No. 23-1095

In the Supreme Court of the United States

PATRICK D. THOMPSON, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
NICOLE M. ARGENTIERI
Principal Deputy Assistant Attorney General
ERIC J. FEIGIN
Deputy Solicitor General
CAROLINE A. FLYNN
Assistant to the Solicitor General
SOFIA M. VICKERY
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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, by stating that he owed a lender $110,000 when he knew that he owed more than $269,000 and by asserting that he had borrowed money for one reason when he knew that it had been for a different reason.

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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 and granted on October 4, 2024. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

Section 1014 of Title 18 provides:

> Loan and credit applications generally; renewals and discounts; crop insurance.

Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of the Federal Housing Administration, the Farm Credit Administration, Federal Crop Insurance Corporation or a company the Corporation reinsures, the Secretary of Agriculture acting through the Farmers Home Administration or successor agency, the Rural Development Administration or successor agency, any Farm Credit Bank, production credit association, agricultural credit association, bank for cooperatives, or any division, officer, or employee thereof, or of any regional agricultural credit corporation established pursuant to law, or a Federal land bank, a Federal land bank association, a Federal Reserve bank, a small business investment company, as defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or the Small Business Administration in connection with any provision of that Act, a Federal credit union, an insured State-chartered credit union, any institution the accounts of which are insured by the Federal Deposit Insurance Corporation, * * * any Federal home loan bank, the Federal Housing Finance Agency, the Federal Deposit Insurance Corporation, the Farm Credit System Insurance Corporation, or the National Credit Union Administration Board, a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), an organization operating under section 25 or section 25(a) * * * of the Federal Reserve Act, or a mortgage lending business, or any person or entity that makes in whole or in part a federally related mortgage loan

as defined in section 3 of the Real Estate Settlement Procedures Act of 1974, upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, loan, or insurance agreement or application for insurance or a guarantee, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both. The term "State-chartered credit union" includes a credit union chartered under the laws of a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

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 the Federal Deposit Insurance Corporation (FDIC), 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). J.A. 163. He was sentenced to four months of imprisonment, to be followed by one year of supervised release. J.A. 178-179. The court of appeals affirmed. Pet. App. 2a-23a.

1. Between 2011 and 2014, petitioner took out multiple loans from Washington Federal Bank for Savings, a federally insured bank, that totaled $219,000 in principal. Pet. App. 3a. But when the bank failed in 2017 and the FDIC became its receiver, petitioner deliberately told FDIC collectors that he had borrowed less than half of that amount and asserted a nonexistent purpose for his borrowing. See *id.* at 3a-5a.

a. Initially, petitioner borrowed $110,000 to make an equity contribution to a law firm that he had joined. Pet. App. 3a; see J.A. 14-15, 32, 34-36.

Petitioner subsequently took out two additional loans from Washington Federal with a combined value of $109,000. Pet. App. 3a. He first borrowed $20,000 to pay a tax bill. *Ibid.*; see Trial Tr. 886-889. He then borrowed $89,000 to repay a debt to another bank. Pet. App. 3a; see J.A. 22-25, 107-109. Petitioner did not sign any paperwork for the latter two loans, but he personally picked up the checks. Pet. App. 3a, 58a; see Trial Tr. 494-496; J.A. 15-25.[1]

Petitioner made a single interest payment of $389.58 on the first loan in 2012; he made no further payments after that. Pet. App. 27a-28a; see Trial Tr. 459, 987. In 2014, the president of Washington Federal e-mailed petitioner a list of the loans, informing petitioner that he owed $219,000 plus interest, which at that time resulted in a total debt of $232,273.82. Pet. App. 3a; see J.A. 28-30.

In 2016, in two loan applications, petitioner stated that he owed $249,050 to Washington Federal. Pet. App. 3a; see J.A. 40-46. And in early 2017, petitioner received a tax document from Washington Federal similarly showing an outstanding loan balance of $249,049.96. Pet. App. 3a; see J.A. 47-49. Petitioner gave that document to his accountant and placed a copy in an envelope on which he wrote, "Washington Fed $249,049.96?" and "Tax." Pet. App. 3a-4a; J.A. 47-48.

b. In late 2017, Washington Federal failed. Pet. App. 4a. The FDIC became its receiver, assuming

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[1] Notwithstanding the absence of loan paperwork associated with the additional amounts, petitioner appears to agree that they were "loans." See Pet. 2, 4.

responsibility for collecting the money that the bank was owed. *Ibid.*; see Trial Tr. 781, 821. In February 2018, the FDIC's loan servicer, Planet Home Lending, sent petitioner an invoice showing a loan balance of $269,120.58. Pet. App. 4a; see J.A. 61.[2]

On February 23, 2018, petitioner called Planet Home's customer-service line. Pet. App. 4a; see J.A. 50-63. During that recorded call (see Pet. App. 30a n.4), petitioner told the Planet Home agent that he had "just received some mail from you guys" and that "the numbers that you've sent me show[] that I have a loan for $269,000 dollars. I—I borrowed $100,000." J.A. 51-52. Petitioner stated that he "signed a Promissory Note * * * for $100,000" but asserted that he "ha[d] no idea where the 269 number comes from." J.A. 52. He further professed to "have no idea what paperwork you have, * * * cause this doesn't match with anything I have." *Ibid.* He claimed to be "shocked" and "very perplexed" by the $269,000 amount, which he said was "significantly higher and much more than—remotely of what we were talking about." J.A. 52, 55. And later on the call, petitioner said, "I mean, I borrowed the money, I owe the money—but I borrowed $100 * * * I think it was $110,000 dollars." J.A. 56.

The Planet Home agent asked if petitioner was claiming a "discrepancy," and petitioner agreed. J.A. 53; see J.A. 55. Petitioner said he wanted to "quickly resolve all this" because the letter obligated him to make a particular installment payment, but he "d[idn't] think that's the right amount" because it was "based on * * * $269,000." J.A. 56. The agent assured him that Planet Home would look into the matter "right away"

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[2] Petitioner was aware that Planet Home was collecting on behalf of the FDIC. J.A. 51, 55; see Pet. App. 30a.

and would "resolv[e] this issue for you." J.A. 57; see J.A. 59. Before the call ended, petitioner reiterated that the letter that he had received showed an unpaid "balance" of "269,120.58" and stated, "I dispute that." J.A. 61. After the call, the Planet Home agent logged in his notes that petitioner was "disputing the Princ[ipal] balance" and "believed that he borrowed $110,000." Trial Tr. 1184.

On March 1, 2018, petitioner had a call with two FDIC contractors, which was not recorded but which the contractors summarized in internal notes. Pet. App. 5a; see J.A. 138. On that call, petitioner again asserted that he "owed $110,000." J.A. 119; see J.A. 66, 138. He also said that he "disputed his balance" of approximately $269,000. J.A. 120; see J.A. 66, 69, 85, 102, 118, 138. And he told the FDIC contractors that he had borrowed the original $110,000 for "home improvement"—not to make an equity contribution to his law firm. J.A. 93, 110, 138. After the March 1 call, the FDIC contractors located records of the second and third loans. J.A. 67. When they told petitioner that they had found proof of the amounts he had claimed to dispute, petitioner said he would "review his records." J.A. 139-140; see J.A. 67-68, 70-71.

In November 2018, petitioner and the FDIC settled petitioner's debt for $219,000, the amount of the loans without interest. Pet. App. 5a; see C.A. App. A141-A142. Petitioner had continued to maintain that he did not owe interest to Washington Federal, and the FDIC believed that it might struggle to collect the debt in full because the bank had not kept proper records. Pet. App. 5a; see C.A. App. A141, A144-A146.

