SUPREME COURT
OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

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AHMAD ABOUAMMO,	)	
Petitioner,	)	
v.	)	No. 25-5146
UNITED STATES,	)	
Respondent.	)	

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UNITED STATES,)

Respondent.)

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Washington, D.C.

Monday, March 30, 2026

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:04 a.m.

APPEARANCES:

TOBIAS S. LOSS-EATON, ESQUIRE, Washington, D.C.; on behalf of the Petitioner.

ANTHONY A. YANG, Assistant to the Solicitor General, Department of Justice, Washington, D.C.; on behalf of the Respondent.

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P R O C E E D I N G S

(10:04 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument first this morning in Case 25-5146, Abouammo versus United States.

Mr. Loss-Eaton.

ORAL ARGUMENT OF TOBIAS S. LOSS-EATON

ON BEHALF OF THE PETITIONER

MR. LOSS-EATON: Mr. Chief Justice, and may it please the Court:

The question here is whether Mr. Abouammo committed his Section 1519 offense in San Francisco. In Section 1519, Congress created a broad document integrity offense distinct from obstruction that requires no communication, no obstructive effects, and no investigation. Under that broad law, Mr. Abouammo's offense started and ended in a 30-minute window during which he never left his home in Seattle.

He was guilty and his offense was complete the moment he finished creating the false invoice with the requisite intent. Whether he sent it to investigators, whether it affected them in some way, or whether an

investigation even existed at all, none of that is relevant to liability under the statute, so the government didn't have to charge any of that in the indictment or prove any of it at trial.

But the government now wants to have it both ways. It says the uncharged, unproven effect of Mr. Abouammo's offense means that he committed it in San Francisco. That is wrong. From the common law, through the founding era, and up through this Court's decisions in Cabrales and Rodriguez-Moreno, venue has always turned on the location of the offense's essential conduct. That is the question that this Court's venue cases all ask, even if not always in so many words.

Here, Section 1519 has one essential conduct element, falsification, and Mr. Abouammo did that entirely in Seattle. Sending the document to investigators may have been evidence of his intent, but it was not essential for conviction, so it cannot support venue.

In arguing to the contrary, the government relies on general, out-of-context

language from cases addressing very different offenses, and it all but ignores Johnson, Cabrales, and the ratification-era understanding of where similar offenses were committed. With no grounding in statutory elements or text, the government's rule is unclear and unworkable, and accepting that rule for the government's own convenience would swallow the test this Court has always applied.

I welcome the Court's questions.

JUSTICE THOMAS: So are you saying that if he simply saved the draft to his computer that the crime would have been complete?

MR. LOSS-EATON: Yes. Exactly, Your Honor. The only --

JUSTICE THOMAS: So how is that?

MR. LOSS-EATON: The -- the crime is knowingly falsifying a document with the intent to impede an investigation. The moment he saved the document on his computer, he had done all three of those things. Even if he had never sent it to anyone, if he had thought better of it, if he had deleted it, at that point, all of the elements were satisfied and

the offense was completed and it was over.

And that is vital for purposes of venue because that's the scope of the inquiry that the Court applies. It asks where did the defendant engage in the essential conduct elements of the offense, to use Rodriguez-Moreno's phrasing. In other words --

JUSTICE SOTOMAYOR: How do you prove intent?

MR. LOSS-EATON: I -- so, certainly --

JUSTICE SOTOMAYOR: If he didn't send it and never intended to send it, you're defeating your own argument.

MR. LOSS-EATON: I -- so, if he hadn't sent it, then, certainly, the government would have a much harder time proving intent, but just as a matter of statutory text and elements, if he had created the document intending to send it to investigators with the hope of impeding the investigation, and then, if he had thought better of it in that moment, say, and he thought this was a terrible idea, what am I doing, and he had deleted the document, he would still have violated the statute and his offense would be over at that

point.

The text of this -- of this provision is clear as to this. And I -- I don't take the government actually to dispute any of that, by the way. Congress knows how to write an obstruction statute that actually requires some sort of obstructive effect, some sort of nexus with the investigation or the proceeding. And Congress very deliberately didn't do that in Section 1519 because it wanted to capture a broader scope of conduct. Responding to the Enron and Arthur Andersen document-shredding and cooking the books, Congress said we want to be sure that we are sweeping in conduct taken in contemplation of an investigation even if one does not actually exist yet.

And so, to that extent, the government's -- actually benefits from the statute's scope because it doesn't have to prove actual communication to investigators or obstructive effects, and those are, therefore, not elements of the statute that are required for conviction.

JUSTICE BARRETT: Counsel, can I --

CHIEF JUSTICE ROBERTS: Is there --

JUSTICE BARRETT: -- ask you a --

CHIEF JUSTICE ROBERTS: Is there any other -- it just seems very bizarre to me. Is -- is there any other body or -- or statutes that are like that? I mean, the guy does whatever it is to create the document, and he says, oh, that's a crazy idea, and tears it up. You're going to prosecute him?

MR. LOSS-EATON: I -- so, practically speaking, of course, it would be relatively difficult for the government to learn about that in the first place. But I think the -- the specific scenario that Congress had in mind when it wrote the statute is illuminating, and that is the -- the Enron scandal. And, there, not only were Enron and Arthur Andersen shredding documents, which, of course, doesn't involve any communication with anybody by definition, but they also were keeping a second set of records, not because they had any specific intention of investigators ever seeing them -- I'm -- I'm quite sure they hoped that that was never going to happen -- but, essentially, it was just in case.

And so Congress quite deliberately

severed the nexus between an actual proceeding, because the statute doesn't even require that there be an investigation or proceeding, and the conduct.

CHIEF JUSTICE ROBERTS: Well, but, I mean, that's a huge conspiracy, you know, affecting all sorts of different people and operations. You're -- you're suggesting the -- the -- the same rule would apply in -- in the case that I gave, somebody who, you know, drafts up a falsification, thinks better of it, tears it up. He's -- I mean, how much time is he facing for that?

MR. LOSS-EATON: I -- I don't remember offhand what the maximum is, Your Honor, but just as a matter of statutory elements, that's what the text says. And, again, I do --

JUSTICE KAGAN: Have courts actually applied it in that way?

MR. LOSS-EATON: I don't know --

JUSTICE KAGAN: I mean, what -- if you look around the universe of 1519 prosecutions, what are the -- you know, what -- what might be considered the fringe cases?

MR. LOSS-EATON: I don't know offhand

of a case in which a court has ever considered a scenario where someone just created a document with the intent of impeding the investigation and then never did anything further than that, presumably, because, practically speaking, it's going to be quite difficult for the government to find out about that.

But just -- again, if you just turn back to the text, knowingly falsifies a document with the intent to impede, that's -- those are the three elements. That's all you have to do. And that is what Mr. Abouammo did.

JUSTICE BARRETT: Okay. But, if -- if that's -- let -- let's just imagine that it did require -- just -- just work with me here. Let's assume that it did require some kind of communication. The agency -- the agents were in his house, right? They were downstairs. Let's imagine, instead of e-mailing it, he handed it to them.

You would still say that all the offense conduct happened in his home in Washington?

MR. LOSS-EATON: Absolutely, yes.

JUSTICE BARRETT: Okay. How does it change matters, again, just assuming that some kind of communication of the document is required, that he e-mailed it to them? So he could just say, for convenience, I'm just going to go ahead and e-mail you the document as an attachment rather than physically handing it over. In your view, would that change -- how -- how might that change matters, if at all?

