No.

IN THE

Supreme Court of the United States

STEPHEN BUYER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This criminal case involves allegations of insider trading. The Constitution, the U.S. Code, and the Federal Rules of Criminal Procedure all require that a criminal defendant be tried where his crime was (allegedly) committed. In the modern era of electronic trading, trades are no longer executed on physical trading floors, but are instead processed on computer servers that may be located anywhere. The U.S. Court of Appeals for the Second Circuit has nonetheless doubled down on its outdated precedent holding that a stock exchange's brick-and-mortar headquarters in Manhattan suffices to establish venue for an insider-trading offense in the Southern District of New York, regardless of where the trades in question actually executed. This rule effectively grants the U.S. Attorney's Office for the Southern District of New York carte blanche to prosecute virtually all insider-trading cases, an outcome fundamentally at odds with the Founders' "deep and abiding antipathy to letting the government arbitrarily choose a venue in criminal prosecutions." *United States v. Fortenberry*, 89 F.4th 702, 712 (9th Cir. 2023).

The question presented is whether a stock trading on an exchange whose physical headquarters is located in Manhattan suffices to establish venue in the Southern District of New York for insider-trading charges related to that stock.

RELATED PROCEEDINGS

United States of America v. Stephen Buyer, Nos. 23-7202(L), 23-7745 (2d Cir.) (judgment entered March 19, 2025, and petition for rehearing denied June 18, 2025)

United States of America v. Stephen Buyer, No. 22-cr-00397 (S.D.N.Y.) (judgment entered September 19, 2023, and amended November 7, 2023)

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INTRODUCTION

Prosecutors have long viewed the Southern District of New York as a favorable forum for novel and aggressive insider-trading prosecutions. In recent years, zealous prosecutors have taken advantage of outdated Second Circuit precedent to assert the power to prosecute virtually *any* insider-trading case involving a publicly traded stock in the Southern District of New York. As a result, defendants who did not commit any of their alleged offenses in New York have been forced to stand trial in "an environment alien to" them but "favorable to the prosecution." *United States v. Johnson*, 323 U.S. 273, 275 (1944).

Mr. Buyer, a decorated veteran and former Republican Congressman from Indiana, is one of the unlucky defendants subject to the unlawful venue tactics deployed by prosecutors in the Southern District of New York. He was haled into court to stand trial before a federal jury in Manhattan for insider-trading charges based on inside information he allegedly misappropriated while in Indiana and Florida—but Second Circuit precedent did not require the prosecutors to prove any other connection to the Southern District of New York beyond the fact that the stocks at issue were listed and traded on the New York Stock Exchange.

Decades ago, trading on the New York Stock Exchange occurred principally (if not exclusively) on the Exchange's trading floor in Manhattan. Because venue is proper where a defendant's crime "shall have been committed," U.S. Const. amend. VI, the Second Circuit long ago held that insider-trading venue is

proper in the Southern District of New York when a defendant traded stocks on the New York Stock Exchange (or another Manhattan-headquartered exchange).

Today, while the New York Stock Exchange still has its physical headquarters in Manhattan, most trading no longer occurs on its floors; instead, trades execute electronically on computer servers located elsewhere. To the extent a particular trade is an "essential conduct element[]" of an insider-trading offense that can establish venue, *United States v. Rodriguez-Moreno*, 526 U.S. 275, 280 (1999), a trade on the New York Stock Exchange no longer occurs in the Southern District of New York. Nonetheless, the Second Circuit has refused to revisit its insider-trading venue precedents to account for this technological development.

Even though no circuit split is likely to develop on the precise question presented (because the major U.S. stock exchanges are located in Manhattan), the Second Circuit's refusal to heed venue limitations by accounting for the way data is stored and transmitted in the modern world is out of step with other circuits' venue precedents. And the Second Circuit's obsolete approach to insider-trading venue urgently requires this Court's review. The Founders *twice* enshrined limitations on criminal venue in the Constitution, once in Article III and again in the Sixth Amendment. They sought to prevent the government from shopping for prosecution-friendly forums—as the British government had done to the American colonists they forced to stand trial in England before British loyalist juries. So the Founders required prosecution in the

district where a defendant's crime was committed. The Second Circuit's exchange-headquarters venue rule ignores that constitutionally required inquiry, and in so, doing grants the government the unfettered ability to prosecute virtually any insider-trading offense in its preferred forum.

The Court should intervene to stop this arrogation of the very power that the constitutional and statutory venue limitations were designed to deny the government: the power to handpick a favorable venue rather than prosecute a defendant where his crime was allegedly committed. Mr. Buyer maintains his innocence and deserves a chance to defend himself in the venue the Founders saw fit to require.

OPINIONS AND ORDERS BELOW

The Second Circuit's decision is unreported and reproduced at Pet. App. 1a-21a. The Second Circuit's order denying rehearing is reproduced at Pet. App. 31a-32a. The district court's order denying Mr. Buyer's motion for a judgment of acquittal is unreported and reproduced at Pet. App. 22a-30a.

JURISDICTION

The Second Circuit issued its decision on March 19, 2025, and denied a timely petition for rehearing on June 11, 2025. On August 22, 2025, Justice Sotomayor extended the time to petition for a writ of certiorari to November 10, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, Section 2, Clause 3 of the U.S. Constitution provides:

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

The Sixth Amendment of the U.S. Constitution provides in relevant 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….

15 U.S.C. § 78aa(a) provides in relevant part:

> The district courts of the United States … shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder…. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred.

18 U.S.C. § 3237(a) provides in relevant part:

> Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

Federal Rule of Criminal Procedure 18 provides in relevant part:

> Unless a statute or these rules permit otherwise, the government must prosecute an offense in a district where the offense was committed.

STATEMENT OF THE CASE

Mr. Buyer, a decorated veteran and longtime public servant, starts a consulting business upon his retirement from Congress.

