No. 25-5146

IN THE

Supreme Court of the United States

AHMAD ABOUAMMO,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITIONER'S REPLY BRIEF

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March 20, 2026

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INTRODUCTION

Abandoning the Ninth Circuit's flawed reasoning, the government urges an even broader rule: A "defendant may properly be prosecuted" anywhere "he intended his conduct to have effect and his actions ultimately took effect." U.S. Br. 20. This rule seemingly applies to all manner of crimes. *Id.* It does not require that the effect be an offense element—or even mentioned in the statute. *Id.* at 13. And while the effect apparently must be "detrimental," *id.*, the government offers no limits on how significant or direct it must be.

This novel view raises a host of unanswerable questions. It would also swallow the Court's venue test. If any intended-and-manifested effect can create venue, then "the location of the commission of the criminal acts" generally becomes irrelevant. Contra *United States* v. *Rodriguez-Moreno*, 526 U.S. 275, 279 (1999). In many cases, the offense conduct's location will become an alternative forum option for prosecutors instead of a core protection for defendants.

That is not the law. The government is trying to reframe this Court's continuing-offense cases as effects-based, but the Court has never upheld venue on that basis. Indeed, the government's lead authority is not about venue; it addresses extraterritorial jurisdiction over a conspiracy based on customary international law. See *Ford* v. *United States*, 273 U.S. 593, 622–23 (1927). That is not a sound basis to interpret Article III or the Sixth Amendment here. And the government has little to say about the ratification-era sources that do shed light on this question.

Contrary to the government's strawman framing, Mr. Abouammo does not claim venue requires physical presence. Rather, venue turns on the location(s) of the

conduct Congress proscribed. For example, a defendant hasn't actually offered a bribe, made an illegal agreement, or impersonated a federal official until he has communicated with someone. So, if the parties are in different states, the offer, agreement, or impersonation is "committed" where the communication was made *or* received. These offenses continue across state lines. But if Congress criminalized only a discrete act, and that act was committed in just one place, venue is not expanded by associated interstate communication—as shown by cases like *United States* v. *Johnson*, 323 U.S. 273 (1944), which the government ignores.

Like the offense in *Johnson*, § 1519 is a point-in-time offense, with no communicative element. The falsified document need never be conveyed to investigators, let alone affect them. Indeed, no investigation need exist. The offense is thus complete as soon as the document is created with the requisite intent. Likewise, § 1519 does not create "an inchoate obstruction-of-justice crime," U.S. Br. 17, but a complete, standalone offense.

Even the government's novel rule would not salvage the conviction, however. Broad as it is, that rule requires an actual effect in the forum. So the government declares that Mr. Abouammo "efficaciously directed his obstructive conduct" at San Francisco, causing "the investigators located there to experience his obstruction." U.S. Br. 12, 34. But as the Ninth Circuit recognized, this case involves no such effect. No obstructive effect was alleged in the indictment, proved at trial, or found by the jury. The Court should reverse.

ARGUMENT

I. The government's intended-and-manifested-effects theory conflicts with precedent.

Venue turns on "the location of the act or acts constituting" the offense—on where the "essential conduct elements" occurred. *Rodriguez-Moreno*, 526 U.S. at 279–80 (cleaned up). Section 1519 has just one such element: falsifying a document. Mr. Abouammo's act of falsification began and ended in Seattle. He thus committed his offense there, not in San Francisco. Pet. Br. 12–15.

The government does not contend that § 1519's intent requirement—let alone the object thereof—is an essential conduct element. And it does not claim Mr. Abouammo engaged in any conduct proscribed by § 1519 anywhere but Seattle. Instead, it offers a new rule: Venue is proper wherever the "effects" of a defendant's "unlawful acts are directed and experienced"—whether or not those effects are "a required element." *E.g.*, U.S. Br. 12, 18, 20. This novel theory finds no support in precedent. Nor can the government manufacture venue by reframing § 1519 as an "inchoate" obstruction offense.