MR. LOSS-EATON: I don't know that -- that those scenarios are any different. Assuming that there is some sort of communicative element in the statute, handing a piece of paper to someone versus e-mailing it to them, I think, is communicating to the same extent. And so, in either of those cases --

JUSTICE BARRETT: So we don't have to worry anything about a server? This is -- you know, it's -- it's -- it's going to their San Francisco server and -- and their computer there and living on it in some way, right?

MR. LOSS-EATON: I -- no, you do not have to worry about that, both because, as a legal matter, the conduct would be the same,

and also because there is no evidence in the record about where the government's servers actually are or were.

JUSTICE BARRETT: Okay. So --

MR. LOSS-EATON: The government, I think, is -- is hoping that you'll assume that the servers are in San Francisco, but that was never asserted at trial, there's no evidence of it.

JUSTICE BARRETT: Okay. So you don't understand -- and, obviously, we can ask Mr. Yang this when he stands up -- but you don't understand the government to be contesting your interpretation of the statute and that only the creation of the document is required even if you put it in a drawer and never communicate it to anyone?

MR. LOSS-EATON: I -- I do not understand the government to contest that, no.

JUSTICE JACKSON: And is that because -- and -- and I'll ask the government this -- but is that because both of you are focused on the statutory elements, not so much what the facts were in this particular case about how he transmitted the document but what

the statute requires, and that's what we should be focused on in determining venue?

MR. LOSS-EATON: That is exactly right, Your Honor. This Court's venue cases have always asked where did you commit the elements of the statutory offense necessary for guilt, in other words, where did you commit the actus reus of the offense.

JUSTICE JACKSON: So these questions about, boy, that's a weird offense and a strange actus reus -- really, it seems to me, isn't dispositive of our consideration here. We have to look at the statute and determine what its actus reus is. And so you say it is, what, falsifying a record?

MR. LOSS-EATON: Yes.

JUSTICE JACKSON: With the intention that it impede an investigation?

MR. LOSS-EATON: Yes.

JUSTICE JACKSON: But both of those things, the falsifying the record and, presumably, the intention, occurred in Seattle in this case, and so that's why I think you're saying Seattle is the appropriate venue?

MR. LOSS-EATON: That is exactly

right, Your Honor. And cases like Cabrales are a perfect illustration of this. In Cabrales, the Court emphasized that we're not asking in a broad sense what did you do in a sort of related factual way. We're looking at the specific statutory proscription that Congress enacted, and then we're asking how did the defendant violate it and where did they do so.

So, in Cabrales, it was irrelevant to venue that she also had engaged in a drug distribution conspiracy in Missouri for which she was also going to be prosecuted no matter what and that she had -- been physically present in Missouri for various parts of that scheme or even that she had to know for the substantive money-laundering counts that the money was the proceeds of a specific other offense, which was the criminal conspiracy in Missouri.

The Court asked simply, where did she actually commit the acts that constitute the money-laundering offense.

JUSTICE KAGAN: The acts or the elements? Or -- is it all elements, or is it some subset of elements?

MR. LOSS-EATON: So the way the Court has framed it is essential conduct elements, which I take essentially to mean the actus reus. None of the Court's cases seem to treat intent as part of the venue analysis for these purposes. But I don't know that that would make a difference even if you looked at the intent element, as Justice Jackson said.

JUSTICE KAGAN: Do you think that there's a reason to treat those two things differently?

MR. LOSS-EATON: I think, historically, commission has been about acts. If you go all the way back to the common law cases or the ratification-era cases, the Court is generally looking at acts or actions, conduct, in the -- in the sense of the actus reus.

But -- and -- and I don't know of any example that does look to an intent element, but even if you do, I don't think it changes anything here because, if the intent element was committed anywhere, it was committed where he was. It was committed in Seattle.

JUSTICE GORSUCH: Counsel, we have the

government's late-breaking argument that there's a separate metadata document that was created in San Francisco. I -- I know you argue that that's forfeited. I -- I wonder whether you -- would actually be better off having the Court address that, though, because one can imagine that we say it's forfeited in this case while, in every 1519 case to follow, the government's going to say, oh, we have a separate new document with different metadata in our offices and that changes everything, so we'll be right back here. Thoughts?

MR. LOSS-EATON: So forfeiture aside, Your Honor, I think that argument has got real problems both legally and factually. Factually, you don't just have to create or falsify a document to commit the actus reus. You have to do so knowingly.

And there is absolutely no evidence in the record here at all that Mr. Abouammo knowingly created a copy of a document anywhere, much less in San Francisco, because, as Justice Barrett and I were discussing, there's no evidence about where the server even was. And -- but, if you get past all of that,

then you get to the legal question.

I'm not aware of any support for the government's position that just e-mailing a copy of an existing false record to someone is a separate act of falsification that can violate the statute. The best analog that we found is the Sixth Circuit case that's cited in our reply which says that at least for Section 1001 purposes, faxing and mailing two copies of a false statement are not two separate violations because there's no additional falsehoods or false content.

And I think that's consistent with the ordinary meaning of "falsifies," which means essentially to make deceptive. It's the act of introducing falsity.

JUSTICE GORSUCH: He falsified the original -- the duplicates are duplicates. He didn't falsify anything in the duplicates?

MR. LOSS-EATON: Exactly.

JUSTICE GORSUCH: If there's any falsification in the duplicate, it might be the government's metadata?

MR. LOSS-EATON: Yes, I think that's fair, Your Honor. And -- and -- and -- and

this is not to say, by the way, that he couldn't potentially violate some other statute by actually communicating the document directly.

JUSTICE GORSUCH: Oh, goodness, I'm sure there are many out there.

MR. LOSS-EATON: I think there probably are. But, for purposes of Section 1519, the only act of falsification was the creation of this document on his own computer in his own home.

And that was the government's consistent position at trial in its opening arguments, in the Rule 29 argument. The government quite consistently said that the falsification was when he went upstairs and he modified the PDF on his computer, and at that point, the offense was over.

JUSTICE KAVANAUGH: What if he had --

JUSTICE ALITO: The situation --

JUSTICE KAVANAUGH: Go ahead.

JUSTICE ALITO: The -- the situation in which someone creates a false document but then never sends it, changes his mind, that person is going to be prosecuted under this

statute, that's really fanciful.

What is real -- what is going to happen in the real world is that the person creates the document and then sends it. But your -- your argument is that even if this had been e-mailed to San Francisco, e-mailed to a specific address of a person in San Francisco, there would be no crime?

MR. LOSS-EATON: That is correct, Your Honor. And I think Johnson is the perfect illustration of why that is. In Johnson, the offense required using the mails for the purpose of sending or bringing into any state contraband. So there was similarly an intent requirement, much like there is here. It was even more closely tied to the interstate communication.

And the Court said that does not change the venue analysis. We construe that statute to proscribe only the act of sending, meaning depositing in the mail. And once you've done that, the offense is complete. And so we are -- we don't care, really, that you did that for the purpose of sending something into another state or even that you actually

succeeded in doing so, thereby causing precisely the effect that Congress enacted the statute to proscribe.

JUSTICE ALITO: What about -- Lamar versus United States, where the Court held that venue was proper in New York for an intent -- a defendant who intended to defraud people located in the state, and the Court held the venue was proper there even though none of the defendant's conduct necessarily occurred in New York and even though the charged offense did not require him to cause any fraud in New York.

That seems like pretty much the same case as this one.