Mr. Buyer's career has been marked by a dedication to public service. He served in the U.S. Army for decades, reached the rank of Colonel, and received a Bronze Star for his service during the Gulf War. C.A. App. 371, 406. After the Gulf War, Mr. Buyer was elected to Congress in 1993 and represented Indiana's Fourth and Fifth Districts in the U.S. House of Representatives until 2011. C.A. App. 406-09. Throughout his congressional service, Mr. Buyer continued to serve in the Army Reserves. C.A. App. 406-07.

After leaving Congress, Mr. Buyer started a consulting and lobbying business focused on veterans'

affairs, healthcare, and communications. C.A. App. 99, 410. Mr. Buyer ran his business from his home in Indiana as well as an office in Washington, D.C. C.A. App. 402, 419-20. Mr. Buyer provided his expertise to many clients, including telecom giant T-Mobile and consulting firm Guidehouse. C.A. App. 101, 203. He also served as a member of the transition team for President Trump's first administration, advising on veterans' issues. C.A. App. 410.

After starting his consulting business, Mr. Buyer also took up investing as a hobby—an interest he inherited from his father and passed along to his son. C.A. App. 403, 413, 417-419, 758-760. During the peak of Mr. Buyer's investing activity (between 2015 and 2019), he traded in over 75 different stocks and had up to $3 million invested. C.A. App. 419, 423.

Mr. Buyer trades in Sprint stock.

The first set of charges against Mr. Buyer pertained to trades in Sprint stock that occurred between March 29 and April 5, 2018. C.A. App. 39-40. The government alleged that Mr. Buyer traded based on material nonpublic information ("MNPI") about an impending merger between T-Mobile and Sprint. C.A. App. 39-40. But there was no direct evidence that Mr. Buyer possessed any MNPI *before* the trades at issue. And Mr. Buyer's conduct related to the Sprint trades had no connection to New York. C.A. App. 267, 271, 560, 756.

The government's theory rested entirely on a golf trip at the Trump National Doral Golf Club in Florida that Mr. Buyer attended with his T-Mobile client

contact Tony Russo from March 28 to March 30, 2018. C.A. App. 89, 149, 184-85, 435-36. During that trip, Mr. Buyer purchased stock in Sprint and another company. C.A. App. 271, 354, 455, 560, 756. Back home in Indiana, Mr. Buyer purchased additional Sprint stock in early April. C.A. App. 267, 271, 560, 756. Around that time, T-Mobile and Sprint restarted confidential merger negotiations, which Russo had learned about shortly before the golf trip. C.A. App. 146, 149, 169. Eventually, Russo brought in Mr. Buyer to consult on the merger, with the first consultant meeting occurring on April 16, C.A. App. 166-67, 534—after Mr. Buyer's purchases of Sprint stock. At trial, Russo testified that Mr. Buyer was part of his "core group" of lobbyists working on the merger and that he would have informed this "core group" of the merger talks by April 3. C.A. App. 147, 162, 201-02. But Russo could not recall ever having told Mr. Buyer that the merger talks were back on, let alone when any such conversation took place in relation to Mr. Buyer's stock purchases. *See* C.A. App. 149, 174, 203. And other evidence suggested Russo had *not* told the "core group" about the merger by April 3, as he claimed. C.A. App. 191-192, 198.

Mr. Buyer trades in Navigant stock.

The second set of charges against Mr. Buyer arose from trades in Navigant stock that occurred between June 13 and August 1, 2019—more than a year after his Sprint trades. C.A. App. 40-43. The government claimed that Mr. Buyer received and traded on MNPI that his consulting client Guidehouse was considering acquiring another consulting company, Navigant. But there was no direct evidence that Mr. Buyer *ever*

obtained MNPI about the possible Navigant acquisition, let alone did so before the charged trades. And again, Mr. Buyer's conduct related to the Navigant trades had no connection to New York.

Mr. Buyer's supposed inside information allegedly came from Guidehouse employee Christopher Stansbury. The government did not call Stansbury as a witness, and it had no direct evidence that Stansbury, much less Mr. Buyer, was ever told in advance about the potential acquisition. Instead, the government's theory centered on an email that Stansbury received from his supervisor requesting analysis of publicly available government contracting data. C.A. App. 489, 545. The government argued that Stansbury must have deduced from this email that Guidehouse was considering a bid to acquire Navigant, even though the email did not mention Navigant, because the email contained an unexplained sentence fragment referencing "synergies" and a "combination."[1] *Id.* The government further surmised that Stansbury then passed this information along to Mr. Buyer, although there was no evidence of that. C.A. App. 489. In fact, the government's theory contradicted the conclusions of Guidehouse's outside counsel, who conducted an extensive internal investigation and represented to the government that "there was no evidence that Guidehouse employees shared

[1] Stansbury's supervisor testified that she did not tell Stansbury about Guidehouse's potential acquisition of Navigant. C.A. App. 214, 229. Thus, the government asked the jury to speculate that Stansbury somehow worked out both Guidehouse's acquisition and the target on his own. C.A. App. 489.

material nonpublic information with [Mr.] Buyer." C.A. App. 259.

Mr. Buyer is prosecuted for and convicted of insider trading in the Southern District of New York.

Despite the exculpatory findings of Guidehouse's internal investigation, the government ultimately prosecuted Mr. Buyer in the Southern District of New York for insider trading in connection with his purchases of both Sprint and Navigant stock. Mr. Buyer was charged with four counts of securities fraud, in violation of 15 U.S.C. § 78j(b) & 78ff; 17 C.F.R. § 240.10b-5; and 18 U.S.C. § 1348. C.A. App. 38-43. Then, as now, Mr. Buyer maintained his innocence of the charged offenses.

Apart from the fact that Sprint and Navigant stock are listed on the Manhattan-headquartered New York Stock Exchange, Pet. App. 16a-17a, Mr. Buyer's conduct and trades had no connection to New York. C.A. App. 28-29. Venue was accordingly a key focus of the trial, with the government calling three venue witnesses to detail the intricacies of the securities-trading process to attempt to conjure some connection to New York. The evidence at trial included the following:

Mr. Buyer purchased Sprint and Navigant stock through brokerage accounts he held at Charles Schwab. C.A. App. 560-562. As part of the trading process, Schwab forwarded Mr. Buyer's orders to two different executing brokers. C.A. App. 295, 298. It was undisputed at trial that these brokers did not execute

Mr. Buyer's trades on the New York Stock Exchange trading floor in Manhattan. Instead, Mr. Buyer's trades executed on computer servers located in New Jersey, as detailed by the broker testimony at trial. C.A. App. 295-301.

