No. 25-7461

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM JAMES WASHINGTON, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Based on his participation in a conspiracy to defraud the National Basketball Association (NBA) Players' Health and Welfare Benefit Plan (the Plan), petitioner was convicted in the Southern District of New York for conspiring to commit wire fraud and healthcare fraud, in violation of 18 U.S.C. 1349; conspiring to make false statements relating to healthcare matters, in violation of 18 U.S.C. 371; healthcare fraud, in violation of 18 U.S.C. 1347; and wire fraud, in violation of 18 U.S.C. 1343. Judgment 1-2; see Pet. App. 3a-6a. Petitioner contends (Pet. 7-14) that venue was improper on the theory that the United States presented insufficient evidence that he could reasonably have foreseen that his offense conduct -- phone calls he made from Seattle to New York City phone numbers -- would "touch[]" the Southern District of New York, Pet. i. Petitioner notes that he filed his petition after the Court granted certiorari in Abouammo v. United States, 146 S. Ct. 878 (2025) (granting certiorari), see Pet. 3-4, but he does not ask the Court to hold his case for Abouammo, see Pet. 1-14, and since Abouammo was decided, has not supplemented his petition with any filing requesting that the Court grant certiorari, vacate the judgment of the court of appeals, and remand (GVR) this case in light of the Court's decision in Abouammo, 146 S. Ct. 1571 (2026). In any event, no GVR would be warranted.

The Court in Abouammo held that a defendant charged with violating 18 U.S.C. 1519, which makes it a crime knowingly to falsify a document with intent to obstruct a federal investigation, "must be tried in the district where the falsification occurred" and could not be tried in "a different district where the investigation was located." 146 S. Ct. at 1575. The Court stated that courts deciding where a crime was committed for venue purposes must look to "the crime's conduct elements -- the acts that the prosecution must prove to secure a conviction." Id. at 1577. The Court noted the parties' agreement that a Section 1519 offense "is complete upon falsification * * * with the specified intent," and that no further act was required. Ibid. And the Court explained that "whatever obstructive effects Abouammo's false invoice may have had in northern California, they were not elements of his crime" and therefore "cannot figure in determining where [his] 'crime [was] committed.'" Id. at 1578 (quoting U.S. Const. Amend. VI) (second set of brackets in original).

Abouammo emphasized that its holding was "'discrete' and narrow, as venue decisions usually are, because it is based on 'the nature of the specific crime charged.'" 146 S. Ct. at 1579 (citation and brackets omitted). And Abouammo provides no reason to disturb the judgment below in this case. Petitioner was not charged under Section 1519 or any offense with materially similar language or offense elements. The court of appeals stated that venue for conspiracy is proper in any district in which an overt act in furtherance of the conspiracy was committed; venue for healthcare fraud is proper in any district where any part of the fraud scheme took place; and venue for wire fraud lies where a wire in furtherance of a scheme begins, continues, or ends. Pet. App. 4a. And the court determined that venue was proper because the trial evidence was sufficient to show by a preponderance that petitioner (1) made calls in furtherance of his conspiracy and scheme to an individual whom petitioner believed worked for the Plan's administrator and who was using a 917 area code assigned to cell phones in New York City, and also (2) made false statements concerning invoices he had submitted to the Plan in phone calls to an attorney in Manhattan who was representing the NBA in its investigation of the fraud scheme. Id. at 5a.

Petitioner does not dispute the legal framework applied by the court of appeals, nor does he analyze the conduct elements of any of the statutes of conviction. See Pet. 7-14. And nothing in Abouammo undermines the court of appeals' description of proper venue for any of the four statues under which petitioner was convicted. Unlike Abouammo, which involved the completion of the Section 1519 offense through falsification of a document entirely inside the defendant's home in Seattle, petitioner's relevant conduct involves telephone calls that he made directly to the Southern District of New York. This Court has long recognized that with respect to crimes "committed by means of a communication," venue is proper where the communication is "received." In re Palliser, 136 U.S. 257, 266 (1890) (citing cases). The Court in Lamar v. United States, 240 U.S. 60 (1916), accordingly upheld venue in the Southern District of New York for the offense of falsely pretending to be a federal officer with intent to defraud, where the defendant pretended to be a member of Congress while speaking into a "telephone to a person in New York." Id. at 65-66. The Court held that, even if the defendant was not himself in New York, venue for his impersonation crime was proper in the Southern District because his telephonic "personation took effect there." Id. at 66.

Rather than challenge that legal framework or address the conduct elements of his offenses, petitioner seeks this Court's review on a different, factbound question about whether the "evidence presented at trial" was sufficient to show that petitioner would have "[r]easonab[ly] foresee[n]" that his phone calls would be answered in the Southern District of New York. Pet. 4-5; see Pet. 8-13. That factbound question of evidentiary sufficiency does not warrant this Court's review. See Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."); United States v. Johnston, 268 U.S. 220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific facts."). And Abouammo provides no basis for the court of appeals to reconsider its decision on the evidentiary question presented below and in the petition, i.e., whether "[t]he evidence at trial" regarding foreseeability was sufficient to establish venue in this case. See Pet. App. 5a-6a. The petition for a writ of certiorari should be denied.*

Respectfully submitted.

D. JOHN SAUER
Solicitor General

AUGUST 2026

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* The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.