No. 25-5146

IN THE

Supreme Court of the United States

AHMAD ABOUAMMO,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITIONER'S BRIEF

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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.

PARTIES TO THE PROCEEDING

Petitioner is Ahmad Abouammo.

Respondent is the United States of America.

No corporate parties are involved in this case.

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INTRODUCTION

A person's right to be tried in the place where he allegedly committed a crime was so prized by the Founding generation that the Constitution protects it twice—once in Article III's Venue Clause, and again in the Sixth Amendment's Vicinage Clause. By allowing trials only where an offense was "committed," these provisions codify the common-law right of vicinage. They serve "to secure the party accused from being dragged to a trial in some distant state," where he may be subjected to "the most oppressive expenses" and "the verdict of mere strangers . . . who may even cherish animosities, or prejudices against him." 3 Joseph Story, *Commentaries on the Constitution* § 1775 (1833). The vicinage right was deemed so fundamental that the Crown's threat to violate it—by "transporting us beyond Seas to be tried for pretended offences"—is among the grievances listed in the Declaration of Independence.

At the Founding, most crimes were "committed" only in one obvious place, often near the defendant's home. As technology evolved and the nation grew more interconnected, offenses implicating multiple states or districts became common. But the constitutional rule did not change: Venue depends on "the location of the act or acts constituting" the crime, *United States* v. *Anderson*, 328 U.S. 699, 703 (1946)—on where the defendant committed the offense's "essential conduct elements." *United States* v. *Rodriguez-Moreno*, 526 U.S. 275, 280 (1999). If something is neither conduct nor an element, it cannot support venue.

Applying that rule here is straightforward. Petitioner Ahmad Abouammo was charged with "knowingly . . . falsif[ying]" a document "with the intent to impede, obstruct, or influence" a federal investigation. 18 U.S.C. § 1519. The only *conduct* proscribed by this

language is the act of falsification; everything else is *mens rea*. And all of Mr. Abouammo's alleged offense conduct—using his computer to create a false invoice—happened in a half-hour window during which he never left his home in Seattle. The offense was committed and completed then and there. In turn, the venue analysis is open and shut: He could be tried for this offense in the Western District of Washington, and nowhere else.

Yet the Ninth Circuit upheld Mr. Abouammo's conviction by a Northern District of California jury. The court reasoned that his act of falsification "continued" until the false invoice was received by its intended recipients, who happened to be working out of San Francisco—though they were sitting in his home in Seattle when he created the invoice and emailed it to them. The hook for this reasoning was § 1519's intent clause: Because Mr. Abouammo allegedly created the invoice "with the intent to impede, obstruct, or influence" an investigation based in San Francisco, the court said, he "committed" his offense there—even though no obstructive effects were required for conviction and none in fact materialized.

The Ninth Circuit wrongly conflated desires with deeds. An offense's *hoped-for* effects are not conduct. Nor are they elements, since the statute is indifferent to whether they occur. That should be the end of this case. By looking past the statutory language and Mr. Abouammo's own acts to focus on the government's investigative choices, the Ninth Circuit's rule produces arbitrary results, invites prosecutorial manipulation, and contravenes the Venue and Vicinage Clauses' purposes. The Court should reverse the decision below.

OPINIONS AND ORDERS BELOW

The Ninth Circuit's opinion is reported at 122 F.4th 1072 and reproduced at JA1–44. The unreported order denying panel rehearing and rehearing *en banc* is reproduced at JA114. The district court's opinion is available at 2022 WL 175844238 and reproduced at JA45–113.

STATEMENT OF JURISDICTION

The Ninth Circuit issued its judgment on December 4, 2024, and denied a timely rehearing petition on March 18, 2025. On June 9, 2025, Justice Kagan extended the time to file the petition to July 16, 2025. The petition was filed on that date and granted on December 5, 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 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.

STATEMENT OF THE CASE

1. As part of an investigation into the disclosure of nonpublic Twitter account information to an associate of now-Crown Prince of Saudi Arabia Mohammed bin Salman, FBI agents flew from their San Francisco office to Mr. Abouammo's home in Seattle. JA6–7. Mr. Abouammo was a former Twitter employee who had accessed company databases about the platform's users and provided personal information about a Saudi dissident user to a Saudi official. After leaving Twitter, Mr. Abouammo moved to Seattle, where he started a freelance social media consultancy. JA6.

Upon meeting Mr. Abouammo outside his house, the agents identified themselves as "FBI agents from the San Francisco office." JA7. They then spoke with him in his home for several hours. *Id.* During this conversation, Mr. Abouammo said that he had worked with the Saudi official after leaving Twitter. When the agents asked for documentation, he went upstairs for about 30 minutes to allegedly create and then email them a falsified invoice for these consulting services. JA8. The agents were still sitting in his home when

he sent the email. This was his only interaction with them about the invoice.

2. Mr. Abouammo was indicted in the Northern District of California for one count of falsifying records under 18 U.S.C. § 1519 (plus other offenses not relevant here). JA8. He moved to dismiss the § 1519 charge for improper venue. The district court denied the motion, concluding that "the crime is tied to the potentially adverse effect upon a specific (pending or contemplated) proceeding, transaction, investigation, etc., and venue may properly be based on the location of that effect." JA85–86.

Mr. Abouammo was then tried and convicted by a Northern District jury. JA9. After trial, he again sought dismissal of the § 1519 charge on venue grounds. The district court again rejected his argument based on the same reasoning. JA85–86.

3. The Ninth Circuit held that venue was proper. It emphasized that § 1519's intent element "*expressly contemplates* the effect of influencing the action of another." JA34 (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 court concluded, "the statute of conviction need not . . . require 'actual' adverse effects or interference in a district for effects-based venue to be proper there." JA38. 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 Mr. Abouammo did not know who or where those particular people were, and even if no one was ever influenced. JA36 (cleaned up). Since the falsified document "was received by FBI agents working out of the FBI's San Francisco office . . . the offense was continued or completed in the Northern District, making venue proper there." *Id.*

Judge Lee concurred to agree that, under circuit precedent, "the Northern District of California was a proper venue." JA43. 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.*

The Ninth Circuit denied Mr. Abouammo's petition for panel and *en banc* rehearing. This Court then granted review.

