

UPDATES

Misleading Statements Aren't (Always) False: Supreme Court Narrows Reach of Another Federal White-Collar Criminal Statute

March 24, 2025

On March 21, 2025, the Supreme Court decided one of the two key white collar cases pending before it this term: *Thompson v. United States*. In a unanimous opinion authored by Chief Justice John Roberts, the Court held that a federal law criminalizing knowingly making a false statement for the purpose of influencing certain regulators and entities, including lenders and financial institutions, only covers false statements, not statements that are literally true but misleading.

This decision overturned a ruling by the Seventh Circuit upholding the conviction of Patrick Daley Thompson, a former Chicago alderman and the grandson and nephew of two former Chicago mayors, Richard J. Daley and Richard M. Daley, respectively. In 2022, Thompson had been convicted of violating 18 U.S.C. §1014, which prohibits “knowingly mak[ing] any false statement or report . . . for the purpose of influencing in any way the action of . . . the Federal Deposit Insurance Corporation [FDIC] . . . upon any . . . loan.”¹ In sum, Thompson allegedly lied to the FDIC, a bank regulator, about loans he took out, and served four months in federal prison.

The case centered on three loans, totaling \$219,000, taken out by Thompson from 2011 to 2014. Thompson had only signed paperwork for the first loan and only made one payment on the loans in 2012. The bank failed in 2017, and, the next year, Thompson received an invoice from FDIC’s loan servicer for \$269,120.58, which covered both the principal and the interest on his loans. Thompson told the FDIC’s loan servicer that he had “no idea where the 269 number comes from.” He stated he had borrowed \$100,000 or \$110,000 — this correlated with the amount of the first loan for which he had paperwork. He neglected to mention the other two loans. Thompson later made similar statements to FDIC contractors. Thompson eventually agreed to pay the FDIC \$219,000, the amount of the principal remaining on his loans, but not the interest.

Thompson was charged with two counts of violating 18 U.S.C. §1014 for making false statements to influence the FDIC and was convicted by a jury. He moved for judgment of acquittal, arguing that his statements were not false — he had in fact borrowed \$110,000, even though he later borrowed more. While he conceded that his statements may have been misleading, he claimed that he could not be found guilty of making *false* statements because his statements to the FDIC were “literally true.” The

courts below denied Thompson's motion, finding that the Seventh Circuit does not require literal falsity to find a violation of §1014, and that misleading representations were sufficient.

The government opposed Thompson's petition for certiorari, pointing out that he was indicted and convicted for making statements that were in fact false: "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).² However, the government maintained that even if Thompson had only made a "misleading" statement about owing \$110,000 (while knowing that he owed more), it would violate the law.

The Supreme Court took up the case to decide "whether §1014 criminalizes statements that are misleading but not false." In its decision, the Court disagreed with the Seventh Circuit and the government, concluding that a "statement that is misleading but true is by definition not a 'false statement.'" As the Court stated: "In casual conversation, people use many overlapping words to describe shady statements: false, misleading, dishonest, deceptive, literally true, and more. Only one of those words appears in the statute. Section 1014 does not criminalize statements that are misleading but true. Under the statute, it is not enough that a statement is misleading. It must be 'false.'" Thus, the Court refused to accept the government's broader reading of the statute and remanded the case for further proceedings.

The government may see silver linings in this narrow loss, as the Supreme Court acknowledged that the context surrounding literally true representations is still relevant to assessing whether a false statement has been made. The decision may also have little effect on Thompson himself. As noted by Justices Samuel Alito and Ketanji Brown Jackson in separate concurring opinions, the jury was properly instructed on the statute's requirement that only false, and not misleading, statements should be weighed. And that jury had come back with a guilty verdict. In Justice Jackson's view, "there is little for the Seventh Circuit to do on remand but affirm the District Court's judgment upholding the jury's guilty verdict." Furthermore, Thompson was convicted on tax charges that were not at issue before the Court. These convictions stand.

It is notable that the Supreme Court granted certiorari in the first instance, given these facts; the outcome illustrates thematic consistency with recent cases, such as *Ciminelli*, *Snyder*, and *Kelly*, all of which narrowed the scope of federal fraud and public corruption statutes, and which can collectively be read as an attempt to deter pursuit of overly aggressive charging theories.

It remains to be seen whether Thompson will alter prosecutors' approach to false statement charges relating to loan applications, to financial institutions, and other entities covered by §1014. Unlike the federal bank fraud statute, violations of §1014 do not require a showing of materiality, making the charge attractive to prosecutors in a wide range of fact patterns, from alleged mortgage fraud to Paycheck Protection Program fraud. A commonly cited purpose underlying the statute is safeguarding financial and lending institutions. Going forward, defense teams should carefully scrutinize whether prosecutors have appropriately alleged (and proved) falsity as Thompson now requires.

We now await the outcome of *Kousisis v. United States*, in which the Supreme Court considers whether fraudulently inducing a party to enter a contract, and to make payments for work performed pursuant to the contract, can be mail or wire fraud if inflicting economic harm was not the purpose of the scheme. *Kousisis* will have potential implications not only for federal contracting fraud cases, but also for the mail

and wire fraud statutes, which are frequently used in white collar prosecutions of all stripes.

¹In addition to the FDIC, the statute prohibits knowingly making such false statements to entities including, but not limited to, any institution whose accounts are insured by the FDIC, a Federal Reserve bank, a federal land bank association, a Farm Credit bank, a federal credit union or home loan bank, the Small Business Administration, the Federal Housing Finance Agency, a mortgage lending business, or a U.S. branch or agency of a foreign bank.

²Thompson took out the loans to make an equity contribution to a law firm he had joined, to pay a tax bill, and to repay a debt to another bank.

CONTACTS

If you have any questions regarding this Sidley Update, please contact the Sidley lawyer with whom you usually work, or

Lisa H. Miller , Partner	+1 202 736 8171, lisa.miller@sidley.com
Kenneth A. Polite Jr. , Partner	+1 202 736 8507, kpolite@sidley.com
Kwaku A. Akowuah , Partner	+1 202 736 8739, kakowuah@sidley.com
Kaitlyn Potter , Senior Managing Associate	+1 202 736 8457, kpotter@sidley.com

Attorney Advertising—Sidley Austin LLP is a global law firm. Our addresses and contact information can be found at www.sidley.com/en/locations/offices.

Sidley provides this information as a service to clients and other friends for educational purposes only. It should not be construed or relied on as legal advice or to create a lawyer-client relationship. Readers should not act upon this information without seeking advice from professional advisers. Sidley and Sidley Austin refer to Sidley Austin LLP and affiliated partnerships as explained at www.sidley.com/disclaimer.

© Sidley Austin LLP