No. 25-5146

In the Supreme Court of the United States

AHMAD ABOUAMMO, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

D. JOHN SAUER
Solicitor General
Counsel of Record
JOHN A. EISENBERG
Assistant Attorney General
ERIC J. FEIGIN
Deputy Solicitor General
ANTHONY A. YANG
Assistant to the
Solicitor General
JEFFREY M. SMITH
JOSEPH P. MINTA
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether a prosecution for knowingly falsifying a record with the intent to obstruct a federal investigation, in violation of 18 U.S.C. 1519, may be brought in the district of the investigation at which the obstructive conduct was directed.

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OPINIONS BELOW

The opinion of the court of appeals (J.A. 1-44) is reported at 122 F.4th 1072. An accompanying memorandum of the court of appeals is available at 2024 WL 4972564. The relevant order of the district court (J.A. 45-113) is available at 2022 WL 17584238.

JURISDICTION

The judgment of the court of appeals was entered on December 4, 2024. A petition for rehearing was denied on March 18, 2025 (J.A. 114). On June 9, 2025, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including July 16, 2025, and the petition was filed on that date. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Art. III, § 2, Cl. 3 provides in pertinent part:

> The Trial of all Crimes * * * shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

U.S. Const. Amend. VI provides in pertinent part:

> 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.

INTRODUCTION

When special agents of the Federal Bureau of Investigation (FBI), known to petitioner to be from the San Francisco field office, arrived at his Seattle home to interview him about crimes that he had committed in San Francisco, petitioner tried to obstruct the San Fran-

cisco investigation. He withdrew upstairs, where he fabricated and e-mailed a false invoice to one of the San Francisco agents in an effort to conceal his San Francisco crime. There is no question that, in doing so, petitioner violated 18 U.S.C. 1519 by "knowingly * * * falsif[ying] * * * [a] record * * * with the intent to impede, obstruct, or influence the [FBI's] investigation," *ibid.* And as the court of appeals recognized, he could properly be tried for that obstructive act in San Francisco—the place of the investigation that he targeted and affected.

The constitutional requirement that venue be where "the crime shall have been committed," looks beyond the defendant's own location and instead turns on the nature of the crime. *In re Palliser*, 136 U.S. 257, 265 (1890). The inchoate crime of conspiracy, for example, is "committed" for venue purposes wherever an overt act in furtherance of the conspiracy occurs, even though traditionally the crime's only conduct element is an unlawful agreement. See *Whitfield* v. *United States*, 543 U.S. 209, 218 (2005). And this Court's venue decisions embody the principle that "[a]cts done outside a jurisdiction, but intended to produce and producing detrimental effects within it," warrant prosecuting the defendant—"the cause of the harm"—"as if he had been present at the effect." *Ford* v. *United States*, 273 U.S. 593, 620-621 (1927) (citation omitted).

Here, Section 1519 defines an inchoate offense (*i.e.*, an offense that is a step to another crime) that requires the confluence of falsification and intent. Where, as in this case, that intent is manifested by submitting a false document to investigators from a particular district, the target district is part of the crime's commission. The Court has previously upheld venue for the crime of impersonating a federal officer with intent to defraud in

the district in which the targeted victim was located, because that is where the defendant intended to direct his impersonation telephonically and where "the personation took effect." *Lamar* v. *United States*, 240 U.S. 60, 66 (1916). Similar principles justify venue in San Francisco for petitioner's offense of obstructing investigators from San Francisco.

Indeed, that is the most practical result. Not only does it allow for the obvious efficiency of avoiding separate trials for the obstruction and for the original investigated crimes, but the district of the intentionally targeted investigation may in some cases be the only readily discernible venue for the obstruction offense. A defendant who conceals his conduct, travels frequently, or simply lives in a region (like the capital region) near district boundaries has no right to force a determination of the time and location of a falsifying act, when the venue that he deliberately targeted supplies an obvious and natural home for his trial.

In any event, even if petitioner were correct in his claim that trial must be in the district of falsification, the Northern District of California was still an appropriate venue. When petitioner e-mailed a copy of the file that he fabricated on his computer in Seattle to the FBI in San Francisco, he caused the creation of a duplicate record in California. Petitioner thus "falsifie[d]" a "record," 18 U.S.C. 1519, in two places. For that reason as well, the jury's finding of guilt on a charge that he committed a crime "in the Northern District of California and elsewhere," C.A. E.R. 208, 2038, should be upheld.

STATEMENT

Following a jury trial in the United States District Court for the Northern District of California, petitioner

was convicted on one count of acting as an unregistered agent of a foreign government, in violation of 18 U.S.C. 951; one count of conspiring to commit wire fraud, in violation of 18 U.S.C. 1343 and 1349; one count of wire fraud, in violation of 18 U.S.C. 1343 and 1346; two counts of money laundering, in violation of 18 U.S.C. 1956(a)(2)(B)(i); and one count of falsifying a record with the intent to obstruct an investigation, in violation of 18 U.S.C. 1519. C.A. E.R. 2 (judgment); see J.A. 2, 9. The court sentenced petitioner to 42 months of imprisonment, to be followed by three years of supervised release. C.A. E.R. 3-4. The court of appeals affirmed petitioner's convictions, J.A. 1-44, but vacated his sentence, 2024 WL 4972564. On remand, the district court sentenced petitioner to time served, to be followed by two years of supervised release. Am. Judgment 2-3 (July 2, 2025).

1. From November 2013 to May 2015, petitioner worked for the social-media company then known as Twitter, at its San Francisco headquarters within the Northern District of California. J.A. 2, 6, 46, 49; C.A. E.R. 910, 949. In his role as a media-partnerships manager for Twitter's Middle East/North Africa region, petitioner had access to the company's "Profile Viewer" tool, which allowed him to obtain identifying information for Twitter users, including their e-mail addresses, phone numbers, and IP addresses. J.A. 4-5, 46-47, 50.

Twitter prohibited its employees from leaking such information, and petitioner had agreed to abide by that restriction. J.A. 47. But he nevertheless leaked the identifying information of two "dissident Saudi Twitter users," to Bader Binasaker, a high-level Saudi official. J.A. 5, 50; see J.A. 3, 13-14, 47-49. In particular, at

Binasaker's behest, petitioner repeatedly accessed—and then disclosed to Binasaker—the identifying information for the operators of a Twitter account that impersonated a Saudi prince and a widely followed Twitter account that criticized Saudi Arabia and its royal family. J.A. 4-5, 49-50; cf. J.A. 6 (discussing testimony about the torture and disappearance of a Twitter user who had been critical of the Saudi Government).

Petitioner met Binasaker in June 2014, when Binasaker toured Twitter's San Francisco offices. J.A. 3. Binasaker later gave petitioner a luxury Hublot watch, which petitioner attempted to sell for $42,000. J.A. 4. Petitioner communicated frequently with Binasaker using WhatsApp, an end-to-end encrypted messaging program; the content of those encrypted messages was never recovered. J.A. 5. After petitioner began to supply Binasaker with the identifying information of dissidents, Binasaker wired petitioner a series of three $100,000 payments, two to a bank account in Lebanon that petitioner had opened under his father's name and one to a business account for petitioner's consulting company. J.A. 5-6, 50-52.

While petitioner worked at Twitter, he introduced Binasaker to a Twitter engineer—Ali Alzabarah—who had even more access than petitioner did to data about Twitter users. J.A. 7, 52. Alzabarah subsequently accessed numerous Twitter accounts on behalf of Saudi Arabia. Gov't C.A. Br. 9. In December 2015, one day after Twitter questioned Alzabarah about his access to one such account, Alzabarah fled to Saudi Arabia. J.A. 6-7, 53. Meanwhile, petitioner had left Twitter in May 2015 and moved to Seattle (in the Western District of Washington) to take a position at Amazon. J.A. 6, 51. While there, petitioner started a consulting company. J.A. 51.

By sometime in 2015, the FBI's San Francisco field office—which included a counterintelligence squad in its Palo Alto satellite office—had opened an investigation into Twitter employees' potential unauthorized accessing of Twitter information. C.A. E.R. 1205-1207, 1593, 1598. In October 2018, while that investigation in the Northern District of California was still proceeding outside of public view, the FBI's press office learned that the New York Times would soon be publishing an article that the agents feared would effectively reveal the investigation. *Id.* at 1412; see J.A. 7. Agents decided that they should promptly interview petitioner before "information about what [they] were investigating became [publicly] known." C.A. E.R. 1412.

