No. 25-5146

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

BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

Matthew P. Cavedon
Counsel of Record
CATO INSTITUTE
1000 Mass. Ave., N.W.
Washington, DC 20001
(706) 309-2859
mcavedon@cato.org

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QUESTION PRESENTED

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.

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INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Project on Criminal Justice was founded in 1999 and focuses in particular on the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement officers.

This case concerns Cato because deviating from the original understanding of constitutional venue requirements threatens to let the Government forum-shop to the detriment of fairness in criminal adjudications.

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[1] Rule 37 statement: All parties were timely notified before the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *Amicus* funded its preparation or submission.

SUMMARY OF THE ARGUMENT

San Francisco-based FBI agents flew to Seattle to question Petitioner Ahmad Abouammo at his home.[2] They suspected Mr. Abouammo, a former Twitter employee, was involved in disclosing a Saudi dissident's private Twitter account information to an associate of a Saudi royal.[3] The Government alleged that during the meeting at his home, Mr. Abouammo went upstairs, created a false invoice, and emailed it to the agents.[4] Mr. Abouammo was indicted in the Northern District of California for (*inter alia*) falsifying records, and convicted following a jury trial.[5]

The Ninth Circuit affirmed Mr. Abouammo's convictions, holding that venue for the prosecution was proper in California because the statute he violated "*expressly contemplates* the effect of influencing the action of another."[6] Accordingly, venue could be proper in either the district where Mr. Abouammo created the false invoice or "the district of the expressly contemplated effect—where the investigation [this] was intended to stymie [was] ongoing or contemplated."[7] Mr. Abouammo could be tried in California because the invoice he made "was received by FBI agents working out of the FBI's San Francisco office."[8] This was so

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[2] Cert. Pet. at 5.

[3] *Id.* at 5–6.

[4] *Id.* at 6.

[5] *Id.* at 6–7.

[6] Cert. Pet. App'x at 37a (citation omitted).

[7] *Id.* at 38a.

[8] *Id.* at 39a–40a.

even if Mr. Abouammo never "specifically foresaw effects" of his actions happening in California.[9]

The Government's plea for effectively unbounded prosecutorial forum shopping is incompatible with the original meaning of the Constitution's provisions limiting venue.

ARGUMENT

The Ninth Circuit's decision allows for anyone who allegedly falsifies documents to be tried in any district where the relevant government investigators are based—even if the defendant has never been to that district and intends no harm to reach it. Virtually every federal entity has investigating agents located in the nation's capital, who could be appended to virtually any federal falsification inquiry. In effect, then, the Government argues that it can turn the District of Columbia, or any other district hosting a significant part of the federal bureaucracy (such as San Francisco), into the universal venue for trying federal crimes. This plea for effectively unbounded prosecutorial forum shopping is incompatible with the Constitution's venue requirements.

Locality is "inseparable from the institution of criminal law."[10] Doctrines arising before American Independence informed constitutional venue requirements. Criminal law and locality have been connected

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[9] *Id.* at 43a.

[10] Lindsay Farmer, *Territorial Jurisdiction and Criminalization*, 63 U. TORONTO L.J. 225, 241 (2013); *see also* Emma Kaufman, *Territoriality in American Criminal Law*, 121 MICH. L. REV. 353, 366 (2022). For a fuller discussion of place and criminal jurisdiction, *see* Matthew Cavedon, *Federalism's Limits on State Criminal Extraterritoriality*, 57 ARIZ. L.J. (forthcoming 2025).

since at least Justinian's Code.[11] Medieval jurists developed choice-of-law doctrines tying jurisdiction to where a crime allegedly took place.[12] Magna Carta required that cases be tried "in a certain fixed place" by "honest and law-worthy men of the neighbourhood."[13]

English common law required that crimes be tried only in the county where they occurred. Courts applied locality requirements quite strictly, holding that if a person was fatally wounded in one county but died in another, the killer could not be tried for murder in *either* locale.[14] *Statutes* eventually addressed this difficulty, providing that the county where harm was fully realized could try a crime.[15] However, locality remained the *common law's* "exclusive basis of criminal jurisdiction."[16] English law required strict locality even though every county applied the same criminal, procedural, and evidentiary laws and was subject to

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[11] Simona Grossi, *Rethinking the Harmonization of Jurisdictional Rules*, 86 TUL. L. REV. 623, 634–37 (2012); JOSEPH STORY, CONFLICT OF LAWS 12 (3d ed. 1846) (citing material printed at 1 THE DIGEST OF JUSTINIAN bk. 2, tit. 1, 1. 20 (Alan Watson ed., rev'd ed., 1998) (*Extra territorium*)).

[12] Grossi, *supra*, at 635.

[13] MAGNA CARTA §§ 11, 14 (Nicholas Vincent trans., 2007), NAT'L ARCHIVES, https://www.archives.gov/exhibits/featured-documents/magna-carta/translation.html.

[14] Wendell Berge, *Criminal Jurisdiction and the Territorial Principle*, 30 MICH. L. REV. 238, 239 (1931).

[15] Rollin M. Perkins, *The Territorial Principle in Criminal Law*, 22 HASTINGS L.J. 1155, 1159–60 (1971).