2. In 2021, a federal grand jury in the Northern District of Illinois charged petitioner with two counts of

making a false statement to influence the FDIC, in violation of 18 U.S.C. 1014, as well as five tax offenses. J.A. 1-12.

Section 1014 prohibits, among other things, "knowingly mak[ing] any false statement or report * * * for the purpose of influencing in any way the action of * * * the Federal Deposit Insurance Corporation * * * upon any * * * loan." 18 U.S.C. 1014. The first Section 1014 count (Count One) charged petitioner with falsely stating during the February 23, 2018 phone call that "he only owed $100,000 or $110,000 to Washington Federal and that any higher amount was incorrect." J.A. 4. The second Section 1014 count (Count Two) charged petitioner with falsely stating on the March 1, 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." J.A. 5.

At the close of evidence, the district court read to the jurors the statements charged in the indictment and provided a copy of the indictment to the jury. J.A. 156-158; Trial Tr. 1317. The court instructed the jury that the elements of the charged Section 1014 counts are that (1) petitioner orally made the "charged false statement"; (2) "at the time [petitioner] made the statement, he knew it was false"; and (3) petitioner made the statement with the intent to influence the action of the FDIC in collecting money petitioner owed. J.A. 157-158. With respect to Count Two, the court explained that the indictment alleged two false statements—(1) that petitioner "only owed [$]110,000 to Washington Federal and that any higher amount was incorrect" and (2) that the funds were for "home improvement"—and that to find petitioner guilty, the jury had to unanimously

agree on which particular false statement or statements he had made. J.A. 158; see Trial Tr. 1332-1333.

The jury found petitioner guilty on both Section 1014 counts, as well as all the tax counts. J.A. 160. On Count Two, the jury returned a special verdict finding that petitioner made all false statements alleged in that count. J.A. 160; see Trial Tr. 1332-1333. The district court denied petitioner's motion for a judgment of acquittal or a new trial, Pet. App. 24a-89a, and sentenced him to four months of imprisonment, J.A. 178.

3. The court of appeals affirmed. Pet. App. 2a-23a. The court rejected petitioner's contention that he did not violate Section 1014, which hinged on the theory that while "his statements may have misrepresented what he owed," they were (in his view) "literally true." *Id.* at 8a; see *id.* at 7a-12a. The court stated that, even assuming petitioner's statements were "literally true," circuit precedent recognized that Section 1014 "criminalizes misleading representations." *Id.* at 9a (citing *United States* v. *Freed*, 921 F.3d 716, 723 (7th Cir. 2019)); see *id.* at 9a-10a. The court observed that one of its previous decisions had explained that a statement's falsity depends upon how the statement would "naturally be understood" and what it "clearly indicated," even if the words were "technically true." *Id.* at 9a (quoting *Freed*, 921 F.3d at 723).

Turning to address the particular statements that the jury had found to be knowingly "false," J.A. 157, the court of appeals observed that "[i]n the face of being told that he owed upwards of $260,000," petitioner had "expressed shock, disputed that figure, and insisted that he had borrowed $110,000." Pet. App. 10a. The court explained that "[e]ven if [petitioner] never used the precise words, the implication of his statements was

that he owed Washington Federal no more than $110,000—something that was untrue." *Ibid.* The court accordingly concluded that petitioner had knowingly made "false statements" within the meaning of Section 1014. *Ibid.* And because the court rejected petitioner's theory that "literal truth is * * * a defense to a § 1014 charge," *id.* at 12a, it did not decide whether—as the government had maintained—petitioner would still be liable even under that theory, see *id.* at 9a.

SUMMARY OF ARGUMENT

The court of appeals correctly upheld petitioner's convictions under 18 U.S.C. 1014 for making "false statements" to FDIC collectors. Like typical speakers of English, the 12 members of the jury understood that the phrase "any false statement" includes statements that inaccurately convey that they are the whole truth, like petitioner's underreporting of his debt. Statutory context and precedent confirm that the word "false" has no specially constrained meaning in Section 1014 that would invite perplexing results. And petitioner's contrary approach, which he labels a requirement of "literal falsity," flouts plain language, finds no footing in this Court's decisions, relies on comparisons to inapposite statutes, and defies common sense. Nor would such an approach even change the result in this case. The Court should affirm.

I. A. Section 1014 prohibits knowingly making "any false statement or report" to a listed federal lender or other financial institution "for the purpose of influencing" the action of that entity "in any way." 18 U.S.C. 1014. In ordinary usage, both today and when Section 1014 was enacted in 1948, a factual assertion is "false"—*i.e.*, untrue, erroneous, or deceptive—if it does not state the whole truth in a setting where the listener would

reasonably understand the statement to be both accurate and complete.

Context is essential to meaning, as this Court has recognized time and again. The ordinary concept of falsity is accordingly not limited to words that are inaccurate only when construed in a vacuum. If a driver tells an inquiring police officer that he "had just one cocktail" when he also had four glasses of wine, his statement is false.

The rest of Section 1014's text confirms that "false" carries that commonsense meaning in Section 1014. The statute proscribes the making of "'*any*' false statement"—that is, "a false statement 'of whatever kind.'" *Brogan* v. *United States*, 522 U.S. 398, 400 (1998) (emphasis added; citation omitted). Statements that are untrue in context clearly qualify, even if they might be characterized as accurate in some hypertechnical respect or in some other setting.

Moreover, Section 1014 specifically targets false "statement[s]" or "report[s]" 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. And it specifically encompasses those entities' actions with respect to, *inter alia*, "application[s]," "advance[s]," and "loan[s]." *Ibid.* Statements to lenders in loan applications frequently involve representations about monetary amounts and other accounting details where accuracy is at a premium.

According to petitioner, however, it would have been perfectly legal for him to inform the FDIC that he "borrowed $1" from Washington Federal—even if he really borrowed (and therefore owed the FDIC) $259,999 more. It makes no sense for Congress to have exempted knowing understatements from Section 1014's

prohibition so long as the incorrect information is carefully phrased.

Precedent reinforces that Section 1014 does not employ the word "false" in that peculiar and self-defeating way. A decade before Section 1014's enactment as part of the 1948 recodification of the federal criminal code, this Court understood similar language in one of Section 1014's statutory predecessors—a prohibition on "'mak[ing] any statement, knowing it to be false'" to the Home Owners' Loan Corporation—to encompass "false *and misleading* representations." *Kay* v. *United States*, 303 U.S. 3 n.1, 7-8 (1938) (emphasis added; citation omitted). Not only does *Kay* illustrate how the term "false" would have naturally been understood during the relevant time period, but this Court "presume[s] that Congress expects its statutes to be read in conformity with this Court's precedents." *United States* v. *Wells*, 519 U.S. 482, 495 (1997). And this Court has already applied that principle with respect to *Kay* and Section 1014. See *id.* at 494-495.

B. Petitioner's arguments in favor of his crabbed understanding of falsity are unsound. He primarily argues that the word "false" must be construed narrowly in Section 1014 because *other* federal statutes pair that word with additional adjectives like "misleading." But none of his comparator provisions—which were enacted at disparate times and arise in a wide range of subject areas—were enacted alongside Section 1014, depriving them of probative force as to the meaning of that distinct statute. See *Johnson* v. *United States*, 559 U.S. 133, 143 (2010). Furthermore, this Court has long recognized that "redundancies are common in statutory drafting," *Pugin* v. *Garland*, 599 U.S. 600, 609 (2023) (citation omitted), and the use of overlapping terms in

other statutes does nothing to limit the plain meaning of "any false statement" in the standalone Section 1014.

