No. 23-1095

In the Supreme Court of the United States

PATRICK D. THOMPSON, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner made "any false statement," for purposes of 18 U.S.C. 1014's bar on making such a statement to influence an action of the Federal Deposit Insurance Corporation or a bank that it insures, by stating that he owed a lender $110,000 when he knew that he owed $269,000, and by incorrectly stating the loan's purpose.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2a-23a) is reported at 89 F.4th 1010. The order of the district court (Pet. App. 24a-89a) is not published in the Federal Supplement but is available at 2022 WL 1908896.

JURISDICTION

The judgment of the court of appeals was entered on January 8, 2024. The petition for a writ of certiorari was filed on April 5, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted on two counts of making a false statement to a financial institution, in violation of 18 U.S.C. 1014, and five counts of filing false income tax returns, in

violation of 26 U.S.C. 7206(1). Judgment 1. He was sentenced to four months of imprisonment, to be followed by one year of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 2a-23a.

1. Between 2011 and 2014, petitioner took out three loans from Washington Federal Bank for Savings that totaled $219,000. Pet. App. 3a. Initially, petitioner borrowed $110,000 to make an equity contribution to a law firm he had joined. *Ibid.* For that loan, petitioner signed a promissory note listing his home address and stating that the loan was secured by that property. *Ibid.*

Petitioner subsequently took out two additional loans with a combined value of $109,000. Pet. App. 3a. He first borrowed $20,000 to pay a tax bill. *Ibid.* He then borrowed another $89,000 to repay a debt to another bank. *Ibid.* Petitioner did not sign any paperwork for those loans. *Ibid.*

In 2014, the president of Washington Federal e-mailed petitioner a list of the three loans, stating that petitioner owed $219,000 plus interest, which at that time resulted in a total debt of $232,273.82. Pet. App. 3a. In 2016, in two separate loan applications, petitioner stated that he owed $249,050 to Washington Federal. *Ibid.* And a year later, he received a statement from Washington Federal showing that his outstanding balance was $249,049.96. *Ibid.* Petitioner gave that invoice to his accountant and kept a copy in an envelope on which he wrote, "Washington Fed $249,049.96?" *Id.* at 3a-4a.

Washington Federal failed in 2017. Pet. App. 4a. The Federal Deposit Insurance Corporation (FDIC) became its receiver, assuming responsibility for collecting money owed to the bank. *Ibid.* The FDIC's loan

servicer thereafter sent petitioner an invoice showing a loan balance of $269,120.58. *Ibid.*

In February 2018, petitioner called the loan servicer. Pet. App. 4a. During that recorded call, petitioner stated that "the numbers that you've sent me show[] that I have a loan for $269,000. I—I borrowed $100,000" or "$110,000." *Ibid.* He claimed that he had "no idea where the 269 number comes from" and that he was "shocked" and "very perplexed" by that amount, which was "significantly higher" than "remotely . . . what we were talking about." *Ibid.* He added that he "want[ed] to quickly resolve all this" and said, of the $269,000 figure, "I dispute that." *Id.* at 4a-5a. During a second phone call in March 2018, petitioner told two FDIC contractors that he disputed owing around $269,000. *Id.* at 5a. He further stated that he had borrowed $110,000 for "home improvement." *Ibid.*

Petitioner and the FDIC later settled his debt for $219,000, the amount of the loans without interest. Pet. App. 5a. In those negotiations, petitioner maintained that he did not owe interest on the loans. *Ibid.* The FDIC believed it might struggle to collect interest because Washington Federal had not kept proper records. *Ibid.*

2. A federal grand jury sitting in the Northern District of Illinois charged petitioner with two counts of making a false statement to a financial institution, in violation of 18 U.S.C. 1014, as well as five tax offenses. Indictment 1-10. Section 1014 prohibits "knowingly mak[ing] any false statement or report * * * for the purpose of influencing in any way the action of" the FDIC (or another listed entity) upon any loan. 18 U.S.C. 1014. The first Section 1014 count charged petitioner with falsely stating during the February 2018

phone call that "he only owed $100,000 or $110,000 to Washington Federal and that any higher amount was incorrect." Indictment 3. The second Section 1014 count charged petitioner with falsely stating on the March 2018 call that "he only owed $110,000 to Washington Federal, that any higher amount was incorrect, and that these funds were for home improvement." Indictment 4.