That same evening, two FBI special agents—Jonathan Kingsley and Leticia Wu—traveled directly to Seattle from their office in Palo Alto. C.A. E.R. 1412-1413, 1599; see J.A. 7. The New York Times published its article online the next day, before the FBI agents (along with an Assistant United States Attorney from the Northern District of California who was there to observe and who later prosecuted this case) reached petitioner's home to interview him. C.A. E.R. 1413. The article specifically named Alzabarah, reporting that, before he had fled the country, "Western intelligence officials [had] told [Twitter executives] that the Saudis [had been] grooming * * * Alzabarah[] to spy on the accounts of dissidents and others." Katie Benner et al., *Saudis' Image Makers: A Troll Army and a Twitter Insider*, N.Y. Times, Oct. 20, 2018, https://www.nytimes.com/2018/10/20/us/politics/saudi-image-campaign-twitter.html; see C.A. E.R. 1414-1415.

When the two FBI agents (and the government attorney) arrived at petitioner's Seattle home on October

20, 2018, they found petitioner in his driveway. J.A. 6-7. The agents "identified themselves as 'FBI agents from the San Francisco office.'" J.A. 7. Petitioner "immediately asked if they were there about the New York Times article" and, after a brief discussion, "said 'something to the effect of he felt bad because he had introduced Ali Alzabarah to [Saudi] officials,' specifically Binasaker." *Ibid.* Petitioner and the government personnel then moved into petitioner's house, where the agents spoke with petitioner for several hours. *Ibid.* Petitioner admitted both that he had collaborated with Binasaker while at Twitter and that Binasaker had asked him to access data about users, but petitioner denied having acquiesced to that request. *Ibid.* Petitioner also "told the agents that he continued to assist Binasaker after he left Twitter and was paid $100,000 for his services." J.A. 8.

"When the agents asked [petitioner] if there was documentation to support this claim, [petitioner] said he had retained an invoice * * * on his computer." J.A. 8. Petitioner left the agents to go upstairs, purportedly to retrieve the invoice. *Ibid.* Petitioner then used his computer to create a fake $100,000 invoice from his consulting company. J.A. 8, 28, 54. After nearly 30 minutes while the agents waited downstairs, petitioner attached the fake invoice as a pdf file to an e-mail that he sent to the "fbi.gov" e-mail address for Agent Kingsley. J.A. 8; App., *infra*, 1a-2a (Gov't Trial Ex. 806); see *id.* at 3a (Gov't Trial Ex. 807); C.A. E.R. 1599.

The following day, Agent Kingsley forwarded the e-mail and attachment to Agent Wu. App., *infra*, 3a-4a; C.A. E.R. 1449. As the FBI's investigation continued, investigators discovered that the invoice was fake. J.A. 8, 54. The electronic file that the FBI had received from

petitioner contained date-and-time metadata showing that the original version of the file had been created in the 30-minute period during which petitioner had gone upstairs during the FBI interview and e-mailed Agent Kingsley. *Ibid.*

2. A federal grand jury in the Northern District of California indicted petitioner on one count of acting as an unregistered agent of a foreign government, in violation of 18 U.S.C. 951; one count of conspiring to commit wire fraud, in violation of 18 U.S.C. 1343 and 1349; 15 counts of wire fraud, in violation of 18 U.S.C. 1343 and 1346; three counts of money laundering, in violation of 18 U.S.C. 1956(a)(2)(B)(i); and one count of falsifying a record with the intent to obstruct an investigation, in violation of 18 U.S.C. 1519. J.A. 8-9; C.A. E.R. 192-213.

Section 1519 makes it a crime to, *inter alia*, "knowingly * * * falsif[y] * * * 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 in relation to or contemplation of any such matter." 18 U.S.C. 1519. The operative indictment alleged that, "in the Northern District of California and elsewhere," petitioner had "creat[ed] and provid[ed] by email to the Federal Bureau of Investigation a fabricated, false, and backdated invoice for $100,000 * * * with the intent to impede, obstruct and influence" the FBI's investigation, in violation of Section 1519. C.A. E.R. 208.

Petitioner moved to dismiss the Section 1519 count for improper venue. See J.A. 9, 85. The district court denied the motion. D. Ct. Doc. 95, at 2 (Jan. 6, 2021) (quoted at J.A. 85-86). The court found that the Northern District of California was a proper venue "because

the allegedly false document was made 'with the intent to obstruct an actual or contemplated investigation' by the FBI in th[at] district." *Ibid.* (citation and emphasis omitted). The court explained that "venue may properly be based on the location" of the intended "potentially adverse effect" on that investigation. *Ibid.*

A jury subsequently found petitioner guilty on the Section 1519 count and, in addition, on one count of acting as an unregistered foreign agent, one count of conspiring to commit wire fraud, one count of wire fraud, and two counts of money laundering. J.A. 9. The district court denied petitioner's posttrial motion for an acquittal on the Section 1519 count on venue grounds for the same reasons that it had denied his pretrial motion raising the same argument. J.A. 85-86.

3. The court of appeals affirmed petitioner's convictions, J.A. 1-44, but vacated his sentence and remanded for resentencing. J.A. 2 & n.1; see 2024 WL 4972564 (sentencing opinion). In doing so, the court of appeals agreed with the district court that venue for the Section 1519 count was permissible in the Northern District of California because "a prosecution under [Section] 1519 may take place [either] in the venue where documents were wrongfully falsified or in the venue in which the obstructed federal investigation was taking place," J.A. 41. See J.A. 26-41.

The court of appeals emphasized that Section 1519 contains a statutory intent requirement that connects "the actus reus and its contemplated effect on [a] * * * federal investigation," by expressly prohibiting the "falsifi[cation of] a record 'with the intent to impede, obstruct, or influence the investigation.'" J.A. 33-34 (quoting 18 U.S.C. 1519) (emphasis omitted). And the court explained that "the contemplated effects are part of the

'essential conduct' of the offense for venue purposes" because a textual prohibition of action taken for either "'the purpose of'" producing or "'with the intent to'" produce a particular effect "expressly contemplate[s] effects-based venue." J.A. 34-35, 38. The court accordingly recognized that venue for a Section 1519 prosecution "can be proper in either the district where the wrongful conduct was initiated—where the false record was created—or the district of the expressly contemplated effect—where the investigation it was intended to stymie" is located. J.A. 34-35.

The court of appeals then observed that petitioner's offense "was continued or completed in the Northern District [of California]" because the e-mailed record "was received by FBI agents working out of the FBI's San Francisco office." J.A. 36; see *ibid.* (reasoning that petitioner's "act of making a false document 'with the intent to impede, obstruct, or influence' a federal investigation, continued until the document was 'received by the person or persons whom it was intended to affect or influence'") (citations and brackets omitted). And the court noted that there was "nothing particularly unfair" about venue in that district, because petitioner knew the investigating "'FBI agents [were] from the San Francisco office'" and "[petitioner] himself directly transmitted a false document to" those agents. J.A. 40. The court also noted that a defendant may move to transfer "the proceedings, or one or more counts," to "a more convenient district" under Federal Rule of Criminal Procedure 21(b). J.A. 39.

In a concurring opinion, Judge Lee emphasized that the court of appeals' decision "does not give free rein to the government to manufacture venue." J.A. 41-42. And he added that no venue-manufacturing concerns

were presented by petitioner's case, because "there is no whiff that the government intentionally used San Francisco-based FBI agents to manufacture venue in the Northern District of California." J.A. 43.

Although it affirmed petitioner's convictions, the court of appeals issued a separate, unpublished memorandum concluding that the district court had erred in its Sentencing Guidelines calculation. 2024 WL 4972564. The court of appeals accordingly vacated petitioner's sentence and remanded for resentencing. *Id.* at *2.

By the time of resentencing, petitioner had completed his original term of imprisonment. D. Ct. Doc. 479, at 1-2 (June 16, 2025). The district court resentenced him to time served, to be followed by two years of supervised release. Am. Judgment 2-3.

SUMMARY OF ARGUMENT

Petitioner was in the middle of an interview with investigators from the FBI's San Francisco field office about crimes that he had committed in San Francisco when he sought to obstruct that investigation by constructing and e-mailing a false invoice to one of the San Francisco agents. As the lower courts recognized, his trial for "knowingly * * * falsif[ying] * * * [a] record * * * with the intent to impede, obstruct, or influence [a federal] investigation," in violation of 18 U.S.C. 1519, was properly held in the venue that he targeted: the Northern District of California. Petitioner's Section 1519 conviction should accordingly be affirmed.

I. First and foremost, venue was proper in the district in which the FBI's investigation was located because that is where petitioner both intentionally and efficaciously directed his obstructive conduct. The Constitution confers a "right to be tried in the district * * * 'wherein the crime shall have been committed,'" not a

right to be tried "where the accused * * * [wa]s personally at the time." *In re Palliser*, 136 U.S. 257, 265 (1890). The determination of where a "crime" was "committed" will depend on the nature of the particular crime at issue. See, *e.g.*, *United States* v. *Rodriguez-Moreno*, 526 U.S. 275, 279 & n.1 (1999). The location of acts constituting elements of the offense are a sufficient foundation for venue, but venue is not limited only to such locations.