A. The Court's key venue precedents turn on essential offense conduct.

The government acknowledges that the "general guide" to determining venue is the *locus delicti* test applied in *Cabrales* and *Rodriguez-Moreno*: The "location of a crime . . . 'must be determined from the nature of the crime alleged and the location of the act or acts constituting it.'" U.S. Br. 19 (quoting *United States* v. *Cabrales*, 524 U.S. 1, 6–7 (1998)) (emphasis omitted). But the government's rule clashes with that test. If "a crime's effects" created venue wherever they were "intended and manifested," U.S. Br. 20–23, then

venue would no longer turn on where the essential conduct elements occurred.

That would upend the Court's key venue precedents. For example, the money laundering in *Cabrales* was surely "directed at, and affect[ed]," Missouri. See U.S. Br. 29. The defendant "participated in various activities in Missouri in furtherance" of the drug-trafficking conspiracy whose proceeds she was laundering. *Cabrales*, 524 U.S. at 4, 9–10. But that was not enough for venue, because the specific "statutory proscriptions" at issue "interdict[ed] only the financial transactions (acts located entirely in Florida), not [any other] criminal conduct." *Id.* at 7. The government's theory would flip the result there. No wonder the government never addresses *Cabrales*'s facts or reasoning.

The government likewise ignores *Johnson*, a "seminal" decision. 4 LaFave, *Criminal Procedure* § 16.2(b) (4th ed. Nov. 2025 update). The defendants there plainly intended to cause, and did cause, a harmful effect in Delaware: the delivery of contraband. 323 U.S. at 274–75. Yet venue lay only in Illinois, because that is where the proscribed conduct—illegal *sending*—occurred. Pet. Br. 18–19. On the government's view, *Johnson* would come out differently too.

Nor does a footnote in *Rodriguez-Moreno* breathe life into the government's theory. Contra U.S. Br. 19. The footnote simply "express[ed] no opinion" on an argument the Court didn't need to reach. 526 U.S. at 279 n.2. And *Rodriguez-Moreno*'s "focus . . . on the actual elements of the crime is inconsistent with" a standard that "would establish venue based on [an] 'effect' that is not an element." 4 LaFave, *supra*, § 16.2(e).

Regardless, the unaddressed argument was simply that "[v]enue may also be based on the effects of a defendant's conduct" under *Palliser*, *Armour Packing*, and *Johnson*. Br. for the United States, *Rodriguez-Moreno*, 526 U.S. 275 (No. 97-1139), 1998 WL 464934, at *16–18. The opening brief explained why those cases don't allow effects-based venue. Pet. Br. 15–19.

Responding only as to *Palliser*, the government says the postmaster's receipt of Palliser's bribery offer "occur[ed] after the defendant's criminal act" but still supported venue. U.S. Br. 38–39. No—the receipt was *part of* the act. Until then, Palliser had not offered a bribe: The crime was "not actually . . . 'committed until' the postmaster learned of Palliser's 'offer or tender' upon receipt," *id.* at 38, because it could not have "influenced" him before then, *Palliser* v. *United* States, 136 U.S. 257, 267 (1890). That is why, as the government concedes, this Court has described *Palliser* as "address[ing] an offense begun in one district and completed in another." U.S. Br. 39 (citing *Benson* v. *Henkel*, 198 U.S. 1, 15 (1905)). *Palliser* "simply recognizes that a mailing" *that is itself illegal* "is properly ranked as an act completed" in the receiving state. *Cabrales*, 524 U.S. at 9.

Put differently, *Palliser* and its progeny address "continuing" offenses—crimes whose "essential element[s]" are "continuously committed" across state lines. *Armour Packing Co.* v. *United States*, 209 U.S. 56, 76–77 (1908). The Ninth Circuit understood as much; it just erred by deeming § 1519 such an offense. Pet. Br. 29–31. And the government doesn't try to rehabilitate that error.

Finally, *Cabrales*'s reference to "the nature of the crime" doesn't license a free-floating venue test unmoored from the elements. Contra U.S. Br. 17, 19. Crimes "are defined in statutory proscriptions," and

venue turns on the conduct those statutes "interdict." *Cabrales*, 524 U.S. at 7. That is, the "conduct constituting the offense" *is* "the nature of the crime." *Rodriguez-Moreno*, 526 U.S. at 279. Thus, the "nature" inquiry asks *how* the elements are satisfied—it doesn't look beyond them. *E.g.*, *United States* v. *Cores*, 356 U.S. 405, 410 (1958) (holding that the offense of overstaying a visa is "continuing in nature").