At the close of trial, the district court read to the jurors "the specific language of the false statements alleged in the indictment," Pet. App. 42a, and instructed them that in order to return a guilty verdict, they had to find, among other elements, that petitioner made the "charged" statements, 2/14/22 Trial Tr. (Tr.) 1323, 1325; see Pet. App. 43a. The jury found petitioner guilty on both Section 1014 counts (Counts 1 and 2), as well as all the tax counts. Tr. 1428-1429. On Count 2, the jury returned a special verdict finding that petitioner made both false statements alleged in that count: *i.e.*, that he "only owed $110,000" to Washington Federal and that "any higher amount was incorrect" and that "the funds he received from Washington Federal were for home improvement." Pet. App. 6a; see Tr. 1323, 1325, 1332-1333, 1428. The district court denied petitioner's motion for judgment of acquittal and a new trial, Pet. App. 24a-89a, and sentenced him to four months of imprisonment, Judgment 2-3.

3. The court of appeals affirmed. Pet. App. 2a-23a. The court rejected petitioner's contention that he did not violate Section 1014, premised on the theory that while "his statements may have misrepresented what he owed," they were "literally true." *Id.* at 8a; see *id.* at 7a-12a. The court explained that, even assuming that petitioner's statements were true in a technical sense

and thus merely "misleading," circuit precedent recognized that Section 1014 "criminalizes misleading representations." *Id.* at 9a; see *United States* v. *Freed*, 921 F.3d 716, 723 (7th Cir. 2019) (statement's falsity depends on how it would "naturally be understood"). And the court accordingly determined that petitioner's insistence "he had borrowed $110,000," and his expression of "shock" at "being told that he owed upwards of $260,000," constituted "false statements" under Section 1014. Pet. App. 10a.

ARGUMENT

Petitioner renews his claim (Pet. 13-18) that he did not make "any false statement" within the meaning of 18 U.S.C. 1014 by claiming to owe his lender only $110,000 when he knew that he owed about $269,000, and by incorrectly stating the loan's purpose. But his statements were false by any measure, and his contrary argument would not entitle him to relief in any circuit. No further review is warranted.

1. The court of appeals correctly rejected petitioner's claim that he did not make a "false" statement within the meaning of Section 1014. Pet. App. 7a-12a.

a. As a threshold matter, petitioner errs at the outset by claiming (Pet. 5) that he "was convicted under 18 U.S.C. § 1014 for stating that he borrowed $110,000 and that he disputed owing $269,000"—statements he characterizes as "misleading" but technically "not false." That premise is mistaken.

Petitioner was indicted and a jury found him guilty not just for saying he borrowed $110,000 and disputed borrowing $269,000, but also for stating "that any higher amount was incorrect" (Counts 1 and 2) and that the funds were for "home improvement" (Count 2). Indictment 3-4; Tr. 1323, 1325, 1332-1333, 1428. Petitioner

does not challenge the sufficiency of the evidence supporting the jury's findings that he made the statements as charged. And those statements were false under any standard of falsity.

As petitioner knew, he had received much more than $110,000 in loans, and the loans were steadily accumulating unpaid interest. It was also plainly false that the loan was for home improvement; petitioner knew that he had borrowed the initial funds for his law-firm capital contribution. See Gov't C.A. Br. 41-42. Petitioner's claim that Section 1014 does not prohibit merely misleading representations is beside the point.

b. Even if petitioner had made only the "misleading" statements that he had borrowed $110,000 and disputed the $269,000 figure, he still would have violated Section 1014. As the court of appeals correctly recognized, Pet. App. 9a, Section 1014 criminalizes misleading representations and is not limited to "literally false" statements.

