

No. 25-

IN THE
Supreme Court of the United States

AHMAD ABOUAMMO,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

As part of an investigation into a scheme to disclose nonpublic Twitter account information to foreign actors, San Francisco-based FBI agents visited Petitioner Ahmad Abouammo at his home in Seattle. While they were there, Mr. Abouammo went upstairs and emailed them an allegedly falsified document. Mr. Abouammo's only interaction with the agents occurred in Seattle.

A grand jury in the Northern District of California indicted Mr. Abouammo for (among other things) falsifying documents with the intent to impede an investigation. The parties then agreed to toll the statute of limitations for other uncharged offenses. On the day the tolling agreement expired, the government filed a superseding *information* adding various felony counts. Mr. Abouammo never waived prosecution by indictment. See Fed. R. Crim. P. 7(b). Four months after the limitations period had expired, the government dismissed this placeholder information and replaced it with a superseding *indictment* containing the same charges.

The questions presented are:

1. Whether venue is proper in a district where no offense conduct took place, so long as the statute's intent element "contemplates" effects that could occur there.
2. Whether a criminal information unaccompanied by a waiver of indictment is an "information charging a felony" that allows the government to unilaterally extend the statute of limitations under 18 U.S.C. § 3288.

PARTIES TO THE PROCEEDING

Petitioner is Ahmad Abouammo.

Respondent is the United States of America.

No corporate parties are involved in this case.

RELATED CASES

This case arises from the following proceedings in the District Court for the Northern District of California and the Court of Appeals for the Ninth Circuit:

United States v. Abouammo

No. 22-10348 (9th Cir.); and

United States v. Abouammo

No. 19-cr-621-EMC-1 (N.D. Cal.).

No other proceedings directly relate to this case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Ahmad Abouammo respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Ninth Circuit.

OPINIONS AND ORDERS BELOW

The Ninth Circuit's opinion is reported at 122 F.4th 1072 and reproduced at Pet. App. 1a–47a. The unreported order denying panel rehearing and rehearing *en banc* is reproduced at Pet. App. 98a. The district court's opinion is available at 2022 WL 175844238 and reproduced at Pet. App. 48a–97a.

STATEMENT OF JURISDICTION

The Ninth Circuit issued its judgment on December 4, 2024 and denied a timely rehearing petition on February 18, 2025. On June 9, 2015, Justice Kagan extended the time to file this petition to July 16, 2025. The Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III provides, as relevant:

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed

The Fifth Amendment provides, as relevant:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury

The Sixth Amendment provides, as relevant:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law

18 U.S.C. § 1519 provides:

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

18 U.S.C. § 3282(a) provides:

Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.

18 U.S.C. § 3288 provides:

Whenever an indictment or information charging a felony is dismissed for any reason after the period prescribed by the applicable statute of limitations has expired, a new indictment may be returned in the appropriate jurisdiction within six calendar months of the date of the dismissal of the indictment or information, or, in the event of

an appeal, within 60 days of the date the dismissal of the indictment or information becomes final, or, if no regular grand jury is in session in the appropriate jurisdiction when the indictment or information is dismissed, within six calendar months of the date when the next regular grand jury is convened, which new indictment shall not be barred by any statute of limitations.

INTRODUCTION

This case raises two important questions of federal criminal procedure, one of which has generated an acknowledged circuit split.

First: When can a criminal offense’s *intended effects* establish venue for prosecution?

Article III and the Sixth Amendment mandate that crimes be prosecuted where they were committed. Thus, proper venue turns on the location of “the conduct constituting the offense”—meaning its “essential conduct elements.” *United States v. Rodriguez-Moreno*, 526 U.S. 275, 279–80 (1999). This Court has reserved the question of whether venue “may permissibly be based upon the effects of a defendant’s conduct in a district other than the one in which the defendant performs the acts constituting the offense.” *Id.* at 279 n.2.

Absent guidance on that question, the circuits have openly split. The Ninth Circuit held below that Mr. Abouammo could be prosecuted under 18 U.S.C. § 1519 in San Francisco for allegedly falsifying documents in Seattle. Because § 1519 requires that the defendant have acted “with the intent to impede, obstruct, or influence” an investigation, the court concluded that “the contemplated [obstructive] effects are part of the ‘essential conduct’ of the offense for venue

purposes.” Pet. App. 37a. And, the court said, there is “no . . . requirement that the statute proscribe conduct that . . . actually affects or interferes with something in the venue.” *Id.* at 42a.