Petitioner also invokes two precedents of this Court, but neither sheds light on the interpretive dispute here. In *Williams* v. *United States*, 458 U.S. 279 (1982), which considered Section 1014's application to writing checks on insufficient funds, this Court held that a check is not a factual "statement" at all. That holding, which turned on the legal properties of a check, has no bearing on the meaning of the statutory term "false." Likewise, the Court's narrow construction of the perjury statute in *Bronston* v. *United States*, 409 U.S. 352 (1973)—which turned on the nature of adversarial cross-examination at a trial and the history of perjury law—has no application to the question presented here.

Finally, to whatever extent that petitioner's policy concerns could limit Section 1014's plain text, they are misplaced. Understanding the word "false" to include statements that inaccurately appear to be the whole truth does not create a generalized disclosure obligation about collateral matters that the statement does not inherently cover. Nor does Section 1014 sweep in pure omissions, even if deceptive; the text requires an affirmative "statement" of some kind. And petitioner's speculation that the statute could apply to strategic bluster during negotiations is unfounded. He points to no such prosecutions, and such puffery has not traditionally been understood as fraudulent.

II. Even if petitioner were correct that Section 1014 imposes some heightened standard of "literal falsity," the statements underlying his convictions would qualify. After receiving an invoice from the FDIC's collectors informing him that he owed the regulator over $269,000, he responded that he "borrowed $110,000"

and "dispute[d]" the invoice amount. Those statements were "literally false." At all events, there is no question that the statement forming the alternative basis for petitioner's conviction on the second Section 1014 count—that his original loan was for "home improvement" when in fact it was for a capital contribution to his law firm—qualifies as "false" under any conceivable reading.

ARGUMENT

I. TEXT, CONTEXT, AND HISTORY SHOW THAT PETITIONER'S UNDERSTATEMENT OF HIS DEBT AND MISSTATEMENT OF ITS PURPOSE WERE "FALSE STATEMENTS" UNDER 18 U.S.C. 1014

The phrase "any false statement" means the same thing in Section 1014 that it does in ordinary English: an untrue or deceptive statement. As the 12 members of the jury—instructed simply that a guilty verdict required a "false" statement—understood, an inherently incomplete statement can be "false" even if in some nominal sense, or in some alternative context, it might not be characterized that way. A gambler who lost a total of $2000 in Las Vegas has made a false statement if he says he "lost $20." Petitioner's effort (*e.g.*, Br. 7) to engraft a hypertechnical requirement of "literal falsity" onto the statute contravenes the well-understood ordinary meaning of "false," clashes with the rest of Section 1014, overlooks this Court's pre-enactment interpretation of the same statutory phrase, and would generate bewildering results.

A. In Section 1014, As In Ordinary English, "Any False Statement" Includes A Factual Statement Inaccurately Appearing To Be The Whole Truth

Text, context, and precedent all support according "any false statement" its plain and ordinary meaning,

which includes factual assertions that are, in context, inaccurate or incomplete regarding the subject at hand. Just as it would be a false statement for a driver to tell an inquiring police officer that he "had just one cocktail" when he also had four glasses of wine, it is a false statement for someone to assert to a collector that he "borrowed $110,000" when in actuality he borrowed $159,000 more.

1. The plain meaning of "any false statement" includes factual assertions that inaccurately appear to be the entire truth

Where "the plain language" of the statute is "'unambiguous,'" the Court's inquiry "'begins with the statutory text, and ends there as well.'" *National Ass'n of Mfrs.* v. *Department of Def.*, 583 U.S. 109, 127 (2018) (citation omitted). And here, the plain language of Section 1014, which prohibits "any false statement" to influence an action of the FDIC or other lenders, 18 U.S.C. 1014, clearly includes a statement that, in context, appears to be conveying the whole truth when it is not.

a. Section 1014 covers "factual assertion[s]" that can "be characterized as 'true' or 'false.'" *Williams* v. *United States*, 458 U.S. 279, 284 (1982). In ordinary usage—both today and when Section 1014 was enacted in 1948, see Act of June 25, 1948, ch. 645, 62 Stat. 683, 752—a factual assertion that seems to be the whole truth, but is not, is "false," not "true."

The word "false" generally means "[n]ot according with truth or reality; not true; erroneous; incorrect." *Webster's New International Dictionary of the English Language* 914 (2d ed. 1947); see *Funk & Wagnalls New Standard Dictionary of the English Language* 893 (1946) ("[c]ontrary to truth; not accordant with fact;

erroneous"); *The Oxford English Dictionary* (2024) ("contrary to what is true, erroneous"). Telling a collector that one owes $110,000 when the actual debt is over $269,000 does not accord with truth or reality; is not true; is erroneous; and is incorrect.

The word's ordinary meaning does not exclude assertions that paint an inaccurate or incomplete picture in a context where they will be taken as accurate and complete. To the contrary, "false" can also mean "deceitful" or "mendacious." 4 *The Oxford English Dictionary* 48 (1933) (defining "false" with respect to "statement"); see *The Oxford English Dictionary* (2024) (same); *The American College Dictionary* 435 (1947) ("deceptive; used to deceive or mislead"); *Merriam-Webster Dictionary* (online ed. 2024) ("intended or tending to mislead"). Indeed, the word's etymological origin is the Latin *falsus*, which is the past participle of *fallĕre*, meaning "to deceive." *The Oxford English Dictionary* (2024). Nor does the word have a more limited definition when used in the law: around the time of Section 1014's enactment, *Black's Law Dictionary* defined "false" as both "[u]ntrue; erroneous" and "[d]eceitful; contrived or calculated to deceive and injure." *Black's Law Dictionary* 748 (3d ed. 1933).

b. Like all collections of written or spoken words, an assessment of whether a particular statement is "false" —*i.e.*, incorrect, untrue, erroneous, or deceitful—must necessarily take account of context. Everyone agrees that meaning may be lost if a speaker's words are artificially "construed in a vacuum" or given a "hypertechnical reading." *Davis* v. *Michigan Dep't of the Treasury*, 489 U.S. 803, 809 (1989); cf. *Yates* v. *United States*, 574 U.S. 528, 555 (2015) (Kagan, J., dissenting) ("I agree with the plurality (really, who doesn't?) that context

matters in interpreting statutes."). An assessment of whether a particular assertion is "false" is no different.

As the court of appeals recognized, a determination of falsity under Section 1014 depends on how the statement would "naturally be understood" and what it "clearly indicate[s]" to the listener or reader. Pet. App. 9a (quoting *United States* v. *Freed*, 921 F.3d 716, 723 (7th Cir. 2019)). That assessment is not limited to the statement's "precise words" and nothing else. *Id.* at 10a. The assessment also properly considers the setting in which the statement is being made, what the speaker says before or after, and whether the statement is in response to a particular question or request.

Take, for example, a child's statement to her mother that she "ate one cookie," after having cleaned out the whole cookie jar. All parents would immediately understand that to be a lie—even if she did eat one cookie, before eating all the rest. Another example might be an accountant for an NBA superstar who asks how much the basketball player made last season. If the response were that he "made $1"—when he earned $49,999,999 more, cf. ESPN, *NBA Player Salaries – 2023-2024*, https://perma.cc/9BXS-37GF—the accountant would never accept such lowballing as the truth.