A "false statement" under Section 1014 is "a factual assertion" that can "be characterized as 'true' or 'false.'" *Williams* v. *United States*, 458 U.S. 279, 284 (1982). In ordinary usage, the word "false" has never been limited by notions of "technical" or "literal" veracity. See, *e.g.*, *Webster's Third New International Dictionary* 819 (1981) (defining "false" as "not true," "deceitful," "tending to mislead") (capitalization and emphasis omitted); *Webster's New International Dictionary of the English Language* 787 (1917) (defining "false" as "Uttering falsehood; unveracious; given to deceit; dishonest"; "Not according with truth or reality; not true; erroneous; as, a *false* statement"; "Not genuine or real; assumed or designed to deceive").

Indeed, even petitioner's own gloss on the statutory language—"literally false" (Pet. 5, 16)—presupposes

that a statement can be "false" even without being an express and literal falsehood. And legal usage accords with that plain-language meaning. In law as in life, "half of the truth may obviously amount to a lie, if it is understood to be the whole." W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 106, at 738 (5th ed. 1984).

This understanding of falsity accords with common sense. On petitioner's view, a child's statement that she "ate one cookie," after having cleaned out the whole cookie jar, would not be a "false" statement because it could be viewed as technically true: she ate one, and then all the rest. Similarly, petitioner would not have made a false statement here even if he had claimed to owe $500 (or *any* nonzero amount) and disputed the real, higher figure. That hypertechnical view of what it means for a statement to be "false" is untenable and inconsistent with normal usage.

Other features of Section 1014's text reinforce its coverage of statements that falsely imply that they are the whole truth. See *Diaz* v. *United States*, 144 S. Ct. 1727, 1735 (2024) (emphasizing "a word's meaning is informed by its surrounding context," and a "crucial part of that context is the other words in the sentence"). The statute prohibits not "a" but "*any* false statement," 18 U.S.C. 1014 (emphasis added), which "suggests a broad meaning." *Ali* v. *Federal Bureau of Prisons*, 552 U.S. 214, 219 (2008). Furthermore, it criminalizes false statements made "for the purpose of influencing in any way the action of" the lenders and other financial institutions listed in the statute. 18 U.S.C. 1014. It would be anomalous to read a law designed to protect lenders from being "influenc[ed] in any way" as excluding misleading statements. *Ibid.*

Precedent points in the same direction. In *Kay* v. *United States*, 303 U.S. 1 (1938), this Court encountered a similarly phrased statutory predecessor, Section 8(a) of the Home Owners' Loan Act of 1933, ch. 64, 48 Stat. 128, that was later consolidated with several others into Section 1014. 48 Stat. 134 (prohibiting "mak[ing] any statement, knowing it to be false, * * * for the purpose of influencing in any way the action of the Home Owners' Loan Corporation" et al.); see *United States* v. *Wells*, 519 U.S. 482, 494-495 (1997); *Williams*, 458 U.S. at 288 (interpreting Section 1014 by reference to these predecessor statutes). In rejecting a constitutional challenge to the law, the Court explained that "Congress was entitled to secure protection" of the home-loan program "against false and misleading representations." *Kay*, 303 U.S. at 7; see *id.* at 6 (statute prohibits statements made "falsely with intent to mislead" and "to deceive by false information").

Because "Congress expects its statutes to be read in conformity with this Court's precedents," *Wells*, 519 U.S. at 495, that understanding of "false" should inform the interpretation of the modern Section 1014. The Court more recently relied on *Kay* in *Wells*, where it declined to read a materiality element into Section 1014. *Id.* at 494-495. And the relevant false statements in *Wells* constituted "concealing from several banks" information contained in "secret side agreements" that the defendant did not disclose. *Id.* at 484-485.

c. Petitioner provides no sound basis why a statement that is contextually "false" would not satisfy the language of the statute.

