

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**

PETITIONER'S REPLY BRIEF

CARMEN SMARANDOIU
OFFICE OF THE FEDERAL
PUBLIC DEFENDER FOR
THE NORTHERN DISTRICT
OF CALIFORNIA
450 Golden Gate Avenue
San Francisco, CA 94102

TOBIAS S. LOSS-EATON
Counsel of Record
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
(202) 736-8427
tlosseaton@sidley.com

JEFFREY T. GREEN
DANIELLE HAMILTON
THE CARTER G. PHILLIPS/
SIDLEY AUSTIN LLP
SUPREME COURT CLINIC
NORTHWESTERN PRITZKER
SCHOOL OF LAW
375 East Chicago Avenue
Chicago, IL 60611

JAMES R. HORNER
ANA PAJAR BLINDER
SIDLEY AUSTIN LLP
787 7th Avenue
New York, NY 10019

Counsel for Petitioner

November 5, 2025

TABLE OF CONTENTS

Table of authorities.....	iii
Reply brief.....	1
I. The venue question warrants review.	2
II. The statute-of-limitations question warrants review.....	8
Conclusion.....	11

TABLE OF AUTHORITIES

CASES	Page
<i>City of Boerne v. Flores</i> , 521 U.S. 507 (1997).....	7
<i>Jaben v. United States</i> , 381 U.S. 214 (1965).....	2, 10
<i>Smith v. United States</i> , 360 U.S. 1 (1959)...	9
<i>United States v. Auernheimer</i> , 748 F.3d 525 (3d Cir. 2014).....	6
<i>United States v. B.G.G.</i> , 53 F.4th 1353 (11th Cir. 2022)	11
<i>United States v. Bowens</i> , 224 F.3d 302 (4th Cir. 2000).....	5, 6
<i>United States v. Cabrales</i> , 524 U.S. 1 (1998).....	3
<i>United States v. Clenney</i> , 434 F.3d 780 (5th Cir. 2005).....	4
<i>United States v. Rodriguez-Moreno</i> , 526 U.S. 275 (1999).....	1, 8
<i>United States v. Salinas</i> , 373 F.3d 161 (1st Cir. 2004).....	2
<i>United States v. Smith</i> , 22 F.4th 1236 (11th Cir. 2022)	4
<i>United States v. Swann</i> , 441 F.2d 1053 (D.C. Cir. 1971)	6
<i>United States v. Teran</i> , 98 F.3d 831 (5th Cir. 1996).....	9
<i>United States v. Trie</i> , 21 F. Supp. 2d 7 (D.D.C. 1998).....	7
<i>United States v. White</i> , 887 F.2d 267 (D.C. Cir. 1989).....	6
<i>Youngstown Sheet & Tube Co. v. Sawyer</i> , 343 U.S. 579 (1952).....	11

TABLE OF AUTHORITIES—continued

Page

CONSTITUTION AND STATUTES

U.S. Const. amend. V	9
18 U.S.C. § 1519	3
18 U.S.C. § 1832(a).....	4
18 U.S.C. § 3288	9
18 U.S.C. § 3289	9
28 U.S.C. § 3288	9

LEGISLATIVE HISTORY

S. Rep. No. 88-1414 (1964), <i>as reprinted in</i> 1964 U.S.C.C.A.N. 3257.....	10
134 Cong. Rec. S7446-01, 1988 WL 171875 (1988)	7

REPLY BRIEF

On the first question presented, the government's evasive responses confirm that review is warranted. The Ninth Circuit has adopted a constitutional rule under which a crime whose scienter element "contemplates" some effect can be prosecuted anywhere the effect could be felt—even if such an effect is not needed for conviction and never actually materializes. In an era of multi-agency, multi-jurisdiction investigations, this rule empowers the government to expand or manipulate venue for obstruction offenses just by sending agents from other cities or forwarding information to other offices, unbeknownst to the defendant. And it conflicts with this Court's approach to venue and with other circuits' decisions.