SUMMARY OF ARGUMENT

I. Venue was improper here because the sole essential conduct element of Mr. Abouammo's § 1519 offense—document falsification—was committed wholly in Seattle, not San Franscisco.

This Court's precedents require a two-step inquiry to determine where an offense was "committed" for venue purposes: (1) identify the charged offense's essential conduct elements, then (2) determine the place or places where that conduct took place. An offense may be prosecuted only where that conduct occurred or continued.

As charged, § 1519 has just one essential conduct element: falsifying a document. Mr. Abouammo's alleged act of falsification was committed and completed

when he created the false invoice in his home in Seattle. No part of this conduct occurred in San Francisco, so venue cannot lie there.

The statute's remaining elements deal not with conduct, but with *mens rea*. *Mens rea* elements are not essential conduct elements that can support venue. And even if they were, Mr. Abouammo formed the requisite intent in the same place as he committed the prohibited act.

Obstructive effects are not an element under § 1519, much less an essential conduct element. Such effects are merely the object of the statutory intent requirement: A defendant must act with the *intent* to obstruct, impede, or influence an investigation or proceeding. But the statute does not require that any obstruction occur—or even that any investigation exist. Thus, such hoped-for effects cannot support venue.

Nothing in the Court's precedents supports venue based on non-element, non-conduct circumstances. In cases involving interstate communications or shipments, the Court has sometimes upheld venue in a place other than where the defendant physically acted, and sometimes not—always based on the specific conduct proscribed by the statute. When the Court has allowed (or required) venue in a place where a mailing or shipment was received, it was always because the conduct that Congress proscribed extended into (or occurred only in) that jurisdiction. Here, no essential conduct occurred in the forum.

II. History confirms that venue cannot rest on contemplated effects. At common law, the right to a trial by a jury of the local community—the vicinage—was settled and sacred. This right entitled a defendant to be tried where the offense's "issuable facts," *i.e.*, its essential facts, occurred.

The Founding generation viewed the vicinage right as a fundamental protection against governmental abuse. A key provocation in the lead-up to the Revolution—specifically named in the Declaration of Independence—was the Crown's attempt to try colonial treason offenses in England. Parliament justified this effort by pointing to the effects of treasonous conduct in the seat of government. The colonists roundly rejected that effort, resulting in the Constitution's twin commands that crimes be tried where they are "committed." That term—as confirmed by early American cases addressing analogous offenses—referred to the location of the defendant's conduct, not the intended effects of his actions.

III. The Ninth Circuit's rule is unsound. The court reasoned that, because the statute's intent element "expressly contemplates" potential obstructive effects, a § 1519 offense continues until (and thus occurs wherever) a falsified document is received by its intended recipients. That view misunderstands § 1519, which criminalizes the act of falsification, not communication. Because the statute does not require that a falsified document ever reach a recipient, let alone that it affect them, the offense does not continue on that basis.

By unmooring venue from the defendant's conduct, the Ninth Circuit's rule produces arbitrary results and invites manipulation. Under the decision below, venue for obstructive-intent offenses turns on the government's investigative choices, of which the defendant may be unaware—where agents are stationed, how investigations are organized, or where information is routed. In an era of multi-agency, multi-jurisdiction investigations, the result is an unpredictable regime that invites prosecutorial forum-shopping and

imposes precisely the hardships that the Venue and Vicinage Clauses were designed to prevent.

ARGUMENT

I. Venue was improper under this Court's precedents.

Article III and the Sixth Amendment mandate that crimes be prosecuted where they were "committed." Proper venue thus depends on the site of "the conduct constituting the offense." *Rodriguez-Moreno*, 526 U.S. at 279. Section 1519 has only one such "essential conduct element," *id.* at 280—falsifying a document. Mr. Abouammo's alleged act of falsification occurred entirely in Seattle, so venue could not lie in San Francisco. It does not matter that he allegedly intended to obstruct an investigation that happened to be based in San Francisco. Potential obstructive effects are neither conduct nor an element of the offense.

A. Venue turns on where the offense's essential conduct elements occurred.

The place where a crime was "committed," and thus may be prosecuted, "must be determined from the nature of the crime alleged and the location of the act or acts constituting it." *United States* v. *Anderson*, 328 U.S. 699, 703 (1946). "In performing this inquiry, a court must initially identify the conduct constituting the offense (the nature of the crime) and then discern the location of the commission of the criminal acts." *Rodriguez-Moreno*, 526 U.S. at 279. The Court's two most recent cases applying this test demonstrate that it limits venue to the place or places where the statutorily proscribed conduct "took place." *United States* v. *Cabrales*, 524 U.S. 1, 7 (1998).

In the first case, *Cabrales*, the defendant was charged in Missouri with money laundering. The

laundering "occurred entirely in Florida" but involved money from cocaine sales in Missouri. *Id.* at 3–4. The defendant was "not alleged to have transported funds from Missouri to Florida" and was not "charged . . . with participation in the Missouri cocaine distribution that generated the funds in question." *Id.* at 4.

This Court held the venue improper. Looking to "the nature of the crime alleged," the Court concluded that the charged money-laundering statutes "interdict only the financial transactions . . . not the anterior criminal conduct that yielded the funds allegedly laundered." *Id.* at 7. "Notably," the charges did not "assert [Cabrales's] responsibility for[] acts done by others," and it was "immaterial whether [she] knew where the first crime was committed." *Id.* at 7–8. Rather, as the Court later explained, the only "proscribed conduct" was the financial transactions themselves. *Rodriguez-Moreno*, 526 U.S. at 280 n.4 (citing *Cabrales*, 524 U.S. at 7). "The existence of criminally generated proceeds," by contrast, was merely "a circumstance element of the offense," which could not dictate venue. *Id.*

Because the prohibited financial transactions "began, continued, and were completed only in Florida . . . venue in Missouri [wa]s improper." *Cabrales*, 524 U.S. at 8 (cleaned up). The Court thus rejected the government's pitch for "the efficiency of trying Cabrales in Missouri"—neither the government's "convenience," nor the location of evidence, nor "the interests of the community victimized by" the underlying drug dealing overcame the defendant's rights. *Id.* at 9. That was so even though (as here) other counts were properly venued in the forum. See *id.* at 4–5.