MR. LOSS-EATON: I don't think so, Your Honor, because Lamar is, just like all of the cases that it was applying, conduct-based. The Court, in a single sentence, says he might even have been in the Southern District.

But, assuming that he wasn't, when he made phone calls pretending to be a Congressman, his impersonation, now I'll use, and this admittedly is a phrase that I know the government likes from Lamar, took effect in the Southern District of New York.

And then Lamar cites Burton, and Burton very carefully conducts a conduct-based analysis to ask where the agreement, the illegal agreement there was formed, relying on cases like Palliser and Armour Packing.

So I think, for Lamar to support the government here, it would have to be doing something completely different from all of the cases that came before or after it.

JUSTICE ALITO: Well, we don't know where -- the Court did not know where he placed the phone call from. So let's assume he placed the phone call from Washington. From Washington, he calls somebody in New York and impersonates a government official.

The Court says -- and -- and the statute makes it a crime to intend to impersonate a government official. What's the difference between that situation and -- and here, except for the fact that the technology changed?

MR. LOSS-EATON: The difference is that there was not only a requirement to act intentionally to try to defraud someone there. The statute, as this Court had just construed

it a few months earlier, required some improper assertion of authority, a -- almost a sort of overt act, to actually manifest the impersonation.

I -- I know the government says that you could commit the actus reus by standing in front of your mirror in your bedroom. But this Court had held that's not correct, that's not enough. You had to actually do something assertive. And the assertion there was the phone call.

And the phone call, under cases like Palliser, happens on both ends. It happens where you physically are, and it happens where you're -- the person you're talking to is. And in that case, the person you were talking to was in New York, and so --

JUSTICE ALITO: Okay. I get your point.

At what point in time do you think the intent that is required by 1519 has to occur?

MR. LOSS-EATON: It -- you -- you -- it has to -- it certainly has to exist when you are falsifying the document. I think you have to have the -- all three elements together, the

knowingly, the falsification, and then the impact.

JUSTICE ALITO: So you can't withdraw from this offense for one half a second? Someone -- maybe someone creates a false document but never -- says, I'm going to just create this, but I'm not actually going to send it. And then, for one second, he's tempted. I'll -- I'll actually send this. And then he immediately says, no, that's the wrong thing to do. Too late?

MR. LOSS-EATON: I think, there, you would not have an offense because you wouldn't have had the falsification with the intent to impede, which is what the statute requires to coincide. I -- now, admittedly, I -- these are all pretty, I think, strange --

JUSTICE ALITO: Seriously? So he creates the false document not intending to -- not intending ever to send it. So his intent at that time is not to do anything -- not to -- not to send the thing. But, later, he changes his mind and he says now, oh, I'm actually going to send it.

There's no offense there because he

didn't have the intent to deceive at the time when he created the document?

MR. LOSS-EATON: I think that's right, Your Honor. I mean, it's -- it's an unusual scenario, and I have a hard time imagining how it might ever come up. But the statute says you have to act knowingly and you have to have the intent when you falsify the document.

I -- I'm not aware of any cases where the Court has said that a later manifestation of intent that didn't exist when the actus reus was committed could satisfy a crime.

I -- but, ultimately, though, even if you disagree with me about that scenario, I don't think it makes any difference here because Mr. Abouammo undisputedly had all three elements at the same time when he created the document on his computer, and at that point, the offense was complete.

And, again, I don't take the government to actually dispute that. And so that makes this case just like Johnson or just like Cabrales or any number of other precedents where the Court has looked narrowly at the essential conduct, the actus reus, where did

you do the thing that Congress proscribed. And the thing that Congress proscribed here was the falsification, which Mr. Abouammo did entirely in Seattle.

JUSTICE KAGAN: And if the -- if the statute did require some kind of interference or obstruction, that would have happened in California, is that correct, in San Francisco?

MR. LOSS-EATON: I don't know if there's enough in the record to establish that conclusively, but it's certainly plausible.

JUSTICE KAGAN: Okay. And if you had an intent to have that happen in San Francisco -- this, I guess, goes back to the question of whether a mens rea element counts, but, if you have the intent that -- that the interference happen in San Francisco, that is enough or that's not enough?

MR. LOSS-EATON: Intent alone, where the statute does not actually require an effect, is not enough because that is the statute that we have here. And that's Johnson --

JUSTICE KAGAN: Because the intent is always where you are, as opposed to I have an

intent to make something happen in another place?

MR. LOSS-EATON: Because the intent is where you are, and it's not conduct. And, as I said, the -- the Court has always focused on conduct elements. But, again, even if you want to look more broadly at elements, all of the elements were committed in Seattle.

JUSTICE BARRETT: So you think Congress could -- you just told Justice Kagan intent, unless intent to cause an effect, so you think Congress could say that venue lies some place where you wanted there to be an effect flowing from your conduct just as a matter of intent?

MR. LOSS-EATON: If the effect is required for conviction, then yes.

JUSTICE KAVANAUGH: Don't you have to show that here?

MR. LOSS-EATON: No. You just have to show that the --

JUSTICE KAVANAUGH: Intent -- you have to -- there are two different mens reas --

MR. LOSS-EATON: Yes.

JUSTICE KAVANAUGH: -- in the statute,

right? There's the knowingly altering, et cetera, falsifying, and then with the intent to impede, obstruct, or influence the investigation or proper administration of any matter.

On that latter one, don't you have to show the intent to impede, obstruct, or influence?

MR. LOSS-EATON: Yes, you do.

JUSTICE KAVANAUGH: Which means an effect, intent to cause an effect, I think.

MR. LOSS-EATON: Yes. What -- what I'm saying is that Congress could create venue there in the place of the proceeding if the effect itself were required for conviction, not just the intent to cause it but actually causing it. And that is --

JUSTICE JACKSON: Why is that? Why -- why are you making that distinction?

MR. LOSS-EATON: Because, in that situation, at least sometimes the causing the effect is part of the actus reus that actually then satisfies the essential conduct element test.

JUSTICE KAVANAUGH: So, if you --

MR. LOSS-EATON: And I --

JUSTICE KAVANAUGH: Keep going.

JUSTICE JACKSON: Go ahead.

JUSTICE KAVANAUGH: Sorry.

MR. LOSS-EATON: I -- so, I -- and, actually, I mean, I do think, honestly, probably the hardest question in this entire area, which this case does not implicate, is, is there a distinction between a statute that requires an effect for conviction but seemingly has a stand-alone element and then a statute that actually describes the actus reus in terms of causing an effect?

But, here, we're not in either of those scenarios because an effect of any kind is not required for conviction. So the Court does not have to get into that. My point is simply that there are some situations, certainly, where Congress could create venue quite properly for an -- obstruction-type offense to the extent that an effect, an obstructive effect or an impeding effect, is actually required for conviction such that it is part of the elements of the offense.

JUSTICE KAVANAUGH: So -- so the

intent to cause an effect elsewhere is not enough to get venue elsewhere? So, you know, mailing a bomb elsewhere and the statute's written in terms of you put it in the -- in the mail with the intent -- to kill someone elsewhere, and that's all the statute is about, the "elsewhere" is not good enough?

MR. LOSS-EATON: So I -- I'm assuming in -- in the hypo the bomb doesn't go off.

JUSTICE KAVANAUGH: Correct.

MR. LOSS-EATON: So I think then it would depend on the specifics of the statute itself because --

JUSTICE KAVANAUGH: I don't think so under your theory. I think there's no venue in the other jurisdiction.