Broker Two Sigma executed certain of Mr. Buyer's trades. A Two Sigma employee testified that, although Two Sigma's headquarters are in Manhattan, it does not execute its customers' trades at that headquarters. C.A. App. 295, 298. Instead, Two Sigma receives orders from its customers (here, Schwab) "electronically" on computer "servers in a data center," and those orders are "processed through algorithms that make decisions as to what to do with that order." C.A. App. 295. The entire trade execution process is "automated," occurring "without any human beings being involved at all." C.A. App. 297-298. Thus, Mr. Buyer's trades brokered by Two Sigma "were processed at [Two Sigma's] data center in New Jersey," and "no human being intervened [in the] transaction." C.A. App. 298.

A different broker, Virtu, executed other trades. A Virtu employee testified that its "execution of [Mr. Buyer's] trades happened in New Jersey." C.A. App. 301. While Virtu is headquartered in Manhattan, orders are "executed on an automated basis by computer systems" "without any human beings interacting with the execution of the trade." C.A. App. 298, 300-301. "[A]ll of the main servers that

complete[d] that process" for Mr. Buyer's trades were "located in New Jersey." C.A. App. 299-300.[2]

Finally, the government offered testimony from an employee of the Depository Trust and Clearing Corporation ("DTCC"), which clears and settles trades in securities. C.A. App. 321-322. "Clearance refers to the post-execution reporting and recording of trades," while "[s]ettlement is the process by which money is exchanged for the transfer of the securities." *United States v. Chow*, 993 F.3d 125, 134 (2d Cir. 2021). DTCC "operate[s] two data centers: One … in lower Manhattan, and one at the Brooklyn Army Terminal [located in the Eastern District of New York]." C.A. App. 321. Each data center contains "a large server," and as "transactions come into [DTCC], … they're load balanced between these two machines. So based on volume and timing, they go through one of the two machines." C.A. App. 321; *see also* C.A. App. 322 ("[A]n algorithm processes the data in one of the two locations depending on what's most efficient."). In sum, "sometimes [trades] come into Manhattan," "sometimes they come into Brooklyn," and—importantly—there is "no way of knowing" where a particular trade cleared or settled. C.A. App. 322. *After* clearance and settlement, transaction data "then is written to storage, primary storage in Brooklyn,

[2] Virtu also has a "backup" data center located in Westchester County (*i.e.*, within the Southern District of New York) that is sometimes used to settle trades, C.A. App. at 299-300, but Mr. Buyer's trades were not executed there. Instead, the Westchester data center contains "back office systems" that "interact with [the DTCC] for settlement," a separate process that takes place "after [Virtu] execute[s] [its] trades" on its main servers in New Jersey. C.A. App. 299.

secondary storage [in Manhattan]," "in a synchronous way," so "the data writes at the same time in both [Manhattan] and Brooklyn." C.A. App. 321.

The jury convicted Mr. Buyer on all counts. C.A. App. 528. The district court sentenced Mr. Buyer to 22 months' imprisonment followed by a three-year term of supervised release, and ordered hundreds of thousands of dollars in fines and restitution. Pet. App. 3a-4a.

The Second Circuit affirms Mr. Buyer's conviction, erroneously adhering to outdated venue precedents.

Mr. Buyer appealed, raising three arguments. First, Mr. Buyer argued that the district court erred in admitting at trial a digital forensic analysis of Stansbury's cellphone, in violation of the Sixth Amendment's Confrontation Clause and the Federal Rules of Evidence. C.A. Appellant Br. 30-48. Second, Mr. Buyer argued that the evidence presented at trial was legally insufficient to convict him. *Id.* at 59-74. Third, and most relevant here, Mr. Buyer argued that the government had failed to prove by a preponderance of the evidence that venue was proper in the Southern District of New York. *Id.* at 48-59. On venue, Mr. Buyer argued that, in the era of electronic trading, the location of an exchange's physical headquarters is irrelevant to the constitutional and statutory venue inquiry, directed at where a crime was committed. *Id.* at 48-54. He further urged that other attenuated connections to the Southern District of New York cited by the government, like post-

transaction data storage, did not suffice to establish venue. *Id.* at 54-59.

The Second Circuit affirmed Mr. Buyer's convictions. With respect to the venue issues relevant here, the Second Circuit construed circuit precedent to hold that venue is categorically proper in the Southern District of New York whenever "'the defendant is charged with an offense involving the trading of securities on a stock exchange located in'" Manhattan, regardless of where the trade actually took place. Pet. App. 15a. Noting that Mr. Buyer purchased stocks listed on the New York Stock Exchange, which in turn is headquartered in Manhattan, the Second Circuit held that venue was proper in the Southern District. Pet. App. 16a-17a. The Second Circuit's decision also referenced the facts that (1) executing broker Virtu had a backup data center in the Southern District of New York, and (2) that the DTCC backs up data to secondary storage in Manhattan, as "supporting" its venue holding. Pet. App. 16a.

Mr. Buyer sought panel and *en banc* rehearing on the venue question. He argued first that the panel was wrong to read Second Circuit precedent as establishing a rule that insider-trading venue is proper wherever an exchange's corporate headquarters is located. Alternatively, Mr. Buyer argued that to the extent Second Circuit precedent established any such rule, it should be overruled as inconsistent with constitutional and statutory venue requirements. The Second Circuit denied rehearing. This petition follows.

REASONS FOR GRANTING THE WRIT

I. The Second Circuit's Outdated Insider-Trading Venue Rule Flouts Constitutional And Statutory Limitations On Venue.

A. Venue lies only in districts where a crime was allegedly committed.

Because "[p]roper venue in criminal proceedings was a matter of concern to the Nation's founders," "[t]he Constitution twice safeguards [a] defendant's venue right." *United States v. Cabrales*, 524 U.S. 1, 6 (1998). First, Article III provides that "Trial of all Crimes … shall be held in the State where the said Crimes shall have been committed." U.S. Const. art. III, § 2, cl. 3. Second, the Sixth Amendment's Vicinage Clause requires "a speedy and public trial[] by an impartial jury of the State and district wherein the crime shall have been committed." U.S. Const. amend. VI.