In the second case, *Rodriguez-Moreno*, the defendant was charged in New Jersey with using and carrying a firearm during and in relation to a kidnapping, in violation of 18 U.S.C. § 924(c)(1). 526 U.S. at 277. He had

seized a captive in Texas and transported him to New Jersey, New York, and then Maryland. In Maryland, he held the prisoner at gunpoint before the man ultimately escaped. See *id.* The defendant maintained that he could be tried only in Maryland—the single "place where the Government had proved he actually used a gun." *Id.*

The Court disagreed. The offense had two "essential conduct element[s]": the "'using and carrying' of a gun" and "the commission of a kidnapping." *Id.* at 280. Though the gun was used only in Maryland, it was used in connection with the kidnapping—a "continuing offense" with "distinct parts" that occurred in "different localities." *Id.* at 281–82 (quoting *United States* v. *Lombardo*, 241 U.S. 73, 77 (1916)). It began in Texas, "continued in" New Jersey and New York, and concluded in Maryland. *Id.* at 277, 281. And as a "continuing offense," the crime could be "tried 'in any district in which'" it "'was begun, continued, or completed,'" including New Jersey. *Id.* at 282 (quoting 18 U.S.C. § 3237(a)). The Court did not reach the government's alternative argument that 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.

Cabrales and *Rodriguez-Moreno* thus call for a two-step inquiry: (1) what are the offense's essential conduct elements, and (2) where did the conduct establishing those elements take place? Venue is proper in the district or districts where that essential conduct occurred, but not where other related circumstances happened to unfold.

B. Obstructive effects are not an essential conduct element under § 1519.

Applying this Court's venue test is straightforward. All the conduct constituting Mr. Abouammo's alleged offense—falsifying the document—took place in Seattle, not San Francisco. Potential obstructive effects are merely referenced in § 1519's intent requirement. They are not required for conviction, so they are not an offense element, let alone a conduct element.

"Elements are the constituent parts of a crime's legal definition—the things the prosecution must prove to sustain a conviction." *Mathis* v. *United States*, 579 U.S. 500, 504 (2016) (cleaned up). As relevant, § 1519 prohibits "knowingly . . . falsif[ying] . . . any . . . document . . . with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any" federal agency "or in relation to or contemplation" thereof. 18 U.S.C. § 1519. This language sets forth three elements: The defendant must (1) knowingly (2) falsify a document (3) with the intent to influence an actual or contemplated federal investigation. See *United States* v. *Spirito*, 36 F.4th 191, 202 (4th Cir. 2022). Proper venue thus turns on which of these elements "are essential conduct elements" and where that conduct occurred. *Rodriguez-Moreno*, 526 U.S. at 280.

As charged here, § 1519 has one essential conduct element: falsifying a document. This is the only element that involves any conduct—any voluntary "act or omission." See 1 Jens David Ohlin, *Wharton's Criminal Law* § 4:1 (16th ed. 2025). And that conduct occurred entirely in Seattle. During the multi-hour interview at his home, Mr. Abouammo went upstairs for about half an hour, allegedly created the false invoice, and emailed it to the FBI agents sitting downstairs. Indeed, the document's metadata showed that it was

"created during the thirty-minute period that Abouammo was upstairs." JA8. This was the sum total of the offense conduct, and none of it happened in San Francisco. "Under these circumstances, venue in [California] is improper." *Cabrales*, 524 U.S. at 8.

Section 1519's other elements address *mens rea*, not conduct. The word "knowingly" denotes a classic "general scienter" requirement. See *Ruan* v. *United States*, 597 U.S. 450, 458 (2022). And the statute's "with the intent to" clause likewise outlines a "*mens rea* element." See *Holloway* v. *United States*, 526 U.S. 1, 8 (1999). The defendant must intend some impeding, obstructing, or influencing effect on a matter covered by the statute. See *Pugin* v. *Garland*, 599 U.S. 600, 605 (2023) (section 1519 bars "falsifying records with an intent to obstruct").

These are not conduct elements that can support venue. "[C]onduct or behavior" is "distinct from intention or state of mind." *United States* v. *Local 807*, 315 U.S. 521, 533 (1942). And criminal law has long distinguished an "evil-meaning mind" (*mens rea*) from an "evil-doing hand" (*actus reus*). See *Morissette* v. *United States*, 342 U.S. 246, 251 (1952); *United States* v. *Apfelbaum*, 445 U.S. 115, 131 & n.13 (1980). Because venue hinges on the "location of the commission of the criminal acts," *Rodriguez-Moreno*, 526 U.S. at 279, it cannot be based on an intent element: An "element [that] merely speaks to the offender's *mens rea* as he commits the conduct essential to the crime . . . is plainly not an 'essential conduct element' as required by *Rodriguez-Moreno*." See *United States* v. *Clenney*, 434 F.3d 780, 782 (5th Cir. 2005) (per curiam) (holding that "intent to obstruct the lawful exercise of parental rights" is not an essential conduct element of international parental kidnapping under 18 U.S.C. § 1204).

In any event, "a mental state . . . cannot have been 'committed' anywhere but where [the defendant] was physically present." *Id.* Thus, even treating § 1519's *mens rea* elements as conduct elements would make no difference to where the offense was committed. Mr. Abouammo never left his home in Seattle; his intent was formed where the conduct was committed.

Obstructive effects are even further removed from venue because they are not an element at all. To secure a conviction, the prosecution must prove the defendant *intended* such effects, but not that they ever materialized. As the court below acknowledged, "§ 1519 does not require that the falsification of records necessarily affect an ongoing investigation (or even that the investigation be ongoing, as opposed to merely contemplated)." See JA37. That distinguishes § 1519 from other laws that criminalize the actual "obstruct[ing], influenc[ing], or imped[ing]" of an official proceeding. *E.g.*, 18 U.S.C. § 1512(c)(2). Because obstructive effects are not required for conviction, they are not an element, much less an essential conduct element, under § 1519.