For instance, venue for the inchoate offense of conspiracy—an agreement to commit another crime—is proper "in any district in which an overt act in furtherance of the conspiracy was committed, even where an overt act is *not* a required element of the conspiracy offense." *Whitfield* v. *United States*, 543 U.S. 209, 218 (2005) (emphasis added). And this Court has long held that, in certain contexts, a defendant is properly understood to have a "constructive presence in a State, distinct from a personal presence, by which [his] crime may be consummated." *Hyde* v. *United States*, 225 U.S. 347, 362 (1912). Most relevant here, the Court's venue decisions have embodied the principle that "[a]cts done outside a jurisdiction, but [1] intended to produce and [2] producing detrimental effects within it," justify prosecuting the defendant—"the cause of the harm"—"as if he had been present at the effect." *Ford* v. *United States*, 273 U.S. 593, 620-621 (1927) (citation omitted).

For example, the Court in *Lamar* v. *United States*, 240 U.S. 60 (1916), upheld venue in the Southern District of New York for the offense of falsely pretending to be a federal officer with intent to defraud, where the defendant had pretended to be a member of Congress "with intent to defraud," while speaking into a "telephone to a person in New York." *Id.* at 65-66. The

Court held that, even if the defendant was not himself in New York, venue for his impersonation-with-intent crime was proper in the Southern District because his "personation *took effect* there." *Id.* at 66 (emphasis added). Similarly, it has long been the case that a defendant who mortally wounds his victim may be tried for murder in the jurisdiction where his action has its fatal effect; an offender who shoots a firearm in one jurisdiction may be the tried in another jurisdiction where the shot has its effect of striking its victim; and venue is proper for crimes committed by means of a communication where the communication is received. Petitioner accordingly errs in suggesting that venue along similar lines here would be ahistorical; he identifies nothing that would undermine the Court's precedents recognizing that the Constitution can at least permit venue where a crime's effect is both directed *and* felt.

For petitioner's Section 1519 offense, that would be the Northen District of California, the location of the FBI's investigation, where petitioner intended his obstructive conduct to have effect, and where it had its effect. Section 1519 defines a type of inchoate offense, *i.e.*, an offense that is itself a step towards the commission of another crime. Its express intent element—"the intent to impede, obstruct, or influence [a federal] investigation," 18 U.S.C. 1519—makes the act of falsifying a record criminal only if done with the specific purpose of obstructing an investigation. And when the defendant manifests his intent by submitting a false record over e-mail to investigators from a specific district, the crime is committed in part where he intended his action to have, and it has had, its effect.

Congress's treatment of other obstruction-of-justice offenses codified alongside Section 1519 confirms as

much. In 1988, Congress determined that the obstruction-of-justice offenses in 18 U.S.C. 1503 and 1512, including inchoate attempts under those provisions, are committed in part in the "district in which the official proceeding * * * was intended to be affected." 18 U.S.C. 1512(i). Congress did so in order to confirm the majority view of what was a lopsided 6-1 circuit conflict approving venue in such districts. That congressional confirmation of the natural understanding of the location of obstruction offenses informs the proper understanding of the later-enacted Section 1519, which must be construed in "the context of the *corpus juris* of which [it is] a part." *Pugin* v. *Garland*, 599 U.S. 600, 605 n.1 (2023) (citation omitted).

Venue in the district of the targeted investigation is also the far more practical result. That venue not only avoids the inefficiency of separate trials for the original investigated crimes and the associated obstruction offense, but it may in some cases be the only readily discernible venue for a Section 1519 obstruction offense. The records and record-like objects that Section 1519 makes it a crime to falsify are typically digital or portable. And because defendants who act with intent to obstruct will naturally try to conceal their obstructive conduct, the exact location of their acts of falsification can be difficult to determine. Further complicating matters, many densely populated regions of the country encompass two or three federal districts, across which inhabitants regularly transit between home, work, and other activities.

Petitioner's suggestion that the government might manufacture venue by manipulating which offices conduct investigations is both unsupported by evidence and

unrealistic. Investigations are typically conducted by offices located closest to where the investigative resources are needed. Petitioner identifies no plausible basis for concluding that a federal agency would alter its normal distribution of investigative workload among its offices based on the possibility that a related obstruction-of-justice offense might occur and warrant prosecution. Moreover, the government cannot be fairly viewed as itself "manufacturing" venue in a location where the *defendant* has intentionally directed the effects of his action and where those effects are, in fact, experienced. And in any event, the prosecution's choice of venue is not the final say. A defendant may move to transfer the proceeding or one or more counts for greater "convenience" and in the "interest of justice." Fed. R. Crim. P. 21(b).

II. Regardless, even if petitioner were correct that venue in the Northern District of California required creation of a false document in that district, that requirement was satisfied here. By e-mailing a copy of a falsified pdf file from Seattle to an FBI investigator from San Francisco, he caused a duplicative record to be created on the FBI's computers there. Petitioner therefore "falsifie[d]" a "record," 18 U.S.C. 1519, in the Northern District of California itself. And although not explicitly raised below, that ground alone is a sufficient basis to affirm the findings of the lower courts that the Northern District of California was an appropriate venue for the trial of that offense.

ARGUMENT

Petitioner "knowingly * * * falsifie[d] * * * [a] record * * * with the intent to impede, obstruct, or influence [a federal] investigation," in violation of 18 U.S.C. 1519, when he fabricated an invoice and e-mailed it to an FBI

agent from the Northern District of California who was interviewing him about crimes that petitioner had committed in that district. As the court of appeals correctly recognized, the Northern District of California was a permissible venue for trial of not only the other crimes, but the Section 1519 violation as well. Section 1519 defines an inchoate offense whose commission includes a district where the obstructive conduct is intended to, and does, have its obstructive effect. Moreover, even under petitioner's more limited view of venue, he was permissibly tried in the Northern District of California because his e-mail caused a version of his fabricated record to be created there. Either way, venue was appropriate in the district where the FBI's investigation was located.

I. PETITIONER'S OBSTRUCTIVE CONDUCT UNDER 18 U.S.C. 1519 WAS TRIABLE IN THE VENUE OF THE INVESTIGATION AT WHICH HIS CONDUCT WAS DIRECTED

The principal reason why venue for petitioner's Section 1519 trial was proper in the Northern District of California—where the FBI's investigation was located—is because that is where petitioner specifically, intentionally, and effectively directed his obstructive conduct. This Court's venue jurisprudence, the nature of the Section 1519 offense as an inchoate obstruction-of-justice crime, and practical considerations all confirm as much.

A. Venue Is Constitutionally Permissible In The District Where The Effects Of A Defendant's Acts Are Directed And Felt

The principle that a defendant may be tried in any venue where the crime is committed is well-embedded

in the law. And as this Court's decisions demonstrate, venue is not limited to the location of the defendant's own unlawful acts, but may also include venues at which the effects of his unlawful acts are directed and experienced.

1. The Constitution permits venue wherever a crime was committed, not just the location of the defendant's own unlawful acts

The constitutional provisions addressing venue for the trial of a criminal offense make clear that venue is proper wherever the "crime" was "committed." The Venue Clause provides that criminal trials "shall be held in the State where the said Crimes shall have been committed." U.S. Const. Art. III, § 2, Cl. 3. The Sixth Amendment's Vicinage Clause similarly provides for trial "by an impartial jury of the State and district wherein the crime shall have been committed." U.S. Const. Amend. VI. And Federal Rule of Criminal Procedure 18, which this Court has approved, tracks the constitutional provisions by specifying that "the government must prosecute an offense in a district where the offense was committed." Fed. R. Crim. P. 18; see Order, 323 U.S. 821 (1944); 18 U.S.C. p. 1970 (1946) (Rule 18) ("[T]he prosecution shall be had in a district in which the offense was committed.").

Consistent with the text of both the Venue and Vicinage Clauses, this Court has explained that the Constitution's text confers only a "right to be tried in the district * * * 'wherein the crime shall have been committed'" —not a right to be tried "where the accused * * * [wa]s personally at the time of committing the crime." *In re Palliser*, 136 U.S. 257, 265 (1890); see *Smith* v. *United States*, 599 U.S. 236, 243 (2023). The analysis of where the particular "crime" was "committed," U.S. Const.

Amend. VI, necessarily takes account of the nature of the crime. As this Court explained in *United States* v. *Cabrales*, 524 U.S. 1 (1998), when Congress has not itself specified the venues for an offense, "the general guide" to apply is that the location of a crime ("'[t]he *locus delicti*'") "'must be determined from the nature of the crime alleged *and* the location of the act or acts constituting it.'" *Id.* at 6-7 (quoting *United States* v. *Anderson*, 328 U.S. 699, 703 (1946)) (emphasis added); see *United States* v. *Rodriguez-Moreno*, 526 U.S. 275, 279 & n.1 (1999).