The government does not dispute this question's importance. Nor does it assert any vehicle problems. And it makes only a cursory attempt to square the Ninth Circuit's rule with this Court's command to decide venue based on an offense's "essential conduct elements." *United States v. Rodriguez-Moreno*, 526 U.S. 275, 279–80 (1999). Instead, it contends that no split exists because no other circuit has rejected effects-based venue under a similar statute. Nonsense. Multiple circuits have squarely rejected the Ninth Circuit's reasoning—and, in some cases, the Ninth Circuit's actual precedent—as applied to materially indistinguishable laws. In those circuits, a panel would have to decide this case the other way. This entrenched split warrants review.

On the second question presented, the government parrots the Ninth Circuit's reasoning without grappling with the holes in its logic or the problems it creates. The Fifth Amendment says in so many words that a defendant need not "answer" a waiverless felony

information; that being so, such an information is a nullity that cannot satisfy or extend the limitations period. Likewise, a waiverless information does not “institute” a felony prosecution under this Court’s decision in *Jaben v. United States*, 381 U.S. 214 (1965)—which the government ignores. That this maneuver grew out of the Covid-19 pandemic is no reason to leave this loaded weapon lying around for prosecutors to pick up at their convenience. This question, too, warrants this Court’s review.

I. The venue question warrants review.

The Ninth Circuit’s venue holding deepens a circuit split, conflicts with *Rodriguez-Moreno*, and raises an important constitutional question. The government does not effectively rebut these showings, and in some cases does not really try.

A. The government says no other circuit has addressed a statute with an intent element like § 1519’s. Opp. 12–13. That is wrong.

The First Circuit. The government says *United States v. Salinas* is distinguishable because it “rejected venue based on a required statutory intent to obtain ... a discrete ... thing”—a passport—“not, as here, to influence or obstruct an ongoing matter.” Opp. 13. But the government does not try to explain why this is supposed to matter. The issue in *Salinas* wasn’t whether venue could exist where the not-yet-printed passport was located, but whether venue could lie wherever a false document ultimately reached its intended government recipient. 373 F.3d 161, 167 (1st Cir. 2004). And the statute in *Salinas* punished the making of a “false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States.” *Id.* at 165. That is no different from punishing the falsifying of a

document “with the intent to impede, obstruct, or influence the investigation ... of any matter within the jurisdiction of any department or agency of the United States.” 18 U.S.C. § 1519. All the *conduct* described in both provisions occurs where the defendant is, not wherever his communications end up. See *Salinas*, 373 F.3d at 165.

The First Circuit thus found “no justification for laying venue in a location other than the one district in which all the criminal conduct occurred.” *Id.* The Ninth Circuit, by contrast, held that such an intent element allows prosecution anywhere the falsified document “was ‘received by the person or persons whom it was intended to affect or influence.’” Pet. App. 39a. The Ninth Circuit also held that such an intent element creates a “continuing offense.” *Id.* at 39a. The First Circuit rejected that view as “impermissible.” 373 F.3d at 168. And the Ninth Circuit’s rule hinges on circuit precedent in *Angotti*. See Pet. App. 33a–44a. But the First Circuit specifically rejected *Angotti* as having “dubious precedential value,” being “inconsistent with” this Court’s decisions in *Rodriguez-Moreno* and *United States v. Cabrales*, 524 U.S. 1 (1998), and relying on “unpersuasive” reasoning. *Salinas*, 373 F.3d at 168. If Mr. Abouammo’s case arose in the First Circuit instead of the Ninth, *Salinas* would mandate reversal.

Nor does the government get anywhere by dredging up First Circuit cases apparently approving of effects-based venue under other laws in the 1980s. See Opp. 13 (citing *United States v. Tedesco*, 635 F.2d 902, 902, 904–06 (1st Cir. 1980); *United States v. Uribe*, 890 F.2d 554, 559 (1st Cir. 1989)). Like *Angotti*, those cases predate *Rodriguez-Moreno* and *Cabrales*. But unlike the Ninth Circuit, the First has correctly changed course.

The Fifth Circuit. As with *Salinas*, the government says *United States v. Clenney* involved an “intent to ... remove a discrete person,” *i.e.*, kidnapping. Opp. 13. Again, that is not a real distinction. Just like § 1519, the parental-kidnapping statute in *Clenney* required obstructive intent—the “intent to obstruct the lawful exercise of parental rights.” 434 F.3d 780, 781 (5th Cir. 2005) (per curiam). And just like the Ninth Circuit held below, the government argued that venue was proper where the intended effects were felt, *i.e.*, in the district where the “parental rights were violated.” *Id.* at 782.