At least six circuits disagree—with some explicitly rejecting the Ninth Circuit’s reasoning as “dubious,” “unpersuasive,” and “inconsistent with” this Court’s decisions. *E.g.*, *United States v. Salinas*, 373 F.3d 161, 168 (1st Cir. 2004). These other courts hold, in various contexts, that venue can be based on an offense’s effects “only when an essential conduct element is itself defined in terms of its effects”—for example, when an element requires conduct “‘affecting’ interstate commerce” or “‘obstructing’ or ‘impeding’ the administration of justice.” *E.g.*, *United States v. Bowens*, 224 F.3d 302, 311, 313 (4th Cir. 2000). It is not enough that the statute required the defendant to *intend* a particular effect; such an intent element “is plainly not an ‘essential conduct element’” for venue purposes. *E.g.*, *United States v. Clenney*, 434 F.3d 780, 782 (5th Cir. 2005) (per curiam).

The other circuits are right and the Ninth Circuit is wrong. If a statute “contemplates” effects only through an intent requirement, then those effects are not part of any essential conduct element. Intent is not conduct. In any event, the relevant element in this situation is the intent itself, not the intended effects. And “the intent element is a mental state that cannot have been ‘committed’ anywhere but where [the defendant] was physically present.” *Id.* Because Mr. Abouammo allegedly formed and acted on his obstructive intent in Seattle, venue in San Francisco is improper.

Second: Can the government unilaterally extend the statute of limitations under 18 U.S.C. § 3288 by filing a felony information—even if the defendant never waived indictment for felony charges?

Below, the Ninth Circuit blessed a novel maneuver by which the government bought itself several extra months, beyond the limitations period, to file additional felony charges. Section 3288 gives the government six months after the dismissal of “an indictment or information charging a felony” to refile charges in “a new indictment” without timeliness problems (provided the dismissal was not based on a time bar to begin with). The government used this procedure to effectively extend the limitations period from April to July 2020 by filing a placeholder information on the day the limitations period was set to expire, which it then dismissed once it was finally ready to file a superseding indictment containing identical charges.

This was improper. Federal felonies “must be prosecuted by indictment, unless the defendant waives this right.” *FDIC v. Mallen*, 486 U.S. 230, 241 n.10 (1988). Mr. Abouammo never did so. Thus, the information the government filed within the limitations period was a nullity—it could not be used to prosecute him. In § 3288’s terms, a felony information filed without a waiver of indictment is not an “information charging a felony” because it does not validly *charge* anything. The Court should grant review to make clear that Congress has not authorized this sort of naked gamesmanship.

STATEMENT OF THE CASE

1. As part of its investigation into the disclosure of nonpublic Twitter account information to an associate of now-Crown Prince of Saudi Arabia Mohammed bin Salman, the FBI flew agents from its San Francisco office to Mr. Abouammo’s home in Seattle. Pet. App. 10a. Mr. Abouammo was a former Twitter employee who allegedly accessed company databases about the platform’s users and provided personal information

about a Saudi dissident user to a Saudi national. After leaving Twitter, he started a freelance social media consultancy. *Id.* at 9a.

Upon meeting Mr. Abouammo, the agents identified themselves as “FBI agents from the San Francisco office.” Pet. App. 10a. They then spoke with him in his home for several hours. *Id.* During this conversation, Mr. Abouammo said that he had worked with a particular Saudi official after leaving Twitter. When the agents asked for documentation, he went upstairs and created and emailed them an allegedly false invoice for these consulting services. *Id.* at 11a.

2. Mr. Abouammo was indicted in the Northern District of California in November 2019 for one count of acting as an agent of a foreign government under 18 U.S.C. § 951 and one count of falsifying records under § 1519. Pet. App. 11a–12a. In February 2020, the parties agreed to toll the statute of limitations to April 7, 2020 to discuss a possible plea deal. *Id.*

When the government asked for another tolling agreement, Mr. Abouammo declined. Thus, on April 7—the day the existing agreement was set to expire—the government filed a superseding information adding fifteen counts of wire and honest services fraud, 18 U.S.C. §§ 1343, 1346, one count of conspiracy to commit those offenses, 18 U.S.C. § 1349, and three counts of international money laundering, 18 U.S.C. § 1956. At the time, Mr. Abouammo had not (and still has not) waived indictment for these felony charges.

In July 2020, after grand jury proceedings resumed—having been halted in light of the Covid-19 pandemic—the grand jury returned a superseding indictment containing the same charges as the April 2020 information. Pet. App. 12a.

3. Mr. Abouammo moved to dismiss the § 1519 falsifying-records charge for improper venue and the wire fraud, conspiracy, and money laundering charges as time-barred. Pet. App. 12a. The district court denied the motion. After a two-week jury trial, Mr. Abouammo was convicted on six counts of the superseding indictment. *Id.*

After trial, Mr. Abouammo again sought dismissal of his conviction for falsification of records for lack of venue. Pet. App. 77a. The district court again rejected his argument. *Id.*

4. The Ninth Circuit upheld Mr. Abouammo's convictions.

As to venue, the court emphasized that § 1519's intent element "*expressly contemplates* the effect of influencing the action of another." Pet. App. 37a (cleaned up). Given this "express connection between the actus reus and its contemplated effect," the court said, "the contemplated effects are part of the 'essential conduct' of the offense for venue purposes." *Id.* Thus, "the statute of conviction need not . . . require 'actual' adverse effects or interference in a district for effects-based venue to be proper there." *Id.* at 42a. That is, "language such as 'for the purpose of' or 'with the intent to'" suffices to expand venue to any district where the intended-but-not-required effect could have occurred. *Id.* On this view, Mr. Abouammo's "act of making a false document" with obstructive intent "continued until"—and occurred wherever—"the document was received by the person or persons whom it was intended to affect or influence," even if he did not know who or where those particular people were. *Id.* at 39a (cleaned up).