In *United States* v. *Rodriguez-Moreno*, the Court was able to apply that general rubric to a firearm crime by simply identifying the location of the defendant's offense conduct. 526 U.S. at 279-282. In doing so, the Court made clear that a crime may have multiple permissible venues, and that a trial may be held "where any part" of a crime "can be proved to have been done." *Id.* at 281 (quoting *United States* v. *Lombardo*, 241 U.S. 73, 77 (1916)); see *Smith*, 599 U.S. at 244. And far from holding that only "conduct elements * * * can support venue," Pet. Br. 13, the Court explicitly declined to decide whether "venue also 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." *Rodriguez-Moreno*, 526 U.S. at 279 n.2.

This Court's other precedents demonstrate that it can. As the Court has long recognized, in certain contexts, a defendant may properly be found to have a "constructive presence in a State, distinct from a personal presence." *Hyde* v. *United States*, 225 U.S. 347, 362 (1912). An inchoate offense—*i.e.*, a crime that is "[a] step toward the commission of another crime," *Black's*

Law Dictionary 1301 (11th ed. 2019)—can be such a context. "Conspiracy," for instance, "is an inchoate offense, the essence of which is an agreement to commit [another] unlawful act." *Iannelli* v. *United States*, 420 U.S. 770, 777 (1975). Yet this Court "has long held that venue is proper in any district in which an overt act in furtherance of the conspiracy was committed, even where an overt act is *not* a required element of the conspiracy offense." *Whitfield* v. *United States*, 543 U.S. 209, 218 (2005) (emphasis added).

Historically, "the criminal agreement itself is the actus reus" of a conspiracy offense, *United States* v. *Shabani*, 513 U.S. 10, 16 (1994), and it is the only conduct element unless Congress has enacted text "expressly mak[ing] the commission of an overt act an [additional] element," *Whitfield*, 543 U.S. at 214. Yet the means through which the conspiracy's objective is advanced are part of the crime's commission for venue purposes, even if not required to prove the offense's commission. Nothing in the Constitution precludes holding a defendant to account for an act in one district —the agreement—in another district (or even many other districts) in which the crime takes shape. As the inchoate crime of conspiracy illustrates, a defendant's own discrete act may launch, or anticipate, events that permit trial in other affected jurisdictions.

2. Venue can be proper in a district where a crime's effects are intended and manifested

In contexts well beyond conspiracy crimes, this Court has long recognized that a defendant may properly be prosecuted where he intended his conduct to have effect and his actions ultimately took effect. As Chief Justice Taft explained for the Court in *Ford* v. *United States*, "[a]cts done outside a jurisdiction, but intended

to produce and producing detrimental effects within it," warrant prosecuting the defendant—"the cause of the harm"—"as if he had been present at the effect." 273 U.S. 593, 620-621 (1927) (quoting *Strassheim* v. *Daily*, 221 U.S. 280, 285 (1911)). And in finding a federal prosecution permissible in such a circumstance (conduct on an offshore ship), *Ford* expressly relied on cases from the venue context, "which sustain the same view." *Id.* at 621 (citing venue decisions including *Lamar* v. *United States*, 240 U.S. 60 (1916), *Burton* v. *United States*, 202 U.S. 344 (1906), and *In re Palliser*, *supra*).

In *Lamar* v. *United States*, for example, the Court found venue for the crime of impersonating a federal officer with intent to defraud in the venue of the intended victim, where "the personation took effect," even if the defendant was speaking by telephone from a different district. 240 U.S. at 66. Similarly, in *Burton* v. *United States*, the Court upheld the Missouri prosecution of a Senator for agreeing to accept compensation for legal services in a matter in which the United States had an interest, even though the Senator's own conduct was confined to Chicago, because the Senator "sent his offer to St. Louis with the intent that it should be there accepted and consummated," as it was. 202 U.S. at 389. And in *In re Palliser*, the Court reasoned that venue for a solicitation offense would be proper in Connecticut, even if the defendant's conduct was in New York, because the solicitation was transmitted to Connecticut, and thus the crime "continued to be committed [there]." 136 U.S. at 267.

Even beyond those specific examples, this Court has observed that where a defendant "mortally wound[s] [his victim] in one jurisdiction" but the act's "subsequent effect"—the victim's death—"takes place in an-

other jurisdiction," a trial for murder where the victim died has "never [been] supposed to be inconsistent" with a right to "trial by a jury of the vicinage." *Palliser*, 136 U.S. at 265 (citing cases). The Court has also recognized the "universal[]" view that "when a shot fired in one jurisdiction strikes a person in another jurisdiction, the offender may be tried where the shot takes effect." *Ibid.* (citing cases). And the Court has made clear that with respect to crimes "committed by means of a communication," venue is proper where the communication is "received." *Id.* at 266 (citing cases).

All of those examples illustrate that where a crime is effectuated in another jurisdiction, and the defendant intended (or, in the case of a mortally wounded victim dying, can be conclusively presumed to have intended) that it be effectuated in that jurisdiction, he can permissibly be tried in that jurisdiction. The Venue and Vicinage Clauses incorporate that broader principle. And as *Ford* illustrates, extraterritorial crimes—including state-law crimes committed from a different state—work the same way. See *Ford*, 273 U.S. at 620-621; *Strassheim*, 221 U.S. at 284-285 (upholding state prosecution where defendant "never had set foot in the State until after the [crime] was complete").

Ford also cited, agreed with, and quoted extensively from a "learned opinion" addressing international extraterritoriality, which highlighted the application of the same principles in yet more contexts. See *Ford*, 273 U.S. at 622-623. As the learned opinion explained, "the criminal jurisprudence of all countries" recognizes "[t]he principle that a man who outside of a country wilfully puts in motion a force to take effect in it is answerable at the place where the evil is done." *Ibid.* (citation omitted). The opinion additionally observed that the same

principle appeared relatively early in "the common law." *Id.* at 623.

In particular, the learned opinion—and, derivatively, this Court—discussed Lord Coke's 16th-century report of *Bulwer's Case*, which recognized that a "nuisance in one county which took effect in another" could be sued "in the county in which the injury was done." *Ford*, 273 U.S. at 623 (quoting learned opinion's discussion of *Bulwer's Case*, 77 Eng. Rep. 411, 415, 7 Co. Rep. 1a, 3b (K.B. 1587)). Although *Bulwer's Case* involved a civil action, rather than a criminal prosecution, see *Bulwer's Case*, 77 Eng. Rep. at 415 & n.(D), there does not appear to have been a distinction between "[t]he power of the jury" to decide "local [civil] actions and indictments for misdemeanors." *King* v. *Burdett*, 106 Eng. Rep. 873, 903, 4 B. & Ald. 95, 175 (K.B. 1820) (Abbott, C.J.); see *Commonwealth* v. *Macloon*, 101 Mass. 1, 6 (1869); cf. *Sparf* v. *United States*, 156 U.S. 51, 140 (1895) (observing that *Burdett* was a "well known" criminal case).

Under the principle that *Bulwer's Case* and other sources espouse, even if a crime is not completed until the victim dies, the shot hits its mark, or the communication is received, see Pet. Br. 16, the crime's commission in a manner that, by design, has direct impact in another jurisdiction can allow for trial in that second jurisdiction. As with the inchoate offense of conspiracy, venue can be proper where a defendant "intend[s his conduct] to produce * * * detrimental effects" and it ends up "producing" those effects, *Ford*, 273 U.S. at 620 (citation omitted)—a jurisdiction that would be the very focus of his crime.

3. Petitioner's contrary arguments are unsound

Petitioner contends (Br. 21) that venue "wherever an offense's intended effects might be felt" would be ahis-

torical. But he identifies nothing that would undermine this Court's precedents recognizing that the Constitution can at least permit venue where a crime's effect is both intentionally directed *and* manifested.

Petitioner notes (Br. 23-25) that the Founders viewed the invocation of a 1543 statute that "authoriz[ed] trials in England for * * * colonists accused of treason" as an affront to the common-law right of a jury of the vicinage, *Smith*, 599 U.S. at 246-247 & n.7 (discussing the Treason Act of 1543, 35 Hen. 8, c. 2). Petitioner further notes that Parliament acknowledged by statute that the relevant offenses were "'committed' in the Colonies," but invoked "effects" on English ships and revenue collection to justify overseas trials. Pet. Br. 23-24 (citation omitted). But to the extent that history suggests that incidental, or unintentional, "effects" are not in themselves sufficient for venue *outside* of a locale where a crime is "committed," it still stops well short of showing that a crime is only "committed" in a locale where the defendant's conduct takes place. For one thing, the direct effects of the Founding-era treason crimes would have been, like the colonists' conduct, located in the place where the ships were and tax collection occurred. And more generally, the colonists' views of a particular treason offense does not show that this Court's intent-and-effect precedents—themselves supported by the common law, see *Ford*, 273 U.S. at 623—are mistaken.