The Fifth Circuit flatly rejected that view. Obstructive intent “is plainly not an ‘essential conduct element’ as required by *Rodriguez-Moreno*,” and anyway, “the intent element is a mental state that cannot have been ‘committed’ anywhere but where [the defendant] was physically present.” *Id.* This reasoning would mandate ruling for Mr. Abouammo. And again, it does not matter that the Fifth Circuit may have said something different before this Court decided *Rodriguez-Moreno*. *Contra* Opp. 13 (citing *United States v. Dupre*, 117 F.3d 810, 822 (5th Cir. 1997)).

The Eleventh Circuit. The government puts *United States v. Smith* in the same “discrete person or thing” bucket. Opp. 13. Once more, that does not matter: The key question is whether the offense’s effects are actually required for conviction or merely part of the intent element. See 22 F.4th 1236, 1243–44 (11th Cir. 2022), *aff’d on other grounds*, 599 U.S. 236 (2023). Under the trade-secrets statute in *Smith*, as here, the latter is true. That statute requires that the defendant “intend[] or know[] that the offense will[] injure any owner of that trade secret.” 18 U.S.C. § 1832(a). This language “does not define any essential conduct element of the offense in terms of its effects.” *Smith*, 22

F.4th at 1244. So too here. In the Eleventh Circuit, Mr. Abouammo would have to win. Another citation from the 1980s does not suggest otherwise. *Contra* Opp. 13 (citing *United States v. Greene*, 862 F.2d 1512, 1515 (11th Cir. 1989)).

The Fourth Circuit. The government tries a different tack with *United States v. Bowens*. It says the fugitive-harboring statute there was unlike § 1519 because the requirement that the fugitive have an active warrant “was merely a circumstance element.” Opp. 12 (cleaned up). But the government is looking at the wrong part of the statute. The element that arguably supported effects-based venue in *Bowens* was not the warrant predicate, but the requirement that the defendant conceal a fugitive “so as to prevent his discovery and arrest.” 224 F.3d 302, 309 (4th Cir. 2000)) (quoting 18 U.S.C. § 1071). But this language could not support venue, the Fourth Circuit held, precisely because it “*defines the requisite intent* for the offense of harboring, not an essential conduct element.” *Id.* at 313 (emphasis added). Older precedent to the contrary “cannot be reconciled with ... *Cabrales* and *Rodriguez-Moreno*.” *Id.* at 312.

In other words: “When Congress defines the essential conduct elements of a crime in terms of their particular effects, venue will be proper where those proscribed effects are felt.” *Id.* at 313. But that is true only when a statute “actually define[s] the essential conduct elements in terms of their particular effects, e.g., ‘affecting’ interstate commerce and ‘obstructing’ or ‘impeding’ the administration of justice”—not just *intending* to do so. *Id.* As a result, “venue for a prosecution under [the harboring statute] is proper only where defendant actually harbors or conceals a fugitive”; “the possible disruption of the administration of justice in the district issuing the arrest warrant is of

no consequence.” *Id.* Likewise here, venue for a prosecution under § 1519 is proper only where the defendant actually falsifies a document; the possible disruption of the administration of justice in a district where the false document is received does not matter.

The Third Circuit. The government groups the Third Circuit with the Fourth, contending that the computer-crime statute in *United States v. Auernheimer* contained no similar intent element. Opp. 12 (discussing 18 U.S.C. § 1030). This response overlooks a separate count under § 1028(a)(7), which prohibits identity theft “with the intent to commit ... any state felony.” See 748 F.3d 525, 535–36 (3d Cir. 2014). As to § 1028, the government argued that venue in New Jersey was proper because the defendant acted “with the intent to violate the New Jersey computer crime statute.” *Id.* at 536. The Third Circuit rejected that view because “no essential conduct element of the alleged violation of New Jersey law occurred in New Jersey.” *Id.* And as to *both* counts, the government argued that “the locus of the [offense’s] effects ... was sufficient to confer constitutionally sound venue.” *Id.* at 537. But that can be true, the Third Circuit held, only if “an essential conduct element is itself defined in terms of its effects.” *Id.* (quoting *Bowens*, 224 F.3d at 311). This logic and holding would constrain a Third Circuit panel to rule for Mr. Abouammo.