MR. LOSS-EATON: I -- so the -- the reason I say that is that cases like -- if you line up Travis, Armour Packing, and Johnson, you've got -- all three of those cases involve sending something from state to state, either in the mails or -- or by shipping. And in one case, the Court says venue only at origin. In another, it says only at destination. And in the third, it says anywhere along the way. And

I think what that tells us really is you have to look very carefully at precisely the conduct that Congress proscribed.

So I -- I think it would be a little hard to answer that question without actually having the text in front of me. I think it's plausible that that statute could be written in a way that does actually reach past just where the person physically acted.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Justice Thomas, anything further?

Justice Alito?

JUSTICE ALITO: There's a -- a peculiarity about this case because the FBI investigation resulted in several other convictions, and you don't dispute venue for any of them. You -- any of those others. You dispute venue only for his attempt to obstruct the investigation.

So, if venue is okay for the other charges, why doesn't it suffice for the charge that -- at issue here? In other words, does the venue clause require him to face two trials in two venues for charges stemming from the

same investigation? Have we ever held that?

MR. LOSS-EATON: I don't know that this Court has ever squarely held that, but the Sixth Amendment on its face says that trial shall be held where the crime, singular, is committed. And I understand the courts always to have read that as it suggests, to mean that venue must be done on be a count-by-count basis.

Now it doesn't necessarily mean that Mr. Abouammo has to be subjected to two trials. Of course, venue is waivable. That's his right. But it does mean that absent a waiver on his part, each individual count has to be tried where it was committed.

And I will note that does not distinguish this case at all from Cabrales. Everything that you could say about why a trial in this case just makes sense in San Francisco could have been said in Cabrales as well, including other charges that were going to be tried there no matter what.

JUSTICE ALITO: Thank you.

CHIEF JUSTICE ROBERTS: Justice Sotomayor?

JUSTICE SOTOMAYOR: Counsel, Congress did, in 1512(c), require the government to prove that a federal investigation was impeded because of the defendant's conduct, correct?

MR. LOSS-EATON: Right.

JUSTICE SOTOMAYOR: And it -- and it enacted a venue provision based on those effects, right?

MR. LOSS-EATON: Yes.

JUSTICE SOTOMAYOR: And so those statutes exist. We have said the same thing, that Congress is free to look at effects, but we're not, meaning absent a congressional statute that permits venue in places other than where conduct is committed, we can't do it, correct?

MR. LOSS-EATON: So I think the -- the right way to think about what Congress can do with a venue statute is that it can make sure that venue lies anywhere that an offense could be said to be committed within the meaning of the Constitution, but, of course, it can't go beyond that.

And so, certainly, there are ways to violate 1512 or 1503 that involve actual

effects, and in those situations, venue would be proper either where the person physically acted or where the proceeding effects --

JUSTICE SOTOMAYOR: And that's what they do.

MR. LOSS-EATON: Yes.

JUSTICE SOTOMAYOR: Now, with respect to Lamar, one of the elements of the Lamar charge was an -- an -- was an overt act that -- that required the use of a communication between people in the impersonation, correct?

MR. LOSS-EATON: I -- yes. Some improper assertion of authority which I think has to be communicative in some way.

JUSTICE SOTOMAYOR: I think the statute used the word "communicative," and so, when the Court in Lamar talked about the person in New York probably being the more -- more proper venue because the communication happened in New York, correct?

MR. LOSS-EATON: I -- I think -- I think Lamar is basically just Palliser with a telephone call instead of a letter, yes.

JUSTICE SOTOMAYOR: Exactly.

CHIEF JUSTICE ROBERTS: Justice Kagan?

Justice Gorsuch?

Justice Kavanaugh?

JUSTICE KAVANAUGH: How are we to think about 1512(i) in this case?

MR. LOSS-EATON: So, on our view, and this is actually something that we have in common with the government because the government has this problem too, Section 1512(i) is unconstitutional in some applications.

JUSTICE KAVANAUGH: Mm-hmm.

On our view, it is unconstitutional where it is applied to prongs of the statute where an effect is not required. And on the government's view, it's unconstitutional whenever an effect is not actually intended and manifested.

So there's some daylight there but I think actually not a huge amount. And so, yes, that does mean that in some cases 1512(i) cannot be applied as it is written.

JUSTICE KAVANAUGH: What if he was interviewed in Canada, in Vancouver?

MR. LOSS-EATON: So, under the Constitution, Congress has plenary authority to

decide venue for offenses that are cognizable under U.S. law but that are committed outside of the United States, and it has, in fact, done so.

So I think, there, it might depend on, say, where he had been apprehended or brought into the country, but, certainly, venue would -- there would be a place to have venue in the U.S. for that act.

JUSTICE KAVANAUGH: Constitutionally but not under this scenario, this statute?

MR. LOSS-EATON: Not -- well, not under 1512(i), but there are other venue provisions that --

JUSTICE KAVANAUGH: I'm talk -- I'm back to 1519 now.

MR. LOSS-EATON: So if -- if he had done the same thing in Canada rather than in the U.S.?

JUSTICE KAVANAUGH: Mm-hmm.

MR. LOSS-EATON: So that -- I mean, that, I think, there, would be an extraterritorial jurisdiction question, which would implicate a different set of --

JUSTICE KAVANAUGH: Well, I don't -- I

don't -- under your theory, I just don't think he could be prosecuted under 1519 if the interview had been in Vancouver rather than Seattle, right?

MR. LOSS-EATON: If the offense were prosecutable at all, I think venue would not be an obstacle because it would be allowed under the provisions that govern where someone commits an offense outside of the United States.

JUSTICE KAVANAUGH: Okay. Thank you.

CHIEF JUSTICE ROBERTS: Justice Barrett?

Justice Jackson?

JUSTICE JACKSON: So would you encourage us to be thinking about this in terms of identifying this offense as not a continuing offense? Is that how we're supposed -- I'm just trying to sort out the cases that seem to suggest that there are circumstances in which a -- a crime that is similar to this could be charged in different locations.

And you've suggested that those cases are distinguishable on the basis of this continuing offense idea, and I haven't heard

you mention that specifically in today's presentation, so I'm just trying to figure out where that fits.

MR. LOSS-EATON: Yes. I -- so I think Armour Packing tells us essentially how the continuing offense doctrine works in this context, and that is that where the essential offense conduct, so essentially the actus reus, continues or extends from one place to another, then venue is proper in each of those places.

But where the actus reus is committed only in one place, venue is proper only there. So I don't deny that it is possible to violate Section 1519 in a way that would create venue in more than one state. If he had started creating the document in Oregon and then finished it in Washington, probably he could be charged for either of those.

But, here, all of the actus reus, the falsification, happened in one place. And that is what distinguishes cases like Palliser, Lamar, and Armour Packing, because, in each of those cases, the actus reus, whether it was offering the bribe or it was impersonating a federal official or it was the illicit

transportation, extended across state lines from one place to another.

JUSTICE JACKSON: And you say even Lamar, I mean, demanding or obtaining is in the statute.

MR. LOSS-EATON: Yes. So Lamar was -- there are two prongs to that statute --

JUSTICE JACKSON: Yes.

MR. LOSS-EATON: -- one of which doesn't specifically require the -- the demanding or obtaining.

JUSTICE JACKSON: Right.

MR. LOSS-EATON: But this Court had construed that first prong to require some sort of improper assertion of authority, and, there, it was the telephone call, was the improper assertion of authority.

JUSTICE JACKSON: Thank you.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

MR. LOSS-EATON: Thank you.