Federal venue statutes implement these constitutional commands. With respect to insider-trading offenses, the Securities Exchange Act of 1934 limits venue to "the district wherein any act or transaction constituting the violation occurred." 15 U.S.C. § 78aa(a). Venue statutes of general applicability similarly allow offenses to be "prosecuted in any district in which [the] offense was begun, continued, or completed." 18 U.S.C. § 3237(a). Federal Rule of Criminal Procedure 18 reaffirms that prosecution shall be had "in a district where the offense was committed."

In sum, the law of venue is clear: A criminal defendant must be tried where his offense was (allegedly) committed. And to determine where an offense was committed (the "locus delicti"), this Court has instructed courts to evaluate "the nature of the crime alleged and the location of the act or acts constituting it." *Cabrales*, 524 U.S. at 6-7 (quotation marks omitted). To undertake this inquiry, "a court must initially identify the conduct constituting the offense (the nature of the crime) and then discern the location of the commission of the criminal acts." *Rodriguez-Moreno*, 526 U.S. at 279. In this way, "a criminal defendant's own actions will determine where venue can be laid." *United States v. Salinas*, 373 F.3d 161, 169 (1st Cir. 2004) (noting the "connection between venue and conduct elements" forged by this Court) (citing *Rodriguez-Moreno*, 526 U.S. at 279).

With respect to insider trading, the relevant securities-fraud statutes proscribe certain fraudulent conduct undertaken "in connection with the purchase or sale of a[] security." 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5 (implementing § 78j(b)); 18 U.S.C. § 1348 (similar prohibition). Under this Court's venue precedents, then, insider-trading venue lies in any district where the defendant's relevant conduct or the transaction in securities occurred—a result expressly confirmed by the text of the Exchange Act's venue provision, which authorizes prosecution in "the district wherein any act or transaction constituting the violation occurred." 15 U.S.C. § 78aa(a).

B. Outdated Second Circuit precedent holds that the physical location of a stock exchange's headquarters is sufficient to establish insider-trading venue.

Historically, trading on the New York Stock Exchange took place on a physical trading floor located in lower Manhattan. *See* NYSE, The History of NYSE, https://perma.cc/NH8F-Y4DW (last visited Nov. 10, 2025); *In re NYSE Specialists Sec. Litig.*, 503 F.3d 89, 92 (2d Cir. 2007) (explaining how New York Stock Exchange "specialists" used to execute stock purchases and sales from "trading post[s]" on the trading floor). At a time when trading was conducted in this way, the Second Circuit held that "the execution of trades on the New York Stock Exchange … is sufficient to establish venue in the Southern District of New York." *United States v. Svoboda*, 347 F.3d 471, 484 (2d Cir. 2003). In so holding, the Second Circuit repeatedly equated execution occurring "on" the New York Stock Exchange with execution occurring "in" the Southern District of New York. *Id.* at 483-84 & n.13. At the time, this association made sense.

As electronic trading became more common and, eventually, ubiquitous, the foundations for a physical-headquarters-based venue test began to erode. Today, trades on the New York Stock Exchange are rarely executed at a trading post on the trading floor. They are instead executed electronically on computer servers that could be located anywhere. Here, for example, Mr. Buyer's Sprint and Navigant trades indisputably executed on computer servers located in New Jersey. C.A. App. 298, 301. In this era of electronic trading,

the fact that the New York Stock Exchange's physical headquarters is in Manhattan says nothing about where a transaction on that exchange "occurred," 15 U.S.C. § 78aa(a), or (more generally stated) where a defendant's "crime shall have been committed," U.S. Const. amend. VI. No one would say that the Philadelphia Eagles' 2025 Super Bowl victory in New Orleans actually occurred in the Southern District of New York simply because the NFL is headquartered in Manhattan. Likewise, it makes no sense to say that Mr. Buyer's trading on New Jersey computer servers actually occurred in the Southern District of New York just because the New York Stock Exchange's headquarters are located there.

In sum, given advancements in trading technology, the Second Circuit's rule that venue lies wherever an exchange is physically headquartered has no basis in the constitutional or statutory text governing venue. *Cf. United States v. Auernheimer*, 748 F.3d 525, 541 (3d Cir. 2014) ("As we progress technologically, we must remain mindful that cybercrimes do not happen in some metaphysical location that justifies disregarding constitutional limits on venue.").

C. The Second Circuit has repeatedly refused to revisit its outdated precedent, entrenching an erroneous insider-trading venue rule.

Although modern trading practices have abrogated the foundation for the Second Circuit's physical-headquarters rule as originally articulated in *Svoboda*, the Second Circuit has repeatedly rejected

invitations to align its insider-trading venue rule with these developments.

In *United States v. Chow*, the defendant was charged with insider trading in stocks traded on the NASDAQ, headquartered in Manhattan. 993 F.3d at 134. He urged that venue could not be predicated on an exchange's corporate headquarters "if the charged trades did not actually take place at those headquarters." *See* Opening Brief at *56, *United States v. Chow*, No. 19-325 (2d Cir. May 21, 2019), 2019 WL 2407815. The Second Circuit rejected the argument out of hand, finding it "foreclosed by the established law of th[e] Circuit" holding that if a "defendant is charged with an offense involving the trading of securities on a stock exchange located in the [Southern District of New York], venue in that district is appropriate." 993 F.3d at 143. The *Chow* court also cited additional trial evidence bolstering the case's ties to the Southern District of New York, including its conclusion that the defendant's trades were, in fact, "executed" in the Southern District of New York. *Id*. at 143-44.[3]

In the present case, Mr. Buyer urged that *Chow*'s language finding an exchange headquarters sufficient, on its own, to establish venue was dictum, because *Chow* also observed that the trades in question had executed in Manhattan. C.A. Appellant Br. 52-54. Alternatively, Mr. Buyer urged the Second Circuit to overrule *Chow* and hold that, given modern trading practices, an exchange's Manhattan headquarters

[3] The defendant in *Chow* did not seek this Court's review of the Second Circuit's decision.

does not suffice to establish venue in the Southern District of New York where trades are not executed on the trading floor. C.A. Reh'g Pet. 13-15.

