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 FOR THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AND NATIONAL ASSOCIATION OF FEDERAL DEFENDERS AS *AMICI CURIAE* SUPPORTING PETITIONER

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INTERESTS OF *AMICI CURIAE*[1]

The National Association of Criminal Defense Lawyers (NACDL) is a nonprofit voluntary professional bar association that works on behalf of criminal-defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a nationwide membership of many thousands of direct members, and up to 40,000 with affiliates. NACDL's members include private criminal-defense lawyers, public defenders, military-defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal-defense lawyers. NACDL is dedicated to advancing the proper, efficient, and just administration of justice. NACDL files numerous *amicus* briefs each year in the United States Supreme Court and other federal and state courts, seeking to provide assistance in cases that present issues of broad importance to criminal defendants, criminal-defense lawyers, and the justice system as a whole.

The National Association of Federal Defenders (NAFD), formed in 1995, is a nationwide, volunteer organization made up of attorneys who work for federal public defender offices and community defender organizations authorized under the Criminal Justice Act, 18 U.S.C. § 3006A. Each year, federal public and community defenders represent

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[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part, and that no person other than *amici* or their counsel made any monetary contributions intended to fund the preparation or submission of this brief. Pursuant to Rule 37.2, counsel of record received notice of *amici's* intent to file this brief.

tens of thousands of indigent criminal defendants in federal court.

NACDL and NAFD both have a particular interest in ensuring that defendants are tried in the location where their alleged conduct occurred and only after being properly charged by indictment, as required by the Constitution.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Ninth Circuit has created a sporting theory of venue. "Effects-based venue" permits federal prosecutors to hale defendants into distant forums in which they committed no criminal conduct. This contradicts the Sixth Amendment's mandate that crimes be charged "wherein the crime shall have been committed." It transforms venue into a leverage point over defendants forced to defend themselves in distant courts. And it increases prosecutors' already substantial power to forum shop beyond any reasonable breaking point.

This Court's venue test turns on the defendant's criminal conduct, not on where that conduct might cause effects or where the government might feel those effects. Consistent with the Sixth Amendment, venue is based on the locus delicti—that is, "the location of the act or acts constituting" the offense. *United States v. Anderson*, 328 U.S. 699, 703 (1946). More specifically, venue depends on where the defendant performed the "essential conduct elements" of the crime. *United States v. Rodriguez-Moreno*, 526 U.S. 275, 279–80 (1999).

The charged offense here, falsifying documents with the intent to obstruct an investigation under 18 U.S.C. § 1519, consists of two elements: (1) falsifying a document and (2) intending to obstruct an investigation. Both elements were satisfied the moment Mr. Abouammo created the fake document, *in Seattle*. The offense requires no transmission, no receipt, and no actual obstruction. In short, section 1519 is a point-in-time offense that is complete "at the moment an applicant makes a knowingly false statement"—there, with the intent to secure a passport. *United States v. Salinas*, 373 F.3d 161, 165 (1st Cir. 2004). This intent is a mental state that exists where the defendant is physically located.

Yet the Ninth Circuit's rule extends venue based on the "contemplated effects" of a section 1519 violation. This rule uses intent to drag a criminal defendant into a location in which he undisputedly committed no charged conduct. It invites the type of hardship for criminal defendants that the Framers sought to prevent. And, by doing so, it unlocks even more forum shopping opportunities for prosecutors who already have far too many. The Court should reverse.

ARGUMENT

I. Effects-based venue is unmoored from the Sixth Amendment and creates significant hardships.

The Ninth Circuit's effects-based venue theory exposes criminal defendants to the practical harms the Constitution's venue protections are designed to

prevent. Justice Story summed those harms up nearly two centuries ago:

> The object . . . is to secure the party accused from being dragged to a trial in some distant state, away from his friends, and witnesses, and neighborhood; and thus to be subjected to the verdict of mere strangers, who may feel no common sympathy, or who may even cherish animosities, or prejudices against him. Besides this; a trial in a distant state or territory might subject the party to the most oppressive expenses, or perhaps even to the inability of procuring the proper witnesses to establish his innocence.

Joseph Story, *Commentaries on the Constitution* § 925 (Carolina Academic Press reprint 1987) (1833); *see also United States v. Cores*, 356 U.S. 405, 407 (1958) ("The provision for trial in the vicinity of the crime is a safeguard against the unfairness and hardship involved when an accused is prosecuted in a remote place.").