The D.C. Circuit. In a brief full of *non sequiturs*, the government’s treatment of D.C. Circuit precedent takes the cake. The government admits that the court rejected effects-based venue in *United States v. White*, 887 F.2d 267 (D.C. Cir. 1989), addressing bribery, and *United States v. Swann*, 441 F.2d 1053 (D.C. Cir. 1971), addressing witness tampering, because in both cases the effects were not required for conviction. But, the government says, *White* overlooked that Congress

abrogated *Swann* by “enact[ing] a specific witness-tampering statute” allowing effects-based venue. Opp. 14.

That is irrelevant. This special venue statute “merely establishe[d] that an obstruction of justice is ‘committed’ where the impact of the obstruction is felt.” 134 Cong. Rec. S7446-01, 1988 WL 171875 (1988). Such a statutory amendment does not and cannot abrogate a constitutional holding. See *City of Boerne v. Flores*, 521 U.S. 507, 519 (1997). No wonder *White* didn’t discuss this legislative change; it had no bearing on the constitutional venue test that governed the court’s analysis. Cf. *United States v. Trie*, 21 F. Supp. 2d 7, 18 (D.D.C. 1998) (“In this Circuit ... the reasoning articulated in *White*, *Swann* and *Moore* controls the venue determination” in obstruction cases not governed by this “special venue provision.”).

In each of these other courts, a panel would have to rule for Mr. Abouammo.

B. On the merits, the government says little. It does not try to explain how an intent element can be a conduct element to begin with. See Pet. 15–16. It does not try to explain how, even if intent were conduct, such conduct could be committed anywhere other than where the defendant was. *Id.* at 16. It does not acknowledge the Ninth Circuit’s discredited “continuing offense” analysis, much less try to rehabilitate it. *Id.* at 16–17. It does not even mention *Angotti*, the outdated opinion underpinning the decision below, whose venue analysis on a related issue this Court has already rejected. *Id.* at 16. It does not try to square the decision below with the original understanding and purpose of the Constitution’s venue protections. See NACDL Amicus Br. 4–5; Cato Amicus Br. 5–7. And while the government emphasizes that Mr.

Abouammo “knew” the investigation was San Francisco-based, Opp. 11, the Ninth Circuit’s rule is indifferent to any such knowledge, see Pet. 18.

The government likewise describes *Rodriguez-Moreno* without trying to explain how it supports the result below. Nor could it. That case involved “a kidnapping that continued through several States,” and the prosecution—for using a firearm in relation to the kidnapping—occurred in “one of the locations in which the victim had been held captive.” Opp. 9. The defendant was thus prosecuted in a venue where he physically committed acts forming part of the offense. See *id.* at 10. That is not true here. The decision below is wrong.

C. As to importance, the government professes confusion about how or why “this Court might fashion a new general venue rule applicable beyond” § 1519. Opp. 15. But as the cases above show, the question presented has broad relevance. It affects prosecutions under any federal criminal statute that (i) requires the defendant to intend a particular effect but (ii) does *not* require those effects to actually occur. That includes (among other offenses) parental kidnapping, theft of trade secrets, hacking, identity theft, harboring a fugitive, and all manner of obstruction, fraud, and tampering crimes. A decision here will provide much-needed guidance for all such cases. Indeed, in the course of “fashion[ing] a ... general venue rule” in *Rodriguez-Moreno*, the Court reserved a variant of this very question. 526 U.S. at 279 n.2. The time has come to answer it.

II. The statute-of-limitations question warrants review.

The second question—whether the government can use a waiverless felony information to bootstrap a

longer limitations period under 18 U.S.C. §§ 3288 or 3289—is independently worthy of review. The Court should decide whether the government can unilaterally circumvent any criminal statute of limitations in this way.