Petitioner cites (Pet. 14-15) other laws that use terms like "misleading" or "fraudulent" in conjunction with "false," but none of them supports his "literal

falsity" gloss on Section 1014. The other provisions were enacted at various times, some of them decades apart. *E.g.*, Stop Terrorist and Military Hoaxes Act of 2004, Pub. L. No. 108-458, Tit. VI, Subtit. H, § 6702, 118 Stat. 3764-3766 (18 U.S.C. 1038). Even for those few (18 U.S.C. 1001, 1341, and 2314) that were part of the same 1948 recodification as Section 1014, see *Scheidler* v. *National Org. for Women, Inc.*, 547 U.S. 9, 20 (2006), the relevant language either appeared before 1948, see Act of Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095-1096 (original version of Section 1001); § 215, 35 Stat. 1130-1131 (original version of Section 1341), or was inserted after 1948, see Act of July 9, 1956, ch. 519, 70 Stat. 507 (amending Section 2314). Accordingly, the kind of inference that can be drawn when Congress includes "particular language in one section of a statute but omit[s] it in another section *of the same Act*," *Johnson* v. *United States*, 559 U.S. 133, 143 (2010) (citation omitted), does not apply here.

Petitioner's reliance (Pet. 16) on *Williams* v. *United States* is likewise misplaced. *Williams* held that depositing a check supported by insufficient funds did not violate Section 1014 because "a check is not a factual assertion at all," and thus not a "statement" that can be true or false. 458 U.S. at 284. The Court therefore had no occasion to address the literal-falsity issue. In fact, Justice Marshall's dissenting opinion, joined by three other Justices, "assume[d] that the majority" would agree "that the failure to disclose material information needed to avoid deception in connection with loan transactions covered by § 1014 constitutes a 'false statement or report,' and thus violates the statute," *id.* at 296, and the opinion of the Court said nothing to the contrary.

Petitioner similarly errs in relying (Pet. 17) on *Bronston* v. *United States*, 409 U.S. 352 (1973). *Bronston* held that the federal perjury statute, 18 U.S.C. 1621, does not prohibit a trial witness's "answer, under oath, that is literally true but not responsive to the question asked and arguably misleading by negative implication." 409 U.S. at 353. The case turned on that statute's distinct language—referring not to a "false statement" but to a statement the speaker "does not believe to be true"—and the distinct context of providing testimony. See *id.* at 357-360. And as this Court has made clear, "Congress did not codify the crime of perjury or comparable common-law crimes in § 1014." *Wells*, 519 U.S. at 491.

Petitioner's fears (Pet. 17) of expansive liability are unsound. As this Court emphasized in rejecting much the same argument in *Wells*, Section 1014 applies "only if the speaker knows the falsity of what he says and intends it to influence" one of the enumerated financial institutions. 519 U.S. at 499. The statute also does not reach forms of "deception" and "fraudulent behavior" (Pet. 13), such as a "pure omission," that do not involve a statement, *Macquarie Infrastructure Corp.* v. *Moab Partners, L.P.*, 601 U.S. 257, 263 (2024). Nothing about the statute is either unclear or uncommonly broad.

2. Petitioner suggests (Pet. 6-13) a conflict in the courts of appeals about Section 1014's applicability to representations that are "literally true." As an initial matter, this case could not implicate any such disagreement, because as noted above, see pp. 5-6, petitioner's statements were not "literally true." He thus could not prevail under any circuit's approach, and this Court does not grant a writ of certiorari to "decide abstract questions of law * * * which, if decided either way,

affect no right" of the parties. *Supervisors* v. *Stanley*, 105 U.S. 305, 311 (1882). And in any event, his claim of circuit disagreement is overstated.

