

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

BART W. REAGOR,

APPLICANT,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

**On Application for Extension of Time to
File Petition for Writ of Certiorari to
Circuit Justice Samuel A. Alito, Jr.**

**APPLICATION FOR AN EXTENSION
OF TIME TO FILE PETITION
FOR A WRIT OF CERTIORARI**

ALAN S. LEWIS

Counsel of Record

CARTER LEDYARD & MILBURN LLP

28 Liberty Street, 41st Floor

New York, NY 10005

(917) 533-2524

lewis@clm.com

Counsel for Applicant

To the Honorable Samuel Alito, as Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

In accordance with this Court's Rules 13.5 and 30.2, Petitioner Bart W. Reagor respectfully requests that the time to file his petition for writ of certiorari be extended for 60 days, up to and including September 8, 2025. The United States Court of Appeals for the Fifth Circuit issued its opinion on February 27, 2025, and denied a timely filed petition for rehearing on April 11, 2025 (*See* App. B, 8a). Absent an extension of time, the time within which to file a petition for a writ of certiorari will expire on July 10, 2025. The jurisdiction of this Court is based on 28 U.S.C. 1254(1). This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is the decision of the Fifth Circuit Court of Appeals in *United States v. Bart W. Reagor*, Case No. 22-10271. Attached hereto as Appendix A, 1a-7a. That decision, issued on February 27, 2025, affirmed Mr. Reagor's conviction after trial of one count of making a false statement to a bank in violation of 18 U.S.C. § 1014 (he was acquitted of all other charges). The charges against Mr. Reagor arose from a loan obtained by a company that he co-owned, from the International Bank of Commerce ("IBC"). The purpose of the loan was to provide the company with "working capital." A portion of the loan was used to pay owner

distributions to Mr. Reagor and his co-owner. At trial, the key questions were (1) whether obtaining a loan for use as “working capital” precluded the use of the loan for owner distributions, and (2) assuming the answer to the first question was no, whether Mr. Reagor *knew* that no part of the loan proceeds could be used for owner distributions. Respondent argued that a loan for working capital could not be used to pay owner distributions, that Mr. Reagor hid his intent to use a portion of the loan proceeds to pay owner distributions, and that this *omission* was material in causing IBC to make the loan. Respondent anchored its case in an omission: the false statements charge was based on the notion that Mr. Reagor’s omission rendered his representation to IBC *misleading*.

On appeal, Mr. Reagor challenged the sufficiency of the evidence arguing that there was an insufficient basis for the jury to find, beyond a reasonable doubt, that he *knowingly* made a *false* statement in connection with the IBC loan. The Fifth Circuit, in affirming Mr. Reagor’s conviction, disregarded the expert testimony offered by Mr. Reagor and ignored critical evidence that proved Mr. Reagor’s statements were neither false nor made knowingly.

On March 21, 2025, after the Fifth Circuit issued its opinion but before it denied Mr. Reagor’s petition for rehearing, this Court issued its opinion in *Thompson v. United States*, 145 S.Ct. 821 (2025), which held that 18 U.S.C. § 1014 does not criminalize statements that are misleading but not false. This Court’s holding in

Thompson is particularly noteworthy in that the charge here, based on Mr. Reagor's omission of his intent to use some of the loan proceeds for owner distributions when communicating with IBC, is functionally equivalent to a charge that Mr. Reagor's omission made his other statements regarding the loan misleading—but under *Thompson*, that is not a crime as § 1014 does not “criminalize[] statements that are misleading but not false.” 145 S. Ct. at 828. Additionally, under § 1014 a false statement is a crime “only if the speaker knows the falsity of what he says and intends it to influence the institution.” *United States v. Wells*, 519 U.S. 482, 499 (1997).