These concerns remain in play for the modern criminal defendant. The expense of a far-flung trial to a defendant and his family is often needlessly catastrophic. A 1981 case illustrates the point: prosecutors sought to try a seven-defendant case in Pennsylvania, when all defendants lived in Atlanta, Georgia and most witnesses were also in or near Atlanta. *United States v. Haley*, 504 F. Supp. 1124, 1127 (E.D. Pa. 1981). Enduring a distant trial threatened to place these defendants, who were "marginally employed or own[ed] and operate[d] struggling businesses," in financial ruin, with one

proposing "pumping gas at night during the trial in order to support himself." *Id.* at 1128. The court recognized that "criminal charges should not include the penalty of financial ruin where the trial might be conducted properly and legally in a forum near defendants' homes and businesses." *Id.*

There can be additional hardship where the defendant has secured private counsel in his home district, who must also travel to the distant venue and associate with local counsel, multiplying the cost and inconvenience to the defendant. *See, e.g.*, *United States v. Garza*, 593 F.3d 385, 390 (5th Cir. 2010) (transfer of venue more than 300 miles "required defense counsel—those who chose not to withdraw due to financial hardship stemming from the transfer—to hold a multiple-day trial far from their practices").

The piling expenses do not end with the defendant, family members, and the trial team. Witnesses must also be flown out and housed, often to wait days not knowing when they can actually be called to testify, while they are forced themselves to take time away from work and family. "The inconvenience, expense and loss of time involved in transplanting these witnesses to testify in trials far removed from their homes are often too great to warrant their use." *United States v. Johnson*, 323 U.S. 273, 279 (1944) (Murphy, J. concurring). "If [the defendant] is poor, and relies upon many witnesses for his exculpation, this will almost of necessity put it out of his power to make a complete defence; if he is a man of moderate means the defence may ruin him." *Swart v. Kimball*, 43 Mich. 443, 450, 5 N.W. 635, 639 (1880).

Meanwhile the defendant, presumed innocent, is separated from their support network during what may be the most stressful event of their life. For example, consider a defendant who "lives in St. Clair County, in the Eastern District of Michigan, with his wife and three children, aged 14, 12, and 11. He would be unable to afford to bring his family with him to New York. A prolonged trial in this district, therefore, would deprive him of their support during a trying time, and would deprive his family of his presence." *United States v. Aronoff*, 463 F. Supp. 454, 458 (S.D.N.Y. 1978).

The toll of this separation is particularly acute for defendants subject to pretrial detention. When pretrial detainees are housed in far-flung locations, they often experience a "drastic reduction" in visits from family and friends, which "obviously curtail[s their ability] to communicate with potential witnesses" and to obtain assistance of counsel. *Cobb v. Aytch*, 643 F.2d 946, 960 (3d Cir. 1981)

In sum, questions of venue "raise deep issues of public policy." *United States v. Johnson*, 323 U.S. 273, 276 (1944). And there must be real limits on allowing "the Government the choice of 'a tribunal favorable' to it." *Travis v. United States*, 364 U.S. 631, 634 (1961) (quoting *United States v. Johnson*, 323 U.S. 273, 275 (1944)). Only when defendants allegedly engaged in illegal conduct away from their home should the Government be able to require them to defend themselves far away from their personal, social, and cultural networks.

II. Venue based on "contemplated effects" improperly expands prosecutorial power.

Effects-based venue improperly expands prosecutors' already worrisome ability to forum shop.

As the law in the lower courts stands, to direct a case to a preferred venue, prosecutors simply need to charge the defendant under a statute whose offense conduct touches that venue. This, often, is easily done. For instance, the wire and mail fraud statutes have been interpreted to subject defendants to far off venues based on a single phone call, email, or letter. *See, e.g.*, *United States v. Powers*, 40 F.4th 129, 136 (4th Cir. 2022) ("Venue for a mail or wire fraud prosecution is not limited to the districts where the communication originated and terminated. For example, these offenses can be prosecuted in any district the wire communication or mail passed through in furtherance of the fraudulent scheme.") (citation omitted).

Conspiracy charges likewise give rise to wide-ranging venue options. This Court "has long held that venue is proper in any district in which an overt act in furtherance of the conspiracy was committed." *Whitfield v. United States*, 543 U.S. 209, 218 (2005) (citing *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 252 (1940) and *United States v. Trenton Potteries Co.*, 273 U.S. 392, 402–04 (1927)).

In practice, prosecutors are already able to work around constitutional venue protections with little difficulty. For example, had prosecutors chosen to charge Mr. Abouammo for *transmitting* a false document to the FBI agents under 18 U.S.C. § 1001, he may well have been subject to jurisdiction in

California under existing law for *that* conduct. Moreover, under existing law and without effects-based venue, section 1519 violations can still be charged in multiple jurisdictions. If documents are falsified or destroyed in different locations, venue may be proper in each. If defendants conspire with others to facilitate a falsification, conspiracy charges could also subject them to prosecution in any co-conspirator's jurisdiction.

But the conduct for which Mr. Abouammo was convicted under section 1519 was different. The Government charged him with a single act of falsification, committed entirely within his home in Seattle. Because section 1519 requires no transmission—only falsification with intent—the charged offense was complete when that falsification occurred with the requisite *mens rea*. The Ninth Circuit's application of its effects-based venue test to justify prosecution in San Francisco stretched the Constitution's venue protections beyond their breaking point, exposing criminal defendants to the harms the Founders sought to prevent.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed.

Respectfully submitted,

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January 27, 2026