At oral argument, members of the Second Circuit panel acknowledged the that modern realities rendered the court's venue precedents ripe for reexamination. Judge Calabresi observed that the language from *Svoboda* and *Chow* was "incredibly broad"—"probably, in [his] judgment, too broad." C.A. Oral Arg. Audio Recording 9:40-52. Judge Jacobs expressed similar concerns, noting that the government's reliance on the headquarters of the NYSE to establish venue, even if based on "one of [the Second Circuit's] cases," may not "make[] much sense." *Id.* at 11:29-40.

Ultimately, however, the Second Circuit adhered to its outdated precedent. The decision below specifically reiterated "that '[w]here the defendant is charged with an offense involving the trading of securities on a stock exchange located in the SDNY, venue in that district is appropriate,'" without qualification. Pet. App. 15a (quoting *Chow*, 993 F.3d at 143). And it noted specifically that the government's "evidence that [Mr.] Buyer traded on the New York Stock Exchange …, headquartered in SDNY, … supports venue," Pet. App. 16a, even though Mr. Buyer's trades executed in New Jersey.

While Mr. Buyer's appeal was pending, the defendant in *United States v. Dagar*, like Mr. Buyer, urged that an exchange's corporate headquarters does not establish venue in the Southern District of New York when the trades in question take place on

computer servers located elsewhere. *See* Opening Brief at 36-41, *United States v. Dagar*, No. 24-2239 (2d Cir. Nov. 22, 2024), Dkt. 21.1. After the Second Circuit's decision in Mr. Buyer's case, the government characterized that decision as definitively "reject[ing] the argument … that the location of an exchange's headquarters is irrelevant when trades are not executed on a trading floor in [the Southern District of New York]." Rule 28(j) Letter at 1, *United States v. Dagar*, No. 24-2239 (2d Cir. Mar. 20, 2025), Dkt. 33.1. The Second Circuit agreed, citing both *Chow* and the decision below to emphasize that "offense[s] involving the trading of securities on a stock exchange located in the" Southern District of New York may be prosecuted in that district because "trade[s] on the New York Stock Exchange, headquartered in [the Southern District of New York], … support[] venue." *United States v. Dagar,* No. 24-2239, 2025 WL 2553533, at *2-3 (2d Cir. Sept. 5, 2025).

Thus, in this trio of cases, the Second Circuit repeatedly refused to limit or distinguish its older precedents upholding venue based on exchange-floor trading. It has instead applied its exchange-headquarters rule of venue in cases where trades indisputably did not execute on the trading floor but instead on computer servers located elsewhere. The upshot is clear: Unless this Court intervenes, the law of the Second Circuit remains "that '[w]here the defendant is charged with an offense involving the trading of securities on a stock exchange located in the [Southern District of New York], venue in that district is appropriate.'" Pet. App. 15a (quoting *Chow*, 993 F.3d at 143).

D. The Second Circuit is an outlier in refusing to account for technological advances in its venue precedents.

As other courts of appeals have recognized, "[t]he ever-increasing ubiquity of the Internet only amplifies" "the danger of allowing the Government to choose its forum free from any external constraints." *Auernheimer*, 748 F.3d at 541 (citation modified). Crimes involving electronic transmission "do not happen in some metaphysical location that justifies disregarding constitutional limits on venue." *Id.* Just as venue rules for crimes involving traditional instrumentalities of commerce focus on the place where the essential conduct occurs, *see, e.g.*, *United States v. Petlechkov*, 922 F.3d 762, 770 (6th Cir. 2019) (holding that the location of "FedEx's worldwide headquarters" was not the appropriate venue for mail fraud prosecution where there was no evidence that "any particular package moved" through that district), the venue rules for crimes involving electronic transmission must account for the fact that "[p]eople and computers still exist in identifiable places in the physical world," *Auernheimer*, 748 F.3d at 541.

Accordingly, in the age of electronic transmission of data, other circuits have appropriately refined their venue precedents to focus on where computer servers used to commit an offense are located. *See, e.g.*, *United States v. Johnson*, 510 F.3d 521, 523-25 (4th Cir. 2007) (venue proper in the Eastern District of Virginia for filing of a false document with the SEC based on transmission of false document to servers in the district); *United States v. Klyushin*, 684 F. Supp. 3d 1, 5, 12 (D. Mass. 2023) (venue proper in the

District of Massachusetts for hacking offenses based on use of server in Boston to gain unauthorized access to a network and download stolen information back to Boston server). Conversely, courts have correctly declined to uphold venue findings where the computer servers involved in the offense are located elsewhere. *See, e.g.*, *Auernheimer*, 748 F.3d at 531 (prosecution for violation of CFAA was not proper in New Jersey where "the servers accessed were not in New Jersey"); *United States v. Smith*, 22 F.4th 1236, 1238, 1243-44 (11th Cir. 2022) (where "data was taken from servers located in the Middle District of Florida" by someone physically present in Alabama, venue for trade-secret theft was not proper in the Northern District of Florida, where the victim company's office was located), *cert. granted and aff'd on other grounds*, 599 U.S. 236 (2023).

By contrast, the Second Circuit's insider-trading venue rule fails to account both for the evolution of electronic trading, *see supra* 16-17, and the fact that the computers executing trades in securities "exist in identifiable places in the physical world," *Auernheimer*, 748 F.3d at 541 (quotation marks omitted). That other circuits have refined their venue precedents to account for modern reality reinforces the Second Circuit's error in continuing to key venue to the physical headquarters of the New York Stock Exchange when the servers involved in electronic trading are not located there.

II. Absent This Court's Review, The Southern District Of New York Will Have Carte Blanche Over Insider-Trading Prosecutions.