CHIEF JUSTICE ROBERTS: Mr. Yang.

ORAL ARGUMENT OF ANTHONY A. YANG

ON BEHALF OF THE RESPONDENT

MR. YANG: Mr. Chief Justice, and may

it please the Court:

Petitioner falsify -- knowingly falsified an invoice with the specific intent to obstruct an FBI investigation he knew was occurring in the Northern District of California. He then manifested that intent -- manifested his obstructive intent and affected the investigation by transmitting the document to the FBI by e-mail.

That conduct directed at and having a direct effect in the Northern -- District of California makes the district a locus of his crime. The Constitution's requirement that venue be where the crime was committed looks beyond the physical location of the defendant and turns on the nature of the crime itself.

And our position focuses on the special nature of a Section 1519 offense. It is an inchoate offense that, like conspiracy, is merely a step towards the commission of another crime. The offense has a special type of statutory intent element, not just mens rea but intent -- specific intent to commit another crime, here, the obstruction.

That necessarily contemplates the

defendant must contemplate that more must be done to achieve the objective that is required as part of the crime. The conduct that continues to manifest that intent by furthering that objective is part of the crime itself.

And where that conduct is intended to produce and directly produces a detrimental effect in that district, the district is proper for venue. Petitioner's conduct manifesting his intent, here, his transmission of the falsified record, is akin to an overt act in furtherance of a traditional conspiracy.

That provides a basis for venue. Neither are elements, conduct elements, of the offense. Both occur after all the conduct elements are completed. And both are taken to further the intent element objective of the crime. That is the ultimate commission of this other offense.

Petitioner's view that venue is proper only when an essential conduct element occurs cannot be squared with the settled rule that venue is proper for conspiracy in any district where any overt act occurs even though the overt act is not an offense element. The same

venue rule applies here.

JUSTICE THOMAS: Well, Mr. Yang, this is not conspiracy, so could you -- is there anything that is done by Petitioner in California? He drafted the -- the invoice in Seattle and he transmitted the invoice from Seattle. Now there's nothing left but the receipt by the FBI.

MR. YANG: Yeah. We -- we don't dispute that his conduct and the offense itself was completed and could have been prosecuted before he hit the e-mail. We're -- we're not disputing that. Our point is somewhat different, which is, even though, when an -- offense elements have been all satisfied, there's conduct that -- can still occur that is furthering the specific intent to commit the other crime, that's --

JUSTICE THOMAS: What is that precisely?

MR. YANG: Well, that was the e-mailing. And --

JUSTICE THOMAS: But he e-mailed it -- he transmitted it from Seattle.

MR. YANG: Mm-hmm. But it was

directed specifically at the Northern District of California. He knew the -- agents were conducting an investigation there and that is where they're from. It's no different than pointing a gun and shooting. He shot the e-mail and he hit Northern California.

And so -- but our -- the -- the -- the main point, I think, is that offenses -- the relevant offense conduct, where the crime is committed, can encompass things that happen after the crime can be fully prosecuted. And that's true --

CHIEF JUSTICE ROBERTS: Mr. --

MR. YANG: -- with conspiracy and with respect to intent, both inchoate crimes that share an essential feature with this crime, which is there has to be specific intent to commit another crime such that the inchoate crime is a step towards that further crime.

CHIEF JUSTICE ROBERTS: Mr. Yang, I -- I gather it's common ground between the parties that this -- the vicinage clause was added because of Parliament's decision to allow the transport of colonists back to England to be tried there.

JUSTICE KAVANAUGH: For treason.

CHIEF JUSTICE ROBERTS: So, under your interpretation, that would still be allowed, right?

MR. YANG: No.

CHIEF JUSTICE ROBERTS: The Boston Tea Party takes place entirely in Boston, but it causes effects back in England. And so why can't you say it's all right to take them to England?

MR. YANG: I -- I -- I don't think that that's quite right. We're not saying that any kind of incidental effects or kind of dignitary effects that might affect the government would cover. If that were true, any offense --

JUSTICE GORSUCH: Oh.

MR. YANG: -- against the United States could be tried in D.C., where this is --

CHIEF JUSTICE ROBERTS: Well, I don't think --

JUSTICE GORSUCH: The whole point -- the whole point of treason -- I -- I'm sorry.

CHIEF JUSTICE ROBERTS: No, no, go ahead.

JUSTICE GORSUCH: -- is aimed at the King, right? I mean -- I mean, that -- wasn't incidental, I think, is --

MR. YANG: I -- I --

JUSTICE GORSUCH: -- what the Chief is -- let -- let -- let -- let's hypothesize.

MR. YANG: -- Could I just -- the aim at the King is a slightly different thing.

JUSTICE GORSUCH: Not -- if -- if -- if you might -- if you might. Let's work with my hypothetical.

We have a crime -- whose -- intended effect is the King in England, okay? That's certainly how the Framers thought of it themselves when they were in the revolution. They were aiming at Parliament and the King and -- and they wanted to depart from them.

And the Crown did want to try them in England, and that was considered infamy that led to the Sixth Amendment. And -- and I -- I -- I do want an answer to the Chief's question.

Assuming hypothetically that the founders were aiming at the King and Parliament and that was their intended effect, could they have been tried in England under your theory?

MR. YANG: No. The offense needs -- our theory turns on a specific feature of this type of crime, which is that you have to specifically intend as an element of the offense to commit another crime elsewhere. You know, the -- the -- here's the crime of obstruction.

Now aiming at the --

JUSTICE GORSUCH: So, if it were -- if it were an -- inchoate offense in America then, okay, a -- a conspiracy offense, an inchoate offense, then they could have been tried in England?

MR. YANG: No. This is -- this is, I think --

JUSTICE GORSUCH: Is that your theory?

MR. YANG: No. This -- I want to just take a step back. They rely on Blackstone. Blackstone explains there are seven types of branches of conspiracy.

The relevant branch for the colonists would have been taking up arms or waging war, right? The element that they talk about is the first -- first branch of conspiracy. That is where you actually act with the purpose or

design to kill the King, literally kill the King. That is a different type of offense.

And if you have the overt acts, let's -- you say you -- you actually bring -- supply arms or your people go to strike the King, even if you were in part of -- in the United States and they struck the King in England, yes, I think you would, as a co-conspirator, as part of that, would be able to go there.

But that's not what the colonists were upset about. The colonists were upset about actions taken here that have direct effect here, that the only connection was a kind of vague dignitary offense of -- of treason. That's different.

JUSTICE GORSUCH: I -- I -- I don't --

CHIEF JUSTICE ROBERTS: Oh, I don't think that's -- I don't think that's how King George took it.

MR. YANG: Yeah.

CHIEF JUSTICE ROBERTS: I mean, the -- the -- saying the Boston Tea Party was concerned with effects here and -- and -- I mean, it was intended to send a very specific message to London that we don't want our

citizens picked up and taken away. And then they act -- enact a clause in response to that that would prevent precisely that from happening.

MR. YANG: Well, I'm not talking about what might have been in the mind of the King. I'm talking about what the law required. And what the law required was there were different parts -- different types of treason with different elements. And what they're talking about about striking the King literally meant killing the King. That was the offense. It was like attempted murder on the King.

Look at Blackstone. It -- it spells out the seven branches. They're relying on something different here to conflate the idea of what -- we have, which is based on idea that inchoate crimes like conspiracy or attempt can continue beyond the point at which the crime can be prosecuted.