The same is true of this case. After receiving an invoice stating that he owed Washington Federal (and thus the FDIC) $269,120.58, and knowing that amount to be correct, petitioner nonetheless called the invoice's sender and claimed to be "shocked" and "very perplexed" by that amount because he "borrowed $100,000" or "$110,000." J.A. 51-52, 55-56. The idea that a reasonable listener would have understood petitioner to be merely describing one of his multiple loans for the Planet Home agent's edification—rather than asserting,

untruthfully, that he did not owe the total amount—blinks reality. The same goes for petitioner's later insistence to the FDIC contractors that he "owed $110,000" and "disputed his balance." J.A. 119-120. Twelve ordinary speakers of the English language sitting on petitioner's jury accordingly recognized that those statements were "false" when they returned a verdict of guilt on the Section 1014 charges. See J.A. 160.

Notably, the word "false" was not defined in the jury instructions.[3] Petitioner proposed an instruction on his "literal truth" theory, but later withdrew it—instead agreeing to "argue" to the jury "that these [statements] are true" and allow the government to "argue that they're false," without "having the [c]ourt weigh in with an instruction about what true or false means." Trial Tr. 1300; see D. Ct. Doc. 127, at 10 (Feb. 11, 2022); D. Ct. Doc. 135, at 2 (Feb. 12, 2022). As a result, on the basis of their own real-world understanding of what it means for a statement to be false, the jurors recognized that petitioner's statements here would qualify.

c. The plain meaning of "false" as used in Section 1014 thus includes some statements that could be alternatively labeled as "half-truths," *i.e.*, "representations that state the truth only so far as it goes, while omitting critical qualifying information." *Macquarie Infrastructure Corp.* v. *Moab Partners, L. P.*, 601 U.S. 257, 263 (2024). To be sure, a statement might not be considered

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[3] Of the seven circuits that have a pattern jury instruction for Section 1014, only two elaborate on the requirement that the statement be "false," and both treat the word's meaning as a matter of common knowledge. See 1st Cir. Pattern Crim. Jury Instruction 4.18.1014 (2024) ("A statement is 'false' if it was untrue when made."); 8th Cir. Model Crim. Jury Instruction 6.18.1014 (2023 ed.) (same).

"false" if it excludes collateral matters (even important ones) that are not inherently within the statement's purview. See p. 36, *infra*. But a statement that leaves out a crucial portion of what it is purporting to address is commonly understood as "false." As Benjamin Franklin memorably put it, "Half the Truth is often a great Lie." Benjamin Franklin, *Poor Richard Improved, 1758*, in J.A. Leo Lemay, *Benjamin Franklin: Writings* 1304 (1987); see 5 *The Oxford English Dictionary* 39 (1933) (entry for half-truth: "'A half-truth is often a falsehood.'" (quoting J.H. Newman, *Apologia Pro Vita Sua* App. 91 (1864)).

Legal authorities agree. Tort and contract treatises, like ordinary English speakers, consider half-truths "as much a false representation as if all the facts stated were untrue." *Universal Health Servs., Inc.* v. *United States*, 579 U.S. 176, 190 n.4 (2016) (quoting Restatement (Second) of Torts § 529, cmt. a, p. 63 (1977)); see Frederick Pollock, *Principles of Contract at Law and in Equity* 473 (1876) (characterizing a "half truth" as "equivalent to a falsehood"). "[H]alf 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).

Likewise, "if the part [of the statement] suppressed would make the part stated false, there is a false representation." Melville M. Bigelow, *A Treatise on the Law of Estoppel and Its Application in Practice* 579 (5th ed. 1890); see Sir John Salmond & W. T. S. Stallybrass, *The Law of Torts: A Treatise on the English Law of Liability for Civil Injuries* 601 (8th ed. 1934) ("The non-disclosure of a part of the truth may make the statement of the residue positively false."). Even if Section 1014 is not "'coextensive'" with those common-law doctrines,

those principles still offer "insights into how a reasonable person understands statements." *Omnicare, Inc.* v. *Laborers Dist. Council Constr. Indus. Pension Fund*, 575 U.S. 175, 191 n.9 (2015) (citation omitted).

This Court has itself described half-truths as "false." In *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U.S. 483 (1922), the Court affirmed an FTC order requiring a hosiery company to cease labeling its products with the words "Merino," "Wool," or "Worsted" when the products were roughly 10% wool and largely cotton; the FTC had deemed the labeling "false and deceptive." *Id.* at 490; see *id.* at 490-492. Even though the underwear did in fact contain wool, Justice Brandeis's opinion for the Court explained that "[t]he labels in question are *literally false*, and * * * palpably so," given that the public understood the labels to refer to products made primarily of those materials. *Id.* at 493 (emphasis added); see *id.* at 491-492; see also *Universal Health Servs.*, 579 U.S. at 190 n.4.

2. Statutory context underscores that the word "false" in Section 1014 includes statements that deliberately report part of the truth as the whole

A "word's meaning" in a statute (no less than the falsity of a statement) "is informed by its surrounding context." *Diaz* v. *United States*, 602 U.S. 526, 536 (2024). And a "crucial part of that context is the other words in the sentence." *Ibid.* Here, nearly all of Section 1014's language is contained in a single sentence whose features underscore the provision's coverage of statements that inaccurately imply that they are the whole truth.

First, the statute prohibits the making of "*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). This Court has

explained that "[w]hen used * * * with a singular noun in affirmative contexts, the word 'any' ordinarily refers to a member of a particular group or class without distinction or limitation." *SAS Inst. Inc.* v. *Iancu*, 584 U.S. 357, 363 (2018) (brackets, citation, and internal quotation marks omitted). And the Court applied that textual observation to the phrase "any false * * * statement" in a prior version of 18 U.S.C. 1001, which prohibits lies to the government; the Court emphasized that the phrase "covers * * * a false statement 'of whatever kind.'" *Brogan* v. *United States*, 522 U.S. 398, 400 (1998) (citation omitted). A statement that is contextually false is, at minimum, one "kind" of false statement.

Second, Section 1014 criminalizes false statements or "report[s]" made "for the purpose of influencing in any way the action of" the lenders and other financial institutions listed in the statute, both federal and private. 18 U.S.C. 1014. And Section 1014 specifically encompasses those entities' actions with respect to, *inter alia*, "application[s]," "advance[s]," and "loan[s]," *ibid.*—financial transactions that require accurate risk assessment and careful bookkeeping.

Those are hardly circumstances in which deception-by-half is tolerated. It is readily apparent that in enacting Section 1014, "Congress hoped to protect federally insured institutions" and lenders "from losses stemming from false statements or misrepresentations that mislead the institutions into making financial commitments, advances, or loans." *Williams*, 458 U.S. at 294 (Marshall, J., dissenting); see *id.* at 288-289 (noting legislative history focusing on statute's coverage of loan and credit applications); *United States* v. *Wells*, 519 U.S. 482, 496 n.18 (1997) (similar); cf. S. Rep. No. 1078, 88th Cong., 2d Sess. 9 (1964) (1964 Senate Report)

(supplemental views of Sen. Douglas) (describing Section 1014 as "mak[ing] it a Federal crime for a borrower or other person to misrepresent essential information").