B. The government's cases do not endorse effects-based venue.

Finding no support in the Court's foundational venue cases, the government looks elsewhere—to no avail.

1. The government's lead case concerns extraterritorial jurisdiction, not venue. In *Ford*, the defendants were arrested on a ship "hovering" off the coast with a contraband cargo. 273 U.S. at 600. They claimed they were beyond U.S. jurisdiction. *Id.* at 619–20. The Court disagreed: The defendants were "conspiring and co-operating" with people in the United States, and "everything done" in furtherance of the conspiracy—including multiple overt acts within the country—"was at the procuration and by the agency of each" conspirator. *Id.* at 600–01, 620.

As the government ultimately admits, the quotations it extracts from sources in *Ford* address the same *non-venue* question: under principles of "international extraterritoriality," when can a sovereign prosecute conduct occurring outside its borders? U.S. Br. 22 (discussing a scholarly article and *Strassheim* v. *Daily*, 221 U.S. 280, 284–85 (1911)). Those authorities say nothing about constitutional venue, and none of this Court's venue cases rely on *Ford*.

In all events, jurisdiction in *Ford* arose not from *effects*, but from conduct. The conspiracy "was *carried*

on partly in and partly out of this country, and so was within its jurisdiction." 273 U.S. at 624 (emphasis added). *Strassheim* likewise involved an ongoing fraudulent scheme among multiple actors; several "material steps" were "taken in" the forum state, including by the defendant himself. See 221 U.S. at 284–85. True, some language in these cases sweeps more broadly. But such "general expressions" must "be taken in connection with the case in which those expressions are used," *Cohens* v. *State of Virginia*, 19 U.S. (6 Wheat.) 264, 399 (1821)—especially when they muse broadly about "the usage of the civilized world," *Strassheim*, 221 U.S. at 284.

2. The government's other cases do address venue. But they again rely on proscribed conduct, not non-element effects. And that essential conduct, unlike here, spanned multiple districts.

The statute in *Burton* v. *United States* prohibited federal officials from "agree[ing] to receive any compensation" for rendering services in relation to any federal proceeding. 202 U.S. 344, 359 (1906). While in Chicago, Senator Burton offered to act as "counsel" for a St. Louis-based company, for a salary, in connection with a federal investigation. *Id.* at 382–83. The company's general counsel conveyed the offer to its officers in St. Louis, who accepted it, confirming by telegram and letter. *Id.* at 383, 386. Citing *Palliser*, this Court upheld venue in Missouri because that is where "the agreement between the parties"—and thus the offense—"was completed." *Id.* at 388.

Burton did not apply an "intent-and-effect-based approach" to venue. Contra U.S. Br. 36. The key was the nature and location of the statutorily proscribed conduct: forming an illegal "agreement." 202 U.S. at 388–89. Under contract-law principles, the agreement was formed upon acceptance "at St. Louis." *Id.* at 383–

84, 386. That is how "intent" mattered: The Senator "sent his offer to St. Louis with the intent that it should be there accepted." *Id.* at 389. Venue thus turned on where the agreement was formed and the offense completed, *id.* at 388—not on effects.

Burton is so clear that even the government admits venue may have been proper in Missouri because "the actus reus . . . was not complete until the company accepted the offer in St. Louis." U.S. Br. 37. The government's only contrary evidence is that *Ford* included *Burton* in a string cite. *Id.* But the best way to understand *Burton* is to read it.

Lamar v. *United States* similarly involved an offense committed by interacting with someone in a different jurisdiction. Lamar was tried in New York for impersonating a Member of Congress via telephone "with intent to defraud." 240 U.S. 60, 64 (1916). The statute punished anyone who "falsely assume[d] or pretend[ed] to be" a federal official by either (1) "tak[ing] upon himself to act as such" or (2) "in such pretended character demand[ing] or obtain[ing]" something of value. Criminal Code of 1909, § 32, ch. 321, 35 Stat. 1095. The Court upheld venue in a single sentence, citing *Burton*: "The personation was by telephone to a person in New York (southern district), and it might be found that the speaker also was in the southern district; but if not, at all events the personation took effect there." 240 U.S. at 65–66. In other words, the proscribed conduct involved communicating with another person, so the offense "took effect"—was committed—where that communication occurred.