Petitioner similarly errs in his invocation (Br. 28) of Chief Justice Marshall's trial-court decision in *United States* v. *Burr*, 8 U.S. (4 Cranch) 460, 25 F. Cas. 55 (C.C.D. Va. 1807) (No. 14,693). That decision interprets the Treason Clause, which instructs that treason consists of "levying War against [the United States]" and, absent a confession, must be proven by "the Testimony

of two Witnesses to the same overt Act," U.S. Const. Art. III, § 3. See *Burr*, 8 U.S. at 471, 25 F. Cas. 159. In light of those constitutional requirements, Chief Justice Marshall concluded that "an indictment for levying war must specify an overt act." *Id.* at 489, 25 F. Cas. 170. And in doing so, he observed that "[t]he place in which a crime was committed is essential to an indictment" to "shew the jurisdiction of the court"—an observation "rendered * * * stronger by" the Sixth Amendment right to be "'tried in the state and district wherein the crime shall have been committed.'" *Ibid.*

Chief Justice Marshall's interpretation of the treason crime to have an overt-act element does not preclude venue for other crimes in a district where they are intended to, and do, have an effect. His opinion, which was not even principally about venue, solved the problem that an indictment that merely "charged the prisoner in general terms with having levied war, omitting the expression of place or circumstance," would not provide any clue *at all* as to proper venue. See *Burr*, 8 U.S. at 489, 25 F. Cas. 170. And petitioner is mistaken in his assertion (Br. 28) that Chief Justice Marshall rejected consideration of intent as part of a venue analysis. The passage petitioner quotes about a "purpose of making war against the government" does not concern Burr or his intent; it comes from a different part of the opinion describing legal views about what constitutes "an act of levying war," which does not mention venue or vicinage. *Burr*, 8 U.S. at 476, 25 F. Cas. 162.

Finally, petitioner's reliance (Br. 28) on serial opinions by two Justices in *Cooper* v. *Telfair*, 4 U.S. (4 Dall.) 14 (1800), is misplaced. In that case, Cooper sought to collect on a bond; the defendant responded by pointing to a Georgia statute confiscating all of Cooper's prop-

erty (including the property sought by the bond) based on treason by Cooper; and Cooper responded by arguing that the statute was "repugnant" to the "*constitution of the state*" because he had "never [been] tried" for treason and the state constitution required treason "to be tried in the county where the crime was committed." *Id.* at 14-16 (reporter's statement) (emphasis added). Two of four Justices understood the state constitutional provision not to apply to acts of treason that occurred beyond Georgia's boundaries, and they rejected Cooper's argument for failure to show whether his offense was "committed in any county of Georgia." *Id.* at 18 (Washington, J.) (emphasis omitted); see *ibid.* (Chase, J.) (stating his "agree[ment]"). But they did not, in doing so, address the venue and vicinage provision of the federal Constitution—let alone reject an intent-and-effect analysis.

B. Petitioner's Section 1519 Offense Was Committed In Part In The Northern District Of California Because He Specifically Intended His Conduct To Have Effect, And It Had Effect, There

Here, petitioner violated 18 U.S.C. 1519, an inchoate obstruction-of-justice offense that makes it a crime to falsify a record "with the intent to impede, obstruct, or influence [a federal] investigation," *ibid.* Where, as here, the defendant's conduct and intent are directed at a specific investigation, the location of that investigation is integral to the commission of the crime. And the defendant may constitutionally be tried in the location that he deliberately targeted and affected. Indeed, that may sometimes be the only readily determinable venue for trial of the offense.

1. Section 1519 defines an inchoate crime that can occur where its effects are directed and experienced

Section 1519 defines an inchoate crime that protects federal proceedings from obstruction. As with other obstruction crimes, when a defendant violates Section 1519 by directing obstructive conduct at a particular proceeding in a particular locale, part of the crime occurs there.

a. An intended target of an obstructive act under Section 1519 will be central to the commission of the offense

Congress "enacted [Section 1519] as part of the Sarbanes-Oxley Act of 2002, 116 Stat. 745," which Congress passed in response to "the collapse of Enron Corporation," the "exposure of Enron's massive accounting fraud," and "revelations that the company's outside auditor, Arthur Andersen LLP, had systematically destroyed potentially incriminating documents." *Yates* v. *United States*, 574 U.S. 528, 532, 535-536 (2015) (plurality opinion). Congress designed Section 1519 to "expand[] prior law by including within [its] reach 'any matter within the jurisdiction of any department or agency of the United States.'" *Id.* at 536 (citation omitted). That language, which is identical to language that Congress had used elsewhere in the obstruction context, codifies Congress's "intent to protect the authorized functions of governmental departments and agencies"—including all "criminal investigations conducted by the FBI"—"from the perversion which might result from the deceptive practices" that are prohibited. *United States* v. *Rodgers*, 466 U.S. 475, 477, 480 (1984) (interpreting 18 U.S.C. 1001) (citation and internal quotation marks omitted).

As this Court has recognized, Section 1519 "reflects the longstanding ordinary understanding of obstruction

of justice," a concept that "covers 'the crime or act of willfully interfering with the process of justice and law,' including * * * by furnishing false information in or otherwise impeding an investigation or legal process." *Pugin* v. *Garland*, 599 U.S. 600, 604, 605 n.1 (2023) (citation omitted). To that end, "[Section] 1519 forbids assorted *means* of destroying, altering, or falsifying records *with an intent to obstruct* certain [federal] investigations or proceedings." *Id.* at 605 (emphases added). And it thereby defines a type of "inchoate offense"—a crime that is "[a] step toward the commission of another crime," *Black's Law Dictionary* 1301—by criminalizing "acts looking toward the commission of [an obstruction of justice]," *United States* v. *Williams*, 553 U.S. 285, 300 (2008); see p. 20, *supra*.

Section 1519's express intent element is central to its function. Falsifying a record "with the intent to impede, obstruct, or influence the investigation" of a federal agency, 18 U.S.C. 1519, "is to act with [a] state of mind respecting th[e] act's consequences" and to have that consequential effect—the obstruction of the investigation—"as a 'conscious object,'" *Voisine* v. *United States*, 579 U.S. 686, 691-692 (2016) (citation omitted); see *United States* v. *Bailey*, 444 U.S. 394, 405 (1980) ("'[P]urpose' corresponds loosely with the common-law concept of specific intent."). Section 1519 accordingly criminalizes the falsification of records only when the offender "acts purposefully"—*i.e.*, when he "'consciously desires'"—to obstruct justice as the "result" of his act of falsification. *Borden* v. *United States*, 593 U.S. 420, 426 (2021) (plurality opinion) (quoting *Bailey*, 444 U.S. at 404).

That "purpose"—"the most culpable level[]" of the "four states of mind * * * that may give rise to criminal liability"—plays an important role in defining such an

"inchoate crime[]," because it separates "criminal conduct from [otherwise] innocent behavior." *Borden*, 593 U.S. at 425-426 & n.3 (plurality opinion); see *Bailey*, 444 U.S. at 404-405. One might knowingly falsify a record for lawful reasons—for instance, to use it as an illustrative document, for parody, or even as a prank. But when someone falsifies a record "with the intent to impede, obstruct, or influence [a federal] investigation," 18 U.S.C. 1519, that action becomes an inchoate offense specifically aimed at obstructing justice. And when his intent is manifested by conduct directed at, and affecting, a specific investigation in another district, the direction at and effect in that district make it a locus of the crime's commission.

Such conduct is akin to an overt act committed in furtherance of a conspiracy, which is considered part of the offense for venue purposes. See *Whitfield*, 543 U.S. at 218. The objective of a Section 1519 offense is, by definition, "to impede, obstruct, or influence" a federal investigation. 18 U.S.C. 1519. The defendant's actus reus—his falsification of a record—must be done "with" that specific "intent." *Ibid.* But the mere private falsification of a record by itself obviously will not obstruct an investigation without further events, such as providing the falsified record to investigators. An individual who has falsified a record "with the intent to impede, obstruct, or influence" a federal investigation (*ibid.*) must necessarily contemplate—like members of a conspiracy who agree to commit another crime—that his mere act of falsification will not complete his undertaking. See *United States* v. *Kissel*, 218 U.S. 601, 607-608 (1910) (discussing how a conspiracy "contemplates" its "continu[ation]"). And where an individual's own related "act in furtherance" of his criminal objective,

Whitfield, 543 U.S. at 218, such as the transmission of a falsified record to investigators, is what causes his falsification to have effect, it makes good sense to view "the place where an unlawful purpose is attempted to be executed," *Hyde*, 225 U.S. at 363, as part of the commission of the crime.

b. Section 1519 is part of a corpus of obstruction crimes that will treat a target of an offense as a central consideration for venue purposes

Congress's treatment of other obstruction-of-justice offenses codified alongside Section 1519 in Chapter 73, 18 U.S.C 1501-1521, confirms that a Section 1519 offense can be committed in part where a federal investigation that the defendant specifically intends to obstruct is located. Congress expressed its clear understanding that similar inchoate obstruction offenses are committed both where the defendant's actions are taken as well as where a relevant proceeding is located, see 18 U.S.C. 1512(i), reinforcing the most natural understanding of the nature of Section 1519's obstruction offense.