Statements to lenders and other financial institutions frequently involve representations about monetary amounts and other accounting details. See, *e.g.*, *United States* v. *Swanquist*, 161 F.3d 1064, 1069, 1071-1072 (7th Cir. 1998), cert. denied, 526 U.S. 1160 (1999). The knowing underreporting of liabilities, income, or other highly pertinent pieces of information is plainly "false," irrespective of whether the reporting party uses the word "only" to introduce the incomplete statement. It would be unnatural to read a law that protects lenders from being improperly "influenc[ed] in any way" in their loan activities to exempt the applicant's intentional misrepresentation of a debt, so long as the inaccuracy is couched in such a way that it might be asserted to be true in some non-pertinent sense.

Indeed, such an interpretation would introduce an implausible asymmetry in the statute by creating a loophole for underreporting of debts, while remaining fully applicable to overreporting of assets (claiming that, say, a property is worth more than it is). But each can be equally harmful, and this Court generally eschews interpretations of statutes that would "enable offenders to elude its provisions in the most easy manner." *The Emily*, 22 U.S. (9 Wheat.) 381, 389 (1824); see Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 63 (2012) ("The presumption against ineffectiveness ensures that a text's manifest purpose is furthered, not hindered."). The Court should not read out a substantial portion of the statute's applications.

3. Precedent reinforces the plain meaning of the statutory language

This Court's opinion in *Kay* v. *United States*, 303 U.S. 1 (1938), reinforces that the phrase "any false statement" is not limited to some hypertechnical notion of veracity. Considering a similarly worded predecessor of the modern Section 1014, this Court repeatedly described the statute in a manner that would include contextually inaccurate or incomplete statements.

Section 1014 was enacted as part of the 1948 recodification of the federal criminal code. See *Wells*, 519 U.S. at 492; see also *Scheidler* v. *National Org. for Women, Inc.*, 547 U.S. 9, 20 (2006). The new provision consolidated 13 previous statutes that "criminalized fraudulent practices directed at a variety of financial and credit institutions." *Williams*, 458 U.S. at 288. This Court has interpreted Section 1014 by reference to those predecessor statutes, see *Williams*, 458 U.S. at 288; *Wells*, 519 U.S. at 492-494—including Section 8(a) of the Home Owners' Loan Act of 1933 (Section 8(a)), ch. 64, 48 Stat. 134, the statute at issue in *Kay*. See *Wells*, 519 U.S. at 494-495 & n.15.

Akin to the modern Section 1014, Section 8(a) prohibited "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 * * * upon any application, advance, discount, purchase, or repurchase agreement, or loan." 48 Stat. 134; see *Wells*, 519 U.S. at 494 (noting that Section 8(a)'s language is "mirrored" in Section 1014). And in *Kay*, which was decided ten years before the 1948 consolidation, the Court understood "false" in Section 8(a) to overlap with "misleading."

Chief Justice Hughes's opinion for the Court repeatedly described Section 8(a) as prohibiting statements designed to "mislead" government officials. See *Kay*, 303 U.S. at 5-6 ("It does not lie with one knowingly making false statements with intent to mislead the officials of the Corporation to say that the statements were not influential or the information not important."); *id.* at 6 ("There can be no question that Congress was entitled to require that the information be given in good faith and not falsely with intent to mislead."); *ibid.* ("When one undertakes to cheat the Government or to mislead its officers * * * by false statements, he has no standing to assert that the operations of the Government in which the effort to cheat or mislead is made are without constitutional sanction."); *id.* at 7 (describing the case as "one of false statements designed to mislead those acting under authority of the Government"); *id.* at 8 ("Congress was entitled * * * to prevent misapplication of the public funds and to protect the officials concerned from being misled.").

Kay also joined the term "misleading" with "false" to describe the type of statements subject to Section 8(a)'s prohibition. In rejecting an argument that Section 8(a) exceeded Congress's constitutional authority, the Court explained that "Congress was entitled to secure protection against false and misleading representations" in the administration of the home-loan program. *Kay*, 303 U.S. at 7. And later, when the Court was comparing Section 8(a) to another subsection of the Home Owners' Loan Act, it again paraphrased Section 8(a) as concerning "false and misleading representations to the officials of the Corporation." *Id.* at 8. The Court thus understood that "false," even when used in isolation, naturally

describes statements that could also be characterized as "misleading."

As this Court reasoned with respect to a different interpretive issue in *United States* v. *Wells*, because the Court "presume[s] that Congress expects its statutes to be read in conformity with this Court's precedents," and "since the relevant language of the statute in *Kay* was substantially like that in § 1014," the *Kay* decision "stands in the way of any assumption that Congress might have understood" the statute to categorically exclude misleading statements. *Wells*, 519 U.S. at 495. Moreover, even if Members of Congress were totally ignorant of *Kay*, the Court's apparent understanding of the word "false" is probative regarding the natural interpretation of the term used shortly thereafter in Section 1014.[4]

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[4] In 1942, this Court in *D'Oench, Duhme & Co.* v. *Federal Deposit Insurance Corp.*, 315 U.S. 447, assigned a similar interpretation to another false-statement provision—not one of the 13 direct antecedents of Section 1014, but one applicable to the FDIC—which prohibited "mak[ing] any statement, knowing it to be false" "for the purpose of obtaining any loan from the Corporation * * * or for the purpose of influencing in any way the action of the Corporation." *Id.* at 456-457 (citation omitted). *D'Oench* concerned a civil repayment dispute involving a note that an insured bank had held out to the FDIC as an asset but which was actually unenforceable. *Id.* at 454. Consistent with its analysis in *Kay*, the Court observed that the false-statement provision revealed "a federal policy to protect [the FDIC] and the public funds which it administers against misrepresentations as to the securities or other assets in the portfolios of the banks which [the FDIC] insures," and suggested that the provision would proscribe schemes "designed to deceive" the FDIC or those in which the FDIC "was likely to be misled." *Id.* at 457, 460; see *id.* at 460 (observing that "[i]f the bank had wilfully padded the bank's assets with the spurious note in order to obtain insurance * * *

B. Petitioner's Context-Free Approach To Falsity Is Unsound

Petitioner urges this Court to limit Section 1014 to statements that are what he calls "literally false" (see Br. 7-8, 10, 32)—by which he apparently means false under any interpretation and in any context. On his view, the child who emptied the cookie jar but claimed to have eaten "one cookie" is a truth-teller, or at least not a liar. So is anyone who deliberately understates anything, irrespective of whether the listener reasonably would have expected completeness. As petitioner would have it, no rational trier of fact could have found that he made a "false" statement by underreporting his debt—even if he had told the FDIC that he owed Washington Federal $500, or *any* nonzero amount.[5] Petitioner provides no sound reason to superimpose such an atextual, ahistorical, and counterintuitive constraint on the statute.

1. Section 1014's text does not support petitioner's interpretation

Petitioner's argument begins (Br. 12-18) from the premise that statements that are inaccurate as conveyed, but might not be inaccurate in other contexts, can also be described as "misleading." In his view (Br.

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there seems no doubt but that [the provision] would have been violated").

[5] The pitfalls of petitioner's literal-falsity requirement are also readily apparent with respect to his statements that he "disputed" the $269,120.58 figure. See J.A. 61, 120; p. 6, *supra*. He apparently considers those statements "true" in the sense that they could have been describing what was taking place: he was engaged in the act of disputing the higher figure. See Pet. Br. 5. But the far more natural understanding—and the one the FDIC's agents evidently had, see pp. 5-6, *supra*—was that petitioner was telling them that the higher amount was inaccurate.

13), the words "'[f]alse' and 'misleading' mean two different things." But the wall that he would erect between the two terms would come as a surprise not only to the Court in *Kay*, but to reference authors and laypersons as well.