The Second Circuit's outdated and illogical venue rule gives Southern District of New York prosectors the unconstrained discretion to pursue virtually any insider-trading offense. Because the major U.S. stock exchanges are headquartered in New York, it is unlikely that a circuit split will develop on the question presented here. But this Court's review is urgently required nonetheless. Such "leeway" on venue "not only opens the door to needless hardship to an accused by prosecution remote from home [a]nd from appropriate facilities for defense" but also "leads to … abuses[] in the selection of … a tribunal favorable to the prosecution." *Johnson*, 323 U.S. at 275.

That is no hypothetical concern: Prosecutors in the Southern District of New York have already stretched the bounds of substantive insider-trading law, often with the Second Circuit's approval. *See, e.g.*, *United States v. Blaszczak*, 947 F.3d 19, 34-37 (2d Cir. 2019) (holding that the government need not prove key elements of insider-trading offenses when it prosecutes under 18 U.S.C. § 1348 rather than 15 U.S.C. § 78j(b)), *vacated on other grounds*, 141 S. Ct. 1040 (2021). They cannot now be allowed to prosecute all such offenses in a handpicked forum. Giving a single U.S. Attorney's Office such unbridled power over defendants across the country upends deeply rooted principles of federalism.

A. The Venue and Vicinage Clauses protect criminal defendants against prosecutorial abuse.

The Founders "forcefully objected" to the practice of holding trials of "colonists accused of treason" "in England before loyalist juries." *Smith v. United States*, 599 U.S. 236, 247 (2023). As a result, the Founders sought to enshrine protections against "the unfairness and hardship to which trial in an environment alien to the accused exposes him." *Johnson*, 323 U.S. at 275. Together, the Venue and Vicinage Clauses create a "safety net, which ensures that a criminal defendant cannot be tried in a distant, remote, or unfriendly forum solely at the prosecutor's whim." *Salinas*, 373 F.3d at 164. Instead, defendants must be tried in a district where their alleged crime was committed. *Supra* 14-15.

In contravention of these constitutional precepts, the Second Circuit's decision prioritizes the whims of federal prosecutors over the defendant's constitutional venue right. Under the Second Circuit's rule, the government can choose to prosecute virtually any securities offense in the Southern District of New York, simply because the headquarters of the country's major stock exchanges are in Manhattan. The government took full advantage of that rule here to force a former Republican congressman from Indiana who was associated with President Trump and very

popular in his home district to stand trial in Manhattan.[4]

The Constitution does not permit such an "outlandish outcome." *Fortenberry*, 89 F.4th at 709. As this Court has repeatedly recognized, affording prosecutors "unrestricted" power in selecting the place of prosecution creates "the temptation to abuses," including selecting "a tribunal favorable to the prosecution." *Johnson*, 323 U.S. at 275, 278. Thus, the "venue provisions in Acts of Congress should not be so freely construed as to give the Government the choice of 'a tribunal favorable' to it." *Travis*, 364 U.S. at 634 (quoting *Johnson*, 323 U.S. at 275).

Consistent with this Court's precedents, numerous courts of appeals have recognized that "one of the primary concerns motivating the limitation of venue has been the danger of allowing the government to choose its forum." *Salinas*, 373 F.3d at 169; *Fortenberry*, 89 F.4th at 712 ("The founding generation had a deep and abiding antipathy to letting the government arbitrarily choose a venue in criminal

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[4] One of Mr. Buyer's motions in limine sought to guard against the risk that some potential Southern District of New York jurors might be politically biased against him, given that Democrats made up approximately 64% of the jury pool and non-Republicans a whopping 88%. *See* S.D.N.Y. Dkt. 77 at 6-7. The district court took umbrage at that suggestion, *e.g.*, C.A. App. 47-48, and denied the relevant motion, C.A. App. 52. In later denying Mr. Buyer's bail application, which was addressed to other issues, the district court again brought up its dissatisfaction with Mr. Buyer's jury bias arguments, insisting without qualification that "S.D.N.Y. jurors are uniformly conscientious, fair, and unbiased," and criticizing Mr. Buyer for ever suggesting otherwise. C.A. App. 71.

prosecutions."); *United States v. Orona-Ibarra*, 831 F.3d 867, 876 (7th Cir. 2016) ("The pro-prosecution attitude the government might be shopping for may be one of the pre-existing 'animosities or prejudices' that concerned Justice Story.") (quoting Joseph Story, *Commentaries on the Constitution* § 925 (Carolina Academic Press reprint 1987)). Thus, in distinction from the Second Circuit, other courts of appeals have refused to permit the government to select its preferred venue based on factors unrelated to the location of the defendant's crime (like the physical location of federal government employees or their offices).

For example, the Ninth Circuit recently rejected an attempt by federal prosecutors in the Central District of California to haul a Republican congressman from Nebraska to Los Angeles to stand trial for making false statements where the only connection to that district "was that the [FBI] agents" to whom the statements were made "worked in a Los Angeles office." *Fortenberry*, 89 F.4th at 705-09. In rebuffing the government's exorbitant venue theory, the Ninth Circuit observed the untenable results that would follow from a government-office-focused venue rule, including that the "government [could] cho[o]se to base every single Section 1001 investigation in Washington, D.C., where federal agencies are headquartered." *Id.* at 709. The Ninth Circuit refused to permit prosecution wherever federal employees are located "irrespective of where the false statement was actually made," "simply because it suits the convenience of federal prosecutors." *Id.*

Similarly, the First Circuit has held that venue for passport fraud, 18 U.S.C. § 1542, does not lie "in

the district in which the State Department chooses to process a passport application." *Salinas*, 373 F.3d at 162. In declining to adopt such a broad reading, the First Circuit noted that it would "give the government unfettered control of determining where passport applicants can be tried." *Id.* at 169. After all, "[u]nder such a rule, the government could opt to process a passport application at any place (Alaska, say, or Guam), no matter how inconvenient for the defendant, and then mount a prosecution at that location." *Id.* at 170.