The Fifth Circuit's affirmation of Mr. Reagor's conviction is therefore in tension with this Court's decision in *Thompson* and prior precedent. The evidence in Mr. Reagor's case proved, at most, that he unknowingly made a misleading statement that was at odds with the bank's understanding but was not false, as required for a criminal act under this Court's interpretation of 18 U.S.C. § 1014. This case thus presents a conflict with this Court's precedent concerning the requirements for a criminal statement under 18 U.S.C. § 1014.

REASONS FOR GRANTING AN EXTENSION

The requested extension is necessary because undersigned counsel for Petitioner was not retained as appellate counsel until after briefing and oral argument concluded and therefore counsel requires additional time to review the appellate record and prepare a petition that will be most helpful to the Court.

Further, counsel of record has substantial commitments during the coming months and would greatly benefit from the additional time.

Specifically, counsel of record has numerous upcoming deadlines, including:

- A reply brief in *United States v. Toivya Rubin*, pending before the Fifth Circuit;
- Appellant's opening brief in *Reeves v. Soderman*, pending before the New York State Appellate Division;
- Oral argument on a motion to dismiss in *Toptal v. Bloomberg*, pending before the Delaware Superior Court;
- Opposition memoranda in *Wang v. N.Y. Philharmonic*, pending before the U.S. District Court for the Southern District of New York;
- Taking and defending of multiple depositions; and
- Various hearings in other pending matters.

Additionally, an extension will not cause prejudice to Respondent, as this Court would likely hear oral argument and issue its opinion in the October 2025 Term regardless of whether an extension is granted. An extension will further ensure that Respondent need not prepare its opposition brief during the summer holidays.

Wherefore, Petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to September 8, 2025.

Dated: New York, New York
June 26, 2025

Respectfully Submitted,

/s/ Alan S. Lewis

ALAN S. LEWIS

Counsel of Record

CARTER LEDYARD & MILBURN LLP

28 Liberty Street, 41st Floor

New York, NY 10005

(917) 533-2524

lewis@clm.com

Counsel for Applicant

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United States Court of Appeals
for the Fifth Circuit

No. 22-10271

United States Court of Appeals
Fifth Circuit

FILED

February 27, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BART WADE REAGOR,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:21-CR-25-1

Before STEWART, RICHMAN, and HAYNES, *Circuit Judges*.

PRISCILLA RICHMAN, *Circuit Judge*:*

A jury found Bart Wade Reagor made a false statement to a bank in violation of 18 U.S.C. § 1014. He contends, as he did at trial by motions for a judgment of acquittal, that the Government did not present sufficient evidence to prove that Reagor knowingly made a false statement. Because there was sufficient evidence to support the jury's verdict, we affirm.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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I

Reagor founded and was the CEO of Reagor-Dykes Auto Group (RDAG), a group of automotive entities with approximately twenty service and sales locations. After an audit revealed that RDAG was in a weak cash position, RDAG sought a working capital loan from the International Bank of Commerce (IBC). IBC employees met with Reagor and other RDAG employees to discuss the loan. Shortly after the meeting, IBC drafted a loan memorandum, which stated that “[t]he entirety of the proposed \$10,000,000 equity term loan will be used to inject equity . . . into the various entities underneath the [RDAG] umbrella” that were operating with insufficient capital due to extreme growth. The memorandum also stated that the “[o]wners have eliminated all withdrawals as of March 2017,” saving the company \$90,000 per month.

Four witnesses, including IBC and RDAG employees who attended the meeting, testified at trial that the loan memorandum was based on representations Reagor made at the meeting, that the memorandum was used by the bank’s approval committees to approve the loan and by its attorneys to draft the loan, and that if at any time anyone had known Reagor intended to use the loan for owner distributions, the loan would have been denied.¹

