress did not intend materiality to be an element of section 1014. *Id.* at 493.

The same reasoning applies here. The text of section 1014 does not mention misleading statements, fraudulent statements, or omissions. Other federal criminal statutes *do* mention misleading statements, fraudulent statements, and omissions. The only sensible inference is that section 1014 does not prohibit these additional categories of wrongdoing. It just prohibits statements that are false.

This conclusion accords best with *Williams v. United States*, 458 U.S. 279 (1982), in which the Court held that section 1014 does not prohibit writing a bad check. In *Williams*, the government argued that writing a bad check implicitly constitutes a false statement that there are sufficient funds in one's bank account to cover the check. *Id.* at 285-86. But the Court rejected the government's theory. *Id.* at 286. The Court held instead that section 1014 only prohibits literal statements that are literally false. *Id.* at 284. "While" the government's "broader reading of § 1014 is plausible, we are not persuaded that it is the preferable or intended one," the Court explained. *Id.* at 286. "It slights the wording of the statute, for, as we have noted, a check is literally not a statement at all." *Id.* (citation and internal quotation marks omitted).

In dissent, Justice Marshall correctly observed that the Court's reasoning "would apply equally to material omissions or failures to disclose," because omissions and non-disclosures are also not literally false statements. *Id.* at 296 (Marshall, J., dissenting). The case Justice Marshall envisioned is precise-

ly our case. As Judge Sutton explained for the Sixth Circuit, *Williams* "goes a long way to resolving this case." *Kurlemann*, 736 F.3d at 446.

This conclusion also accords best with *Bronston v. United States*, 409 U.S. 352 (1973), in which the Court held that 18 U.S.C. § 1621, the federal perjury statute, does not prohibit testimony that is literally true but misleading. The statute defined perjury as a statement that the witness "does not believe to be true." 409 U.S. at 352 n.1. The Court acknowledged that in casual conversation, the deliberate fostering of a misleading impression is sometimes equated to lying. *Id.* at 357. "But we are not dealing with casual conversation," the Court continued, "and the statute does not make it a criminal act for a witness to willfully state any material matter that *implies* any material matter that he does not believe to be true." *Id.* at 357-58.

The same is true of section 1014. In ordinary conversation, a misleading statement might be considered a lie. But we are not dealing with casual conversation. We are interpreting a statute, one in which Congress deliberately punished just one kind of deceptive conduct, not every kind. Section 1014 prohibits the making of a "false" statement, not the making of a statement that is misleading.

The Seventh Circuit's interpretation of section 1014 also threatens to criminalize a vast and ill-defined range of statements. When prospective borrowers negotiate with financial institutions over the terms of a loan, and when past borrowers negotiate with financial institutions over the payment of a debt, these discussions include many assertions that may be misleading but are not false. For example, a

homebuyer negotiating for a mortgage might say, "I have an offer from another bank with a lower interest rate," without disclosing that the other bank requires a larger down payment. Statements of this sort are commonplace during negotiations: "This is my final offer." "I can get better terms from your competitor down the street." "I'm doing the best I can to repay the loan." "Business has been slow, but we expect it to pick up." If section 1014 prohibits statements that are not false, the government will possess an extraordinary discretionary power to prosecute borrowers and prospective borrowers for engaging in everyday commercial practices.

Finally, if there were any doubt left as to the proper interpretation of section 1014, the rule of lenity would tip the balance in favor of the Sixth Circuit's view and against the Seventh Circuit's view. Section 1014 is a serious criminal statute. A person who violates it can be imprisoned for thirty years and fined a million dollars. Before subjecting someone to such substantial criminal penalties, "when choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite." *Williams*, 458 U.S. at 290 (internal quotation marks omitted). As Judge Sutton observed, however, "[t]he only thing 'clear and definite' here is that Congress did not proscribe concealment, half-truths or omissions in § 1014." *Kurlemann*, 736 F.3d at 448.

III. This is an important issue, and this case is an excellent vehicle for resolving it.

This issue is important. "Section 1014 has always been a popular statute with prosecutors …. Section 1014 prosecutions have been quite common and have resulted in a relatively high conviction rate." John K. Villa, *Banking Crimes: Fraud, Money Laundering and Embezzlement* § 4.3 (Westlaw ed.). Whether the statute prohibits misleading statements as well as false ones is a question that has arisen frequently and is sure to arise frequently in the future.

This case is in the ideal posture for deciding whether section 1014 prohibits misleading statements as well as false ones. Both courts below decided the case on the assumption that Patrick Thompson's statements were misleading but not false. The District Court concluded: "Because the Court finds that literal falsity is not required to sustain a Section 1014 conviction, the Court does not address the Government's argument that Thompson's statements were literally false." App. 56a. The Court of Appeals likewise explained that "we need not decide whether Thompson's statements were literally true because … § 1014 criminalizes misleading representations." *Id.* at 9a. As the case arrives at this Court, therefore, it cleanly presents a pure question of law: whether section 1014 prohibits statements that are misleading but not false. If the Court interprets the statute literally, to prohibit only false statements, the parties' dispute about whether Thompson's statements were false can be resolved by the lower courts on remand.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

CHRIS GAIR
Gair Gallo Eberhard
1 E. Wacker Drive
Suite 2600
Chicago, IL 60601

STUART BANNER
Counsel of Record
UCLA School of Law
Supreme Court Clinic
405 Hilgard Ave.
Los Angeles, CA 90095
(310) 206-8506
banner@law.ucla.edu