No. 25-576

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

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

The government's brief in opposition does not offer any meaningful defense of the Second Circuit's insider-trading venue rule, which allows a defendant to be prosecuted in the Southern District of New York whenever he trades on an exchange whose physical headquarters is located in Manhattan—because that rule is indefensible. Indeed, it is striking how many of the petition's points the government declines to address. The government does not disagree that the Second Circuit's venue holding was predicated on a fact—that the stocks in question traded on the New York Stock Exchange—that is insufficient to establish venue, as trades execute electronically on servers that may be located anywhere. Nor does the government contest that here, Mr. Buyer's trades executed on computer servers located in New Jersey based on information allegedly misappropriated while Mr. Buyer was in Florida and Indiana. And the government does not dispute that forcing a former Republican congressman associated with President Trump to stand trial in Manhattan, where nearly 90% of the jury pool identified as non-Republicans, was prejudicial to Mr. Buyer's defense.

Instead, the government attempts to rewrite the Second Circuit's decision to rest on snippets of testimony about technical "clearing" and "storage" processes that the Second Circuit never held would be (and plainly are not) essential conduct elements independently sufficient to establish venue for an insider trading offense. The government's attempted muddying of the waters cannot obscure the fundamental legal question the petition presents: whether

the Second Circuit's exchange-headquarters venue rule, which grants the Southern District of New York carte blanche over virtually all insider-trading prosecutions, comports with the constitutional and statutory limitations on venue. It does not, so this Court should grant the petition to curb the outsized power of prosecutors in the Southern District of New York over insider-trading cases. At a minimum, this Court should hold the petition until the Court issues its decision in *Abouammo v. United States*, No. 25-5146 (argued Mar. 30, 2026), which also implicates the constitutional and statutory limits on venue in criminal prosecutions.

I. The Government Does Not Defend The Second Circuit's Erroneous Exchange-Headquarters Venue Rule.

The government makes no attempt to defend the Second Circuit's categorical rule that venue is proper in the Southern District of New York for an insider-trading charge whenever a defendant trades securities listed on an exchange headquartered in Manhattan. For good reason: the rule is indefensible.

A. As the petition explains, the Second Circuit has long held that insider-trading venue in the Southern District of New York may be established by the mere fact that the stocks at issue were listed and traded on the New York Stock Exchange or another Manhattan-headquartered exchange. Pet. 16-20; *see United States v. Svoboda*, 347 F.3d 471, 484 (2d Cir. 2003) ("[T]he execution of trades on the New York Stock Exchange … is sufficient to establish venue in the Southern District of New York."). The Second

Circuit has persisted in applying that categorical rule even as modern trading practices have eroded its foundation, refusing repeated invitations to bring its venue precedents in line with technological advancements and the precedents of other circuits. Pet. 16-22; *see United States v. Chow*, 993 F.3d 125, 143 (2d Cir. 2021) (reiterating this categorical rule as "the established law of th[e] Circuit").

Below, Mr. Buyer urged the Second Circuit to hold that a stock exchange's physical headquarters does not dictate venue when a defendant's trades are not executed at that headquarters. Pet. 12-13. The Second Circuit rejected Mr. Buyer's invitation and instead reiterated its categorical rule in finding that the government had met its burden to prove venue: "Where 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). And in a decision issued after the decision here, the Second Circuit again emphasized its categorical rule, holding 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. Sep. 5, 2025) (quotation marks omitted); *see* Pet. 19-20.

Rather than defend the Second Circuit's consistently stated rationale, the government says only that the petition "overreads" these precedents. BIO 8.

That contention simply cannot withstand scrutiny. The broad, unequivocal language in this case, *Chow*, *Dagar*, and *Svoboda*, among others, establishes a bright-line rule based solely on the physical location of a stock exchange's headquarters. The Second Circuit has refused to narrow its rule, despite repeated exhortations. Tellingly, the government itself has even argued—in this case and in others—that the Second Circuit's rule is categorical. Its Second Circuit brief in this case argued that "all of Buyer's stock trades took place on the New York Stock Exchange, which is headquartered in Manhattan," and that "[u]nder [the Second Circuit's] binding precedent, that is the end of the matter." C.A. U.S. Br. 44-45. And in *Dagar*, the government argued that the decision in Mr. Buyer's case showed that the Second Circuit has 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." Rule 28(j) Letter at 1, *United States v. Dagar*, No. 24-2239 (2d Cir. Mar. 20, 2025), Dkt. 33.1. The government's attempt to rewrite the Second Circuit's insider-trading venue rule to narrow its scope thus cannot be squared with either the Second Circuit's language or the government's own prior positions.