Put another way, the "nature of the crime" here, *Cabrales*, 524 U.S. at 7, is not obstruction, but document falsification. Section 1519 was enacted "to prohibit, in particular, corporate document-shredding to hide evidence of financial wrongdoing." *Yates* v. *United States*, 574 U.S. 528, 536 (2015). Congress deliberately proscribed such conduct "in relation to or contemplation of any" covered matter, 18 U.S.C. § 1519, to reach document tampering even if no investigation or proceeding is underway. While other obstruction statutes require a "nexus" between the defendant's conduct and an investigation, "Congress intentionally relaxed this requirement" in § 1519 "to allow the statute to reach more broadly." *United States* v. *Singh*, 979 F.3d 697,

719 (9th Cir. 2020) (citing S. Rep. No. 107-146, at 14–15). Since the statute does not even require that an investigation exist, it makes no sense to treat the potential obstruction thereof as an essential part of the offense.

In short, Mr. Abouammo committed all the conduct forming his § 1519 offense in Seattle. He could not be prosecuted in San Francisco.

C. The Court has never upheld venue based on potential effects.

This Court has repeatedly considered venue in cases involving multi-state fact patterns, including schemes to interfere with government functions or proceedings. Though the Court has sometimes allowed venue where the defendant did not physically act—on the theory that the conduct underlying the offense continued into other jurisdictions—it has never done so based on an offense's effects that were neither conduct nor required for conviction.

In the Court's foundational interstate venue cases—*In re Palliser* and *Armour Packing Co.* v. *United States*—venue turned on the location of essential, prohibited conduct.

Palliser held that a defendant could be tried in Connecticut for sending a letter there from New York proposing an illegal transaction. 136 U.S. 257, 264 (1890). The statute at issue prohibited "promis[ing], offer[ing], or giv[ing] . . . any money" to a federal official "with intent . . . to induce him to do or omit to do any act in violation of his lawful duty." *Id.* at 263 (citation omitted). Palliser sent a letter to a federal postmaster in Connecticut essentially offering a bribe for selling postage on credit. This Court upheld venue in Con-

necticut because "the offense continued to be committed when the letter reached the postmaster" there. *Id.* at 267–68.

Palliser turned on the nature of the specific offense conduct: "an offer to bribe [the postmaster] to do [an] unlawful act." *Id.* at 264. Because the offense required promising or offering money, *id.* at 263, it was not committed—and certainly was not completed—"until the offer or tender was known to the postmaster, and might have influenced his mind." *Id.* at 267. In that way, Palliser's offense was akin to other acts of "unlawful[] . . . communication," like sending "a threatening letter" or a "fraudulent representation," which could be prosecuted where the mail was received. *Id.* at 266–67.

Palliser also drew an analogy to cases holding that, "where a shot fired in one jurisdiction strikes a person in another jurisdiction, the offender may be tried where the shot takes effect." *Id.* at 265–66. Just as the shooter has not shot someone until the bullet reaches the victim, the mailer has not actually offered a bribe until the letter reaches the would-be bribee. In both situations, the prohibited conduct "is committed partly in one district and partly in another." *Id.* at 266. At the same time, *Palliser* never suggested that the location of the bribe's potential effects—the place where the bribee would perform the "act[s] in violation of his lawful duty"—had any bearing on the venue analysis. See *id.* at 263; cf. *United States* v. *White*, 887 F.2d 267, 272 (D.C. Cir. 1989) (R.B. Ginsburg, J.) ("No acts necessary to establish the crime of bribery occurred in the District of Columbia," even though the bribee committed "many official acts" there, because the offense did not require that the bribee "was actually influenced in any such acts").

Unlike the offense in *Palliser*, a § 1519 violation is committed and completed when a document is falsified with the requisite intent. The document need not be communicated to anyone, let alone have an obstructive effect. Though conveying a falsified document "may be powerful evidence of the intent element of the crime," the statute does not require that any document "be conveyed or communicated" to a recipient. See *United States* v. *Salinas*, 373 F.3d 161, 166 (1st Cir. 2004) (rejecting effects-based venue under the passport-fraud statute, 18 U.S.C. § 1542).

Armour Packing likewise involved continuing cross-border conduct, essential to conviction. There, a shipping company was charged in Missouri with unlawfully obtaining transportation of goods from a railroad for a fee below the railroad's published rates. 209 U.S. 56, 74–75 (1908). A statute prohibited shippers from "receiv[ing] any rebate or concession" through which "property is . . . transported" at below-published rates. *Id.* at 73–74. The defendant argued that venue was proper only in Kansas, where it had delivered the goods to the railroad, not in Missouri, where the goods traveled next. *Id.* at 68, 76.

The Court disagreed. Congress had specifically authorized prosecution in any district "through which the transportation may have been conducted." *Id.* at 73. That congressional choice was permissible, the Court held, because the "transportation is an essential element of the offense." *Id.* at 76. And the illegal transportation "equally takes place over any and all of the traveled route, and during transportation the crime is being constantly committed," creating a "continuing offense." *Id.* at 76–77.

Armour Packing is inapt in two ways. First, "transportation—actual carriage—was made an essential el-

ement" of the offense. *Id.* at 74. In contrast, obstructive effects are not an element under § 1519. Second, interstate transportation of goods is *conduct*. The defendant shipper induced this conduct, and the railroad violated the statute by engaging in it. See *id.* at 71. But neither obstructive intent nor potential obstructive effects are conduct, by anyone.

Another interstate-mailing case, *United States* v. *Johnson*, reinforces why *Armour Packing* differs from this case. The *Johnson* defendants were charged with mailing unlicensed dentures from Illinois to Delaware in violation of the Federal Denture Act, which prohibited using the mails "for the purpose of sending or bringing into a State or Territory any denture" made by a non-dentist. 323 U.S. 273, 274 (1944). Venue, the Court held, was proper only in Illinois, because "the crime of the sender is complete when he uses the mails in Chicago" to send the goods. *Id.* at 275–77.

Johnson distinguished *Armour Packing*, explaining that the proscribed conduct there ("transportation") was "inescapably a process, a continuing phenomenon"—which was why Congress could properly specify venue in any district through which the transportation passed. *Id.* at 277. By contrast, a sender's "use of the mails" is "complete" the moment he drops a parcel in the mail. *Id.* And to the extent that the statute "reasonably permit[ted]" two different constructions, the "constitutional concern for trial in the vicinage" warranted the construction that allowed venue in the defendants' vicinage, and not in a place "remote from home." *Id.* at 275–76, 278.