The government says venue in *Lamar* must have been effects-based because a person could theoretically commit the *actus reus* "alone in front of a mirror." U.S. Br. 35. But the statute's "act as such" prong, under which Lamar was charged, see *Lamar* v. *Splain*, 42

App. D.C. 300, 304–05 (D.C. 1914), required more than playing dress-up—it called for "some act in keeping with the pretense." *United States* v. *Barnow*, 239 U.S. 74, 77 (1915). That is, the statute required "an overt act that asserts, implicitly or explicitly, authority that the impersonator claims to have." *United States* v. *Rosser*, 528 F.2d 652, 656 (D.C. Cir. 1976) (Skelly Wright, J.). Venue was proper because Lamar made his improper assertion of authority via telephone—and thus in the district where his interlocutors were located.

The government's cases thus reinforce that (i) venue is based on essential offense conduct, and (ii) where that conduct spans multiple jurisdictions, prosecution is proper in any of them. That does not help the government here.

C. The government cannot reframe § 1519 as an inchoate obstruction offense.

1. Section 1519 is not like conspiracy or attempt.

The government says § 1519 is an inchoate offense like conspiracy, which can be prosecuted where its effects are felt. U.S. Br. 20, 27–28. This argument fails at each step.

To start, this Court has already rejected the government's effort to stretch conspiracy venue principles to reach non-conspiracy cases. In *Cabrales*, the government pointed to conspiracy precedents to urge prosecution where the laundered funds originated. 524 U.S. at 8. The Court dismissed that effort, emphasizing that "the counts at issue [did] not charge Cabrales with conspiracy; they [did] not link her to, or assert her responsibility for, acts done by others." *Id.* at 7. Likewise here, the § 1519 count alleges conduct by Mr. Abouammo alone.

Nor is § 1519 an inchoate offense. The government (at 28) cites Black's definition of an inchoate crime as "[a] step toward the commission of another crime"—but it omits the qualification: "The three inchoate offenses are attempt, conspiracy, and solicitation." *Offense*, Black's Law Dictionary (12th ed. 2024). Section 1519 is none of those. And "all inchoate crimes" are defined by "the elements of the crime which is the objective." 2 LaFave, *Substantive Criminal Law* § 12.2(c) (3d ed.). Section 1519 has no object crime.

Likewise, a § 1519 offense's intended effect is not akin to a co-conspirator's overt act. Contra U.S. Br. 29. The government says conspiracy 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." *Whitfield* v. *United States*, 543 U.S. 209, 218 (2005). But that rule is not effects-based. An overt act is not the conspiracy's intended effect, but a step toward the separate objective crime. "It is not even necessary for a coconspirator to know about the acts of another coconspirator," let alone intend them. *E.g.*, *United States* v. *Carr*, 5 F.3d 986, 990 (6th Cir. 1993).

An overt act is also *conduct*. Overt acts are "part of the 'continuous cooperation' necessary to keep the conspiracy alive." *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 253 (1940). Those acts thus form part of the "proscribed conduct," see *Rodriguez-Moreno*, 526 U.S. at 280 n.4, even if the government need not prove an overt act for guilt. Even when the overt act is undertaken by a co-conspirator, it is still attributable to the defendant, as "each conspirator [is] the agent of the others." *Hyde* v. *United States*, 225 U.S. 347, 369 (1912). By contrast, the effects of falsifying a document, manifested or not, are neither conduct nor essential to a § 1519 offense.

In all events, if § 1519 *were* like an inchoate offense, the closer analogue would be attempt. See U.S. Br. 30–31. And while this Court hasn't addressed the issue, lower courts hold that attempt venue requires an "act which constitutes a substantial step toward the commission of the substantive offense"—a conduct-based rule. *E.g.*, *United States* v. *Foy*, 641 F.3d 455, 468 (10th Cir. 2011). In other words, a substantial step is the essential conduct element of attempt.

