No. 23-1095

IN THE
Supreme Court of the United States

PATRICK D. THOMPSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The National Association of Criminal Defense Lawyers is a nonprofit bar association that works on behalf of criminal defense attorneys to advance the proper, efficient, and just administration of criminal justice. NACDL has filed scores of *amicus* briefs in this Court and others, harnessing the unique perspectives of its members to advocate for policy and practice improvements in the criminal legal sys-

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[1] No counsel for a party authored this brief in whole or in part; no such counsel or party made a monetary contribution to fund the preparation or submission of the brief; and no person other than *amicus curiae*, its members, or its counsel made such a contribution.

tem. Courts and judges routinely rely on those briefs to resolve important legal issues in criminal law.[2]

NACDL's members have seen firsthand the harm done by the kind of overbroad interpretations of federal criminal statutes the government urged successfully below. That harm often plays out behind closed doors, where such interpretations give prosecutors unchecked leverage to induce even those defendants with meritorious defenses to trade away their right to a trial by jury.

SUMMARY OF ARGUMENT

This case presents another example of the improper expansion of federal criminal law. Title 18, Section 1014 prohibits the making of certain "false statement[s]." The government, however, has stretched the statute's text to reach *true* statements deemed "misleading," threatening violators with up to thirty years in prison. Congress could have drafted § 1014 to punish "misleading" statements, as it has done in more than a dozen other statutes. It did not. The government's contrary reading flouts this Court's precedent, erodes the Constitution's guarantee of fair notice, and hollows the right to trial by jury of any practical meaning.

ARGUMENT

I. THE GOVERNMENT'S READING OF SECTION 1014 FAILS TO PROVIDE THE PEOPLE WITH FAIR NOTICE

Criminal laws "must give people 'of common intelligence' fair notice of what the law demands of them,"

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[2] See, *e.g.*, *Erlinger* v. *United States*, 602 U.S. 821, 847 (2024) (citing NACDL *amicus* brief); *Alabama* v. *Shelton*, 535 U.S. 654, 671 (2002) (same); *Hughes* v. *United States*, 584 U.S. 675, 693 (2018) (Sotomayor, J., concurring) (same); *Bassett* v. *Arizona*, 144 S. Ct. 2494, 2498 (2024) (mem.) (Sotomayor, J., dissenting from denial of certiorari) (same); see also N. Gorsuch & J. Nitze, Over Ruled 108-109 (2024) (quoting NACDL study).

United States v. *Davis*, 588 U.S. 445, 451 (2019), and "what the law intends to do if a certain line is passed," *Marinello* v. *United States*, 584 U.S. 1, 7 (2018). Fair notice ensures that no person may be punished for conduct that is not plainly "enumerated in [a] statute." *United States* v. *Wiltberger*, 18 U.S. (5 Wheat.) 76, 96 (1820). The government's application of § 1014 defies those basic principles.

The statute's text is challenging. Its key language is a single, 337-word sentence. It forbids "false statement[s]" made to "influenc[e] in any way the action[s]" of a long list of financial institutions and government agencies involved in certain lending or insurance programs. But the statute fails to say what "influence" means or how the "action" must relate to the loan, insurance, or other matter. The only provision of § 1014 that an ordinary reader might find clear is the prohibition on "*false* statement[s]" – plainly meaning statements that are "contrary to fact or truth." *False*, The American Heritage Dictionary of the English Language 637 (5th ed. 2018).

The government contends it is enough to show a statement is "misleading" even if it is literally *true*. No ordinary reader would understand the statute that way. The U.S. Code is full of statutes that forbid "misleading" statements, "misrepresentations," and "misstatements."[3] Section 1014 is not among them. And even if § 1014 *could* somehow be

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[3] See, *e.g.*, 7 U.S.C. § 13(a)(2) (misleading reports); 13 U.S.C. § 305(a)(1) (misleading information); 18 U.S.C. §§ 288 (misrepresentation, misstatement, or concealment), 1001 (concealment), 1012 (failure to disclose), 1013 (attempt to deceive), 1027 (failure to disclose), 1035 (fraudulent statement), 1037(a)(2) (misleading statement), 1040(a)(2) (fraudulent statement), 1341 (fraudulent representations), 1343 (same), 1365(b) (misleading labeling), 1919 (failure to disclose), 1920 (fraudulent statement); 38 U.S.C. § 1987(b) (same). See Pet. Br. 18-20 (collecting additional civil examples).

read to reach true-but-misleading statements, due process would forbid applying it that way.

Requiring that the government prove falsity beyond a reasonable doubt imposes some objective limit on the statute. Removing that requirement, as the government urges, would leave §1014 unconstitutionally "standardless." *Johnson* v. *United States*, 576 U.S. 591, 595 (2015).