On the statute of limitations, the Ninth Circuit held that the government's April 2020 information—filed

without any waiver of indictment—sufficed to toll the limitations period. That holding relied on 18 U.S.C. § 3288, which provides that, if “an indictment or information charging a felony is dismissed for any reason after the [applicable limitations] period . . . has expired,” the government may bring “a new indictment” within six months of the dismissal without being time-barred. See Pet. App. 26a. The court held that this requirement was met because “the superseding information was filed on April 7, 2020, within the statute of limitations,” and the “superseding indictment in this case was returned within six months of the dismissal of the April 7, 2020 information” (indeed, on the same day). *Id.*

The court thus rejected Mr. Abouammo’s argument that this tolling mechanism requires an “information accompanied by a waiver of indictment.” Pet. App. 26a. The court noted that the statute previously referred to an “information filed after the defendant waives in open court prosecution by indictment,” but Congress omitted that language in 1988. *Id.* at 27a (emphasis omitted) (cleaned up).

Judge Lee concurred to agree that, under circuit precedent, “the Northern District of California was a proper venue.” Pet. App. 46a. He also warned that courts “should be wary of . . . attempts by the government to cherry-pick favored venues through pretextual reliance on out-of-district agents,” though he did not believe this was such a case. *Id.* at 47a.

The Ninth Circuit denied Mr. Abouammo’s timely petition for panel and *en banc* rehearing.

REASONS FOR GRANTING THE PETITION

I. The Court should grant review to decide when an offense’s intended effects can establish venue.

There is an acknowledged six-to-one circuit split on whether venue can rest on an offense’s intended effects that are not essential to conviction. Courts on both sides have had ample time to consider this question in light of *Rodriguez-Moreno* and each other’s positions. And the Ninth Circuit’s rule violates the Constitution’s command to focus on acts the defendant committed. This Court should resolve this split.

A. The circuits are openly split on when an offense’s intended effects can support venue.

Most courts of appeals—at least the First, Third, Fourth, Fifth, Eleventh, and D.C. Circuits—hold correctly that an offense’s effects can support venue only when the effects are themselves an element of the offense. The Ninth Circuit, by contrast, reasons that venue is proper whenever the statute “contemplates” effects through an intent element.

1. **The First Circuit** holds that venue for passport fraud—“knowingly mak[ing] any false statement . . . with intent to induce or secure the issuance of a passport,” 18 U.S.C. § 1542—is proper where “an applicant makes a knowingly false statement,” not where “the false statement is actually communicated to” the relevant officials. *United States v. Salinas*, 373 F.3d 161, 165–66 (1st Cir. 2004). In so holding, the court rejected the premise—adopted by the Ninth Circuit below—that a false-statement statute’s intent requirement “create[s] a continuing offense.” *Id.* at 168. If the text “requires intent only at the moment the false

statement is made,” the crime is “a point-in-time offense, which can be prosecuted at the place of the false statement but not at some different place where the government” receives or acts on the statement. *Id.* at 169. “Allowing specific intent to continue a crime into any district in which that intent has consequences,” the court warned, “would significantly expand the range of permissible venues.” *Id.*

The First Circuit also rejected the government’s reliance on the Ninth Circuit’s *Angotti* decision—the key precedent underlying the decision below. See Pet. App. 36a (holding that “*Angotti* governs” here); *United States v. Angotti*, 105 F.3d 539, 543 (9th Cir. 1997), *abrogated by United States v. Cabrales*, 524 U.S. 1 (1998). *Angotti*, the First Circuit said, “was decided prior to the Supreme Court’s clarification of the standards [for] venue in *Rodriguez-Moreno* and *Cabrales*.” *Salinas*, 373 F.3d at 168. Because “*Angotti* is inconsistent with those decisions,” it is “dubious” precedent on its own terms, and its “reasoning [is] unpersuasive,” the First Circuit “decline[d] to follow it.” *Id.*

The Third Circuit likewise determines venue based on whether Congress defined a statutory violation “in terms of its effects.” See *United States v. Auernheimer*, 748 F.3d 525, 537 (3d Cir. 2014). Auernheimer was charged in New Jersey with unauthorized access to, and obtaining information from, a computer, 18 U.S.C. § 1030, and identity fraud, *id.* § 1028(a)(7). The Third Circuit held that venue was improper. It did not matter that the defendant allegedly had “the intent to violate the New Jersey computer crime statute,” because “no essential conduct element of the alleged violation of New Jersey law occurred in New Jersey.” *Auernheimer*, 748 F.3d at 536; see *id.* at 533–35. Nor did it matter that thousands of email addresses “belong[ing] to New Jersey residents” were among the

information unlawfully obtained. *Id.* at 536. The Third Circuit could not find “any case where the locus of the [offense’s] effects, standing by itself, was sufficient to confer constitutionally sound venue.” *Id.* at 537. Although “there are some instances where the location in which a crime’s effects are felt is relevant to determining whether venue is proper,” “those cases are reserved for situations in which an essential conduct element is itself defined in terms of its effects.” *Id.* (cleaned up).