The government's counterexamples (at 31) aren't helpful. Though both refer broadly to effects—in applying the "substantial contacts" gloss on venue adopted in some lower courts, which may not be good law anyway—neither case upheld venue on that basis alone. In *United States* v. *Davis*, the defendant "purposefully took steps in the [forum] to advance the [attempted] robbery." 689 F.3d 179, 187, 189–90 (2d Cir. 2012). And in *United States* v. *Zidell*, the attempted drug-distribution offense "had its beginnings" in the defendant's in-forum conduct. 323 F.3d 412, 423 (6th Cir. 2003). So even including those outliers, an attempt analogy wouldn't aid the government.

The government rejoins that a falsification alone "will not obstruct an investigation without further events, such as providing the falsified record to investigators," so a defendant "must necessarily contemplate … that his mere act of falsification will not complete his undertaking." U.S. Br. 29. But the relevant "undertaking" for venue purposes is the charged offense, see *Cabrales*, 524 U.S. at 7–8, which started and ended in Seattle.

To be sure, Congress may have criminalized the conduct covered by § 1519 because of its potential obstructive effects. U.S. Br. 27. But under this Court's precedents, the "key" point is "the specific function of the

offense as evidenced by its elements, not some secondary goal of the legislature in creating the offense." 4 LaFave, *supra*, § 16.2(d). And Congress chose not to make obstructive effects an element under § 1519. The government benefits from that choice because it need not prove such effects to establish guilt; now it must take the bitter with the sweet.

2. Section 1512(i) is inapplicable.

Section 1512(i) provides that a prosecution under §§ 1503 or 1512 "may be brought" where "the official proceeding . . . was intended to be affected" or where "the [offense] conduct . . . occurred." 18 U.S.C. § 1512(i). The government admits this provision "does not apply directly to Section 1519," U.S. Br. 33, but contends it should.

It cannot. Courts cannot read language "into [a] statute when Congress has left it out"—particularly when the omitted language appears in "nearby sections" of the same statutory scheme. *Keene Corp.* v. *United States*, 508 U.S. 200, 208 (1993). When Congress enacted § 1519, it did not incorporate § 1512(i) or include a similar venue provision. See Pub. L. No. 107-204, § 802. Nor did Congress extend § 1512(i) to cover § 1519 when it later amended related obstruction statutes, adding a venue provision to § 1513 and amending § 1512. See Pub. L. No. 110-177, §§ 204, 205. It is "inadmissible to suggest" this was mere oversight. See *Johnson*, 323 U.S. at 277 (refusing to infer an "unexpressed" congressional intent to broaden venue).

Congress's choice also makes sense, because § 1519 is unlike the government's cited obstruction offenses. Those offenses require proof that the defendant "obstruct[ed], influence[d], or impede[d]" a proceeding or attempted to do so. *E.g.*, 18 U.S.C. § 1512(c)(2). Such

a prosecution requires a concrete "nexus"—"a relationship in time, causation or logic"—with the proceeding. *United States* v. *Aguilar*, 515 U.S. 593, 599–600 (1995). This "nexus" requirement applies "even when intent to obstruct justice is otherwise clear." *Id.* at 611 (Scalia, J., dissenting).

Section 1519 is different. It requires only that the defendant falsify a document with intent to influence any matter within federal jurisdiction. No investigation need exist. See *Pugin* v. *Garland*, 599 U.S. 600, 605 & n.1 (2023). Indeed, "Congress intentionally relaxed" the nexus requirement "to allow the statute to reach more broadly." *United States* v. *Singh*, 979 F.3d 697, 719 (9th Cir. 2020); see S. Rep. No. 107-146, at 14–15 (2002) (disclaiming "any technical requirement . . . to tie the obstructive conduct to a pending or imminent proceeding or matter").

Section 1519 is thus a crime unto itself. Since Congress deliberately severed the link between the violative conduct and any actual proceeding, it makes no sense to base venue on the location of such a proceeding—let alone by expanding the reach of a provision that Congress chose not to apply to § 1519.