JUSTICE JACKSON: But, Mr. Yang, isn't -- isn't really the point of the Chief and Justice Gorsuch's questioning that this clause, the law, the -- the way in which the Constitution developed around this issue was a

concern that people were being removed from the area in which they had committed the essential elements of the crime and taken back to England? The government was -- or the -- the Crown was gaining or thought they would gain an advantage by trying them back there rather than here in the colonies and then later here in the United States.

And so the concern, I think, with your theory is that -- because the government controls the location of the investigation, you would end up with the same kind of troubling dynamic that the essential elements of the crime you admit in terms of the actus reus is happening in one location, but to the extent that the person intends to affect an investigation in the United States, the United States says, well, our investigation was happening in San Francisco or New York or wherever.

MR. YANG: We don't just -- we don't say -- it -- the investigation preceded --

JUSTICE JACKSON: Or it was. Fine. Fine, but you --

MR. YANG: No. It preceded his crime.

JUSTICE JACKSON: But you concerned that --

MR. YANG: Like, it already had to exist.

JUSTICE JACKSON: But -- but what I'm suggesting is that you control that. So here's the hypothetical. Suppose that in this very same situation, the United States had decide -- that 1519 crimes are best prosecuted by the Southern District of New York because they have the most experience, because they think they do better, those prosecutors.

But the underlying issue, all of the alleged foreign interference and -- espionage and whatnot that Mr. Abouammo was allegedly engaged in happened in San Francisco. And they, the United States, sends New York-based agents to his home in Seattle because they're the ones that are doing the investigation, and the same set of facts ensues.

Is your view that venue would be proper in the Southern District of New York?

MR. YANG: If the -- the -- the agents were, instead of being San Francisco, in -- they were in New York --

JUSTICE JACKSON: Yes. They're from New York, the --

MR. YANG: Yes.

JUSTICE JACKSON: -- the Southern District of -- of New York.

MR. YANG: And he -- and he knew they were from New York and he still transmitted it to New York, our position would be --

JUSTICE JACKSON: No, no, he -- it -- but -- but transmission is not in the statute as a statutory element, right?

MR. YANG: No, I under- -- I understand that.

JUSTICE JACKSON: The statute that I'm positing is the same, that all he has to do is falsify the document and intend to do so, the falsification, where he is.

MR. YANG: Our position is that his relevant conduct for purposes of determining where venue is appropriate continues beyond the completion of the crime, just as --

JUSTICE JACKSON: There's no continuation here.

JUSTICE BARRETT: What if the --

JUSTICE JACKSON: It's just --

MR. YANG: No, no, no.

JUSTICE JACKSON: -- the New York agents in his living room. And you're saying -- and I just want to be clear. You're saying the -- the -- the United States could try this person in New York because the investigating agents are from New York even though all relevant conduct in terms of the statute occurs in Seattle?

MR. YANG: Yes, because he intended to and specifically did affect the investigation in New York. Let me explain --

JUSTICE BARRETT: And, Mr. Yang, that doesn't matter -- let's see. How important is this continuing intent to your argument? Are you saying that -- let's imagine he didn't e-mail it. He just creates it in his house and that's it. You've said that that would violate the statute, right?

MR. YANG: It would.

JUSTICE BARRETT: Okay.

MR. YANG: It would. We -- we'd --

JUSTICE BARRETT: How does this change --

MR. YANG: I mean, as a practical

matter, we might not be able to ever prosecute it.

JUSTICE BARRETT: Well, right. But you're saying it would.

MR. YANG: But -- but -- but, yes, it would -- it would violate the statute.

JUSTICE BARRETT: So -- so tell me how your venue theory works there.

MR. YANG: It -- it wouldn't work there. This -- you always have venue where there's an actus reus, right? We know that.

JUSTICE BARRETT: Sure.

MR. YANG: So you could prosecute it in Seattle. The question is whether you could also prosecute it elsewhere. Crimes aren't always commit -- are -- aren't always committed in one place.

JUSTICE BARRETT: But doesn't the intent, when he -- okay, so the agents show up at his house. He knows they're investigating in the Northern District of California. So, when he falsifies the document and he's intending to obstruct the investigation, he knows where it's going on. It's just that he puts it in his drawer.

MR. YANG: Yeah.

JUSTICE BARRETT: Why would your theory be any different?

MR. YANG: Our theory relies not only on the intent -- this is -- we're -- we're borrowing from Ford's explanation of the Court's venue cases, right, including Lamar. Ford explains that when acts are done outside a jurisdiction but are intended to and do have a detrimental effect --

JUSTICE BARRETT: And do.

MR. YANG: And do have -- produce the --

JUSTICE BARRETT: But the statute doesn't require that, right?

MR. YANG: Well, none of this is --

JUSTICE BARRETT: On your theory of --

MR. YANG: None of this is part of the statutory intent -- elements.

JUSTICE BARRETT: Okay.

MR. YANG: Our position -- we -- we are accepting that the elements of the offense were satisfied upon falsification. He made it on his computer. We could have prosecuted if we knew about it.

JUSTICE BARRETT: Yeah.
MR. YANG: We would never know it, but --
JUSTICE BARRETT: Yeah. Yeah.
MR. YANG: -- yes. Our position is that further action that furthers the intent, that takes -- that seeks to have that intent fulfilled -- remember, the intent is actually to obstruct. You cannot just falsify a document and obstruct.
JUSTICE KAGAN: But -- so, Mr. Yang --
MR. YANG: More is required.
JUSTICE KAGAN: -- if I understand you correctly, you're -- you're saying that Mr. Loss-Eaton is just using the wrong test. If -- if he tells us look to essential conduct elements, you're saying you agree, if you look to essential conduct elements, he wins. You shouldn't look to essential conduct elements.
MR. YANG: Yes.
JUSTICE KAGAN: And then you're also saying it's not enough to look to just the intent of the person because the intent of the person -- I mean, tell me if I'm wrong about this -- but is that -- why don't you tell me

that first.

MR. YANG: I think that's right, but it -- remember, ultimately --

JUSTICE KAGAN: You think it's right that that's not enough either?

MR. YANG: I -- I -- I -- I'm sorry. But I just wanted to say this --

JUSTICE KAGAN: The person has an intent to obstruct a -- an investigation.

MR. YANG: Mm-hmm.

JUSTICE KAGAN: That still is not going to get you venue where you want venue.

MR. YANG: That -- that's not -- yeah, that's not our theory, yeah.

JUSTICE KAGAN: So what is going to get you venue where you want venue?

MR. YANG: Yes. So --

JUSTICE KAGAN: Because now we're looking outside the statute itself.

MR. YANG: I -- I don't think so. You're understanding what the nature of the crime is. Ultimately --

JUSTICE KAGAN: Well, the nature of the crime -- I mean, the nature of the crime we usually think is, like, what the crime requires

the government to show. It's the elements of the crime.

MR. YANG: Let me give you two examples.

JUSTICE KAGAN: We can -- we can have a conversation about whether the elements include only conduct elements or also include mens rea, but -- but you're -- you're trying to get us to look to the statute and devise a crime that doesn't appear in the statute and then say, oh, if you think about that crime, we'll have venue in California.

MR. YANG: Let me give you two examples, and they're both in the inchoate context because I think that's important. The inchoate -- remember -- inchoate crimes that we're talking about are crimes where you have as an element the intent to commit another crime and you know the crime is not -- your -- your inchoate crime is not sufficient. More needs to be done because you're not -- you haven't completed the crime. That's the premise.