In sum, courts across the country have recognized that the Venue and Vicinage Clauses were designed to protect against the danger of prosecutors handpicking favorable forums for prosecution. In adhering to its insider-trading venue precedents, the Second Circuit lost sight of those principles.

B. Giving prosecutors in the Southern District of New York carte blanche on insider-trading venue encourages abuse of power.

The Manhattan-headquartered New York Stock Exchange is the largest stock exchange in the world. *See History of NYSE*, *supra*, https://perma.cc/NH8F-Y4DW. The other major U.S. stock exchange, the NASDAQ, is also headquartered in Manhattan. *Supra* 18. Thus, despite the Founders' concerns about bestowing upon the government the power to choose its forum, the Second Circuit's exchange-headquarters venue rule "in effect grant[s] the Southern District of New York carte blanche on venue in virtually all insider trading cases." *United States v. Geibel*, 369

F.3d 682, 697 (2d Cir. 2004)—an outcome the Second Circuit previously warned would be impermissible yet has now embraced, *see id.*; *supra* 17-20 (discussing entrenchment of the Second Circuit's exchange-headquarters venue rule); *see also* C.A. Reh'g Pet. 1-2, 11-12, 14.

The Southern District's unbounded power in insider-trading cases is not merely conjectural. Mr. Buyer is not the only out-of-state defendant whom prosecutors in the Southern District have forced to stand trial "in an environment alien to" him. *Johnson*, 323 U.S. at 275. In recent years, Southern District prosecutors have brought insider-trading charges against numerous out-of-state defendants based on trades of stocks listed on the New York Stock Exchange or the NASDAQ, even when the defendant's conduct had no apparent connection to the district.[5]

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[5] *See, e.g.*, Government's Opposition to Motion for Acquittal at 11-12, *United States v. Dagar*, No. 1:23-cr-319 (S.D.N.Y. Feb. 28, 2024), Dkt. 109 (arguing venue based largely on the physical headquarters of NASDAQ, even though trades were undisputedly placed and executed outside of the District); Indictment ¶¶ 20, 54, 58, *United States v. Lewis*, No. 1:23-cr-370 (S.D.N.Y July 24, 2023), Dkt. 1 (charging British businessman with securities fraud offenses based on trades of a stock listed on NASDAQ, and alleging no other connection to the District); Indictment at 3, 16, *United States v. Dupont*, No. 1:23-cr-320 (S.D.N.Y. June 28, 2023), Dkt. 1 (citing trades that took place on NASDAQ to support venue regardless of where electronic trades were executed); Indictment at 3-4, 15-16, *United States v. Markin*, No. 1:22-cr-395 (S.D.N.Y. July 21, 2022), Dkt. 1 (same); Information at 8-9, *United States v. Stone*, No. 1:22-cr-510 (S.D.N.Y. Sept. 23, 2022), Dkt. 17 (citing trades listed on exchanges with headquarters in Manhattan).

The Second Circuit's decision will only encourage further abuse of the venue provisions.

Granting prosecutors in the Southern District of New York unfettered venue over insider-trading cases would be particularly dangerous given the role that they have historically played in making the Southern District of New York "a tribunal favorable to the prosecution" in insider-trading cases. *Johnson*, 323 U.S. at 275. It is well-documented how aggressively Southern District prosecutors have pursued novel charging theories in insider-trading cases. *See, e.g.*, *United States v. Newman*, 773 F.3d 438, 448 (2d Cir. 2014) ("The Government's overreliance on our prior dicta merely highlights the doctrinal novelty of its recent insider trading prosecutions, which are increasingly targeted at remote tippees many levels removed from corporate insiders."), *abrogated by Salman v. United States*, 580 U.S. 39 (2016); *United States v. Blaszczak*, 56 F.4th 230, 246 (2d Cir. 2022) (Walker, J., concurring) ("highlight[ing] [the] anomaly" under the government's Title 18 insider-trading theory "that a criminal conviction for tipper-tippee insider trading securities fraud prosecuted under 18 U.S.C. § 1348 does not require proof" of the same elements as SEC Rule 10b-5); *United States v. Chastain*, 145 F.4th 282, 286-87 (2d Cir. 2025) (rejecting novel insider-trading charges brought in 2022 under the wire fraud statute with respect to trading of non-fungible tokens).

Giving Southern District prosecutors free rein in virtually all insider-trading cases will only exacerbate the already disproportionate power they have long wielded in pressing the substantive bounds of insider-trading law. *See Dubin v. United States*, 599 U.S. 110,

129-30 (2023) ("Crimes are supposed to be defined by the legislature, not by clever prosecutors riffing on equivocal language." (citation modified)). Over time, it will also enable politically motivated prosecutors to target for prosecution in New York defendants for whom that might be a particularly unfavorable forum. These are precisely the abuses the Founders sought to avoid.

And this case illustrates the practical impact of those abuses at the hands of aggressive prosecutors. The government's purely circumstantial case against Mr. Buyer was weak: He was accused of trading on information he supposedly obtained from witnesses who either did not testify at all or could not remember disclosing that information to him. So the government prosecuted Mr. Buyer in a forum uniquely favorable to it and hostile to him, then openly invited the jury to convict based on attenuated speculation and conjecture. This injustice will be only the tip of the iceberg if the Court does not intervene.

C. Concentrating prosecutorial power in one U.S. Attorney's Office upends the protections of federalism.

The Second Circuit's expansive venue rule also vitiates deeply rooted principles of federalism.

The Founders deliberately created separate federal judicial districts that function as "separate" "tribunals" rather than "branches of one nation-wide district court." *United States v. Bink*, 74 F. Supp. 603, 607 (D. Or. 1947). Correspondingly, the Founders created separate U.S. Attorney's Offices overseeing

prosecutions in each federal judicial district. *See* An Act to Establish the Judicial Courts of the United States, ch. 20, § 35, 1 Stat. 73, 92 (1789) (providing for the appointment in each federal judicial district of a district attorney, later to be known as the U.S. Attorney, "learned in the law to act as attorney for the United States *in such district* ... whose duty it shall be to prosecute *in such district* all delinquents for crimes and offences, cognizable under the authority of the United States" (emphasis added)).