Finally, even if § 1512(i) applied here, it would not change the result. While Congress can authorize venue in any forum where an offense was "committed" under the Constitution, it cannot go further. See *Dickerson* v. *United States*, 530 U.S. 428, 437 (2000). And for the reasons above, Mr. Abouammo's offense was not "committed" in San Francisco.

D. Venue is improper even under the government's rule because no effect was charged or proved.

The government says venue was proper because Mr. Abouammo intended an effect in San Francisco and

"the investigators located there . . . experience[d] his obstruction." *E.g.*, U.S. Br. 34. But the government never describes this supposed obstructive effect.

That is presumably because this case was litigated from start to finish on the (correct) premise that no effect was required. An indictment must "contain[] allegations of fact that, if true, would sustain venue." *E.g.*, *United States* v. *Johnson*, 297 F.3d 845, 861 (9th Cir. 2002); cf. *Johnson*, 323 U.S. at 274 (affirming quashal of information for defective venue allegations). Likewise, venue is "part of the case that the prosecution must prove at trial," 4 LaFave, *supra*, § 16.1(g)—meaning the jury must find the relevant facts, see *United States* v. *Jackalow*, 66 U.S. (1 Black) 484, 487–88 (1861).

None of that happened with the government's "manifested effect." The operative indictment alleged only that Mr. Abouammo falsified a document "in the Northern District of California and elsewhere." C.A. E.R. 208. It alleged no supposed effects. The jury instructions mentioned no need to find any effect. D. Ct. ECF 356 at 37. The verdict form includes no such finding. D. Ct. ECF 391 at 4; cf. *Burton*, 202 U.S. at 381–82. And the Ninth Circuit affirmed because it believed that, "an 'actual' obstructive effect . . . within the district" was not required. JA38.

In short, the government has not identified any San Francisco effect. But even if it had, no such effect was alleged or proved below.

II. The government's effects-based rule is ahistorical.

To the extent the government engages with history, its arguments lack merit.

1. The government tries to minimize the pre-Revolution treason and arson examples by suggesting that these offenses would have "direct" effects only in the Colonies, and merely "incidental" or "unintentional" effects in England, U.S. Br. 24. Here, the government concocts a limitation on its own invented rule: Venue requires effects that are intended, manifested, and *direct*. The government mentions this idea nowhere else, offers no authority for it, and doesn't explain how it works. This situational caveat appears designed simply to evade the obvious point that Parliament provoked the precise constitutional protections at issue by floating an effects-based venue theory. See Pet. Br. 24.

Anyway, the government is wrong to claim that effects in England would be unintended byproducts. The broadest species of treason—compassing the death of the King—required proof of a "purpose or design" toward the "dissolution of government," which would necessarily happen in England. See 4 William Blackstone, *Commentaries* *6, *78–79 (Philadelphia, J.B. Lippincott Co. 1893). The design need not succeed nor the harm occur. See *id.* at *79. Put differently, intending the effects was required for guilt, but the effects were not. That is why venue properly turned on the *act* constituting the treason. 1 Edward Hyde East, *A Treatise of the Pleas of the Crown* 102–03 (London 1803). But this does not mean such effects were "incidental," U.S. Br. 24; acts were considered treasonous *because* they endangered the "safety of the . . . government." Willard Hurst, *Treason in the United States*, 58 Harv. L. Rev. 226, 235 (1944).

In turn, when Parliament justified prosecuting colonists in England on this basis, it was doing what the government urges here: Using effects that the defendant must intend, but that are not required for guilt, as a hook for venue.

2. On the most analogous post-ratification cases—*Parmenter*, *Wright*, and *Knight*—the government is silent. Each held that offenses much like § 1519 were "committed" only where a false document was forged or counterfeited, not where it was subsequently uttered or mailed. Pet. Br. 27–28. The government apparently has no answer. Nor does it offer a single ratification-era American case to support its view.