Petitioner acknowledges that four courts of appeals (the Fifth, Seventh, Eighth, and Tenth Circuits) have squarely rejected the rule he urges. Pet. 11-13; see *United States* v. *Freed*, 921 F.3d 716, 723 (7th Cir. 2019); *United States* v. *Copus*, 110 F.3d 1529, 1535 (10th Cir. 1997); *United States* v. *Wells*, 63 F.3d 745, 752 (8th Cir. 1995), vacated on other grounds, 519 U.S. 482 (1997); *United States* v. *Greene*, 578 F.2d 648, 657 (5th Cir. 1978), cert. denied, 439 U.S. 1133 (1979). The Second and Ninth Circuits have also found that certain statements, even if literally true, violated Section 1014. See *United States* v. *Autorino*, 381 F.3d 48, 52 (2d Cir. 2004) (defendant's "concealment, while pledging the stock certificate, of the fact that he had fraudulently caused the certificate to be cancelled and replaced" satisfied Section 1014); *United States* v. *Miller*, 676 F.2d 359, 363 (9th Cir.) (rejecting the defense that statements "literally construed" were true when they typically would not be interpreted in that manner), cert. denied, 459 U.S. 856 and 459 U.S. 866 (1982). And although the Third Circuit has not found it necessary to resolve the question, see Pet. 6 n.2, it has described petitioner's position as "at least questionable." *United States* v. *Ryan*, 828 F.2d 1010, 1014 (1987), abrogated on other grounds by *Wells*, 519 U.S. 482.

Petitioner asserts (Pet. 6-11) that three courts of appeals—the First, Sixth, and Eleventh Circuits—require a statement to be "literally false" to violate Section 1014. But the statement that he quotes from the First Circuit's decision in *United States* v. *Attick*, 649 F.2d 61, cert. denied, 454 U.S. 861 (1981)—"one cannot

be convicted under 18 U.S.C. § 1014 if the statement claimed to be false is, in fact, literally true," *id.* at 63—did not address a contextually false statement. Instead, the First Circuit was considering a simple yes-or-no dispute about whether an "Event of Default" had occurred under a contract, *id.* at 63-65. The First Circuit found sufficient evidence that one had occurred and that the defendant knew it, and accordingly affirmed his conviction under Section 1014. See *ibid.* And the First Circuit has subsequently affirmed convictions under Section 1014 based on a defendant's misleading omissions of relevant secondary mortgages in a settlement statement. See *United States* v. *Concemi*, 957 F.2d 942, 950-951 (1992).

The Eleventh Circuit's decision in *United States* v. *Thorn*, 17 F.3d 325 (1994), likewise did not adopt petitioner's rule. In that case, the Eleventh Circuit found that the relevant "statement," a title insurance policy that the defendant submitted to a financial institution, did not contain even "implied false statements," because it "did not make any representation as to the state of" the relevant preexisting mortgage. *Id.* at 328-329 (internal quotation marks omitted). Moreover, the Fifth Circuit decision that petitioner recognizes as in accord with the decision below in this case, see Pet. 11, predates the separation of the Fifth and Eleventh Circuits and thus would bind the Eleventh Circuit as well as the Fifth. See *Bonner* v. *City of Prichard*, 661 F.2d 1206, 1207-1209 (11th Cir. 1981) (en banc).

The Sixth Circuit's view in *United States* v. *Kurlemann*, 736 F.3d 439 (2013), that "a false-statement prosecution under § 1014 cannot generally be premised on implied representations," *id.* at 447, is in at least some tension with the reasoning of the decision below.

But *Kurlemann* did not question "the rule that an omission may amount to a false assertion if the omitted information is specifically requested or if the defendant was under a legal duty to disclose the admitted information." *Id.* at 449. And it relied on circuit precedent that recognized that a document may contain "implied factual assertions" based on "the system of statutes, regulations, and announced policies" that created it. *United States* v. *Waechter*, 771 F.2d 974, 978-979 (1985); see *Kurlemann*, 736 F.3d at 448.

The Sixth Circuit's decision in *Kurlemann* does not support petitioner's request for further review in this case. It is unclear how practically meaningful any disagreement between the two circuits might be. And it is far from clear that the Sixth Circuit would find petitioner's conduct here—in which petitioner responded to a request for repayment of a $269,120.58 balance by falsely asserting that he had "no idea" where the number came from and recalled only a single $100,000 or $110,000 loan, Pet. App. 4a-5a—to be outside the scope of Section 1014.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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