[16] *Id.* at 1163.

the same sovereign authority—as is the case with the modern federal criminal system.[17]

Locality influenced the drafting of the Constitution. In the late 1760s, Parliament revived a law of King Henry VIII allowing for treason to be tried by royal commissioners "in such shire of the realm" as they designated.[18] This was meant to combat Massachusetts tax protests.[19] Virginia's legislature protested that colonial defendants had the right to be tried locally.[20] However, Parliament soon extended the law to the destruction of military facilities and supplies, as well as to trials of Massachusetts law enforcement officials and tax collectors.[21]

The first Continental Congress decried the first measure, while Thomas Jefferson thought the second risked colonists' deportation for trials overseas.[22] The Founders condemned these measures for depriving accused Americans of local support.[23] Though it appears no overseas trials actually took place, the Declaration

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[17] *Commonwealth v. Uprichard*, 69 Mass. 434, 436 (1855).

[18] Drew L. Kershen, *Vicinage*, 29 OKLA. L. REV. 803, 805–06 (1976) [hereinafter "Kershen I"].

[19] *Id.* at 806.

[20] *Id.* (citing William W. Blume, *The Place of Trial of Criminal Cases: Constitutional Vicinage and Venue*, 43 MICH. L. REV. 59, 63 (1944)).

[21] *Id.* at 806–07.

[22] *Id.* at 807.

[23] Kaufman, *supra*, at 366.

of Independence condemned the King's "transporting us beyond Seas to be tried for pretended offenses."[24]

The Framers thus required in Article III that federal criminal trials be held "in the State where the said Crimes shall have been committed" (the Venue Clause).[25] Additionally, the Sixth Amendment required juries to be selected from "the State and district wherein the crime shall have been committed" (the Vicinage Clause).[26] Further, Article III provides that crimes "not committed within any State" can be tried in a venue designated by Congress, which also received an enumerated power to "define and punish piracies and felonies committed on the high seas, and offenses against the law of nations."[27] The Constitution contains no similar provision giving Congress authority to set criminal venue as a general matter. Across multiple provisions, the Constitution sets locality as a core requirement for every federal criminal prosecution.

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[24] *Declaration of Independence: A Transcription*, NAT'L ARCHIVES, https://www.archives.gov/founding-docs/declaration-transcript; Paul Mogin, *"Fundamental Since Our Country's Founding":* United States v. Auernheimer *and the Sixth Amendment Right to Be Tried in the District in Which the Alleged Crime Was Committed*, 6 U. DENV. CRIM. L. REV. 37, 41 (2016).

[25] Kaufman, *supra*, at 365 (quoting U.S. CONST. art. III, § 2).

[26] *Id.* (quoting U.S. CONST. amend. VI); *see also* Kershen I, *supra*, at 830 (noting the historical assumption "that the place of trial and the place from which the jurors were to be selected were the identical place"); *id.* at 832 n.107 ("A jury of the vicinage is . . . from the place of the commission of the crime . . . ."); C. Steven Bradford, *What Happens if* Roe *Is Overruled? Extraterritorial Regulation of Abortion by the States*, 35 ARIZ. L. REV. 87, 137 (1993); Farmer, *supra*, at 233 (discussing vicinage at common law).

[27] U.S. CONST. art. I, § 8; *id.* art. III, § 2, cl. 3.

Also relevant is the structure of the federal judiciary. The Constitution did not directly establish any inferior courts, and several Founders anticipated that federal crimes would be tried in the courts of the states where they were committed.[28] For 200 years, starting with the Judiciary Act of 1789, federal district courts' criminal jurisdiction remained limited to their home states.[29] Only in the late nineteenth century, due to the creation of intra-district divisions, did this Court distinguish between jurisdiction and venue.[30]

Criminal-venue scholar Drew Kershen summarizes: "Find the court with jurisdiction over the crime by finding the place where the crime was committed[.]"[31] He concludes that for the Founders and nineteenth-century Americans, "no other test aside from the place where the crime was committed would have been compatible with" the Constitution.[32]

CONCLUSION

The Ninth Circuit's ahistorical test focusing on what statutes "contemplate" deviates from the original

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[28] Kershen I, *supra*, at 812.

[29] *Id.* at 812, 846; Drew L. Kershen, *Vicinage*, 30 OKLA. L. REV. 1, 3 (1977) [hereinafter "Kershen II"]; *see also United States v. Ta-Wan-Ga-Ca*, 28 F. Cas. 18, 19 (D. Ark. 1836).

[30] Kershen II, *supra*, at 5 (citing *Rosencrans v. United States*, 165 U.S. 257 (1897); *Post v. United States*, 161 U.S. 583 (1896); *Logan v. United States*, 144 U.S. 263 (1892)).

[31] Kershen II, *supra*, at 8; *see also Ex parte Crow Dog*, 109 U.S. 556, 559 (1883); *United States v. Wood*, 28 F. Cas. 755, 761 (C.C.D. Pa. 1818) (per Washington, J.) (invalidating a federal indictment that did not specify which of a state's two judicial districts was the crime's site).

[32] Kershen I, *supra*, at 812.

understanding of constitutional venue provisions. Criminal defendants can be tried only where their wrongdoing meaningfully happened. Mr. Abouammo carried out his crime entirely in his Seattle home, using an upstairs computer to create and send a false invoice to the agents waiting on the first floor. Accordingly, the Western District of Washington was the only constitutionally permissible venue for prosecuting him for those acts. This Court should grant his petition and reverse.

Respectfully submitted,

Matthew P. Cavedon
Counsel of Record
CATO INSTITUTE
1000 Mass. Ave., N.W.
Washington, DC 20001
(706) 309-2859
mcavedon@cato.org

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