The obstruction-of-justice statute in 18 U.S.C. 1503 contains an "'Omnibus Clause' [that] serves as a catch-all," making it a crime to "endeavor[]"—*i.e.*, attempt—"to influence, obstruct, or impede the due administration of justice." *United States* v. *Aguilar*, 515 U.S. 593, 598-599 (1995); see 18 U.S.C. 1503(a); see also 18 U.S.C. 1503 (1982). And in 1982, Congress enacted a related provision—18 U.S.C. 1512—to elaborate upon Section 1503's prohibitions with more specific provisions making it a crime to, *inter alia*, tamper, or attempt to tamper, with a witness, victim, or informant in an official proceeding. 18 U.S.C. 1512(a), (b), and (d); see 18 U.S.C. 1512(a) and (b) (1982).

By 1988, a lopsided 6-1 majority of the courts of appeals had found venue is proper for those obstruction offenses in the district in which a specific targeted official proceeding is conducted. See *United States* v. *Frederick*, 835 F.2d 1211, 1213-1214 (7th Cir. 1987) (identifying circuit split for Section 1503 offenses and taking view that that venue precedent controls venue for Section 1512 because Section 1512 was enacted to elaborate upon Section 1503's protections; and joining the majority view), cert. denied, 486 U.S. 1013 (1988). And they did so even though there was no requirement under Section 1503 that "the defendant's actions need be successful"—"an 'endeavor' suffice[d]," *Aguilar*, 515 U.S. at 599—and Section 1512 likewise criminalized inchoate "attempt[s]," 18 U.S.C. 1512(a) and (b) (1982); see *Williams*, 553 U.S. at 300 (recognizing that "attempt" is an "inchoate crime[]"). Cf., *e.g.*, *United States* v. *Davis*, 689 F.3d 179, 187-188 (2d Cir. 2012) (holding that venue for the "inchoate offense" of attempt "will lie in any district where a substantial step" "toward commission of the [attempted] offense occurred" and in any district where the defendant could reasonably "foresee[] that interstate commerce would be affected" by his attempted Hobbs Act robbery), cert. denied, 568 U.S. 1183 (2013); *United States* v. *Zidell*, 323 F.3d 412, 423 (6th Cir.) (upholding venue for attempted drug distribution where the crime's "effects * * * would have been felt in [the venue]," even if the defendant "act[ed] solely in [a different district]"), cert. denied, 540 U.S. 824 (2003).[1]

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[1] Congress has subsequently supplemented Section 1512 with further criminalization of inchoate "attempts," including—and contrary to petitioner's contention, see Br. 12—Section 1512(c)(2). See 18 U.S.C. 1512(c)(2) (criminalizing "attempts" to obstruct); Corpo-

In 1988, Congress confirmed the "long[standing]" "majority" view, thereby eliminating the lopsided "split in the circuits," by enacting what is now Section 1512(i), which "clarif[ies] [that] venue for an obstruction of justice prosecution" will lie "in the district [of] the official proceeding" as well as "in the district where the illegal act itself occurred." 134 Cong. Rec. 13,780, 13,780 (1988) (section-by-section analysis for Minor and Technical Amendments bill); see *United States* v. *Gonzalez*, 922 F.2d 1044, 1054 (2d Cir.), cert. denied, 502 U.S. 1014 (1991). Section 1512(i) makes clear that the majority of circuits were correct in treating offenses under Sections 1503 and 1512 as occurring in part both "in the district in which the conduct constituting the alleged offense occurred" *and* "in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected." 18 U.S.C. 1512(i); see Minor and Technical Criminal Law Amendments Act of 1988, Pub. L. No. 100-690, Tit. VII, Subtit. B, § 7029(a), 102 Stat. 4395, 4397-4398 (enacting 18 U.S.C. 1512(h) (1988), now 18 U.S.C. 1512(i)).

That venue provision codifies the natural understanding of the location of an obstruction offense. The congressional analysis accompanying the provision explained that if, for instance, "a witness scheduled to testify in a District of Columbia trial is killed while dining at a restaurant in Maryland, the prosecution for obstruction of justice could take place in either Maryland or in the District of Columbia." 134 Cong. Rec. 13,780. An act of murder is not inherently obstructive. But it is when it is directed at affecting, and does affect, a proceeding (pending, imminent, or otherwise), which may

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rate Fraud Accountability Act of 2002, Pub. L. No. 107-204, Tit. XI, § 1102(2), 116 Stat. 807 (enacting Section 1512(c)).

or may not be in the same jurisdiction as the murder, by depriving that proceeding of a witness.

Like Section 1503 and Section 1512, the definition of obstruction under Section 1519 hinges on the defendant's intent that it be obstructive. And although Section 1512(i) does not apply directly to Section 1519, its correction of a lone circuit's mistaken understanding of analogous obstruction offenses informs the nature of Section 1519 as well.[2] As this Court has emphasized when previously interpreting Section 1519, "'the most rudimentary rule of statutory construction' is 'that courts do not interpret statutes in isolation, but in the context of the *corpus juris* of which they are a part." *Pugin*, 599 U.S. at 605 n.1 (quoting *Branch* v. *Smith*, 538 U. S. 254, 281 (2003) (plurality opinion of Scalia, J.)). And there is no sound reason, in the Constitution or otherwise, not to respect Congress's explicit judgment about the nature of obstruction offenses like Section 1519.

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[2] Congress later enacted text similar to Section 1512(i) in 18 U.S.C. 1513(g), to "clarify" that the crime of retaliating against a witness, victim, or informant in violation of Section 1513 also is committed in part in the district of the associated proceeding. H.R. Rep. No. 218, 110th Cong., 1st Sess. Pt. 1, at 17 (2007); see S. Rep. No. 42, 110th Cong., 1st Sess. 4-5 (2007). Section 1513 is not a typical obstruction offense, because it encompasses after-the-fact "retaliat[ion]" against persons who have already played a role in connection with an "official proceeding." 18 U.S.C. 1513(a)(1), (b), and (e). No similar clarification was necessary for Section 1519, which is a typical obstruction offense analogous to Sections 1503 and 1512.

2. Petitioner could constitutionally be tried in the district of the investigation at which his conduct was directed

Here, petitioner directed his conduct at the Northern District of California by sending his false invoice to agents investigating him there. Doing so manifested his intent to obstruct a specific ongoing investigation in the Northern District of California and caused the investigators located there to experience his obstruction. Prosecution in the Northern District of California was therefore consistent with the general intent-and-effect principle recognized in *Ford*. Indeed, it was specifically analogous to three of the venue cases that *Ford* identified: *Lamar* v. *United States*, *Burton* v. *United States*, and *In re Palliser*. See *Ford*, 273 U.S. at 621 (citing all three cases).

a. In *Lamar*, the Court addressed the permissibility of a trial in the Southern District of New York for violating Section 32 of the Criminal Code of 1909, ch. 321, 35 Stat. 1095, which made it a crime to "falsely * * * pretend to be * * * any officer of the Government [of the United States], and * * * take upon himself to act as such," "with intent to defraud * * * any person," *ibid.* See *Lamar*, 240 U.S. at 65. The Court made clear that the offense at issue was simply "personation with intent to defraud," not actual "defrauding," which was a different offense under Section 32. *Ibid.* Lamar had committed that impersonation-with-intent crime by "falsely pretend[ing] to be * * * a member of the House of Representatives," *id.* at 64, while speaking into a "telephone to a person in [the Southern District of] New York," *id.* at 65-66. And this Court held that even if Lamar was not in the Southern District of New York during the call, venue was nonetheless proper in that district be-

cause "the personation *took effect* there." *Id.* at 66 (emphasis added).

