

# Clients&Friends Memo

## Supreme Court Excludes “Misleading” Statements from False Statement Liability in *Thompson v. U.S.*

**March 27, 2025**

In a unanimous decision issued on March 21, 2025, the Supreme Court in *Thompson v. U.S.* heightened the burden of proof for “false” statements under 18 U.S.C. § 1014, excluding “misleading” but true statements from liability under the statute. Prior to the Justices’ ruling, there was a Circuit split related to the interpretation of “false” under 18 U.S.C. § 1014, which involves false statements made to influence federally insured financial institutions and agencies such as the Federal Deposit Insurance Corp., Federal Housing Administration or Small Business Administration. Though limited to § 1014, the Court’s reasoning in *Thompson* and heightened standard of “false” will likely also impact criminal prosecutions under other federal fraud statutes. Ultimately, charged false statements should now need to be proven to be untrue.

### I. Case Background

From 2011 to 2014, Patrick Thompson took out three loans from one bank, totaling \$219,000.<sup>1</sup> When that bank failed, the Federal Deposit Insurance Corporation (“FDIC”) became its receiver and appointed Planet Home Lending as the FDIC’s loan servicer for the bank’s loans.<sup>2</sup> In February 2018, Planet Home Lending sent Thompson an invoice listing a balance of \$269,120.58, reflecting the \$219,000 he initially borrowed, plus interest.<sup>3</sup> Following a complaint lodged with Planet Home Lending disputing the balance stated on his invoice, Thompson represented on two phone calls with FDIC agents that he had borrowed \$110,000.<sup>4</sup> Though the first of Thompson’s three loans was for \$110,000, he subsequently borrowed \$20,000 and \$89,000 from the bank on two separate occasions.<sup>5</sup> Thompson’s debt was ultimately settled with the FDIC for \$219,000.<sup>6</sup>

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<sup>1</sup> *Thompson v. U.S.*, No. 23-1095, 604 U.S. \_\_\_, slip op. at 1 (Mar. 21, 2025).

<sup>2</sup> See *id.*

<sup>3</sup> See *id.* at 2.

<sup>4</sup> See *id.*

<sup>5</sup> See *id.*

<sup>6</sup> See *id.*

Thompson was later charged in the Northern District of Illinois with two counts of violating 18 U.S.C. § 1014 based on his representations to the FDIC agents.<sup>7</sup> This law criminalizes making a “false statement . . . for the purpose of influencing in any way the action” of the FDIC.<sup>8</sup> Thompson was found guilty after a jury trial. The jury was not given any specialized instruction on the meaning of “false” for purposes of the statute. After the jury verdict, Thompson moved for judgment of acquittal, arguing that he could not be held guilty under 18 U.S.C. § 1014 for making statements that were technically true as he had in fact taken out a loan for the amount of \$110,000.<sup>9</sup> The District Court denied his motion and the Seventh Circuit affirmed on appeal.<sup>10</sup> Both courts declined to address whether Thompson’s statements to the FDIC agents were “literally” true or false – as opposed to considering the context of the statements – because both courts believed that § 1014 liability could be premised on merely misleading statements, as Thompson’s statements were.<sup>11</sup>

The Supreme Court granted certiorari to decide whether 18 U.S.C. § 1014 criminalizes statements that are misleading but not false.<sup>12</sup> In a unanimous opinion the Court held that misleading but true statements are not criminalized under § 1014.<sup>13</sup>

## II. The Supreme Court’s Ruling

In its 10-page opinion, the Court looked to the text and history of the statute and compared § 1014 to other criminal false statement statutes to support its definition of “false” as excluding merely “misleading” statements. Looking to both contemporaneous and modern dictionary definitions of the term “false,” the Court considered “as a matter of plain text” that “a statement that is misleading but true is by definition not a ‘false statement’” under the statute.<sup>14</sup> This is because a false statement is, by definition, “not true[.]”<sup>15</sup> Whereas a “misleading” statement is not always false and can include statements that can be both true or false, albeit misleading.<sup>16</sup>

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<sup>7</sup> See *id.* at 3.

<sup>8</sup> 18 U.S.C. § 1014.

<sup>9</sup> See *Thompson* at 3.

<sup>10</sup> See *id.*

<sup>11</sup> See *id.*

<sup>12</sup> See *id.*

<sup>13</sup> See *id.* at 10.

<sup>14</sup> See *id.* at 5.

<sup>15</sup> See *id.* at 5.

<sup>16</sup> See *id.* at 6 (explaining, for example, that a statement from a doctor claiming to have performed 100 surgeries, where 99 were fatal, is misleading but true).