The Framers further limited the power of federal prosecutors in that the federal courts do not "exercise a common law jurisdiction in criminal cases." *United States v. Hudson*, 11 U.S. (7 Cranch) 32, 32 (1812). This Court has repeatedly recognized that "the States under our federal system have the principal responsibility for defining and prosecuting crimes." *Abbate v. United States*, 359 U.S. 187, 195 (1959); *see also Brecht v. Abrahamson*, 507 U.S. 619, 635 (1993) (same). With fraud offenses in particular, this Court has repeatedly "caution[ed] that, absent a clear statement by Congress, courts should not read the [federal] fraud statutes to place under federal superintendence a vast array of conduct traditionally policed by the States." *Ciminelli v. United States*, 598 U.S. 306, 315-16 (2023) (citation modified).

The Second Circuit's venue rule, which gives a single U.S. Attorney's Office effective authority to prosecute securities fraud offenses occurring anywhere in the country, is inconsistent with this Founding principle of federalism. *See Bink*, 74 F. Supp. at 611 (The Constitution "recognized the right of the several states to have crimes against the federal

government committed *within their respective boundaries* tried in the particular state." (emphasis added)); *Georgia v. Pa. R. Co.*, 324 U.S. 439, 467 (1945) ("Apart from specific exceptions created by Congress the jurisdiction of the district courts is territorial."). The Framers did not intend for one U.S. Attorney's Office to wield such enormous power over offenses that were not committed within its jurisdiction—because of the abuses that comes along with such power. This Court's review is needed to restore balance to our federalist system.

III. This Petition Is An Ideal Vehicle To Address The Question Presented.

The decision below has eliminated any doubt about the prevailing and categorical insider-trading venue rule in the Second Circuit: "[W]here the defendant is charged with an offense involving the trading of securities on a stock exchange located in the [Southern District of New York], venue in that district is appropriate." Pet. App. 15a (quoting *Chow*, 993 F.3d at 143). As Southern District of New York prosecutors have recognized, the Second Circuit has now expressly "rejected the argument … that the location of an exchange's headquarters is irrelevant when trades are not executed on a trading floor in SDNY, but rather on computer servers located in New Jersey." *See* Rule 28(j) Letter at 1, *United States v. Dagar*, No. 24-2239 (2d Cir. Mar. 20, 2025), Dkt. 33.1. And those prosecutors have themselves treated the Second Circuit's precedent as articulating a categorical rule under which an exchange headquarters is, on its own, sufficient to establish venue. *See id.*; *cf.* C.A. U.S. Br. 44-45 (arguing that the fact that Mr. Buyer's

"stock trades took place on the New York Stock Exchange, which is headquartered in Manhattan" was "the end of the matter" "[u]nder [the Second Circuit's] binding precedent"). The Second Circuit's erroneous venue rule is thus ripe for review.

And Mr. Buyer's case is the ideal case to take up the question. The government's lead venue argument throughout this case has been that the New York Stock Exchange is headquartered in Manhattan. *See* S.D.N.Y. Dkt. 96 at 5; C.A. U.S. Br. 44-45. Presumably because the exchange-headquarters venue rule so clearly flouts the relevant constitutional and statutory text, prosecutors in the Southern District of New York generally advance backup arguments, pointing to other asserted Southern District connections to bolster the case for venue. *See, e.g.*, *Chow*, 993 F.3d at 143; C.A. U.S. Br. 46-48. Here, the Second Circuit never said that the miscellaneous other evidence cited by the government would be sufficient to establish venue *even without* the exchange-headquarters rule—because it plainly would not be.

For example, the Second Circuit referenced the fact that the DTCC, as part of its post-trade processing, writes a duplicate copy of all transaction data to *secondary* storage in Manhattan after execution (primary storage is in Brooklyn, in the Eastern District of New York). C.A. App. 321; Pet. App. 16a.[6] But

[6] Notably, the Second Circuit did not accept the government's related argument that the DTCC settled Mr. Buyer's trades in the Southern District of New York, Pet. App. 16a n.4, given uncontroverted trial testimony that there was "no way of

data storage does not "constitut[e]" the "transaction" or "violation" in an insider-trading case, 15 U.S.C. § 78aa(a), nor is the place of subsequent data storage the place "wherein the crime shall have been committed," U.S. Const. amend. VI. Under a contrary rule, venue in every insider-trading case could lie in Alaska if the New York Stock Exchange decided to ship a duplicate copy of all transaction records there for storage. That "odd and troubling result" cannot be right. *Fortenberry*, 89 F.4th at 709.

Second, the Second Circuit referenced that one of the executing brokers had a data center located within the Southern District. Pet. App. 16a. As discussed, *see supra* 10-11 & n.2, the evidence showed, at most, that a "backup" data center in Westchester County could have been an intermediary stop through which data for an unspecified subset of Mr. Buyer's trades *may* have passed between Virtu's New Jersey servers (where the trades indisputably executed) and the DTCC's servers (where the trades cleared and settled). C.A. App. 299-300. Even assuming some of the at-issue trades were routed through that data center, that does not establish venue in the Southern District of New York because it does not show that Mr. Buyer's offense was "committed," U.S. Const. amend. VI, or that the "transaction constituting the violation occurred" there, 15 U.S.C. § 78aa(a). At minimum, no court has ever considered whether the movement of digital transaction data through a district as part of the settlement process, on its own, can suffice to establish venue over an insider-trading offense. *Cf.*

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knowing" whether Mr. Buyer's trades were settled in the Southern or Eastern Districts of New York. C.A. App. 322; *supra* 11.

Rodriguez-Moreno, 526 U.S. at 280 (venue must be predicated on "*essential* conduct elements" (emphasis added)).

In sum, the Second Circuit's exchange-headquarters venue rule is outcome-determinative in this case. The Court should grant review to correct the Second Circuit's outdated insider-trading venue rule, which gives the Southern District of New York carte blanche over insider-trading crimes, including those that were indisputably *not* committed in the District, in clear violation of constitutional and statutory limits on venue.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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