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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

# SUPREME COURT OF THE UNITED STATES

Syllabus

## BROGAN *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 96–1579. Argued December 2, 1997– Decided January 26, 1998

Petitioner falsely answered "no" when federal agents asked him whether he had received any cash or gifts from a company whose employees were represented by the union in which he was an officer. He was indicted on federal bribery charges and for making a false statement within the jurisdiction of a federal agency in violation of 18 U. S. C. §1001. A jury in the District Court found him guilty. The Second Circuit affirmed, catagorically rejecting his request to adopt the so-called "exculpatory no" doctrine, which excludes from §1001's scope false statements that consist of the mere denial of wrongdoing.

*Held:* There is no exception to §1001 criminal liability for a false statement consisting merely of an "exculpatory no." Although many Court of Appeals decisions have embraced the "exculpatory no" doctrine, it is not supported by §1001's plain language. By its terms, §1001 covers "any" false statement– that is, a false statement "of whatever kind," *United States* v. *Gonzales*, 520 U. S. ___, ___– including the use of the word "no" in response to a question. Petitioner's argument that §1001 does not criminalize simple denials of guilt proceeds from two mistaken premises: that the statute criminalizes only those statements that "pervert governmental functions," and that simple denials of guilt do not do so. *United States* v. *Gilliland*, 312 U. S. 86, 93, distinguished. His argument that a literal reading of §1001 violates the "spirit" of the Fifth Amendment is rejected because the Fifth Amendment does not confer a privilege to lie. *E.g., United States* v. *Apfelbaum*, 445 U. S. 115, 117. His final argument that the "exculpatory no" doctrine is necessary to eliminate the grave risk that §1001 will be abused by overzealous prosecutors seeking to "pile on" offenses is not supported by the evidence and should, in any event, be addressed to Congress. Pp. 2–8.

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96 F. 3d 35, affirmed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, and THOMAS, JJ., joined, and in which SOUTER, J., joined in part. SOUTER, J., filed a statement concurring in part and concurring in the judgment. GINSBURG, J., filed an opinion concurring in the judgment, in which SOUTER, J., joined. STEVENS, J., filed a dissenting opinion, in which BREYER, J., joined.