The Fourth Circuit, too, focuses on whether “the terms of the statute itself forbid *affecting* [conduct] in particular ways.” *United States v. Bowens*, 224 F.3d 302, 313 (4th Cir. 2000). *Bowens* was charged in Virginia with “harbor[ing] or conceal[ing]” a fugitive “so as to prevent his discovery and arrest.” 18 U.S.C. § 1071. The court held venue improper. “The only *conduct* proscribed by § 1071 is the act of harboring or concealing the fugitive,” so “venue will lie only where acts of harboring or concealing take place.” *Bowens*, 224 F.3d at 309. And those acts occurred in South Carolina. *Id.* at 304–06.

It did not matter, the *Bowens* court explained, that the harbored fugitives were being sought by federal officials in Virginia. While Congress may have criminalized fugitive harboring because of its harmful effects on the administration of justice—which were felt in Virginia—the statute’s “essential conduct element . . . is not defined in terms of its particular effects.” *Id.* at 313. Though the statute contains the language “so as to prevent the fugitive’s discovery and arrest,” that phrase “defines the requisite intent for the offense”—which is “not an essential conduct element.” *Id.* (cleaned up).

In so holding, the Fourth Circuit recognized that this Court’s decisions in *Cabrales* and *Rodriguez-Moreno*

had abrogated circuit precedent holding “that in prosecutions for crimes in the nature of obstruction of justice, venue is proper in the district where the obstruction would take effect.” *Id.* at 311.

The Fifth Circuit agrees. *United States v. Clenney* addressed venue for the offense of removing a child from the United States “with intent to obstruct the lawful exercise of parental rights.” 434 F.3d 780, 781 (5th Cir. 2005) (per curiam) (quoting 18 U.S.C. § 1204). Though “none of the acts complained of in the indictment” occurred in the forum district, the government said venue was proper because obstructive intent “is an element of the offense, and [the other parent’s] parental rights were violated in” the forum district. *Id.* at 781–82. The Fifth Circuit held otherwise. The obstructive-intent element “merely speaks to the offender’s *mens rea* as he commits the conduct essential to the crime; it is plainly not an ‘essential conduct element’ as required by *Rodriguez-Moreno*.” *Id.* at 782. In any event, the requisite intent “was formed and existed solely in the mind” of the defendant, so it “cannot have been ‘committed’ anywhere but where he was physically present.” *Id.*

The Eleventh Circuit likewise holds that “the effects of a crime are a permissible basis for venue” only if the statute “contain[s] an essential element . . . defined in terms of the effects of the act.” *United States v. Smith*, 22 F.4th 1236, 1243–44 (11th Cir. 2022), *aff’d on other grounds*, 599 U.S. 236 (2023). *Smith* involved theft of trade secrets, which requires as an element that the defendant “intend[] or know[] that the offense will[] injure any owner of that trade secret.” 18 U.S.C. § 1832(a). Even so, venue was improper in a district where the victim was located but none of the defendant’s conduct took place. As Chief Judge Pryor ex-

plained for the court, the “theft-of-trade-secrets statute does not define any essential conduct element of the offense in terms of its effects on the owner of the trade secret.” *Smith*, 22 F.4th at 1244. That theft necessarily involves “interference with the possessory interest of the owner” does not change the offense’s *conduct* elements. *Id.*

The D.C. Circuit also holds that venue “lies only in a district in which the defendant committed unlawful acts and is not proper in a district where only the effects of the crime occur,” unless those effects are elements of the offense. *United States v. White*, 887 F.2d 267, 272 (D.C. Cir. 1989) (R.B. Ginsburg, J.). *White* concerned a bribery prosecution under 18 U.S.C. § 201(c). Foreshadowing this Court’s approach in *Rodriguez-Moreno*, then-Judge Ginsburg’s opinion focused on whether any “acts necessary to establish the crime of bribery occurred” in the District of Columbia. Although the bribes apparently had their intended effect in the District because the recipient committed “many official acts” there in exchange for payment, that did not matter; “proof that [the bribee] was actually influenced in any such acts is not an element of the bribery offense.” *Id.*; see also *United States v. Swann*, 441 F.2d 1053, 1055 (D.C. Cir. 1971) (venue for attempting to influence a witness was proper only where the attempt took place, not where the witness would testify).