There are two other examples. Conspiracy. Traditionally, the -- the actus

reus is the agreement. That's it. The intent is reflected in the agreement to commit another crime. As soon as you form that agreement, right then you can be prosecuted.

JUSTICE GORSUCH: Well, that's --

MR. YANG: But -- but -- but --

JUSTICE GORSUCH: -- that's because a conspiracy, Mr. Yang, though, is we impute the actions of your agents to you. And this isn't a conspiracy statute. So let's -- will you answer --

MR. YANG: Well, that's different. That's -- that's actually a different --

JUSTICE GORSUCH: Mr. Yang, please.

MR. YANG: I would just try to --

JUSTICE GORSUCH: Mr. Yang, thank you.

If you would answer Justice Kagan's question without respect to conspiracy and limit yourself to inchoate offenses, that would be helpful to me and I think probably to her and maybe -- maybe even to your client.

MR. YANG: Well, inchoate offenses include -- conspiracy. They also include -- attempt. Let -- let me give you an -- an attempt example.

In Restont -- Resendiz-Ponce, the Court recognized that you can have multiple substantial steps. What you need for -- the elements of an attempt -- attempt crime are intent to commit the other crime and a substantial step towards it, right?

So, in Resendiz-Ponce, the Court recognized there can be multiple serial substantial steps. At the first substantial step, the crime can be completed, right? I mean prosecuted. You have a substantial step, you have intent.

But it continues. Why? Because the idea the -- of the crime is you're trying to do something more than just the attempt. You're trying to complete the other crime. So, if you take another substantial step, that is also going to be a basis for venue even though you could have already been prosecuted. It's because the idea of the crime is you're trying to commit another completed crime.

If you make an agreement with others, it's the same thing. You can be prosecuted as soon as the agreement. No actions, overt actions, traditionally defined as conspiracy

have to occur, but, if they do occur, if you try to manifest your intent, further your intent to achieve your objective, they're still considered part of the crime even though they're not offense elements. That's the whole point, both for attempt and for agreements, you have the same thing.

We say it's the same thing here, where there's an inchoate crime with intent to commit obstruction of justice.

JUSTICE ALITO: So we know it's an unusual --

JUSTICE JACKSON: So --

JUSTICE KAVANAUGH: Can I ask a clarifying -- go ahead.

JUSTICE ALITO: No.

JUSTICE KAVANAUGH: Go ahead.

CHIEF JUSTICE ROBERTS: Justice Alito?

JUSTICE ALITO: All right.

MR. YANG: And we're still focusing on intent -- intent -- we're still focused on elements, but we're just focusing on how the statutory intent element, which is special, not just mens rea but, like, intent to commit another crime, something specific, how that

gets manifested as part of the crime.

JUSTICE ALITO: I -- I -- I just want to try to put this in perspective. So this is an unusual statute and it was enacted in response to Enron, is that right?

MR. YANG: It -- it was.

JUSTICE ALITO: And -- and was it part -- I should -- I can't recall this precisely. Was it part of the same -- the same act that included the statute that we had in Yates --

MR. YANG: It is the same statute.

JUSTICE ALITO: -- with -- right.

MR. YANG: Oh, sorry, it's in the same -- yes.

JUSTICE ALITO: Yeah, right, with the fish and the tangible objects.

MR. YANG: Yeah. Yeah, yeah.

JUSTICE ALITO: So it was enacted under circumstances where there was a -- kind of a panic about Enron and maybe Congress didn't draft things as precisely as it should.

So -- I mean, you're trying to defend this particular conviction, and I understand that. But maybe, when you're told that what

you're doing is a violation of the Declaration of Independence --

(Laughter.)

JUSTICE ALITO: -- you might think about what seems to me the more important point for lasting significance is the situation where there's an intent to commit a fraud and the transmission of the document that would carry out the fraud. That seems to me to be the -- the -- the important point.

And to say that in that situation there would not be venue in the place where the -- where the -- to which the document was transmitted would be of quite -- quite a bit of importance. So maybe you could talk about that.

MR. YANG: I -- I -- I think that's really not that different from what we're saying here because, when you have the statutory intent component that you have to commit another crime, the whole nature of the crime is a step towards, an effort towards, completing the other crime.

So things that complete the crime, things that complete the obstruction, like the

transmission, when it's directed at a specific place, it actually has an effect there, is properly considered part of the crime for purposes of venue. That is our -- that is our position.

And it's a little bit shocking that you could have this specific intent as an element that we proved, no doubt, he's intending to obstruct this investigation in the Northern District of California.

And he shoots off his e-mail, just like shooting a gun at Northern -- California, to achieve that objective, and venue is not proper in the Northern District of California, it's -- it's a surprising result --

JUSTICE JACKSON: Mr. Yang, how do you -- how -- how do you account for Cabrales if you're right? Why doesn't that case come out differently?

MR. YANG: Yeah. Thank you. Cabrales is -- this is over two pages of the opinion they emphasize the money laundering there is committed after the fact of the early drug crime. It's an act -- it's a backwards looking.

We have a forward-looking crime --

JUSTICE JACKSON: But -- but -- but isn't -- isn't the -- wasn't the government's argument in that case that it was related?

MR. YANG: It's --

JUSTICE JACKSON: Whether it was after it temporally, they -- they connected -- I mean, this is why the government said, we can do this in Missouri, because the money laundering that she engaged in in Florida is connected to --

MR. YANG: Yeah, and Cabrales says that the test is not related, but Cabrales does not say -- here, we have a different offense. There, the relationship was backwards. It was completed by others in Missouri. There was a money-laundering offense that was not looking back. It was -- you know, it was after the fact related to it, but it was in Florida.

JUSTICE SOTOMAYOR: So, Mr. Yang, how do you deal -- let's do it with a forward-looking one. How do you distinguish Johnson?

MR. YANG: Right.

JUSTICE SOTOMAYOR: There, the

crime -- I -- I never knew there was a Federal Denture Act.

MR. YANG: Yes, there was.

JUSTICE SOTOMAYOR: Okay. Which made it illegal "to use the mail to fabricate a document for the purpose of sending or bringing into another state any denture prepared by the person not licensed to practice dentistry in the state into which the denture is sent."

And we said in that case that purpose or intent to do an act is not measured by the final destination where the dentures were received, which, by the way, is the only place where the illegality could have happened, but that only sending the item from Chicago qualified as venue.

Seems that this is -- that statute is completely comparable to this one and talks directly about intent not being adequate to house venue.

MR. YANG: We think that Johnson is different in -- in an important way. It -- the nature of the offense was understood to be simply placing it in the mail with the idea that it's going to go forward, but nothing

further had to be done.

JUSTICE SOTOMAYOR: You told me that the nature of this offense is the creation of the document with the intent in Chicago. If he had never mailed it, he would still be guilty.

MR. YANG: No, it's slightly different.

JUSTICE SOTOMAYOR: That's what you told Justice Kagan.

MR. YANG: The -- the offense here, the -- it's not just any kind of mens rea. It is intent -- it's a specific intent to have -- to commit a further crime. There are more things that have to happen for that further crime to happen. It has to be -- the -- it has to come to the investigation to obstruct the investigation. In Johnson, the Court --

JUSTICE SOTOMAYOR: But you don't have to prove -- obstruction. You didn't have to prove --

MR. YANG: That -- that is true.

JUSTICE SOTOMAYOR: -- anything about the other state -- well, you did have to prove that it was illegal.