¹ ROA.650, 666-68 (testimony of William Patrick Schonacher, president and CEO of IBC Bank Oklahoma); ROA.701-02 (testimony of Thomas Hutchison, attorney who does legal work for IBC); ROA.809-10, 831-32 (testimony of Shane Smith, then-Chief Financial Officer of RDAG) (“Q. Did yourself, the defendant, and other representatives of Reagor-Dykes tell IBC Bank that the working capital loan would be used for working capital? A. Yes. Q. Was there any other purpose stated for that loan other than working capital? A. No, sir. Q. During that meeting, did the defendant, or anyone else, ever tell IBC Bank that the working capital loan proceeds will be used for the defendant’s personal use or benefit? A. No, sir. Q. Was that ever discussed at all? A. No, sir, not with them.”); ROA.919 (testimony of Shane Smith) (“Q. At the time [Reagor] gave you those instructions, did you know it was wrong to distribute the working capital loan proceeds that

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The final agreement reflected a loan of \$10 million for working capital and a \$25 million refinancing loan secured by a mortgage. Following negotiations between Smith and IBC, a term in the loan agreement that prohibited distributions except for tax purposes was altered in June 2017 to prohibit only distributions made without prior consent “if a Default or Event of Default exists or would result therefrom.”

Before any of the loan proceeds were disbursed, Reagor emailed his Chief Financial Officer, Shane Smith, instructing him that Reagor and Rick Dykes “have decided to pay ourselves the first 33.3% of every dollar we borrow,” and instructing Smith to take care of those disbursements but cautioning, **“How we are going to manage this capital is 100000000% confidential between us and is not ANYONE ELSE’S BUSINESS!!!!!! NOBODY’S!!!!!!!!!!!!!! NO BANKERS OR ANYONE ELSE! OUR BUSINESS! GAME ON!!!!!!!!!!!!!!”**² The first disbursement of \$5 million occurred in July 2017, and on that same day, Smith wired \$2 million into the account of an RDAG entity and wrote Reagor a check for \$766,277.77 out of those funds. Before the second disbursement, Reagor said to his sales team on video:

way? A. I didn’t know it was illegal. Q. Did you know it was wrong? A. Yes.”); ROA.749, 760 (testimony of William Woodring, former vice president of commercial banking and commercial lending at IBC) (“Q. Did the defendant make representations to you at the April 2017 meeting? A. Yes. Q. And were those representations included in this commercial loan memorandum? A. Yes. Q. And where was it included in this commercial loan memorandum? A. They are summarized throughout the package, including the use of funds.”); ROA.761-62 (testimony of William Woodring) (“Q. Before this criminal case, did you have any idea that the defendant intended to take a personal distribution from the working capital loan proceeds? A. No. Q. And if the defendant had told you at the initial meeting in April 2017 that he planned to take a personal distribution of the working capital loan proceeds, would you have approved this loan? A. No.”).

² ROA.1862-63 (Exhibit 41) (all bolding and emphasis in original).

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OPM. Other people's money. That's how I did it. When you don't have money, you talk other people into giving you their money so you can use their money to increase your net worth. That's how I did it. [Reagor laughs] OPM. How else? But I'm a hell of a salesman! I'm just telling you. Y'all . . . most of y'all have no comprehension of the sh*t I've pulled off in this lifetime.³

Another disbursement of \$5 million occurred in February 2018, and Smith again moved \$2 million into an RDAG entity account and cut Reagor a check for \$1 million out of those funds. The combined \$1.7 million out of both disbursements was deposited into Reagor's personal checking account and used to pay off personal credit cards, to make payments to family, and for improvements to his "mansion on 19th Street."

After fraud schemes unrelated to bank fraud rendered RDAG insolvent, Reagor was indicted based on the allegations at issue in this case. There was testimony at trial that the distributions to Reagor, made in contravention of the loan's purpose section, were an event of default and violated the agreement.⁴ The jury found Reagor not guilty on two counts of bank fraud and guilty on one count of making a false statement to the bank in violation of 18 U.S.C. § 1014.

³ ROA.537, 859-60 (Exhibit 48); United States Br. at 8.