Petitioner ignores the substantial overlap between the two adjectives. That overlap is evident in dictionary definitions that use similar words to define them. See, *e.g.*, *Webster's New International Dictionary of the English Language* 787, 1381 (1928) (defining "false" as "erroneous" and "designed to deceive" and "mislead" as "to guide into error" and "to deceive"); 4 *The Oxford English Dictionary* 47 (1933) (defining "false" as "[e]rroneous"); 6 *The Oxford English Dictionary* 518 (1933) (defining "misleading" as "that leads astray or causes to err"); see also p. 15, *supra* (dictionaries using "mislead" in defining "false"). It is also evident when paging through a thesaurus: far from being mutually exclusive, false and misleading have long been considered synonyms. See, *e.g.*, *Funk & Wagnalls Standard Handbook of Synonyms, Antonyms, and Prepositions* 161 (1947) (listing "misleading" as a synonym for "false"); *Webster's Dictionary of Synonyms* 327, 549-550 (1942) (listing "false" and "misleading" as synonyms of one another); *Merriam-Webster Thesaurus* (online ed. 2024) (same).

It accordingly does not follow from the absence of the word "misleading" in Section 1014 that "false" should carry anything other than its ordinary, commonsense meaning. As explained, that meaning encompasses contextual falsity. See pp. 14-19, *supra*. Petitioner points to no definition or other usage authority suggesting otherwise. He thus attacks a strawman when he argues (Br. 15-18) that the government claims

the authority to insert a word or element into the statute that does not appear there. To the extent that the word "misleading" might sometimes carry a broader meaning than "false," the word "false" plainly in itself—and even more plainly in the context of Section 1014—covers statements like claiming a debt of $110,000 when the actual amount is $269,000.

Petitioner nonetheless asserts that the cramped meaning he assigns to "false" is necessary to provide "'fair warning'" to potential wrongdoers and avoid "'clever prosecutors riffing on equivocal language.'" Pet. Br. 15 (citations omitted). But "affected individuals and courts alike are entitled to assume statutory terms bear their ordinary meaning." *Niz-Chavez* v. *Garland*, 593 U.S. 155, 163 (2021). And even when it comes to criminal statutes, courts must employ "common sense." *Abramski* v. *United States*, 573 U.S. 169, 179 (2014). It is petitioner's own blinkered construction that would perplex most English speakers, who intuitively understand that a statement's context, as much as its individual words, dictates meaning.

Petitioner also dismisses (Br. 18) Section 1014's use of the phrase "*any* false statement," pointing out that the statement must still qualify as "false." That is correct but question-begging—it simply assumes that the word "false" contains the limitations that he would impose. But the "natural[]" import of Congress's use of the "expansive" determiner "'any'" is to encompass false statements "'of whatever kind,'" not a narrow subclass. *United States* v. *Gonzales*, 520 U.S. 1, 5 (1997) (citations omitted); see *SAS Inst.*, 584 U.S. at 363.

2. Other statutes do not provide a basis for narrowing the ordinary meaning of "false" in Section 1014

Much of petitioner's textual argument (Br. 18-25) focuses not on the language of Section 1014, but on different provisions. He observes that other statutes in the U.S. Code sometimes use alternative formulations—such as "false or misleading," "false or fraudulent," or a specific reference to omissions—to prohibit various forms of deceptive conduct. But regardless of what additional words Congress may have seen fit to include alongside "false" in *other* statutes, there is no indication that the legislature intended to alter the natural meaning of "any false statement" in Section 1014.

Petitioner's cited statutes (Br. 19, 21, 23) span 13 different titles of the U.S. Code. They involve subjects as diverse as employee benefit plans, food labeling, the registration of foreign agents, and hoaxes about terrorism. And they were enacted at various times, some of them decades after Section 1014. *E.g.*, Egg Products Inspection Act, Pub. L. No. 91-597, § 7(b), 84 Stat. 1625-1626 (1970) (21 U.S.C. 1036(b)); Trademark Law Revision Act of 1988, Pub. L. No. 100-667, § 132, 102 Stat. 3946 (15 U.S.C. 1125(a)); ICC Termination Act of 1995, Pub. L. No. 104-88, Tit. I, § 103, 109 Stat. 873 (49 U.S.C. 13708(b)); Foreign Relations Authorization Act, Fiscal Year 2003, Pub. L. No. 107-228, Tit. XIV, § 1404(f), 116 Stat. 1455 (2002) (13 U.S.C. 305(a)(1)).

Even for the two cited provisions (18 U.S.C. 1001 and 1341) that were part of the same 1948 recodification as Section 1014, the relevant language appeared before 1948. See Criminal Code, ch. 321, § 35, 35 Stat. 1095-1096 (original version of Section 1001); § 215, 35 Stat. 1130-1131 (original version of Section 1341). 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), is absent here. See Scalia & Garner 173 (such comparisons are most persuasive when the comparator statute was "enacted at the same time" and "dealt with the same subject").

Nor does Congress's choice to group the word "false" with other related adjectives in other provisions say much about legislative understanding of the word's meaning. As this Court has repeatedly recognized, "'redundancies are common in statutory drafting," sometimes due to "a congressional effort to be doubly sure." *Pugin* v. *Garland*, 599 U.S. 600, 609, (2023) (citation omitted); see Scalia & Garner 170, 176-177 (observing that drafters often "use different words to denote the same concept" and "repeat themselves" in a "belt-and-suspenders approach"). The use of the terms in conjunction does not establish that their respective meanings are completely distinct.

Petitioner's own comparator statutes illustrate that when Congress uses multiple adjectives to describe deceptive acts, those adjectives often cover much of the same ground. One example he highlights, Section 1001 (Pet. Br. 23-24), prohibits the making of a "*false*, *fictitious*, or fraudulent statement or representation." 18 U.S.C. 1001(a)(2) (emphasis added); see 18 U.S.C. 1001(a)(3); see also 18 U.S.C. 287 (criminal false claims statute prohibiting "false, fictitious, or fraudulent" claims against the government). Presumably even petitioner does not understand "false" and "fictitious" to have wholly distinct meanings. See *Webster's New International Dictionary* 940 (2d ed. 1947) (defining "fictitious" as "[f]eigned, imaginary, pretended, not real");

Funk & Wagnalls New Standard Dictionary of the English Language 916 (1946) (defining "fictitious" as "false"). Another of petitioner's examples, 7 U.S.C. 13 (Pet. Br. 19), prohibits "*false* or misleading or *knowingly inaccurate* reports concerning crops or market information or conditions." 7 U.S.C. 13(a)(2) (emphasis added). Again, the terms cannot be understood to have some clear-cut boundary.

To the extent that Section 1014 covers some conduct that is also covered by other criminal laws, "overlap"—even "substantial" overlap—"is not uncommon in criminal statutes." *Loughrin* v. *United States*, 573 U.S. 351, 358 n.4 (2014). "The mere fact that two federal criminal statutes criminalize similar conduct says little about the scope of either." *Pasquantino* v. *United States*, 544 U.S. 349, 358 n.4 (2005). And Congress may have been especially unconcerned with overlap when it came to Section 1014. In a report accompanying an update to the statute in 1964 (to add federal credit unions to the list of covered victims, see *Williams*, 458 U.S. at 289), the Senate Committee on Banking and Currency explained that "[it] did not undertake a general review of the criminal statutes applicable to offenses involving Government lending agencies and federally chartered or insured financial institutions, nor did it undertake a review of the relationship to 1014 and the other sections of chapter 47 of title 18." 1964 Senate Report 4.