On *United States* v. *Burr*, the government says Chief Justice Marshall was not "principally" expounding the Venue and Vicinage Clauses. U.S. Br. 25. True, but the issue here is where crimes were understood to be "committed" at the Founding, and *Burr* addresses that question. The government also says the opening brief conflated separate points in *Burr*. But those points were parts of a whole: Chief Justice Marshall first noted that levying war consists of a treasonous purpose and conduct, and then explained that the crime was "committed" where the conduct occurred or continued. *United States* v. *Burr*, 25 F. Cas. 55, 162, 166, 168, 169, 170, 173 (C.C.D. Va. 1807) (No. 14,693).

3. Against these early American authorities, the government offers a sixteenth-century English tort case, *Bulwer's Case*, (1587) 77 Eng. Rep. 411 (KB). But the government relies not so much on *Bulwer*'s as on *Ford*'s repetition of a scholarly article's paraphrase of *Bulwer*'s dicta about nuisance. U.S. Br. 23.

Bulwer's itself cuts against the government. It addressed venue for a malicious-prosecution conspiracy. 77 Eng. Rep. at 412. Focusing on where "material or traversable" events occurred—on the location of "things done"—the court held that venue was proper wherever the conspirators "put their conspiracy . . . in execution," including where they delivered the writ that led to the plaintiff's indictment. *Id.* By contrast,

"if they conspire in one county, by force of which conspiracy *without any other act by them*, he is indicted in another county," venue lies in the first county because "the defendants have *done nothing*" in the second. *Id.* (emphasis added). That is a conduct-based rule.

Bulwer's footnote dicta about nuisance is irrelevant. Nuisance to land was intertwined with real-property principles and had a "different complexion [than] any other criminal proceeding." 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 492 (1819); see *Bulwer's*, 77 Eng. Rep. at 414–15 & n.(d) ("any issue [that] rises on the land . . . shall be brought . . . where the land lies").

Bulwer's was also a civil case. Civil venue doctrines developed against a different backdrop and served different purposes. See Drew L. Kershen, *Vicinage II*, 30 Okla. L. Rev. 156, 156 n.590 (1977). The government (at 23) says otherwise, pointing to Lord Chief Justice Abbott's observation in *King* v. *Burdett* (citing *Bulwer*'s) that the "power of the jury" was the same in "local [civil] actions and indictments for misdemeanors." (1820) 106 Eng. Rep. 873, 903 (KB). But that observation was part of his explanation that "a jury of one county" can "take cognizance of [a] fact that happened in another." *Id.* at 901, 903. That does not address whether venue lies where no conduct occurred.

Burdett's actual venue analysis again hurts the government. The Lord Chief Justice explained that, for misdemeanor venue to lie, "[s]ome act must have been done" in the forum. *Id.* at 905. For the libel prosecution at issue, venue was proper because "the defendant did the act in the county" where he was charged. *Id.* at 901; see *id*. at 903 (similar, for forgery).

III. The government's policy and practicality arguments lack merit.

Ultimately, the government complains that conduct-based venue is "impractical." This only underscores its weakness on the law.

1. The government's rule lacks clear limits. It says venue is proper wherever "a crime's effects are intended and manifested." U.S. Br. 20. And it suggests those effects must be "detrimental." *Id.* at 3, 13, 21, 23, 37. Beyond that, it never explains what kind of effects count—and it says the effect need not be "a required element." *Id.* at 13. The Ninth Circuit's rule at least focused on statutory text. JA34. The government's rule lacks even that fig-leaf limitation.

The resulting rule is unclear and unworkable. How "detrimental" must the effect be? How "direct" must it be? Cf. U.S. Br. 24. If it can't be "incidental," *id.*, incidental to what? Does the defendant have to intend that the effect happen *in the forum*, or just somewhere? How must the effect relate to the offense's "nature"—and how is that nature identified, if not through the elements? See *id.* at 19. Must these non-element effects be charged in the indictment? Are they subject to discovery? How do judges instruct the jurors on what they must find? The government does not say.

Even if some of these questions have answers, the sheer breadth of the government's rule would swamp the essential-conduct test the Court has always applied. Almost any crime can be said to have detrimental effects, where the defendant acted and often elsewhere too. On the government's view, then, an offense could be prosecuted at least where the defendant engaged in the proscribed conduct, but perhaps in multiple other places as well.

