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

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

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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 established 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 and vicinage requirements threatens to let the government forum-shop to the detriment of fairness in criminal adjudications.

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[1] Rule 37 statement: No party's counsel authored this brief in any part and no person or entity other than *amicus* funded its preparation or submission.

SUMMARY OF ARGUMENT

The principle that a criminal defendant should be tried by a local jury is a cornerstone of the American justice system. Having witnessed the British Parliament's attempts to try colonists overseas, the Framers believed that justice should be sought where the alleged crime occurred, by a jury familiar with the community's shared values. Consequently, they codified venue and vicinage protections in the Constitution to ensure that local citizens would decide a defendant's fate.

San Francisco-based FBI agents suspected that Petitioner Ahmad Abouammo, a former Twitter employee, had disclosed a dissident's private Twitter account information to an associate of a Saudi royal.[2] They flew to Seattle, in the Western District of Washington, to question Mr. Abouammo at his home.[3] The Government later alleged that during this meeting, Mr. Abouammo went upstairs, created a false invoice, and emailed it to the agents as they waited downstairs.[4] He was indicted (in relevant part) for falsifying records and convicted following a jury trial.[5] His case was tried in San Francisco, in the Northern District of California—two states and 800 miles from the home where he committed the alleged crime.[6]

The Ninth Circuit affirmed Mr. Abouammo's convictions, holding that venue was proper because the

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[2] J.A. 6–7.

[3] *Id.* at 7.

[4] *Id.* at 8.

[5] *Id.* at 8–9.

[6] *Id.*

statute he violated "*expressly contemplates* the effect of influencing the action of another." *United States v. Abouammo*, 122 F.4th 1072, 1092 (9th Cir. 2024). 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." *Id.* at 1092–93. Mr. Abouammo could be tried in the Northern District of California because the invoice he made "was received by FBI agents working out of the FBI's San Francisco office." *Id.* at 1093. This was so even if Mr. Abouammo never "specifically foresaw effects" of his actions happening in California. *Id.* at 1095.

Extending jurisdiction to any district where effects might be contemplated is unjustifiable. Such broad discretion would grant the government a blank check to select a favorable venue. After all, virtually every federal entity has investigating agents located in the nation's capital and other major cities, who could be appended to nearly any federal investigation. Under the Ninth Circuit's rule, the government could turn the District of Columbia or any other bureaucratic hub (such as San Francisco) into the universal venue for trying federal crimes.

Limitless prosecutorial forum shopping is incompatible with the Constitution's venue and vicinage requirements. *See, e.g.*, Emma Kaufman, *The First Criminal Procedure Revolution*, 139 HARV. L. REV. 543, 545 (2025) (noting that constitutionally proper criminal venue was originally a strict jurisdictional rule). The Ninth Circuit's ruling lets the government "cherry-pick favored venues through pretextual reliance on out-of-district agents." *Abouammo*, 122 F.4th

at 1097 (Lee, J., concurring). This risks allowing the government to manipulate the jury pool and so further diminish the constitutionally prescribed role of local citizens in trying criminal cases.

ARGUMENT

I. THE NINTH CIRCUIT'S RULE VIOLATES THE ORIGINAL MEANING OF THE VENUE AND VICINAGE CLAUSES.

The presumption "that crimes should be tried before a jury of the vicinage—people from the place where the crime was committed—is a deeply rooted and important value."[7] The rationales for it are clear. First, local jurors' "familiarity with the community and its practices allows them to evaluate best the competing narratives of the prosecutor and the defendant."[8] Second, it "provides a neutral venue rule that limits the government's ability to select a forum inconvenient or hostile to the defendant."[9] "Third, the law relies upon the subjective experience of the local community."[10] Finally, and perhaps most importantly, "the vicinage presumption fulfills the jury's democratic function by allowing the aggrieved community to participate through its representatives on the jury."[11]

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[7] Brian C. Kalt, *Crossing Eight Mile: Juries of the Vicinage and County-Line Criminal Buffer Statutes*, 80 WASH. L. REV. 271, 296 (2005).

[8] Steven A. Engel, *The Public's Vicinage Right: A Constitutional Argument*, 75 N.Y.U. L. REV. 1658, 1660 (2000).

[9] *Id.*

[10] *Id.*

[11] *Id.* at 1661.

While these foundational principles are ancient, they rose to new prominence during the American Revolution. Locality is "inseparable from the institution of criminal law."[12] Criminal law and locality have been connected since at least ancient Rome's Code of Justinian.[13] Medieval jurists developed choice-of-law doctrines tying jurisdiction to where a crime allegedly took place.[14] Magna Carta required that cases be tried "in a certain fixed place" by "honest and law-worthy men of the neighbourhood."[15]

English common law developed to require that an alleged crime be tried only in the county where it occurred. Courts applied locality requirements 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.[16] *Statutes* eventually provided that the county where harm was fully realized

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[12] 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, see Matthew P. Cavedon, *Federalism Limits on State Criminal Extraterritoriality*, 57 ARIZ. ST. L.J. 811 (2026).