This case is like *Johnson*, not *Armour Packing*. The essential offense conduct (document falsification) is not an "inescapably . . . continuing phenomenon." Rather, it was "complete" the moment Mr. Abouammo finished creating the allegedly false invoice. *Id.* at 277.

Intended effects do not change the analysis. Though the *Johnson* defendants necessarily intended their mailing to have effects in Delaware—since they acted "for the purpose of sending" contraband into that state, *id.* (cleaned up)—their offense was committed and could be prosecuted only in Illinois. So too here.

This Court's only venue case dealing with false statements likewise focused on the precise conduct proscribed, declining to allow venue in every location touched by an interstate mailing. *Travis* v. *United States* involved a union official charged with filing false non-Communist affidavits "in [a] matter within the jurisdiction" of the National Labor Relations Board. 364 U.S. 631, 635 (1961). The Court held that he could not be prosecuted in Colorado, where he signed and mailed the affidavits, but must be tried in the District of Columbia, where the agency received them. *Id.* at 637.

Travis's result followed from the "statutory design" at issue: The relevant provisions "did not require union officers to file non-Communist affidavits," in which case "the whole process of filing, including the use of the mails, might logically be construed to constitute the offense." See *id.* at 635. Rather, such affidavits (i) were "conditions precedent to a union's use of the Board's procedures" and (ii) were subject to the false-statement statute, 18 U.S.C. § 1001. See 364 U.S. at 635–36. Critically, an affidavit did not come "within the jurisdiction" of the Board, as required to trigger § 1001, until it was "on file" there. *Id.* The Court read this scheme to penalize "only the single act of having a false statement at a specified place," the agency's headquarters. *Id.* at 637; see also *id.* at 633 & n.3.

Travis thus rejected the government's theory that the crime was a continuing offense. *Id.* at 636. "Venue should not be made to depend on the chance use of the

mails," the Court said, "when Congress has so carefully indicated the locus of the crime." *Id.*

Travis's reasoning supports the opposite result here. Under the statutes in *Travis*, the offense occurred *only* where the false document was "on file." The converse is true here: The "single act" penalized by § 1519 is falsifying a document with obstructive intent. The offense is committed and completed as soon as that happens, whether or not the document is ever sent to or received by anyone. The offense does not continue beyond that point. "Venue should not be made to depend on the chance use" of email to send the falsified document to federal agents who happened to work in San Francisco. *Id.*

Together, these cases reinforce *Cabrales* and *Rodriguez-Moreno*'s instruction that venue turns on essential conduct elements. All underscore that (i) venue is based on the location of proscribed conduct, not intended effects; and (ii) the statutory specifics are crucial in identifying the precise conduct proscribed—including whether and how it may continue across more than one venue. And on the second point, the Court has emphasized the importance of construing criminal statutes in light of the Constitution's venue and vicinage safeguards. *Johnson*, 323 U.S. at 275. As Justice Frankfurter warned for the Court, allowing prosecutions in any of multiple districts "not only opens the door to needless hardship to an accused by prosecution remote from home and from appropriate facilities for defense. It also leads to the appearance of abuses, if not to abuses, in the selection of what may be deemed a tribunal favorable to the prosecution." *Id.* at 275. "These are matters that touch closely the fair administration of criminal justice and public confidence in it, on which it ultimately rests." *Id.* at 276.

II. History confirms that venue cannot rest on contemplated effects.

What precedent dictates, history confirms: The Constitution does not permit venue wherever an offense's intended effects might be felt.

This Court has long "turn[ed] to the historical background" of the Sixth Amendment "to understand its meaning." *Crawford* v. *Washington*, 541 U.S. 36, 43 (2004); see also *Smith* v. *United States*, 599 U.S. 236, 246 (2023). The same is true for Article III's Venue Clause. See *Cabrales*, 524 U.S. at 6 & n.1. And "the origin of these constitutional provisions shows that they were adopted to achieve important substantive ends—primarily, to deter governmental abuses of power." *United States* v. *Palma-Ruedas*, 121 F.3d 841, 861 (3d Cir. 1997) (Alito, J., concurring in part and dissenting in part), *rev'd sub nom. Rodriguez-Moreno*, 526 U.S. 275. In particular, these constitutional safeguards were a response to the Crown's scheme to try certain colonial offenses "beyond the Sea"—including where the only connection to Britain was potential effects there.

A. The common law vicinage right required a jury drawn from the place where the essential facts occurred.

The common-law right to a trial by a jury of the local community—the vicinage—"is as longstanding as the notion of the jury itself." Steven A. Engel, *The Public's Vicinage Right: A Constitutional Argument*, 75 N.Y.U. L. Rev. 1658, 1674 (2000). By the Founding, "no rule [was] better established." *Smith*, 599 U.S. at 246. This right reflected the fundamental principle that when the accused "hath put himself upon the country" by proceeding with a trial, those standing in judgment

should come from the place of the alleged wrongdoing. 4 William Blackstone, *Commentaries* *350.

Common-law commentators were clear on this point. Edward Coke described the jurors' "dwelling most neere to the place where the question is moved" as the first of a jury's three essential "properties." 1 Edward Coke, *Institutes of the Laws of England* 155.b (Phila., Robert H. Small 1853). Matthew Hale said the jury trial, "the best Trial in the World," required that jurors "be of the Neighbourhood of the Fact to be inquired, or at least the County or Bailywick." Matthew Hale, *The History and Analysis of the Common Law of England* 252–53 (London, John Nutt 1713). And Blackstone confirmed that, "in general, all offences must be inquired into as well as tried in the county where the fact is committed." 4 Blackstone, *supra*, at *304. "[I]t is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of twelve of his neighbours and equals." 3 William Blackstone, *Commentaries* *379.