Lamar directly parallels this case. The criminal statute in *Lamar*, like Section 1519, prohibited an act that can itself be lawful. Lamar could have lawfully pretended to be a federal official in, say, a movie; petitioner could have lawfully created a false invoice for, say, training purposes. The criminal statute in *Lamar*, like Section 1519, also did not inherently require communication with another. Lamar could have satisfied the Section 32 crime's actus reus requirement by simply pretending to be a federal official alone in front of a mirror; petitioner could have satisfied Section 1519's actus reus by creating a false invoice and doing nothing with it. What made the conduct a crime in each case was a statutory specific-intent element: in *Lamar*, the "intent to defraud" another, 240 U.S. at 65; here, the "intent to impede, obstruct, or influence [a federal] investigation," 18 U.S.C. 1519.

As *Lamar*'s venue holding illustrates, when the actus reus and mens rea are manifested through conduct directed at another jurisdiction, and the conduct affects that jurisdiction, that jurisdiction is a proper venue for trial of the crime. Cf. *Bailey*, 444 U.S. at 402 (discussing general requirement of "concurrence" of actus reus and mens rea). The fact that Lamar was speaking into a telephone was a factual circumstance of his particular criminal conduct, not an element of the statutory offense. The Court nonetheless found venue proper where the prohibited act (pretending and acting to be an officer) with the requisite intent (to defraud) "took effect," as evidenced by his use of a telephone to transmit a reproduction of his voice into that district. *Lamar*, 240 U.S. at 66. The same logic applies here:

like in *Lamar*, venue for petitioner's offense is proper in the Northern District of California because his falsification of a record with intent to obstruct an investigation "took effect" in the district into which petitioner himself directed the record in an electronic transmission.

b. Similarly, in *Burton*, this Court applied an intent-and-effect-based approach to uphold prosecution in a venue in which the defendant himself was never present nor directly acted. Specifically, the Court upheld venue in the Eastern District of Missouri for the prosecution of a United States Senator from Kansas, under a statute that made it a crime for a sitting "Senator, Representative or Delegate" to "agree to receive any compensation whatever * * * for any services rendered, or to be rendered, to any person, * * * in relation to any proceeding * * * before any [federal agency]," where the Senator's own conduct occurred entirely in Illinois. *Burton*, 202 U.S. at 359 (quoting Rev. Stat. § 1782 (1874)) (emphasis added); see *id.* at 361-364, 382-384 (discussing Count 6).

While in Illinois, Senator Burton had proposed to the general counsel of a St.-Louis-based company that, for a $500 monthly salary, he would work to persuade the Post Office Department to cease investigating the company. *Burton*, 202 U.S. at 382; see *id.* at 363-364. After the attorney responded that "only the company" could agree to the compensation, the Senator specifically "contemplated * * * that his offer as to employment and compensation would be submitted for him to the company at St. Louis." *Id.* at 382. The next day, the general counsel arrived back in St. Louis (in the Eastern District of Missouri), where "the company promptly accepted the offer" by telegram dispatched from St. Louis

to the Senator's office in Washington, D.C. *Id.* at 382-383.

The Court in *Burton* found venue proper in Missouri notwithstanding the Senator's presence in Illinois. See *Burton*, 202 U.S. at 361-364, 382-384. In doing so, the Court emphasized that "[t]he constitutional requirement is that the *crime* shall be tried in the State and District where committed, not necessarily * * * *where the party committing it happened to be* at the time." *Id.* at 387 (second emphasis added). And applying that principle to the crime of "agree[ing] to receive" compensation, *id.* at 359 (quoting Rev. Stat. § 1782), the Court explained that the Senator's "offense was, in the eye of the law, committed" in Missouri, because he had "sent his offer to St. Louis *with the intent that it should be there* accepted and consummated," which it was. *Id.* at 389 (emphasis added).

Even if the actus reus in *Burton* required a meeting of the minds that was not complete until the company accepted the offer in St. Louis, see *Burton*, 202 U.S. at 384-385, the Court has nonetheless recognized its decision in that case as supporting the broader principle that "[a]cts done outside a jurisdiction, but intended to produce and producing detrimental effects within it," are properly punished "as if [the defendant] had been present at the effect." *Ford*, 273 U.S. at 620-621 (citation omitted). Applied in *Burton*, that principle meant that acts done outside Missouri justified a prosecution there, when those acts were "intended to produce," and did "produc[e]" (*ibid.*), an effect in St. Louis. Applied here, that principle means that acts done outside the Northern District of California justified prosecution there, when they were similarly "intended to produce," and did "produc[e]," an effect in San Francisco.

c. The Court's decision in *Palliser* likewise is illustrative of the general principle and analogous to this case. Palliser had mailed a letter from New York to a postmaster in Connecticut, proposing to pay fully for postage through a billing arrangement that would have violated a statute requiring advance payment for stamps. *Palliser*, 136 U.S. at 263-264, 267. Palliser was then prosecuted in Connecticut for the crime of "offer[ing] * * * any money" or "tender[ing] any contract * * * for the payment of money" to a federal officer "with intent to * * * induce him to do * * * any act in violation of his lawful duty." *Id.* at 262-263 (quoting Rev. Stat. § 5451). And the Court found venue in Connecticut to be proper, even though Palliser had acted only from New York. *Id.* at 267-268.

The Court acknowledged that, under the criminal statute at issue, the crime might not actually have been "committed until" the postmaster learned of Palliser's "offer or tender" upon receipt of Palliser's letter in Connecticut. *Palliser*, 136 U.S. at 267. But rather than resolve that question, the Court made two alternative holdings. First, the Court held that if the "offence was committed [only] in Connecticut" where the letter had been directed and received—such that "no offence was committed in New York" where Palliser was located—then venue in Connecticut was proper. *Id.* at 267-268. And second, the Court alternatively held that if "the offence was committed in New York" upon Palliser's mailing of the letter, "the offence *continued* to be committed when the letter reached the postmaster in Connecticut." *Id.* at 267 (emphasis added).

That second holding illustrates that events that occur after the defendant's criminal act can be a proper basis for venue, at least when the act is taken with "in-

tent" to have, and then has, an effect in the district of prosecution. See *Ford*, 273 U.S. at 620-621 (citing *Palliser*, *supra*); cf. *Cabrales*, 524 U.S. at 9 (observing that *Palliser* "recognizes that a mailing to Connecticut is properly ranked as an act completed in that State"). Even if *Palliser* has subsequently been understood as implicitly applying a statutory venue provision that specifically addresses an offense begun in one district and completed in another, see, *e.g.*, *Benson* v. *Henkel*, 198 U.S. 1, 15 (1905), the Court in *Palliser* also recognized no constitutional infirmity in venue under the intent-and-effect principle. And for reasons discussed above, that principle equally supports venue for petitioner's trial in the Northern District of California, where the effect of his conduct was directed and felt.

3. Foreclosing trial in the venue of a targeted investigation would be impractical

a. Allowing petitioner's obstruction trial in the Northern District of California is also the far more practical result. Not only does it allow for obvious efficiencies, by avoiding two trials (one for obstruction and one for the original investigated crimes) in different locations, but the district of the targeted investigation may in some cases be the only readily discernible venue.

Section 1519's only actus reus element is an act of "alter[ing], destroy[ing], mutilat[ing], conceal[ing], cover[ing] up, falsif[ying], or mak[ing] a false entry in" a "record, document, or [record-like] tangible object." 18 U.S.C. 1519; cf. *Yates*, 574 U.S. at 549 (plurality opinion) (interpreting "tangible object"); *id.* at 550 (Alito, J., concurring in the judgment) (same). The items that a defendant may falsify or otherwise corrupt are typically digital or otherwise portable, and defendants will naturally try to conceal their obstructive conduct. Accord-

ingly, if and when falsification is discovered, the exact location of the falsification may not be readily ascertainable.

Even when federal investigators can identify *who* falsified a record or document with the requisite intent, the locus of his action could be impossible to ascertain. In this case, the government was able to establish where petitioner first created his false invoice because FBI agents were at his home at the time and metadata from the pdf file that he transmitted to the investigation showed precisely the time of that original creative act. Under less rushed circumstances, however, petitioner might have taken steps to impede discovery of the circumstances of the document's creation, like deleting the document and file-system metadata. See Adobe, *How to remove metadata from a PDF*, https://www.adobe.com/acrobat/hub/remove-metadata-pdf.html. And physical records, like paper documents, are even less likely to reflect where they have been created or modified.