Section 3288’s plain text, and plain common sense, show the Ninth Circuit’s error. A waiverless information is not “an information charging a felony” because it does not initiate a prosecution. The government does not dispute that an “information charging a felony” must be a “preliminary step in [a] prosecution[]” Opp. 16–17. Still, it says a waiverless information qualifies because “[t]he filing of an information begins criminal proceedings, even if those proceedings may culminate in a motion to dismiss ... and the defendant is not exempt from the requirement to appear in court and address the criminal prosecution in some way.” *Id.*

The Fifth Amendment says otherwise. “No person *shall be held to answer* for a [felony] ... unless on a presentment or indictment of a Grand Jury[.]” U.S. Const. amend. V (emphasis added). So contrary to the government, without an indictment or waiver, the defendant has no obligation to “answer” the information; it is a nullity. This Court has long deemed these requirements jurisdictional—absent an indictment, it is the waiver that “confer[s] power on the convicting court to hear the case.” *Smith v. United States*, 360 U.S. 1, 10 (1959); accord *United States v. Teran*, 98 F.3d 831, 835 (5th Cir. 1996).

Nor does the government grapple with the fact that the decision below incongruously allows a waiverless information to extend the limitations period even though it would not satisfy the underlying statute of limitations in the first place. See 28 U.S.C. § 3288

(“This section does not permit the filing of a new indictment or information where the reason for the dismissal was the failure to file the indictment or information within the period prescribed by the applicable statute of limitations”). Section 3282 requires that an information be “instituted” in order to toll the limitations period, and this Court has already made clear that a criminal pleading is not “instituted” unless it can “begin *effectively* the criminal process.” *Jaben*, 381 U.S. at 215, 220 (emphasis added). The government has no answer. The opposition does not even mention *Jaben*, this Court’s most relevant precedent.

The government instead looks to § 3288’s 1988 amendment. Opp. 17–18. But, like the Ninth Circuit, the government would give no effect to the language that Congress *added* at that time—the requirement that an “information” be one that is “charging a felony.” Pet. App. 27a n.4. This replaced prior language saying an information need only be “filed.” *Id.* The government also ignores the 1964 amendment that first added a reference to informations. That amendment was designed to “permit reindictment ... where an information was filed *after the defendant waived in open court prosecution by indictment.*” See S. Rep. No. 88-1414, at 2 (1964), *as reprinted in* 1964 U.S.C.C.A.N. 3257, 3257–58 (emphasis added). And the government overlooks the petition’s showing that, when Congress first used the phrase “information is instituted” in § 3282’s predecessor provision, it cannot have meant to include a waiverless felony information because no such thing existed. See Pet. 24–25.

Finally, the government tries to write off this issue as unimportant, noting that this maneuver has so far been used only in the “anomalous context of COVID-19 restrictions.” Opp. 18. But nothing in the Ninth Circuit’s reasoning limits this end-run to pandemics or

other unusual circumstances. Cf. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 650 (1952) (Jackson, J., concurring) (“emergency powers [] tend to kindle emergencies”). This Court should decide whether this “bad-faith gambit,” *United States v. B.G.G.*, 53 F.4th 1353, 1374–75 (11th Cir. 2022) (Wilson, J., dissenting), should remain in the government’s arsenal.

CONCLUSION

The petition should be granted.

Respectfully submitted,

CARMEN SMARANDOIU
OFFICE OF THE FEDERAL
PUBLIC DEFENDER FOR
THE NORTHERN DISTRICT
OF CALIFORNIA
450 Golden Gate Avenue
San Francisco, CA 94102

TOBIAS S. LOSS-EATON
Counsel of Record
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
(202) 736-8427
tlosseaton@sidley.com

JEFFREY T. GREEN
DANIELLE HAMILTON
THE CARTER G. PHILLIPS/
SIDLEY AUSTIN LLP
SUPREME COURT CLINIC
NORTHWESTERN PRITZKER
SCHOOL OF LAW
375 East Chicago Avenue
Chicago, IL 60611
(312) 503-1486

JAMES R. HORNER
ANA PAJAR BLINDER
SIDLEY AUSTIN LLP
787 7th Avenue
New York, NY 10019

Counsel for Petitioner

November 5, 2025