2. The Ninth Circuit held below, by contrast, that effects can establish venue whenever a statute “expressly contemplates” those effects. Pet. App. 42a. Relying on *Angotti*—which the First Circuit explicitly rejected in *Salinas*, 373 F.3d at 168—the Ninth Circuit reasoned that “contemplated effects” are part of the essential conduct of an offense if the statute requires a

defendant to intend that his conduct have those effects, whether or not the effects are actually required for conviction. Pet. App. 37a–38a. Though Mr. Abouammo allegedly created and delivered the false document to agents in his Seattle residence, the Ninth Circuit held that the act of making a false document *continued* until it was received by “the person or persons whom it [was] intended to affect or influence,” who happened to be in San Francisco. *Id.* at 39a (quoting *Angotti*, 105 F.3d at 543). It did not matter that § 1519 requires no actual influence or obstruction—the intent element sufficed to permit venue wherever the intended effects may be felt. *Id.* at 39a, 41a.

* * *

In at least the First, Third, Fourth, Fifth, Eleventh, and D.C. Circuits, this case would come out the other way. These courts all hold that an offense’s effects are not grounds for venue unless those effects are themselves essential elements for conviction—which is not the case just because the defendant must intend those effects to occur.

B. The decision below is wrong.

The Constitution forecloses the Ninth Circuit’s rule basing venue on an offense’s “contemplated” effects. Article III commands that “[t]he Trial of all Crimes . . . shall be held in the State where the said Crimes shall have been committed.” U.S. Const. art III, § 2, cl. 3. The Sixth Amendment adds that every accused shall be tried “by an impartial jury of the State *and district* wherein the crime shall have been committed.” *Id.* amend. VI (emphasis added); accord Fed. R. Crim. P. 18. The crux of the constitutional venue analysis is thus “the place of committing the crime”—the locus delicti. *United States v. Anderson*, 328 U.S. 699, 703 (1946).

In turn, “the locus delicti must be determined from the nature of the crime alleged and the location of the act or acts constituting it.” *Id.* *Rodriguez-Moreno* underscored this focus on the defendant’s “act or acts” by holding that only an offense’s “essential conduct elements” can establish venue. 526 U.S. at 279–80.

The Ninth Circuit’s decision, however, looks not to conduct, but to effects—and not effects that are required elements of the offense, but merely those the defendant must *intend*, even if they never materialize. As other circuits recognize, effects-based venue is proper only “when an essential conduct element is itself defined in terms of its effects.” *Bowens*, 224 F.3d at 311. That is not the case here.

As relevant, § 1519 criminalizes “knowingly . . . falsify[ing] . . . any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States.” This language requires three elements. The defendant must (1) knowingly (2) falsify a document (3) with the intent to impede a federal investigation. See *United States v. Spirito*, 36 F.4th 191, 202 (4th Cir. 2022). The investigation need not actually exist; it can be merely “contemplat[ed].” 18 U.S.C. § 1519.

Under *Rodriguez-Moreno*, determining venue for a § 1519 prosecution turns on which of these elements “are essential *conduct* elements.” 526 U.S. at 280 (emphasis added). The word “conduct” is important—*Rodriguez-Moreno* did not focus “simply [on] the essential elements” of the offense, but on “where physical *conduct* occurred.” *United States v. Miller*, 808 F.3d 607, 615 (2d Cir. 2015) (cleaned up). “The determination of criminal venue” thus turns on “the place of the relevant physical acts,” “not where criminal intent was

formed.” *Id.* (cleaned up); see also *Clenney*, 434 F.3d at 782 (distinguishing between “an element of the offense” and “an essential conduct element”).

Only § 1519’s second element—falsifying the document—involves conduct. And it is undisputed that all the conduct encompassed in that element occurred in Seattle, not San Francisco. Pet. App. 10a–11a. Nor does this conduct element refer in any way to the effects of the alleged falsification.

The first and third elements, by contrast, are *mens rea* requirements. And “*mens rea* elements [are] irrelevant to venue.” *Smith*, 22 F.4th at 1243 (citing *Rodriguez-Moreno*, 526 U.S. at 279). But even if the intent element could be deemed a conduct element, the Ninth Circuit still erred by focusing on the location of the intent’s *object*, rather than where the *intent itself* was formed. Obstructive intent is “formed and exist[s] solely in the mind” of the offender, so it cannot be “committed” anywhere but where the offender was physically present. *Clenney*, 434 F.3d at 782. There is no contention that Mr. Abouammo formed the requisite obstructive intent anywhere other than Seattle. Either way, the Ninth Circuit’s decision is wrong.