⁴ ROA.710, 708 (testimony of Thomas Hutchison) ("Q. . . . If there was a distribution for a purpose other than what's in Section 2.01(b), would that be an event of default? A. Yes. It would be under this section because 2.01(b) states the borrower shall use the advancing term loan for working capital only, which is a covenant for an agreement of the borrower or the borrower group member, and so if those working capital—if the loan is used for any other purpose, it would constitute a default or event of default under this subsection (e)."); *see also* ROA.1881 (defining "Borrower Group" by pointing to Schedule 5.01, a list of entities that does not include Reagor); ROA.1922 (Schedule 5.01).

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II

Reagor’s preserved challenge to the sufficiency of the evidence is reviewed de novo.⁵ Our court must affirm a criminal conviction “if, after viewing the evidence and all reasonable inferences in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”⁶ “We do not delve into the evidentiary weeds: The jury ‘retains the sole authority to weigh any conflicting evidence and to evaluate the credibility of witnesses.’”⁷

The elements of the § 1014 false statement offense are “(1) the defendant knowingly and willfully made a false statement to the bank, (2) the defendant knew that the statement was false when he made it, (3) the defendant made the false statement for the purpose of influencing the bank to extend credit, and (4) the bank . . . was federally insured.”⁸ “We have held that if a person makes a false statement that has the capacity to influence the bank, ‘then the specific intent necessary to violate [Section] 1014 may be inferred and the offense is complete.’”⁹

The jury was free to believe the Government’s expert over the defense experts that the definition of working capital was clear and did not include owner distributions. “We will not second guess the jury in its choice of which

⁵ *United States v. Grant*, 683 F.3d 639, 642 (5th Cir. 2012).

⁶ *United States v. Vargas-Ocampo*, 747 F.3d 299, 301 (5th Cir. 2014) (en banc) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

⁷ *United States v. Scott*, 892 F.3d 791, 796-97 (5th Cir. 2018) (quoting *Grant*, 683 F.3d at 642).

⁸ *United States v. Sandlin*, 589 F.3d 749, 753 (5th Cir. 2009).

⁹ *Id.* at 754 (alteration in original) (quoting *United States v. Johnson*, 585 F.2d 119, 124 (5th Cir. 1978)).

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witnesses to believe.”¹⁰ The jury was also free to credit the circumstantial evidence of Reagor’s state of mind—the email he sent requiring the distribution plan to be kept confidential from the bankers, the statements he made to his staff at the meeting on video about using other people’s money, and the testimony that the loan memorandum reflected what Reagor said at the meeting he had with bank representatives prior to obtaining the loan. The Government may prove its case by direct or circumstantial evidence,¹¹ and, “[a]bsent a confession, intent will almost always have to be established by circumstantial evidence.”¹²

Although conflicting evidence existed, the jury could weigh the testimony from prosecution and defense witnesses as to the meaning of terms in the loan agreement to conclude both that the agreement prohibited distributions made without permission and that Reagor knew that working capital excluded owner distributions when he represented to the bank that the loan would be used for working capital. “The evidence need not exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt.”¹³ “As is its prerogative, the jury in this case found that [Reagor’s] actions evinced a knowing and willful state of mind. We will not disturb that finding.”¹⁴

¹⁰ *United States v. Zuniga*, 18 F.3d 1254, 1260 (5th Cir. 1994) (citing *United States v. Jones*, 839 F.2d 1041, 1047 (5th Cir. 1988)).

¹¹ See *United States v. Mitchell*, 484 F.3d 762, 768 (5th Cir. 2007).

¹² *Sandlin*, 589 F.3d at 755.

¹³ *United States v. Grant*, 683 F.3d 639, 642 (5th Cir. 2012) (quoting *United States v. Moreno*, 185 F.3d 465, 471 (5th Cir. 1999)).

¹⁴ *Sandlin*, 589 F.3d at 754.

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For the reasons stated, the judgment of the district court is
AFFIRMED.

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 11, 2025

Lyle W. Cayce
Clerk

No. 22-10271

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BART WADE REAGOR,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:21-CR-25-1

ON PETITION FOR REHEARING

Before STEWART, RICHMAN, and HAYNES, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.