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

[14] Grossi, *supra*, at 635-36.

[15] MAGNA CARTA §§ 11, 14 (Nicholas Vincent trans., 2007), *available at* https://www.archives.gov/exhibits/featured-documents/magna-carta/translation.html.

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

could try a crime.[17] However, locality remained the *common law's* "exclusive basis of criminal jurisdiction."[18] English law required strict locality even though every county applied the same criminal, procedural, and evidentiary laws and was subject to the same sovereign authority—as is the case with the modern federal criminal system.[19]

Disregard for 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.[20] This provision was meant to combat Massachusetts tax protests.[21] Virginia's legislature protested that colonial defendants had the right to be tried locally.[22] 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.[23] The first Continental Congress decried the first measure, while Thomas Jefferson thought the second risked colonists'

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

[18] *Id.* at 1163.

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

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

[21] *Id.* at 806.

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

[23] *Id.* at 806–07.

deportation for trials overseas.[24] The Founders condemned these measures for depriving accused Americans of local support.[25] Though it appears that no overseas trials actually took place, the Declaration of Independence condemned the King's "transporting us beyond Seas to be tried for pretended offenses."[26]

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). U.S. CONST. art. III, § 2. Further, the Sixth Amendment required juries to be selected from "the State and district wherein the crime shall have been committed" (the Vicinage Clause). *Id.* amend. VI.[27] Article III also provides that crimes "not committed within any State" can be tried in a venue designated by Congress, which received an enumerated power to "define and punish piracies and felonies committed on the high seas, and offenses against the law of nations." *Id.* art. I, § 8; *id.* art. III, § 2, cl. 3. The Constitution

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[24] *Id.* at 807.

[25] Kaufman, *Territoriality*, *supra*, at 366.

[26] *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).

[27] *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).

contains no similar provision giving Congress authority to set criminal venue as a general matter. Across all of these provisions, the Constitution sets locality as a core requirement for every federal criminal prosecution.

Locality is reflected in the structure of the federal judiciary, too. 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] 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

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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).

the place where the crime was committed would have been compatible with" the Constitution.[32]

II. VENUE AND VICINAGE PROTECT THE INSTITUTION OF THE JURY TRIAL.

The Framers knew the tyranny of juryless courts and enshrined the right to trial by a local jury as a fundamental safeguard for liberty. They understood the jury to be the voice of the community, reflecting its shared experiences and understanding of justice.

> "To guard against a spirit of oppression and tyranny on the part of rulers," and "as the great bulwark of [our] civil and political liberties," trial by jury has been understood to require that "the truth of every accusation. . . should afterwards be confirmed by the unanimous suffrage of twelve of [the defendant's] equals and neighbours . . . ."

Apprendi v. New Jersey, 530 U.S. 466, 477 (2000) (quoting 2 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 540–41 (4th ed. 1873) (internal citations omitted).

Many criminal defendants have reasons to prefer local juries. A defendant may "feel that a local jury, with whom he or she may share cultural values, economic status, racial identity, or just a general sense of community identity, would sympathize with him more than the police or the victim."[33] The criminal jury's role in shielding its accused neighbors from threats made by a distant and tyrannical government predates the

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

[33] Kalt, *supra*, at 312.

Founding. In 1734, the Crown accused publisher John Peter Zenger of seditious libel for publishing works critical of New York's royal governor.[34] A local jury acquitted Zenger in what became a *cause célèbre* for liberty and government accountability.[35] Had Zenger been tried in England, the outcome may have been different, as a jury from there would not have shared colonists' grievances.

Locality became especially important following the passage of the Fugitive Slave Act of 1850. Shadrach Minkins escaped captivity in Virginia and reached Boston, where he was eventually captured by federal authorities.[36] A group of locals stormed the Boston federal courthouse and helped free Mr. Minkins. Two abolitionists stood trial in Boston, and both were acquitted by a local jury.[37] Had they instead been tried in Virginia, surely they would have been convicted.

For all of their importance to defendants, "[t]rials by a jury of the vicinage are important . . . to victimized communities as well."[38] Trials can bring closure when local jurors get to "decid[e] what the standards for conduct in the community will be."[39] Consider the recent

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[34] *See* Eben Moglen, *Considering* Zenger*: Partisan Politics and the Legal Profession in Provincial New York*, 94 COLUM. L. REV. 1495 (1994).

[35] *See id*.

[36] *Robert Morris: Civil Rights Lawyer, Antislavery Activist*, B.C. L. SCH., https://tinyurl.com/42tynfxm.

[37] *Id*.

[38] Kalt, *supra*, at 296.