A crime was historically "committed" where the essential facts occurred. When explaining where an offense should be tried, Coke noted that the jury should draw from the place where "the matter of fact *issuable* [was] alleged." 1 Coke, *supra*, at 125a (emphasis added); *accord Smith*, 599 U.S. at 246. At common law, "issuable and material" facts were those "essential to the cause of action." Benjamin J. Shipman, *Code Pleading: The Aid of Earlier Systems*, 7 Yale L.J. 197, 200 (1898); *accord Knowles* v. *Gee*, 8 Barb. 300, 305 (N.Y. Sup. Ct. 1850); see also 2 William Hawkins, *A Treatise of the Pleas of the Crown* 249 (London, E. Richardson & C. Lintot 1762). Issuable facts did *not* include those "detailed and minute circumstances

which may go to establish" the essential facts. Shipman, *supra*, at 200–01; see *United States* v. *Peacock*, 27 F. Cas. 479, 480 (C.C.D.C. 1804) (No. 16,019) (explaining that "after circumstances" used to prove fraudulent intent, an issuable fact, need not be set forth in an indictment); *Indictment*, Giles Jacob, *A New Law Dictionary* (The Savoy, Henry Lintot, 6th ed. 1750) (contrasting the "narrative of an offence committed" with "those necessary circumstances, that concur to ascertain the fact" (cleaned up)). Thus, an offense was committed, and venue was proper, where the essential facts occurred.

B. The Founding generation rejected British attempts to try offenses where their effects may be felt.

In the lead-up to the Revolution, Parliament flouted the traditional vicinage right, outraging the colonists, by empowering the Crown to try certain colonial offenses in Great Britain. Civil unrest in Massachusetts led Parliament in 1768 and 1769 to revive a Tudor-era statute allowing treason outside the realm to be prosecuted in England. Parliament called for colonists charged with treason to be transported across the Atlantic for trial under this law. See Neil M. York, *Imperial Impotence: Treason in 1774 Massachusetts*, 29 L. & Hist. Rev. 657, 657–58 (2011); 16 T.C. Hansard, *The Parliamentary History of England* 479 (London, 1813); see also *Cabrales*, 524 U.S. at 6 n.1. Then in 1772, Parliament similarly authorized prosecuting some treason-adjacent offenses—burning royal vessels, dockyards, or materiel—in England. See Dockyards etc. Protection Act 1772, 12 Geo. 3, c. 24 (1772).

These offenses involved conduct in America and potential effects in England. Parliament acknowledged that these offenses were being "committed" in the Colonies. 35 Hen. 8, c. 2 (1543) (authorizing prosecution

of "Treasons . . . comytted out of the King Majesties Realme of Englande"); 12 Geo. 3, c. 24 (authorizing prosecution of dockyard arson "as if such [o]ffence had been committed within" England). English courts recognized the same point. *E.g.*, *The King* v. *Platt* (1777) 168 Eng. Rep. 181, 186 (explaining that "high treason . . . was in fact committed out of the realm of England" because it occurred in Georgia). This all tracks the common-law view that treason was "committed . . . where the overt acts charged in the indictment were done." 1 Edward Hyde East, *A Treatise of the Pleas of the Crown* 102–03 (London 1803).

Parliament justified trying these offenses in England based on their effects. In authorizing the prosecution of royal-dockyard arson in England, it noted the "great importance" of the afflicted English ships to the "[w]elfare and [s]ecurity of the Kingdom." 12 Geo. 3, c. 24. And in allowing treason trials there, Parliament similarly cited the colonists' "obstruct[ion]" of English revenue collection and "subver[sion] of his Majesty's government." 16 T.C. Hansard, *supra*, at 478–79. Indeed, the broadest treason charge looming over the colonists required proving that a defendant contemplated such effects. 4 Blackstone, *supra*, at *6, *78–79 (explaining that "compassing or imagining the death of the king," as required for treason, "signif[ies] the purpose or design of the mind or will" (cleaned up)).

"The Continental Congress and colonial legislatures forcefully objected to trials in England" in these cases. *Smith*, 599 U.S. at 247. The Virginia House of Burgesses responded to Parliament's actions by resolving that "all Trials for Treason . . . or for any Felony" ought to be held within the colony where the offense was "committed." *Journals of the House of Burgesses of Virginia 1766–1769*, at 214 (John Pendleton Kennedy ed. 1906); see *Cabrales*, 524 U.S. at 6 n.1; William Wirt

Blume, *The Place of Trial of Criminal Cases: Constitutional Vicinage and Venue*, 43 Mich. L. Rev. 59, 65 (1944). British practice to the contrary would be "illegal" and "unconstitutional." Journals, *supra*, at 214–15. Other colonial legislatures soon followed suit. See Blume, *supra*, at 65. And when "States declared independence, most incorporated some form of a venue or vicinage clause in their governing documents." *Smith*, 599 U.S. at 247.

The First Continental Congress echoed this refrain, resolving that these British measures "deprive[d] the American subject of a constitutional trial by jury of the vicinage." 1 *Journals of the Continental Congress, 1774–1789*, at 72 (Worthington Chauncey Ford ed. 1904). And when the Continental Congress later wrote the Declaration of Independence, it again protested the Crown "transporting [colonists] beyond Seas to be tried for pretended offenses." The Declaration of Independence para. 21 (U.S. 1776); see *Cabrales*, 524 U.S. at 6 & n.1. All in all, the vicinage right "was highly prized by the founding generation." *Smith*, 599 U.S. at 248.

C. The Venue and Vicinage Clauses reflect the Founders' reaction to British abuses.

The Constitution's Venue and Vicinage Clauses likewise responded directly to these British attempts to allow trials other than where offenses were committed.

When the delegates to the Philadelphia Convention convened, "the experiences and grievances from colonial times were still fresh in their memories." Drew L. Kershen, *Vicinage*, 29 Okla. L. Rev. 801, 808 (1976). It is thus no surprise that the New Jersey Plan, the Hamilton Plan, and the Pinckney Plan all featured language to the effect that "no person shall be liable to be

tried for any criminal offense . . . in any other state than that wherein the offense shall be committed." 3 *The Records of the Federal Convention of 1787*, at 616 (Max Farrand ed., 1911) (New Jersey Plan); *accord id.* at 600 (Pinckney Plan); *id.* at 626 (Hamilton Plan). The Committee on Detail took these proposals and adopted their substance. 2 *id.* at 144. That language eventually made its way into Article III with only slight revision. "Little debate" attended this provision, "as the delegates undoubtedly recalled the venue grievance listed in the Declaration of Independence." Kershen, *supra*, at 808; see also Engel, *supra*, at 1686.