The Justices raised examples of misleading but true statements during oral argument that provide additional context. For example, Justice Kagan hypothesized about a scenario where “[a] doctor’s trying to convince a patient to have a particular surgery, and he says: I’ve done a hundred of these surgeries. Turns out that 99 of the patients have died. A hundred of these surgeries. True statement, correct? . . . But he doesn’t say 99 people have died. He’s now misled the patient, correct? . . . But he hasn’t said anything that’s false.”<sup>17</sup> Justice Brown Jackson then compared this hypothetical to one where the question to the doctor was, “How many times have you done this surgery?” If the doctor answered 10, when he had actually performed 100 surgeries, Justice Brown Jackson opined that the answer would be a false statement, but not a misleading one.<sup>18</sup>

Though it recognized the frequent overlap between false and misleading statements, the Court held that “§ 1014 does not cover *all* misleading statements”—just those that are false.<sup>19</sup> Additionally, though the statute criminalizes “any” false statement, the Court held that this term does not qualify or otherwise alter the Court’s definition of a “false” statement under § 1014.<sup>20</sup>

The Court also considered the absence of the term “misleading” from the text of § 1014 as indicative of Congress’ intent to exclude misleading statements from the scope of the statute—particularly where other criminal statutes explicitly account for “misleading” statements.<sup>21</sup> Further, including all misleading statements in the term “false” would, according to the Court, render other criminal statutes that impose liability for “misleading” statements superfluous and redundant.<sup>22</sup>

This reasoning, the Court explained, is in line with its previous decisions on the text of § 1014. For example, the Court referenced its decision in *United States v. Wells*, 519 U.S. 482 (1997), explaining that its decision not to incorporate a materiality requirement under § 1014 in that case was due to the absence of such a term in the text of the statute. Similarly, in *Williams v. United States*, 458 U.S. 279 (1982), the Court reversed a conviction under § 1014 because the defendant’s bad checks could not be considered a “false” and not ‘true’ statement.<sup>23</sup>

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<sup>17</sup> *Thompson v. U.S.*, No. 23-1095, Transcript of Oral Argument (2025) at 71, available at [https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2024/23-1095\\_19m1.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2024/23-1095_19m1.pdf).

<sup>18</sup> See *id.* at 74.

<sup>19</sup> See *id.* (emphasis added).

<sup>20</sup> See *id.*

<sup>21</sup> See *id.* (citing 18 U.S.C. §§ 1038(a), 1365(b), 1515(b); Securities Act of 1933, 15 U.S.C. 77q(a)(2)).

<sup>22</sup> See *id.*

<sup>23</sup> See *id.* at 8.

### III. Takeaways

- On its face, *Thompson* explicitly raises the government's burden of proving "false" statements in 18 U.S.C. § 1014 cases. However, the Court did not consider whether Thompson's statements were, in fact, "false" and remanded the case to the lower courts to consider this issue.<sup>24</sup>
- The Court's opinion in *Thompson* could also impact litigation under similar criminal statutes. In fact, the Court explicitly referenced several federal laws in support of its interpretation of § 1014 — notably including securities fraud under the Securities Act of 1933 (15 U.S.C. § 77q(a)(2)), amongst others.<sup>25</sup>
- Though not specifically cited in the Court's opinion, this ruling may also impact prosecution under the federal wire fraud statute. In *Thompson*, the Court rationalized that "a statute that criminalizes 'false' statements also criminalizes statements that are both false *and* misleading."<sup>26</sup>
- *Thompson* is consistent with the Second Circuit's decision in *U.S. v. Connolly*, where falsity was evaluated separately from fraudulent intent as part of the alleged wire fraud offense. Based on *Connolly*, in the Second Circuit at least, objective falsity needs to be proven irrespective of fraudulent intent and evidence of a defendant's "morally wrong actions" cannot be considered as evidence to establish falsity under the federal wire fraud statute.<sup>27</sup> False statements need to be proven to be untrue, even in the context of liability for material omissions that make a statement made untrue.
- Common jury instructions in wire fraud, commodities fraud, and securities fraud cases frequently instruct that "half-truths" are false statements. *Thompson* now limits half-truth liability and we should see adjustments to jury instructions more broadly.
- *Thompson* puts the burden of proof squarely on the falsity of the statement that was made and should narrow the scope of charges that can be successfully brought by the government under the various federal statutes that rely on allegations of "false" statements.

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<sup>24</sup> See *id.* at 9–10.

<sup>25</sup> See *id.* at 6.

<sup>26</sup> See *id.* at 9 (emphasis in original).

<sup>27</sup> See No. 19-3945 (2d Cir. Jan. 27, 2022).

If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

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