[39] *Id.* at 315; *see Williams v. Florida*, 399 U.S. 78, 100 (1970) (listing as an "essential feature of a jury" the notion of "community

prosecutions of Minneapolis Police Officer Derek Chauvin, who killed George Floyd,[40] and Kyle Rittenhouse, who shot three men—killing two—amid protests following a police shooting in Kenosha, Wisconsin.[41] Both were tried in the jurisdiction where the alleged crimes occurred. In Minneapolis, grocery store and bakery owner Nur Ahmed stressed that the guilty verdict provided "a measure of relief for the city," stating "[t]he temperature of the city went down."[42] Similarly, in Kenosha, lead prosecutor Thomas Binger acknowledged the importance of local juries, remarking that "[t]he jury, which represented our community in this trial, has spoke."[43]

The salutary effects of trials by local juries are threatened by the Ninth Circuit's rule, which would degrade venue and vicinage to prosecutorial options. The location of a trial was never a mere procedural technicality. Article III and the Sixth Amendment were designed to ensure that a defendant was judged by members of the community where the alleged harm occurred. Decoupling venue from the location of the

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participation and shared responsibility that results from that group's determination of guilt or innocence").

[40] Sean A. Berman, *Collective Memory, Criminal Law, and the Trial of Derek Chauvin*, 72 DUKE L.J. 481, 484 (2022).

[41] Patrick Lyons, *The Jury Acquitted Kyle Rittenhouse on All of These Five Counts*, N.Y. TIMES (Nov. 19, 2021), https://tinyurl.com/tj8r5zzc.

[42] Marc Gollom, *In Minneapolis, a Burden Lifts as Chauvin Verdict Brings Relief, Jubilation to a Tense City*, CBC NEWS (Apr. 21, 2021), https://tinyurl.com/yzdrynw3.

[43] Bruce Vielmetti & Bill Glauber, *Kyle Rittenhouse Found Not Guilty on all Counts in Kenosha Shootings Case*, MILWAUKEE J. SENTINEL (Nov. 19, 2021), https://tinyurl.com/3vptekh3.

alleged crime would greatly diminish the role of the jury as the voice of the community, particularly when liberty and civil rights clash with state power and policing—as happened in the colonial context that inspired these constitutional requirements.

III. THE NINTH CIRCUIT'S DECISION INVITES PROSECUTORIAL GAMESMANSHIP.

"It is part of established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community."[44] The Framers understood that locality affects the composition of the jury pool. This Court has held that "that the selection of a petit jury from a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial." *Taylor v. Louisiana*, 419, U.S. 522, 528 (1974). Assembling a jury in a different, far-flung jurisdiction would evade this requirement. Here, Mr. Abouammo was tried by a jury drawn from a community two states and 800 miles away from the one where his alleged crime occurred. A San Francisco jury cannot be a fair cross-section of Seattle.

The Michigan prosecution of Clarence Terrell serves as a blueprint. After witnessing two Detroit police officers chase his sister and a third officer strike another sister on their front lawn, Mr. Terrell allegedly assaulted one of the officers.[45] Fearing that a Detroit jury familiar with aggressive race-based policing might view him with sympathy, prosecutors devised a novel theory. Mr. Terrell resided in Detroit, and his

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[44] *Smith v. Texas*, 311 U.S. 128, 130 (1940).

[45] Kalt, *supra*, at 272–73.

alleged offense took place entirely within city limits.[46] But because his house where his alleged crime occurred sat just 1,500 feet from the county line, prosecutors took advantage of a Michigan statute allowing any crime committed within a mile of the county line to be prosecuted in either county.[47] Prosecutors eventually charged Mr. Terrell with misdemeanor assault in a wealthy, nearly exclusively white enclave the next county over.[48] The government engaged in blatant forum-shopping to find a jury pool more amenable to conviction.

This power to manipulate venue is particularly perilous in an era of political lawfare. Because federal agencies maintain a nationwide presence and personnel in many different places, the government could funnel prosecutions into forums where the jury pool is most ideologically aligned with its efforts. Gunowners and pro-life protesters could be dragged to culturally progressive locales, while immigrant-rights activists and religious dissidents would be dispatched in rural districts. Tactical maneuvering would win many trials before a single juror is even seated. In a system where 98.3 percent of federal convictions are secured through guilty pleas,[49] venue would be yet another extraordinary form of leverage afforded the prosecution.

To allow the government to choose its own jury is to replace constitutional rules with prosecutorial

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[46] *Id.* at 273.

[47] *Id.* (quoting MICH. COMP. LAWS ANN. § 762.3(1) (West 2000)).

[48] *Id.*

[49] Clark Neily, *The ABA's 2023 Plea Bargain Task Force Report*, CATO INST. (Feb. 22, 2023), https://tinyurl.com/z4wbhvs5.

preferences. The officials tasked with enforcing the laws should not get to select who adjudicates their cases.

CONCLUSION

The Ninth Circuit's decision deviates from the original public meaning of the Constitution's venue and vicinage provisions. Defendants can be tried only where they allegedly committed a crime, by a jury of that locale. Mr. Abouammo carried out his alleged crime entirely in his Seattle home, using an upstairs computer to create and send a false invoice to the agents downstairs. He could not properly have been tried 800 miles and two states away.

Respectfully submitted,

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