The Sixth Amendment's Vicinage Clause grew out of the same concerns. During the original Constitution's ratification debates, anti-Federalists harkened back to the cherished vicinage right to protest the Venue Clause as insufficiently protective. A defendant must have the "right to insist on a trial in the vicinity where the fact was committed." 2 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 109 (Jonathan Elliott ed. 1836). It would be unjust, they argued, for a man to be "dragged to a distant county" for offenses like "ignorantly passing a counterfeited . . . bill." 2 *id.* at 400. "[T]hat great safeguard" had been "taken away" by Great Britain before, so preserving this "dear-bought right[]" against future infringements was imperative. 4 *id.* at 143. And the Venue Clause was not enough—it allowed the prosecution of an offense anywhere in a state, so it still created the risk of prosecutions hundreds of miles from the place of commission. See 1 *id.* at 504; 3 *id.* at 578; 4 *id.* at 143. So, when James Madison proposed the Bill of Rights in 1789, he included a provision to codify that right in what became the Sixth Amendment.

By requiring prosecution where an offense was "committed," the Venue and Vicinage Clauses confirm that

the location of essential offense conduct is key. Early American cases thus treated offenses as "committed" where the defendant engaged in the acts constituting the offense—not where those acts had effects that were unnecessary for guilt.

In *Commonwealth* v. *Parmenter*, for example, the Massachusetts high court set aside a conviction for forging a promissory note. 22 Mass. 279 (1827) (per curiam), *overruled on other grounds by Commonwealth* v. *Wright*, 55 Mass. 46 (1848). Much like a § 1519 offense, common law forgery consisted of "a false making of a written instrument" that "might defraud or deceive, if used with that intent," "for the purpose of fraud or deceit." *E.g.*, *Commonwealth* v. *Hinds*, 101 Mass. 209, 210 (1869). "Uttering" the forged document—offering or presenting it as genuine—was not an element of forgery, but a distinct offense. See *id.* In *Parmenter*, the forgery had effects in Massachusetts because the forged note was uttered there. See 22 Mass. at 284. "But it was not sufficiently proved that the offence was *committed* in" Massachusetts, because there was no evidence that the forged note was *created* there. See *id.* (emphasis added); see also *United States* v. *Wright*, 28 F. Cas. 790, 791 (C.C.D.D.C. 1822) (No. 16,773) (dismissing an indictment for forgery in the District of Columbia—despite the defendant's mailing of papers to the District with the "intent to defraud the United States"—because he mailed the documents from Tennessee and "did no act" in the District).

Similarly, in *State* v. *Knight*, a defendant was indicted in North Carolina under a state law that criminalized "counterfeiting the current bills of credit of [North Carolina]" and "utter[ing] or vend[ing] the same with an intention to defraud the citizens of [the] State." 1 N.C. (Tay.) 143, 143 (N.C. 1799). Though the

act of counterfeiting was plainly directed at North Carolina, it occurred in Virginia. *Id.* at 145. The court thus held that the prosecution exceeded North Carolina's power to "define and punish crimes committed within the State," because a state cannot punish those who "committed [an] offense beyond [its] territorial limits." *Id.* at 144–45. Since the offense was committed "in Virginia," it must be prosecuted there. *Id.*

Members of this Court shared the same view, observing that a defendant does not "commit" an offense wherever its effects may occur. In *Cooper* v. *Telfair*, a plaintiff charged with treason surely contemplated effects in Georgia—he went to "open war" with the State. 4 U.S. (4 Dall.) 14, 14–15 (1800). But two Justices, writing *seriatim*, concluded he did not "commit" treason in Georgia because he engaged in the treasonous acts elsewhere. *Id.* at 17–18 (opinion of Chase, J.); *id.* at 17 (opinion of Washington, J.). Similarly, in *In re Burr*, though the prosecution alleged that Aaron Burr had a "purpose of making war against the government," Chief Justice Marshall, citing the Vicinage Clause, explained that the relevant inquiry for identifying "[t]he place in which a crime was committed" was where Burr's conduct occurred. 8 U.S. (4 Cranch.) 470 (1807). See also *United States* v. *Virgin*, 28 F. Cas. 383 (C.C.D. N.J. 1806) (No. 16,625) (opinion of Washington, J.) (noting an offense was "committed" outside the United States, "intent to defraud the revenue" notwithstanding, because the conduct occurred offshore).

* * *

In short, the Venue and Vicinage Clauses were an explicit rejection of the Crown's attempt to try offenses in England based on their supposed *effect* on the Crown's sovereign authority, felt in the seat of power. In rebuffing that attempt and requiring prosecution

where a crime was "committed," the Founding generation rejected effects-based venue in favor of the common-law right. Because all the acts forming Mr. Abouammo's offense occurred in Seattle, he cannot be prosecuted in San Francisco under Article III and the Sixth Amendment, as those crucial protections were originally understood.

III. The Ninth Circuit's rule is mistaken and manipulable.

Despite all this precedent and history, the Ninth Circuit held that, "where the statute's language expressly contemplates" a potential effect, venue can be proper in "the district of the expressly contemplated effect"—even if no such effect is required for conviction and even if the defendant did not contemplate the effect occurring in that particular place. JA34. On this view, a § 1519 offense continues wherever potential obstructive effects *could* be felt. JA35. That conclusion bears no relationship to the proper venue test and produces a harmful rule.

A. Intended obstructive effects do not create a continuing offense under § 1519.

The crux of the decision below is that § 1519's intent element "*expressly contemplates* the effect of influencing the action of another." JA34 (cleaned up). This "express connection between the actus reus and its contemplated effect" led the Ninth Circuit to conclude that "the contemplated effects are part of 'the essential conduct' of the offense for venue purposes." *Id.* That was so, the court said, even though § 1519 does "not . . . require 'actual' adverse effects or interference." JA38. In other words, it did not matter that § 1519 requires no actual obstruction—nor even an extant investigation: The intent element suffices to allow venue anywhere the intended effects *could* be felt.

Under this logic, Mr. Abouammo's "act of making a false document" with obstructive intent "continued until" (and so took place 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 people were. JA36 (cleaned up). Because the falsified document "was received by FBI agents working out of the FBI's San Francisco office," the court concluded, "the offense was continued and completed" there. *Id*.

That is wrong. As the court acknowledged, venue must be based on the location of an offense's essential conduct elements. JA29; *supra* § I.A. As already explained, obstructive effects are not conduct because they are merely referenced in the statute's *mens rea* requirement. And they are not an element because they are not required for conviction. See *supra* § I.B. The Ninth Circuit should have stopped there.