B. The government's failure to defend the Second Circuit's categorical rule is not surprising, as that rule fails to heed constitutional and statutory limitations on venue. Those limitations require that a defendant accused of insider trading be tried in any district where the defendant's relevant conduct or the transaction in securities occurred. *See* Pet. 14-15.

The physical location of a corporate entity's headquarters plays no role when, as is true in modern trading, the transaction does not take place there.

As set forth in the petition, the Constitution, federal venue statutes, and this Court's precedent all compel the same conclusion: Venue must be determined by where a defendant's charged conduct actually occurred, not by the location of a corporate entity's brick-and-mortar headquarters. Pet. 14-15, 23-27. The Second Circuit's contrary rule vitiates the protections on venue secured by the Founders—protections so "highly prized," *Smith v. United States*, 599 U.S. 236, 248 (2023), that the founding generation enshrined them twice in the Constitution to "secure the party accused from being dragged to a trial in some distant state," where he may be subjected to "the most oppressive expenses" and "the verdict of mere strangers … who may even cherish animosities, or prejudices against him," 3 Joseph Story, *Commentaries on the Constitution* § 1775 (1833). *See* Pet. 23-27. The Second Circuit's adherence to its exchange-headquarters rule despite technological developments is also out of step with other circuits' venue precedents, which account for the way data is transmitted in the modern world. *See* Pet. 21-22. And the Second Circuit's rule effectively grants the Southern District of New York unbounded power to prosecute virtually *all* insider trading cases, even where the defendant's conduct has no apparent connection to the district other than a stock's listing on a Manhattan-headquartered exchange—encouraging abuses of power and offending deeply rooted principles of federalism. *See* Pet. 27-32.

In sum, the government's failure to defend the Second Circuit's rule only underscores that this Court should grant review to bring the Second Circuit's venue precedents in line with what the Constitution and federal law require.

II. The Government's Attempt To Salvage Venue On An Invented Alternative Ground Is Not A Reason To Deny Review.

Rather than attempt to defend the Second Circuit's insider-trading venue rule, the government tries to change the subject: It portrays the petition as seeking review of a "factbound dispute" as to whether Mr. Buyer's trades were executed, cleared, and settled in the Southern District. BIO 7. But the petition does not raise the "factbound dispute" the government asserts. The petition seeks review of the Second Circuit's longstanding categorical rule, applied in this case, that venue in the Southern District is proper whenever "the defendant is charged with an offense involving the trading of securities on a stock exchange located in [Manhattan]." Pet. App. 15a (quoting *Chow*, 993 F.3d at 143).

Because the government does not defend that entrenched and erroneous rule, *see supra* 2-4, the real question here is whether there is any obstacle to this Court's review of that rule in this case. On that point, the government contends that other record evidence pertaining to "clearing" and "storage" of securities trades supported a finding of venue in the Southern District. BIO 6-8. While the Second Circuit referenced that evidence in its decision, it never held that testimony about a clearance-related data center

and post-transaction storage *independently* sufficed to establish venue in the Southern District. Pet. App. 16a. It would have been easy enough for the Second Circuit to set out a clear alternative holding along these lines if it wished, but it conspicuously did not do so. *See* Pet. App. 16a-17a.

It is hardly a mystery why the Second Circuit's decision does not contain an independent alternative holding on the clearance and data-storage grounds the government centers in its opposition, as such a holding would have been untenable. As the government concedes, venue turns on where the defendant "effectuated 'an essential conduct element' of the offense." BIO 6 (quoting *United States v. Rodriguez-Moreno*, 526 U.S. 275, 280 (1999)). The offense here was trading in securities based on material nonpublic information. Pet. 15; Pet. App. 3a. The place where an exchange chooses to store transaction data after the fact does not define where the transaction takes place. Pet. 33-34. Nor has any court held that the offense of insider trading is committed in every district through which digital transaction data moves *after* the transaction is executed. Pet. 34-35. In sum, the contacts with the Southern District invoked by the government here reflect technical decisions made by third-party entities about how to route and store data associated with an already-executed transaction; they were not "essential" to Mr. Buyer's purchases of the securities in question, *Rodriguez-Moreno*, 526 U.S. at 289, nor were they "reasonably foresee[able]" even to a "savvy investor," *contra* BIO 9 (quoting *Svoboda*, 347 F.3d at 483).