In holding otherwise, the Ninth Circuit relied almost entirely on *Angotti*—a pre-*Rodriguez-Moreno* decision whose venue analysis on a separate count this Court has already rejected. See *Cabrales*, 524 U.S. at 6. The court below did not pause to examine *Angotti* for consistency with this Court’s later decisions. Cf. *Salinas*, 373 F.3d at 168. And *Angotti* itself did not focus on essential conduct. Instead, it reasoned that “the act of making a communication continues until the communication is received by the person or persons whom it is intended to affect or influence,” even if “the statements did not have to reach their intended destination in order to constitute a crime.” 105 F.3d at 543. That

holding, however, “has no support in the Sixth Amendment, in case law or in logic.” *Id.* at 546 (Norris, J., dissenting); *id.* at 547 (arguing that “crime was committed—it was over—when Angotti delivered the fraudulent documents” in his home district).

The court below then mashed together *Angotti*’s continuing-communication theory with § 1519’s intent element to uphold venue on the theory that “§ 1519 *expressly contemplates* the effect of influencing” an investigation—even though it does not *require* any such effect. Pet. App. 37a (cleaned up). None of this comports with *Rodriguez-Moreno*’s approach or the Constitution’s text.

Angotti aside, the Ninth Circuit also emphasized that Mr. Abouammo “can hardly feign surprise at the existence of a federal investigation being conducted in the Northern District of California,” since “many other features of this case . . . connect Abouammo to the Northern District, most obviously his employment with Twitter, which gave rise to the entire case.” Pet. App. 43a. These considerations are improper. They have nothing to do with where the offense was “committed” for constitutional venue purposes. The decision below is wrong.

C. This case is an ideal vehicle to decide this important and recurring issue.

This petition presents a perfect chance to resolve the split on effects-based venue. The facts are simple and undisputed, the issue was pressed and passed upon at each level below, and the Ninth Circuit denied Mr. Abouammo’s rehearing petition, making clear that it will not budge from its outlier position.

And this issue is vitally important. “Proper venue in criminal proceedings was a matter of concern to the Nation’s founders.” *Cabralles*, 524 U.S. at 6. It is a

bedrock principle that the accused stand trial only where his alleged crime occurred. “In criminal cases venue involves important considerations of policy, with deep historical roots,” Charles A. Wright, *Law of Federal Courts* § 43, at 271 (5th ed. 1994)—which led to the Constitution “twice safeguard[ing] the defendant’s venue right” in express terms. *Cabralles*, 524 U.S. at 6. Indeed, the proper place to be tried “was so important to the founding generation that it was listed as a grievance in the Declaration of Independence.” *Auernheimer*, 748 F.3d at 532.

This issue also has significant practical importance. The Ninth Circuit’s rule invites the government to forum-shop by sending investigators from its chosen venue to the defendant’s location, or even just by forwarding materials around within its own offices. Indeed, while the agents here happened to mention that they were from San Francisco, Pet. App. 43a, the Ninth Circuit’s rule does not require the defendant to know “where the information would ultimately be received”—it is enough for him to know that *someone, somewhere* will receive it. *Angotti*, 105 F.3d at 543. Nor does an offense end once a document first reaches the recipient entity or agency; according to the Ninth Circuit, the offense “continues” until—so venue is proper wherever—the communications reach their *final* recipient. See *id.*; *id.* at 547 (Norris, J., dissenting). Thus, so long as federal agents duly forward a defendant’s documents or statements to an office in San Francisco, *every* defendant in the Ninth Circuit can be prosecuted there. On a national level, the Ninth Circuit’s rule is a recipe for many federal criminal prosecutions to flow to Washington, D.C., or to any other forum where the government feels it has an advantage. Cf. Pet. App. 47a (Lee, J., concurring) (expressing concern about “government officials trying to

game the system by involving agents from a particular district with an eye towards asserting venue in what they view as a favorable district”).

This question also arises often, as the sheer volume of post-*Rodriguez-Moreno* cases attests. Indeed, this issue can arise in every single prosecution based on a government investigation, a false mortgage application, stolen trade secrets, computer hacking, international parental kidnapping, and any other offenses involving potential effects that can cross state or district lines. The Court should grant review here to resolve the question it reserved in *Rodriguez-Moreno*, 526 U.S. at 279 n.2.

II. The Court should grant review to decide whether a waiverless felony information tolls the statute of limitations under 18 U.S.C. § 3288.

Independently, the Ninth Circuit wrongly allowed the government to bootstrap its way into a longer statute of limitations by filing a felony information on the last day of the limitations period, knowing full well that Mr. Abouammo did not and would not waive his right to indictment by a grand jury. Absent a waiver, this information was invalid, a mere placeholder. Thus, it did not properly “charg[e] a felony” as required to extend the limitations period under 18 U.S.C. § 3288.

This issue is critical to the administration of the criminal justice system. Statutes of limitations “represent legislative assessments of relative interests of the State and the defendant in administering and receiving justice; they are made for the repose of society and the protection of those who may (during the limitation) have lost their means of defence.” *United States v. Marion*, 404 U.S. 307, 322 (1971) (cleaned

up). “These statutes provide predictability by specifying a limit beyond which there is an irrebuttable presumption that a defendant’s right to a fair trial would be prejudiced.” *Id.* “Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity.” *Id.* at 323.