That result clashes with this Court's consistent recognition that criminal venue is "not merely" a "matter[] of formal legal procedure." *Johnson*, 323 U.S. at 276. It protects against "needless hardship to an accused" and against "the appearance of abuses"—or actual abuses—in selecting a forum. *Id.* at 275–76. The government's position largely undoes that protection.

The government responds that concerns about manipulated venue are "unrealistic" because Mr. Abouammo can't point to a specific investigation structured to manufacture venue. U.S. Br. 41–42. But how would an actor outside the government uncover such information? And the government's view doesn't just invite up-front manipulation, it also allows after-the-fact charging decisions aimed at securing a favorable forum. Pet. Br. 32. Anyway, this Court does not construe criminal laws—let alone the Constitution—just because "prosecutors [promise to] act responsibly." *Dubin* v. *United States*, 599 U.S. 110, 131 (2023).

Nor does the possibility of venue transfer avoid these concerns. Contra U.S. Br. 42. Transfer is mandatory only if "the court is satisfied that so great a prejudice" exists "that the defendant cannot obtain a fair and impartial trial"—a high bar. Fed. R. Crim. P. 21(a); cf. *Skilling* v. *United States*, 561 U.S. 358, 378 n.11 (2010). Otherwise, transfer is discretionary and rare. Fed. R. Crim. P. 21(b).

2. The government says effects-based venue creates "efficiencies." U.S. Br. 39. But, "like much else in our Constitution, the jury system isn't designed to promote efficiency but to protect liberty." *United States* v. *Haymond*, 588 U.S. 634, 655 (2019) (plurality op.). *Cabrales* thus rejected similar efficiency arguments. See 524 U.S. at 9.

Anyway, the government's concerns are overstated. The crux of its efficiency pitch is that expanding venue "avoid[s] two trials (one for obstruction and one for the original investigated crimes)." U.S. Br. 39. But a § 1519 charge requires no investigation and no "original" crime. Nor does the government's theory seem limited to offenses that might typically involve another crime requiring a separate trial. See *id.* at 21 (citing the illegal agreement in *Burton* as an example).

The government also frets that, without effects-based venue, it "could be all but impossible to find a venue" for inchoate offenses. U.S. Br. 40–41. But most circuits have rejected effects-based venue since *Cabrales* and *Rodriguez-Moreno*. Pet. 9–14. The government does not claim a single prosecution has faltered as a result. Small wonder, given the array of investigative tools available. *E.g.*, *Carpenter* v. *United States*, 585 U.S. 296, 309 (2018) (discussing cell-phone location data).

3. As a last gasp, the government newly claims Mr. Abouammo "directly caused a falsified record to be created" in California "through his e-mail to the FBI office in San Francisco." U.S. Br. 43. Of course, Mr. Abouammo did not email "the FBI office in San Francisco"—he emailed agents sitting in his Seattle living room.

Regardless, this argument was not raised below or in the brief in opposition. Even if a respondent may "defend the judgment below" on any ground, U.S. Br. 43 n.4, this Court generally does not reach arguments that were neither raised nor decided below. *Matsushita Elec. Indus. Co.* v. *Epstein*, 516 U.S. 367, 379 n.5 (1996); see *Glover* v. *United States*, 531 U.S. 198, 205 (2001).

This argument is also incorrect. "Falsify" means "[t]o make deceptive; to counterfeit, forge, or misrepresent; esp., to tamper with." *Falsify*, Black's Law Dictionary (12th ed. 2024). Emailing an existing false document to someone is not a separate act of "falsifi[cation]." Cf. *United States* v. *Grenier*, 513 F.3d 632, 637 (6th Cir. 2008) (faxed and mailed copies of the same document were not distinct § 1001 violations because the mailed version "contained no additional false statements").

* * *

If intended-and-manifested effects could fix venue, the government wouldn't need to cobble together dicta in ancient English civil cases, conspiracy cases (including non-venue cases), and statutes that facially don't apply here. And if the government's rule were correct, it would radically undermine venue's defendant-protective purpose and raise a host of thorny or impossible questions. The Court should reject it.

CONCLUSION

The decision below should be reversed.

Respectfully submitted,

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March 20, 2026