In any event, petitioner fails to show that Section 1014 lacks a place in the statutory scheme. For instance, Section 1014's requirement of an intent to influence one of the listed entities, see *Wells*, 519 U.S. at 499, is not present in Section 1001. See 18 U.S.C. 1001; see also Pet. Br. 23-24. Moreover, the bank-fraud statute carries the same maximum penalties as Section 1014,

see 18 U.S.C. 1344, as do the mail-fraud and wire-fraud statutes when the offense "affects a financial institution," 18 U.S.C. 1341, 1343. Petitioner's amicus nonetheless claims that "[t]he government's reading would make §1014 the 'most serious' and 'readily provable' offense in many cases that might otherwise be subject to less extreme penalties." NACDL Br. 5. But the only example it proffers (*ibid.*) is 18 U.S.C. 1013, which prohibits making false representations to "any person" "concerning the character" of an "issued" "farm loan bond," "coupon," or "debenture." That provision—which targets deception about certain issued securities—does not overlap substantially with Section 1013.

Ultimately, none of the alternative statutes to which petitioner and his amici point can support an inference that Congress meant "any false statement" in Section 1014 to have some limited domain inconsistent with its plain and ordinary meaning. In the end, as in the beginning, the best guide to what Section 1014 covers is the text of Section 1014, not petitioner's survey of the rest of the U.S. Code.

3. Precedent does not support petitioner's "literal falsity" gloss

Petitioner also errs in contending (Br. 32-33) that his limited view of falsity best aligns with this Court's cases. Nothing in this Court's precedent indicates that the word "literally"—particularly as petitioner would narrowly construe even that term—should be inserted into the text of Section 1014.

a. As a threshold matter, petitioner cannot avoid the significance of the Court's pre-enactment opinion in *Kay*. Petitioner correctly notes (Br. 30) that *Kay* did not consider the question presented here. But as discussed above (see p. 24, *supra*), *Kay* is nonetheless

probative in two respects: it illustrates how the term "false" would have been understood at the time, and it provided an interpretation that Congress may be presumed to have relied on in consolidating Section 8(a) with other similar statutes in Section 1014.

Petitioner dismisses (Br. 31) *Kay*'s repeated use of the word "mislead[]," see p. 23, *supra*, on the theory that the Court was describing the defendant's purpose, not the kind of statements subject to Section 8(a)'s prohibition. But that was an appropriate setting for the Court's view of the word "false," which in Section 8(a) appeared in reference to the required mental state. See 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").

Nor is petitioner's attempted distinction even accurate on its own terms. It does not explain the Court's pronouncement, in deeming Section 8(a) constitutional, that the legislature "was entitled to secure protection against *false and misleading representations*." *Kay*, 303 U.S. at 7 (emphasis added). Nor does it explain the Court's description of Section 8(a) as encompassing "*false and misleading representations* to the officials of the Corporation." *Id.* at 8 (emphasis added). Those observations clearly referred to the statements that a defendant makes, not just his intent in making them.

b. Petitioner instead relies heavily (Br. 16-17, 32) on this Court's 1982 decision in *Williams* v. *United States*, which held that Section 1014 does not cover writing a check for an amount that exceeds the funds in the underlying account. 458 U.S. at 284. But he misunderstands the basis for that holding. *Williams* did not address falsity; it instead reasoned that "a check is

literally not a 'statement' at all." *Id.* at 286; see *id.* at 284 (explaining that the government's position failed because "a check is not a factual assertion"). That reasoning was specific to the facts presented in *Williams* and has no purchase here, where petitioner does not dispute that he made "statements" within the meaning of the statute.

Petitioner's efforts to draw support from *Williams* (Br. 17) rely on excerpts from the opinion that he takes out of context. The Court's reluctance "to base an expansive reading on inferences drawn from subjective and variable 'understandings,'" *Williams*, 458 U.S. at 286, was referencing the government's reliance on a general public "understanding" specific to checks, see *id.* at 285-286, which the Court found to be inconsistent with a check's actual legal properties, *id.* at 284-285 (citing the Uniform Commercial Code). And *Williams*'s observation that "if Congress really set out to enact a national bad check law in § 1014, it did so with a peculiar choice of language," *id.* at 287, does not at all suggest that "false statement" is a peculiar choice of language to describe the understatement of a debt.

Nor can petitioner derive support (Br. 32) from his out-of-context quotation of Justice Marshall's criticism, in dissent, that the majority's reasoning "would apply equally to material omissions or failure to disclose." *Williams*, 458 U.S. at 296. In context, Justice Marshall was pointing out that the majority's analysis "prove[d] too much," because he "assume[d] that the majority *would not disagree*" with the consensus in the courts of appeals that "the failure to disclose material information needed to avoid deception in connection with loan transactions * * * constitutes a 'false statement or report.'" *Ibid.* (emphasis added; citation omitted). And

even if Justice Marshall meant to do more than just identify a logical inconsistency in the majority decision, a dissent "is 'just that.'" *Office of the United States Tr.* v. *John Q. Hammons Fall 2006, LLC*, 144 S. Ct. 1588, 1599 n.3 (2024) (citation omitted). The *Williams* dissent does not transform the Court's opinion on the scope of the term "statement" into a referendum on the term "false."

c. Petitioner also errs in relying (Br. 32-33) on *Bronston* v. *United States*, 409 U.S. 352 (1973), which interpreted the federal perjury statute, 18 U.S.C. 1621. In *Bronston*, the Court held that Section 1621 does not extend to 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. That holding turned on the distinct context of witness testimony in the formal setting of cross-examination in an adversarial trial and the history of the perjury prohibition; the Court's reasoning has no application in the distinct context of out-of-court statements intended to deceive a lender.

Bronston explained that in the context of cross-examination at trial, "[i]f a witness evades, it is the lawyer's responsibility to recognize the evasion and to bring the witness back to the mark, to flush out the whole truth with the tools of adversary examination." 409 U.S. at 358-359. Thus, "if the questioner is aware of the unresponsiveness of the answer, * * * the very unresponsiveness of the answer should alert counsel to press on for the information he desires." *Id.* at 362. The Court was skeptical that Congress would have intended for a perjury prosecution "to cure a testimonial mishap that could readily have been reached with a single additional question by counsel." *Id.* at 358; see *id.* at 359-

361 (relaying historical concerns that overbroad conceptions of perjury would discourage witnesses from testifying). And the Court declined to interpret the statutory prohibition against perjury to cover such a scenario.

What this Court described as the "narrow" holding of *Bronston* was limited to "the application of the federal perjury statute," 409 U.S. at 352-353, and does not support petitioner's argument here. As the Court has since explained, "Congress did not codify the crime of perjury or comparable common-law crimes in § 1014." *Wells*, 519 U.S. at 491. And *Bronston*'s discussion of the adversarial thrust-and-parry at trial is in no way analogous to more informal, real-world interactions between lenders and borrowers—where Congress would not have expected or desired that federal agencies and banks act as hostile and ever-vigilant cross-examiners of customers.

4. Petitioner's policy concerns are misplaced

Petitioner claims (Br. 17-18, 33-35) that his atextual approach is necessary to avoid what, in his view, would be overexpansive liability. To the extent that the Court would entertain such policy arguments here, but see *Wisconsin Central Ltd.* v. *United States*, 585 U.S. 274, 284 (2018), petitioner's concerns are misplaced.