These interests, however, are gutted by a rule that allows prosecutors to decide how much time they should have to prosecute. Cf. *Klopfer v. North Carolina*, 386 U.S. 213, 221–22 (1967) (the Sixth Amendment prohibited a state criminal procedure that allowed the prosecutor to toll the statute of limitations indefinitely by entering a nolle prosequi). And the Ninth Circuit is not the only court to bless such an aberrant rule. See *United States v. Webster*, 127 F.4th 318, 324 (11th Cir.) (holding that “filing an information without a waiver tolls the statute of limitations”), *cert. denied*, 145 S. Ct. 1461 (2025); Pet. App. 25a (citing cases).

Nothing in § 3288 contemplates such a dangerous result. This provision merely serves to “discourage defendants from delaying their motions to dismiss until after the statute of limitations has run.” *United States v. Peloquin*, 810 F.2d 911, 912 (9th Cir. 1987) (A. Kennedy, J.). Before the Covid-19 pandemic, § 3288 was “rarely used and [was] unheard of by most prosecutors.” *United States v. B.G.G.*, 53 F.4th 1353, 1370 n.1 (11th Cir. 2022) (Wilson, J., dissenting). Since then, however, prosecutors across the country have dusted it off and used it “to achieve a tactical advantage in derogation of [defendants’] rights.” *Id.* at 1371. This Court should put a stop to that practice.

Section 3288 provides a six-month grace period only if the government timely files “an indictment or information charging a felony,” which is then dismissed. 18

U.S.C. § 3288. The government did not indict Mr. Abouammo for money laundering or wire fraud within the limitations period. Pet. App. 23a–24a. So the key question is whether the information it filed in April 2020, just as the limitations period was expiring, was an “information charging a felony.” If not, § 3288 was never triggered and the eventual indictment on these counts was untimely.

The answer is no—the April 2020 information did not trigger the statute. Under the Fifth Amendment, “[n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury[.]” U.S. Const. amend. V. Thus, a federal felony “must be prosecuted by an indictment” unless “the defendant—in open court and after being advised of the nature of the charge and of the defendant’s rights—waives prosecution by indictment.” Fed. R. Crim. P. 7(a)–(b). Only after such a waiver may a felony “be prosecuted by information.” *Id.* So, absent indictment, a valid waiver is required to “confer power on the convicting court to hear the case.” *Smith v. United States*, 360 U.S. 1, 10 (1959) (emphasis added); *United States v. Teran*, 98 F.3d 831, 835 (5th Cir. 1996).

Against this backdrop, a felony information that is not accompanied by a valid waiver of indictment does not “charg[e] a felony,” as § 3288 requires. To “charge” is to “accuse (a person) of an offense”—to bring a “formal accusation of an offense as a preliminary step to prosecution.” See *Charge*, Black’s Law Dictionary (12th ed. 2024). A waiverless information does not do so, because it does not and cannot begin a felony prosecution. In the Constitution’s terms, a defendant need not “answer for” felony allegations in an information unless he waives indictment. U.S. Const. amend. V. In turn, the government “should not be able to grant

itself a six-month extension of the statute of limitations whenever it wants, in every case, simply by filing a patently defective and meaningless charging document, and then immediately dismissing it to invoke the savings provisions of § 3288.” *United States v. Gatz*, 704 F. Supp. 3d 1317, 1330 (S.D. Fla. 2023). Trying to extend the limitations period by filing “a legal nullity” is a “bad-faith gambit.” *B.G.G.*, 53 F.4th at 1374–75 (Wilson, J., dissenting).

This analysis finds further support in the general statute-of-limitations provision, which requires that the “indictment [be] found or the information [be] instituted” within the prescribed limitations period. 18 U.S.C. § 3282. A waiverless indictment is “insufficient to ‘institute’ a prosecution under section 3282.” *B.G.G.*, 53 F.4th at 1374 (Wilson, J., dissenting); see also *Gatz*, 704 F. Supp. 3d at 1325 (collecting cases).

This Court’s decision in *Jaben v. United States* illustrates the point. That case similarly involved a limitations period that could be extended if “a complaint [was] instituted” within the initial six-year period. 381 U.S. 214, 215 (1965). On the day before the six-year period expired, the government filed a complaint. *Id.* at 216. The defendant was later indicted; that indictment was timely only “if the complaint . . . was valid for the purpose of bringing the nine-month extension into play.” *Id.* The government argued that, “regardless of the complaint’s adequacy for any other purposes, it was valid for the purpose of triggering the nine-month extension of the limitation period whether or not it showed probable cause.” *Id.* at 217. This Court disagreed: “[T]he complaint, to initiate the time extension, must be adequate to begin effectively the criminal process,” meaning it “must be sufficient to justify the next steps in the process.” *Id.* at 220; accord

id. at 226–27 (Goldberg, J., concurring in part and dissenting in part). For the reasons just explained, the information here was not “adequate to begin effectively the criminal process.”