The problem may be particularly acute for offenders who travel frequently, but it is by no means limited to them. Even for defendants who stay near home, matters are significantly complicated because many densely populated regions of the country lie on or near state or federal-district boundaries that individuals in the region regularly cross, making it even more difficult to determine where an individual falsified a record. In the capital region, for instance, many people routinely cross the borders separating the District of Columbia, Maryland, and Virginia as they move between home, work, and other activities in multiple jurisdictions. Such circumstances are far from unique: numerous other densely populated areas include similar jurisdictional

complications from the proximity of two or three judicial districts.[3]

Non-inchoate crimes pose fewer difficulties. Such crimes, when completed, frequently involve criminal acts that will directly produce a locus-identifying harm that will make a venue for prosecution clear. But inchoate crimes like Section 1519 obstruction offenses, which merely involve a *step* towards the commission of another (obstruction) offense, could be all but impossible to find a venue for—even where the evidence indisputably shows that the defendant committed the offense with the required intent—if the only permissible venue were the venue in which a record was falsified. The Constitution's allowance of trial in the venue where the conduct is intentionally directed and felt properly allows for trial of such offenses at what may be the only readily apparent locus of the crime.

b. Petitioner suggests (Br. 32-34) that practical problems might arise if government were permitted to "manufacture venue for any offenses involving obstructive intent," Br. 32. But petitioner identifies no instance of

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[3] The metropolitan areas of New York City (New York, New Jersey, and Connecticut), Philadelphia (Pennsylvania, New Jersey, and Delaware), Chicago (Illinois, Indiana, and Wisconsin), Cincinnati (Ohio, Kentucky, and Indiana), and Sioux City (Iowa, Nebraska, and South Dakota) each encompass three States. Numerous others include at least two, including St. Louis (Missouri and Illinois), Kansas City (Missouri and Kansas), Portland (Oregon and Washington), Memphis (Tennessee and Arkansas), Louisville (Kentucky and Indiana), and Augusta (Georgia and South Carolina). See also Wikimedia Commons, *Category: Populated places coinciding a state border within the United States*, https://commons.wikimedia.org/wiki/Category:Populated_places_coinciding_a_state_border_within_the_United_States (listing over 200 population areas along state borders).

any actual attempt to manufacture venue by choosing a particular office to conduct an investigation, and his speculation that such a practice will arise and proliferate is unrealistic.

As this case illustrates, federal criminal investigations are typically conducted by specific federal offices responsible for the geographic areas in which the underlying crimes occurred, which is where the investigative resources will be most needed. Although certain investigations may sometimes require joint efforts from multiple components of a federal agency, petitioner identifies no plausible basis for concluding that those offices would be selected simply to manufacture venue based on the possibility of obstruction-of-justice offenses. That is particularly apparent on the facts of this case, where the FBI's Northern District of California investigation was originally opened to determine whether crimes had been committed at Twitter in San Francisco, and any subsequent obstructive conduct, if it were to occur, would have been the tail of the investigative dog. Moreover, the government cannot be fairly viewed as itself "manufacturing" venue in the district where a *defendant* has intentionally directed the effects of his action and where those effects are, in fact, experienced.

In any event, the prosecution's choice of venue is not the final say. A court must grant a defendant's request to transfer the proceeding to another district if it is satisfied that the defendant would not obtain a "fair and impartial trial" in the original venue, Fed. R. Crim. P. 21(a), such as "when there is a well-grounded fear of jury prejudice," *Singer* v. *United States*, 380 U.S. 24, 35 (1965). And even if the original venue poses no such risk, a defendant may move to transfer the entire proceeding —or "one or more counts"—"to another district for the

convenience of the parties, any victim, and the witnesses, and in the interest of justice." Fed. R. Crim. P. 21(b); cf. *Platt* v. *Minnesota Mining & Mfg. Co.*, 376 U.S. 240, 243-245 (1964) (balancing of factors relevant to Rule 21(b)'s interest-of-justice component is a "discretionary function" of the trial judge).

II. EVEN UNDER PETITIONER'S APPROACH, HIS CRIME WAS COMMITTED IN THE NORTHERN DISTRICT OF CALIFORNIA BECAUSE HE DIRECTLY CAUSED A FABRICATED RECORD TO BE CREATED THERE

At all events, even if petitioner's constricted view of venue were correct, venue was proper in the Northern District of California because petitioner directly caused a falsified record to be created in that district. Even petitioner does not appear to dispute that if he "started creating a false document in one district and finished it in another," the offense would be committed in both districts. Pet. Br. 31. And that is precisely what happened here. Although petitioner assumes that his act of falsification occurred only in his home in Seattle, he in fact caused the creation of his false record *in California* through his e-mail to the FBI office in San Francisco.[4]

The falsified record admitted at trial was a printed copy of the e-mail and the attached file with the fake invoice that had appeared at the FBI's San Francisco office following petitioner's electronic transmission. C.A. E.R. 1429 (discussing Gov't Trial Ex. 806); see App., *infra*, 1a-2a (exhibit). The evidence reflected that

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[4] Although the government did not previously advance this argument, it may, as a respondent in this Court, "defend the judgment below on any ground which the law and the record permit," *Smith* v. *Phillips*, 455 U.S. 209, 215 n.6 (1982), notwithstanding that it "did not urge the point" below, *Bondholders Comm., Marlborough Inv. Co.* v. *Commissioner*, 315 U.S. 189, 192 n.2 (1942).

the electronic transmission of the fake invoice resulted in the creation of a record—a file on the computers of the San Francisco FBI office—that was not itself the original of the falsified record, but instead a duplicate. Specifically, the invoice file on petitioner's computer (which the FBI had seized) contained metadata that was somewhat different from that of the FBI-received record. See C.A. E.R. 1522-1523; see also *id.* at 1102-1108.

It follows that petitioner, through his act of e-mailing a copy of his fake invoice file to the FBI, "falsifie[d]" a "record," 18 U.S.C. 1519, in two places. See *Webster's Third New International Dictionary* 820 (2002) (defining "falsify" to mean "to represent falsely"); *Webster's New International Dictionary* 915 (2d ed. 1951) (same). The jury accordingly found petitioner guilty on "the charge of Falsification of Records to Obstruct [an] Investigation * * * *as set forth* in Count Eleven of the indictment," D. Ct. Doc. 391, at 4 (Aug. 9, 2022) (verdict form) (emphasis added); see C.A. E.R. 2038, which stated that petitioner, "*in the Northern District of California* and elsewhere," had "falsified a record or document, namely creating and *providing by email to the* [*FBI*] a fabricated, false, and backdated invoice for $100,000" with intent to obstruct an FBI investigation. C.A. E.R. 208 (emphases added). Given the facts, venue would be proper even if the falsification needed to occur in the Northern District of California for petitioner to be tried there.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
JOHN A. EISENBERG
Assistant Attorney General
ERIC J. FEIGIN
Deputy Solicitor General
ANTHONY A. YANG
Assistant to the Solicitor General
JEFFREY M. SMITH
JOSEPH P. MINTA
Attorneys

FEBRUARY 2026

APPENDIX

[FOLDOUT]

From: Ahmad AbouAmmo <[redacted]@gmail.com>
Sent: Saturday, October 20, 2018 4:43 PM
To: Kingsley, Jonathan D. (SF) (FBI)
Subject: Re: Invoice for Friedman Rubin
Attachments: misk_invoice_2016010001.pdf

invoice for misk

On Sat, Oct 20, 2018 at 4:14 PM Ahmad AbouAmmo <[redacted]@gmail.com> wrote:

[FOLDOUT]

CYRCL, LLC

INVOICE

206-[redacted]
payable@cyrcl.com

[redacted]
Seattle, WA
98119

Attention: Bader Alasaker
Misk

Project Title: Social Media Consultancy
Project Description: Marketing & advertising - January
P.O. Number: N/A
Invoice Number: 2016010001

Description	Quantity	Hourly Rate	Cost
One year of consultancy	1	$ 100,000.00	$100,000.00
		Total	$100,000.00

Thank you for your business.

Sincerely yours,

Ahmad AbouAmmo

[FOLDOUT]

From: Kingsley, Jonathan D. (SF) (FBI)
Sent: Sunday, October 21, 2018 1:53 PM
To: Wu, Letitia L. (SF) (FBI)
Subject: FW: Invoice for Friedman Rubin
Attachments: misk_invoice_2016010001.pdf

From: Ahmad AbouAmmo [mailto:[redacted]@gmail.com]
Sent: Saturday, October 20, 2018 4:43 PM
To: Kingsley, Jonathan D. (SF) (FBI) <[redacted]@fbi.gov>
Subject: Re: Invoice for Friedman Rubin

invoice for misk

On Sat, Oct 20, 2018 at 4:14 PM Ahmad AbouAmmo <[redacted]@gmail.com> wrote:

[FOLDOUT]

CYRCL, LLC

INVOICE

206-[redacted]
payable@cyrcl.com

[redacted]
Seattle, WA
98119

Attention: Bader Alasaker
Misk

Project Title: Social Media Consultancy
Project Description: Marketing & advertising - January
P.O. Number: N/A
Invoice Number: 2016010001

Description	Quantity	Hourly Rate	Cost
One year of consultancy	1	$ 100,000.00	$100,000.00
		Total	$100,000.00

Thank you for your business.

Sincerely yours,

Ahmad AbouAmmo