Applying the well-accepted meaning of "false" to include statements that inaccurately appear to be the whole truth does not mean that Section 1014 criminalizes every instance where a speaker "omit[s] contextual information that would help a listener understand the statement." Pet. Br. 20. Generally speaking, "nondisclosure alone" is not sanctionable. *Universal Health Servs.*, 579 U.S. at 188. The statement that the NBA superstar "made $50,000,000 last season" would not be

false merely because it references only his salary and omits his separate income from endorsements. But if that statement were offered in response to a question about the player's "total income," it would be false, because the listener would reasonably understand the statement as a complete account on that score.

Moreover, Section 1014 requires the defendant to make a "statement" of some kind. The statute accordingly does not reach a "pure omission." *Macquarie*, 601 U.S. at 263; see Salmond & Stallybrass 600 ("[A] mere passive non-disclosure of the truth, however deceptive in fact, does not amount to deceit in law."). But where, as here, a defendant makes a statement in a context where it would be understood as both accurate and complete, and that statement conveys a knowingly untrue message intended to influence the FDIC's action, Section 1014 applies.

Nor is petitioner correct in asserting (Br. 33) that a contextual understanding of falsity sweeps in "a great deal of everyday conduct." He imagines (Br. 33-34) hypotheticals in the negotiation context. But Section 1014 only applies to "factual assertion[s]" that can "be characterized as 'true' or 'false.'" *Williams*, 458 U.S. at 284. Moreover, common-law principles exclude things like information about a party's negotiation position and puffery from actionable fraud. See 1 Joseph Story, *Commentaries on Equity Jurisprudence, as Administered in England and America* § 201 (10th ed. 1870); 3 Dan B. Dobbs et al., *The Law of Torts* § 676 (2d ed. 2011). Such principles would likely carry over to Section 1014 if such hypothetical prosecutions ever came to pass. Cf. *Omnicare*, 575 U.S. at 191 & n.9.

Petitioner also emphasizes (Br. 35) the statute's lack of a materiality requirement. But as this Court observed

when it declined to graft such a requirement onto the statute in *Wells*, other features of Section 1014 cabin its reach: "The language makes a false statement to one of the enumerated financial institutions a crime only if the speaker knows the falsity of what he says and intends it to influence the institution." 519 U.S. at 499. Such a statement "will not usually be about something a banker would regard as trivial," *ibid.*, and the government "rare[ly] will be able to prove that a false statement was . . . made with the subjective intent of influencing a decision unless it could first prove that the statement has the natural tendency to influence the decision." *Ibid.* (citation and internal quotation marks omitted).

As explained above, it is petitioner's position that would have debilitating policy consequences. See pp. 20-22, *supra*. Petitioner's approach would give a free pass to statements that knowingly misreport crucial financial information in an intentional attempt to deceive a financial regulator or lender—here, in an effort to deprive the federal fisc of over $150,000. Even petitioner admits (Br. 33) that in "casual conversation," "misleading statements" (his term) "might be considered just as blameworthy as false ones." He offers no sound reason why the lending context would be different. Even if Section 1014's bar on "false statements" may not cover every statement to a lender that could be described as "misleading," petitioner offers no policy reason for immunizing the ones like his own that ordinary English speakers—like the jurors here—would easily classify as "false."

5. The rule of lenity does not apply

Finally, petitioner errs in relying (Br. 35-36) on the rule of lenity. That rule "comes into operation at the end of the process" of statutory interpretation, "not at

the beginning as an overriding consideration of being lenient to wrongdoers." *Maracich* v. *Spears*, 570 U.S. 48, 76 (2013) (citation omitted). It applies only if the criminal statute contains a "grievous ambiguity"—that is, only if, after applying all the traditional principles of statutory construction, a court "can make no more than a guess as to what Congress intended." *Ocasio* v. *United States*, 578 U.S. 282, 295 n.8 (2016) (citation omitted); see *Pulsifer* v. *United States*, 601 U.S. 124, 152 (2024) (recognizing that the rule of lenity does not apply if the statute is not "genuinely ambiguous"). This case creates no occasion for such a guess, because the plain meaning of the word "false" encompasses petitioner's contextually false statements.

II. UNDER ANY STANDARD, SUFFICIENT EVIDENCE SUPPORTED THE JURY'S FINDING THAT PETITIONER'S STATEMENTS WERE FALSE

For the reasons explained, the Court should affirm petitioner's convictions by rejecting his effort to artificially constrict Section 1014 to only those statements that are untrue under any interpretation and in any context. But even if the Court agrees with petitioner's legal theory, it should still affirm because his statements were "false" even on his constricted view.

As the government maintained below, petitioner's statements to Planet Home and the FDIC contractors in response to being told that he owed $269,120.58 are themselves "literally false."[6] Specifically, petitioner

[6] Petitioner suggests (Br. 6) that the government has conceded that his statements were "literally true." It has not. Petitioner relies on an excerpt of one of the government's arguments before the district court where the government was explaining why petitioner's theory was not legally correct. See *ibid.* (citing J.A. 144). The

stated that he "borrowed $110,000"; that he had "no idea" where the larger amount in the invoice "c[ame] from"; that the invoice amount was "significantly higher" and "much more than" what he and the bank had "talked about"; that he "dispute[d]" the invoice amount; and that he did not "think" the installment-payment amount in the invoice was "right" because it was "based on * * * $269,000." J.A. 52, 56, 61, 119-120; see pp. 5-6, *supra*. As the court of appeals explained, those statements conveyed the message—which the evidence showed that the FDIC's agents received—that petitioner did not owe the full $269,120.58. Pet. App. 10a; see, *e.g.*, Trial Tr. 1184. That message was a lie: the evidence showed that petitioner was fully aware that he borrowed much more than $110,000 from Washington Federal and that the principal was accumulating interest. See Trial Tr. 494-496; J.A. 15-25; 28-30.

The jury likewise understood petitioner's statements (and the state of his knowledge) that way. Petitioner was charged with making the false statements that "he *only* owed $100,000 or $110,000 to Washington Federal and that any higher amount was incorrect" (the February 23 call providing the basis for Count One), and that "he *only* owed $110,000 to Washington Federal, that any higher amount was incorrect, and that these funds were for home improvement" (the March 1 call providing the basis for Count Two). J.A. 4-5 (emphases added). In returning a guilty verdict on both Section 1014 counts, the jury necessarily found that petitioner made those "charged false statement[s]." J.A. 157, 158

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government maintained during that same hearing and thereafter that the statements forming the basis for petitioner's Section 1014 convictions were "not true." Trial Tr. 1160-1163; see D. Ct. Doc. 200, at 9 (Sept. 6, 2022); Gov't C.A. Br. 28-32.

(jury instructions). Indeed, for Count Two, the jury entered a special verdict specifying that petitioner had made all of the statements alleged. J.A. 160; see Trial Tr. 1332-1333.

While petitioner argued below that the jury was legally precluded from finding him guilty unless the trial evidence showed that he said the exact words charged in the indictment, both lower courts rejected that contention, Pet. App. 12a-13a, 38a-39a, 42a-46a, and he did not seek review of that determination in this Court, see Sup. Ct. R. 14.1(a). And even that argument—or petitioner's literal-falsity theory more generally—could not undermine his conviction on Count Two, which was independently supported by the jury's verdict regarding his "home improvement" statement (which even petitioner does not claim was "literally true," Pet. 5).

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
NICOLE M. ARGENTIERI
Principal Deputy Assistant Attorney General
ERIC J. FEIGIN
Deputy Solicitor General
CAROLINE A. FLYNN
Assistant to the Solicitor General
SOFIA M. VICKERY
Attorney

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