The statute thus speaks clearly. But even if it were ambiguous, the canon in favor of repose require that a felony information be accompanied by the defendant’s waiver of indictment to satisfy and potentially extend the statute of limitations. See *Toussie v. United States*, 397 U.S. 112, 115 (1970).

In holding otherwise, the Ninth Circuit acknowledged that “a felony cannot be prosecuted by information unless the defendant waives prosecution by indictment.” Pet. App. 25a. But it never grappled with the implications of that fact for whether the April 2020 information actually “charg[ed]” a felony. It simply declared that “[n]othing in this language requires that the information be ‘instituted’ or otherwise accompanied by a waiver.” *Id.* at 26a. It thus skipped over the meaning of “instituted” altogether. *Id.* at 25a.

The crux of the Ninth Circuit’s reasoning was instead a 1988 amendment to § 3288, in which “Congress specifically removed language requiring a waiver of indictment.” Pet. App. 27a. From 1964 to 1988, the statute applied “[w]henever an indictment is dismissed for any error, defect, or irregularity with respect to the grand jury, or an indictment or information filed after the defendant waives in open court prosecution by indictment is found otherwise defective or insufficient for any cause.” See *Id.* at 27a n.4 (strikeout omitted). In 1988, Congress adopted the law’s current language: “Whenever an indictment or information charging a felony is dismissed for any reason . . .” *Id.* (emphasis omitted); Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, tit. VII, § 7081(a), 102 Stat. 4181, 4407.

The court’s narrow focus on this change was erroneous in two ways. First, the court “presume[d]” that Congress intended the 1988 deletion to “have real and substantial effect.” Pet. App. 28a. To be sure—but *what* effect? Congress answered that question: This amendment served merely to overrule a Ninth Circuit decision holding “that a Speedy Trial Act violation is neither an ‘irregularity with respect to the grand jury’ nor a defect or insufficiency in the indictment itself,” such that § 3288 did not apply to a dismissal for speed-trial violations. Section Analysis of Judiciary Committee Issues in H.R. 5210 (Senate), 134 Cong. Rec. S17360-02, 17372 (daily ed. Nov. 10, 1998), 1988 WL 182529 (citing *Peloquin*, 810 F.2d 911). Congress gave no indication that the change was meant to do anything beyond what it thought the statute already accomplished. See *id.* (explaining that the prior statute already “appear[ed] to permit the extension no matter what the reason for the dismissal of the charges”).

Second, the Ninth Circuit ignored the rest of the statutory history. Although indictments and informations have existed for centuries, informations were never used for felonies until the twentieth century. See *Ex Parte Wilson*, 114 U.S. 417, 423–25 (1885); *Gatz*, 704 F. Supp. 3d at 1326. Thus, when Congress first used the phrase “information is instituted” in § 3282’s predecessor provision in 1790, it cannot have intended to include a waiverless felony information. There was no such thing. This language could have referred only to a charging document validly alleging a lesser offense. See *Gatz*, 704 F. Supp. 3d at 1326. the modern usage of the same phrase carries the old soil with it.

Likewise, § 3288’s predecessor statute did not refer to informations at all, only indictments. See *id.* at

1327–28. Congress added the reference to informations in 1964, in response to Criminal Rule 7 “authoriz[ing] the prosecution of a noncapital felony by information if the defendant in open court waives prosecution by indictment.” S. Rep. No. 88-1414, at 2 (1964), *as reprinted in* 1964 U.S.C.C.A.N. 3257, 3257–58. That is, Congress “recognize[d] that felony prosecutions may be instituted by informations and that dismissals of such prosecutions because of technical defects in the informations should be accorded treatment similar to that accorded prosecutions instituted by indictments.” *Id.* The added reference to informations would thus “permit reindictment in similar cases where an information was filed *after the defendant waived in open court prosecution by indictment.*” *Id.* at 1 (emphasis added).

This history “demonstrates that Congress intended [§] 3288 . . . to toll the limitations period at § 3282 for dismissed informations where those informations comported with Rule 7(b)” —meaning where the defendant waived indictment. *Gatz*, 704 F. Supp. 3d at 1328. In other words, Congress assumed throughout this process that “the filed information would constitute a valid charging document.” *Id.* “The idea that an ineffective information could be instituted to toll the limitations period, but not to prosecute the accused, could not have been a consideration at [§ 3282’s] inception, nor at the time § 3288 or its predecessor were enacted.” *Id.*

This Court should grant review to make clear that § 3288’s requirement of an “information charging a felony” has teeth and does not allow the Government to use a constitutionally defective, waiverless information to circumvent the limitations period. The contrary rule invites abuse.

CONCLUSION

For these reasons, the petition should be granted.

Respectfully submitted,

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