Labeling Mr. Abouammo's offense "continuing," JA36–37, does not avoid these problems. A non-conspiracy offense is continuing for venue purposes—is "committed in more than one district," 18 U.S.C. § 3237(a)—under two circumstances. The first is "where a crime consists of distinct parts which have different localities," like the kidnapping in *Rodriguez-Moreno*. See 526 U.S. at 281 (quoting *Lombardo*, 241 U.S. at 77). The second is "where it may be said there is a continuously moving act, commencing with the offender and hence ultimately consummated through him," *Lombardo*, 241 U.S. at 77—like the mailed bribery offer in *Palliser* or the illegal interstate shipment in *Armour Packing*.

Unlike in those situations, falsification is not generally a continuing crime, but a discrete act: It starts when the defendant begins creating the false document and ends when he stops. Here, Mr. Abouammo

began and completed the alleged falsification in a 30-minute window in his own home in Seattle. The offense did not "continue" beyond that point.

In still concluding that § 1519's "with intent to" language creates a continuing offense, the Ninth Circuit misunderstood the crime's nature. The court's analysis hinged on the notion 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." JA31 (cleaned up). But § 1519 does not criminalize "the act of making a communication"—as charged, it criminalizes the act of falsifying a document. Under the plain text, a falsification offense is committed and completed as soon as a false document is created with the requisite intent, even if the defendant just puts it in his desk drawer forever. The intent behind his act does not change where it occurs. Compare JA35 (asserting that "language like 'for the purpose of,' expressly contemplate[s] effects-based venue"), with *Johnson*, 323 U.S. at 274, 277 (holding that the sender's offense was "complete when he use[d] the mails in Chicago," even though the statute prohibited mailings "for the purpose of" sending unlawful dentures).

This is not to say a document-falsification offense can never be continuing. Falsification under § 1519 "arguably might rank as a 'continuing offense'" if the defendant started creating a false document in one district and finished it in another—making good use of time while flying, for example. Cf. *Cabrales*, 524 U.S. at 8. "But that is tellingly not this case." *Id.* Other forms of violating the statute, like "conceal[ing]" or "cover[ing] up" a record with obstructive intent, 18 U.S.C. § 1519, also might result in a continuing offense, depending on the facts. But none of that saves the decision below.

B. The Ninth Circuit's rule is unpredictable and invites forum-shopping.

The Ninth Circuit's rule would also unmoor venue doctrine from the "important substantive ends" the Venue and Vicinage Clauses were designed to achieve. See *Palma-Ruedas*, 121 F.3d at 861 (Alito, J., concurring in part and dissenting in part). "Questions of venue in criminal cases," after all, "are not merely matters of formal legal procedure"; they "raise deep issues of public policy." *Johnson*, 323 U.S. at 276. Those issues include "the appearance of abuses, if not [actual] abuses, in the selection of what may be deemed a tribunal favorable to the prosecution." *Id.* at 275. A "favorable" tribunal may be a court in a circuit with more government-friendly law; a district with single-judge divisions, where the government can choose the presiding judge; a court with harsher sentencing trends; or simply a place where the defendant will seem like an outsider.

By condoning prosecution anywhere an offense "contemplates" some potential effect, the Ninth Circuit allows the government to manufacture venue for any offenses involving obstructive intent. The court's rule does not require that the defendant know "where the information would ultimately be received"—only that someone, somewhere will receive it. See *United States* v. *Angotti*, 105 F.3d 539, 543 (9th Cir. 1997), *abrogated on other grounds by United States* v. *Cabrales*, 524 U.S. 1 (1998); JA40 (noting that "it was not necessary for the government to show that Abouammo specifically foresaw effects in the Northern District"). Likewise, the offense does not end when a document reaches its intended recipient, instead continuing as recipients choose to forward it to others. See *Angotti*, 105 F.3d at 543; *id.* at 547 (Norris, J., dissenting); JA35–36.

The Ninth Circuit's rule thus invites manipulation in two ways. First, the government can choose to run an investigation from an office in a particular venue, confident that any false statements to its agents can be prosecuted there. Second, it can structure investigations to include officials from multiple offices, later allowing its pick of forums for prosecution. "We should be wary of such attempts by the government to cherry-pick favored venues through pretextual reliance on out-of-district agents." Cf. JA43 (Lee, J., concurring).

These concerns are not academic. The government has prosecuted an Arkansas defendant in New Jersey for a computer crime with no ties to the forum other than the disclosure of its residents' email addresses. See *United States* v. *Auernheimer*, 748 F.3d 525, 540 (3d Cir. 2014). It has prosecuted someone in Virginia for "arrang[ing] a hiding place" for an associate in South Carolina. *United States* v. *Bowens*, 224 F.3d 302, 307 (4th Cir. 2000). And it has brought charges in New Hampshire against a New Yorker who filed a false passport application in Brooklyn. See *Salinas*, 373 F.3d at 163. Whatever the reasons behind the charging decisions in these particular cases, a defendant should not "be tried in a distant, remote, or unfriendly forum solely at the prosecutor's whim." *Id.* at 164.

Likewise, by blessing such prosecutions, the Ninth Circuit's rule does not meaningfully protect against the "serious hardship" of a person being hauled off "across the continent," "incur[ring] the expense of taking his witnesses, and . . . employing counsel in a distant city." *Hyde* v. *Shine*, 199 U.S. 62, 78 (1905). This hardship is what the Venue and Vicinage Clauses were designed to prevent.

Lastly, the Ninth Circuit's rule deprives defendants of notice of where they may face prosecution. Conduct-

based venue rules generally require prosecution where the defendant acted (or induced others to act). Those locations are knowable. But effects-based venue, especially in obstruction-type offenses, turns on the government's internal processes, which may be entirely opaque and arbitrary from the defendant's perspective. While the Ninth Circuit declared that Mr. Abouammo "can hardly feign surprise" at being investigated in San Francisco, JA40, he had no reason to expect being prosecuted there for creating a document in his home in Seattle that he sent to agents sitting downstairs.

CONCLUSION

For these reasons, the decision below should be reversed.

Respectfully submitted,

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