Given the extraordinary breadth of the statute's other terms, the government's theory leaves no "remotely clear lines separating an innocuous" statement from one subject to §1014's harsh penalties. *Snyder* v. *United States*, 603 U.S. 1, 16 (2024). Millions of Americans who interact with banks, credit unions, the FDIC, Federal Housing Administration, Small Business Administration, or any of the other entities listed in §1014 have no way to "know what is acceptable and what is criminalized." *Ibid.*

This Court has long rejected such interpretations of criminal statutes. See, *e.g.*, *Snyder*, 603 U.S. at 15-18 (rejecting overbroad reading of 18 U.S.C. §666); *Dubin* v. *United States*, 599 U.S. 110, 129-130 (2023) (same for §1028A(a)(1)); *Davis*, 588 U.S. at 448 (§924(c)); *Marinello*, 584 U.S. at 6-7 (26 U.S.C. §7212(a)); *McDonnell* v. *United States*, 579 U.S. 550, 576-577 (2016) (18 U.S.C. §201); *Johnson* v. *United States*, 576 U.S. 591, 595-596 (2015) (§924(e)(2)); *Yates* v. *United States*, 574 U.S. 528, 548 (2015) (plurality) (§1519); *Skilling* v. *United States*, 561 U.S. 358, 412 (2010) (§1346); *Arthur Andersen LLP* v. *United States*, 544 U.S. 696, 703 (2005) (§1512(b)); *United States* v. *Aguilar*, 515 U.S. 593, 600 (1995) (§1503). It should do so again here.

II. The Government's Reading Also Undermines The Right To Trial By Jury

The government's broad interpretation also exacerbates the ongoing erosion of the right to trial by jury – vesting prosecutors with leverage "to bludgeon defendants into effectively coerced plea bargains." J. Rakoff, Why the Innocent Plead Guilty and the Guilty Go Free 23 (2021).

Today's justice system is one "of pleas, not a system of trials." *Lafler* v. *Cooper*, 566 U.S. 156, 170 (2012). More than 97% of federal criminal cases end in a plea. NACDL, The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How To Save It 21 (2018). The few defendants who risk trial and lose are punished with sentences *three times* longer than those who plead guilty to the same crime. *Id.* at 20. The result is a "largely secret and unreviewable" system where defendants face "such inordinate pressures to enter plea bargains" that a "significant number" of defendants "plead guilty to crimes they never actually committed." Rakoff, *supra*, at 28.

That is not just coercion by individual prosecutors. Department of Justice policy "[o]rdinarily" directs prosecutors to pursue "the most serious offense * * * that is likely to result in a sustainable conviction." U.S. Dep't of Justice, *Justice Manual* §9-27.300 (rev. 2023). The 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. For example, an effort to "deceive[ ]" a "Federal land bank" would ordinarily be punishable by "not more than one year" in prison. 18 U.S.C. §1013. Under the government's view, however, a prosecutor could choose – or be required to bring – a §1014 charge with a penalty *thirty times* higher for the same conduct.

The government's reading also worsens the overlap with § 1001, which specifically punishes "fraudulent" statements with up to five years' imprisonment. 18 U.S.C. § 1001. The threat of a § 1014 charge for conduct also covered by § 1001 carries added weight because a defendant convicted under § 1001 is eligible to receive a no-jail sentence of probation. But a defendant convicted under § 1014 is not. See 18 U.S.C. §§ 3559(a)(2), 3561(a)(1) (prohibiting probation for offenses punishable by 25 years or more). The "choice" between a guarantee of no more than a few years in prison with the chance of probation and risking up to *three decades* in prison at trial with no chance of probation is hardly a choice at all.

Not only does the government's theory expose defendants to § 1014's harsher penalties for the same conduct, but it is also easier to prove. Statutes like §§ 1001 and 1013 that *expressly* reach misleading statements typically require the government to prove that the statement was material and made "knowingly and willfully," *e.g.*, 18 U.S.C. § 1001(a), but § 1014 does not. Rather, it is enough to prove a "knowingly" false statement – even if that statement is immaterial.

It is not just defendants who will suffer as fewer cases go to trial. The jury trial is a vital "feature of our separation of powers," checking legislative and executive excesses. N. Gorsuch & J. Nitze, Over Ruled 129 (2024). And jury service is a defining aspect of "what it means to be a citizen and to participate in our own governance." A. Lahav, *The Jury and Participatory Democracy*, 55 Wm. & Mary L. Rev. 1029, 1059 (2014). When the government is permitted to exceed the statutory language Congress passed and the President signed into law, those benefits to our system of self-governance disappear along with the jury trial.

CONCLUSION

The judgment of the United States Court of Appeals for the Seventh Circuit should be reversed.

Respectfully submitted.

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