At a minimum, it is unclear whether the Second Circuit would have found the government's venue showing on these dubious grounds to be sufficient if the Second Circuit could not rely on its stated rationale: that the New York Stock Exchange's physical headquarters in Manhattan is sufficient to justify venue. The decision's reference to the clearance- and storage-related testimony is at best ambiguous, and in any event presents no obstacle to reviewing the question presented. Taking a step back illustrates why. The government's resort to this grab-bag of attenuated connections to the Southern District of New York is the rule in a case where venue is contested, not the exception. Where, as here, evidence of venue is thin, prosecutors will throw everything against the wall to see what sticks. And where, as here, a venue rule is dubious, courts may be tempted to insulate that rule from review by issuing a decision reciting various facts but declining to say which ones are dispositive, allowing the government to characterize that decision as "factbound" in opposing this Court's review. BIO 7.

The government's incentive to shield the Second Circuit's rule from review is a particularly acute problem here, because that rule gives Southern District of New York prosecutors unbridled power over insider-trading cases. Pet. 23-30. Such power "leads to … abuses[] in the selection of … a tribunal favorable to the prosecution." *United States v. Johnson*, 323 U.S. 273, 275 (1944). Here, for example, prosecutors were able to bolster their weak, circumstantial case against Mr. Buyer by charging him in an inconvenient venue far from his home, in front of a jury pool likely to be hostile to him, and before courts

that have endorsed Southern District prosecutors' aggressive expansion of insider-trading liability. Pet. 23-25, 27-30.

This Court should not allow prosecutors and lower courts to insulate from review the Second Circuit's indefensible venue rule granting Southern District prosecutors outsized influence in insider-trading cases. Instead, the Court should take up the question presented.

III. At A Minimum, This Court Should Hold The Petition Pending The Outcome Of *Abouammo v. United States*.

This petition should at least be held pending the outcome of *Abouammo v. United States*, No. 25-5146 (argued Mar. 30, 2026). The opinion in *Abouammo* is likely to clarify the limits on the government's power to select its preferred venue, aiding this Court's resolution of the petition here and potentially providing important guidance for the Second Circuit.

The government acknowledges that the Court granted certiorari in the *Abouammo* case *after* Mr. Buyer's petition was filed, and that both cases implicate criminal venue. *See* BIO 9-10. Although the government halfheartedly argues that *Abouammo* is "unlikely to inform" the resolution of this case, BIO 10, that contention simply does not hold up.

Both this case and *Abouammo* ask whether venue may be predicated on something other than "an essential *conduct* element" of an offense. *Rodriguez-Moreno*, 526 U.S. at 280 (emphasis added). As a re-

sult, there are important similarities between the government's venue arguments in *Abouammo* and those asserted in its brief in opposition here. Both invite this Court to permit prosecutors to establish venue by pointing to a district whose connection to the case depends on facts unrelated to the defendant's alleged offense conduct—whether that district is selected because the government's investigators are based there (as in *Abouammo*) or because a corporate entity is headquartered there (as the Second Circuit held below). The Court's decision in *Abouammo* may also bear on the fallback venue theory urged in the brief in opposition, which relies on the technological fortuity of digital data being routed through or stored in a district for reasons the defendant could not reasonably foresee or control. *Cf.* U.S. Br. in *Abouammo* at 16 (arguing that venue in the Northern District of California could be established by the defendant's "e-mailing a copy of a falsified pdf file from Seattle to an FBI investigator from San Francisco" who was waiting in the defendant's Seattle home at the time, which "caused a duplicative record to be created on the FBI's computers" in San Francisco).

Despite the foregoing, the government suggests that *Abouammo* will not impact this case because the offense there arises under 18 U.S.C. § 1519, not under the Exchange Act. BIO 9-10. But the existence of an express venue statute in the Exchange Act does not change the constitutional baseline: The rule in 15 U.S.C. § 78aa(a) that venue lies where the "act or transaction constituting the violation occurred" still must be applied in a manner consistent with the

Venue and Vicinage Clauses, the scope of which *Abouammo* is likely to address.

In sum, the eventual opinion in *Abouammo* may inform the Court's assessment of whether the Second Circuit's venue precedents comply with constitutional limitations on venue, or otherwise guide the Second Circuit's approach to venue. At a minimum, therefore, this Court should hold the petition pending the outcome of *Abouammo*.

CONCLUSION

This Court should grant the petition for a writ of certiorari, or, at a minimum, hold the petition pending the outcome of *Abouammo*.

Respectfully submitted,

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