MR. YANG: That -- that's why we

are -- that's why our position is that the actual conduct but conduct that is manifesting the express intent element to commit another crime by advancing -- trying to commit the other crime is part of this offense.

That is different from Johnson because, in Johnson, the Court construed it as simply placing the thing in the mail and you're done. That's not the case with an inchoate offense.

JUSTICE BARRETT: But, here, you just make the document and you're done. And if I understood you, I just want to be clear that I understood when we were talking before and when you were talking to Justice Kagan that you're conceding that venue would not lie if he had the intent to obstruct the investigation in San Francisco and created the document harboring that intent and put it in his drawer. You said, I think, correct me if I'm wrong, that venue would not lie in California.

MR. YANG: But the -- yes, but the difference is, when you do have additional conduct which is manifesting --

JUSTICE BARRETT: Well --

MR. YANG: -- the intent in order to achieve that -- further crime, the -- the obstruction, which you need to because you can't just --

JUSTICE BARRETT: No, but I under -- I -- I guess I just want to know why -- I -- if -- if your theory -- I thought your theory was about where you intended the effects to occur. So why isn't venue sufficient in California if he just put it in his drawer?

MR. YANG: Our theory is that you not only have to intend it, but you actually have to -- your action has to produce it.

JUSTICE BARRETT: So would you -- your action has to actually produce the effect? That's not the --

MR. YANG: Produce the -- obstruction or something close to it.

JUSTICE BARRETT: Well, presumably, he could have been prosecuted under an obstruction-of-justice statute then.

MR. YANG: Well, he could have, as well as under the intent.

JUSTICE BARRETT: Would it have been different under your theory if he had

AirDropped the document to the FBI agents as opposed to e-mailing it? Because then it would have all happened --

MR. YANG: I don't use AirDrop, but I think that's an Apple product that -- that, like, you -- you upload it somewhere?

JUSTICE BARRETT: Yeah. Are you an Android guy?

MR. YANG: I am an Android guy.

(Laughter.)

MR. YANG: I -- I'm sorry. I -- I'm really sorry.

JUSTICE BARRETT: Okay.

MR. YANG: I was an old engineer. It's -- it's --

JUSTICE BARRETT: It just means that you send the document and it's not e-mailed.

MR. YANG: Right, right.

JUSTICE BARRETT: It just kind of goes over the home Internet.

MR. YANG: Yeah, it shouldn't matter. It's -- the ultimate destination that you're intending to get to is what matters. The fact that it might be on a server somewhere, what you're trying to do is send it to the FBI agent

that you know is investigating in Northern District of California from Northern District of California entirely.

JUSTICE KAGAN: You have to know that the investigation is taking place in that district? Suppose you just know that there's an investigation someplace out there that is taking place. You intend to obstruct it.

MR. YANG: Yeah. Yeah.

JUSTICE KAGAN: You intend to cause these effects wherever this investigation is occurring. What then?

MR. YANG: Mm-hmm. Our theory is that a crime has committed, under -- under 1519, there is a crime, but our theory of venue would not apply. So the venue that -- only venue you would be able to prosecute there is where the actus reus is. If --

JUSTICE KAGAN: And where is that in the statute?

MR. YANG: It -- it's -- it's --

JUSTICE KAGAN: I mean, I keep on looking to the statute to try to figure out how it's connected to your theory of venue, and the answer is it's really not.

MR. YANG: Well, I think the connection to the statute is through the statutory intent element. Remember, you have to specifically intend to commit the other crime. You have to specifically intend to obstruct justice. And that's the same as -- with inchoate crimes generally.

When you intend to commit a further act -- a further crime and you have to take -- there's more things that have to be done. If you take those other things after your first substantial step in an attempt or after the forming of the agreement, which is the crime, by the way, in conspiracy -- through an overt act, those things count for venue because it's part of the overall offense conduct as construed. We think that's the same thing for 1519 because of the statutory intent element.

I'd like to also clarify a few things about 1512 and Lamar.

JUSTICE KAVANAUGH: If he just shredded documents in his house, what are -- what's your theory?

MR. YANG: That would be an offense.

JUSTICE KAVANAUGH: I got that.

(Laughter.)

MR. YANG: It -- it -- right. It -- we would not be able to -- our theory, again, is based on Lamar.

JUSTICE KAVANAUGH: Just where could he be prosecuted?

MR. YANG: Well, that would have to be in -- in Seattle.

JUSTICE KAVANAUGH: Even though --

MR. YANG: Even though he had the intent.

JUSTICE KAVANAUGH: Intent. Because, on the text of the statute, I guess, to follow up on other questions, I thought it was conduct --

MR. YANG: Well, you know what, actually --

JUSTICE KAVANAUGH: Can I just finish the question?

MR. YANG: Yeah. Yeah, yeah.

JUSTICE KAVANAUGH: Conduct with the intent to cause an effect elsewhere. Conduct in one place with the intent to cause an obstructive effect elsewhere.

MR. YANG: Yeah.

JUSTICE KAVANAUGH: And I thought your theory --

MR. YANG: You know --

JUSTICE KAVANAUGH: -- might be you could be prosecuted in either place, but --

MR. YANG: I'm sorry -- destruction is a little bit weird, destruction of a document. I -- that's a harder question because it is unlike where you're actually affirmatively placing the document into the investigation.

And so I think our position would be a little harder. We might well argue that that would be covered, but I think it would be a -- a -- a fair amount harder.

JUSTICE KAVANAUGH: But your theory, as articulated here, wouldn't cover it, I gather. I mean --

MR. YANG: Yes. I think --

JUSTICE KAVANAUGH: Let me just make sure --

MR. YANG: Yeah.

JUSTICE KAVANAUGH: -- I'm clear on what your theory is not.

MR. YANG: Yes.

JUSTICE KAVANAUGH: Your theory is not

that conduct in one place with the intent to cause an obstructive effect in another is good enough to prosecute you in that other place?

MR. YANG: Right. You also need to actually produce an effect at the other place. You actually have -- this is -- this is how --

JUSTICE KAVANAUGH: And that's not in the text.

MR. YANG: -- the Court understood its venue decisions --

JUSTICE JACKSON: So why isn't shredding doing it? I mean, what if the -- what -- what if these agents arrived at his house in Seattle looking for a document --

MR. YANG: Mm-hmm.

JUSTICE JACKSON: -- that he had upstairs?

MR. YANG: Yeah.

JUSTICE JACKSON: And he threw it in the shredder when he went upstairs instead of creating it.

MR. YANG: Yeah.

JUSTICE JACKSON: I don't understand there to be, under your theory, a material difference between placing a falsified document

into the --

MR. YANG: Well --

JUSTICE JACKSON: -- into the investigation versus --

MR. YANG: -- well, there -- there --

JUSTICE JACKSON: -- versus removing one from the investigation from the standpoint of your theory. So going back to what Justice -- Kavanaugh just said, I -- I -- I'm now completely baffled --

MR. YANG: Well, I -- I think --

JUSTICE JACKSON: -- as to what your theory is doing.

MR. YANG: I think the difference is and may -- we may well argue that that's covered, but there is a difference, which is, when you intend -- when you are sending it to the Northern District of California, you know it's just like shooting a bullet to the Northern District of California --

JUSTICE JACKSON: No, he knows because the agents from California arrived at his -- at his house saying, we're doing an investigation and you know what --

MR. YANG: It -- yeah.

JUSTICE JACKSON: -- we have one piece left.

MR. YANG: I --

JUSTICE JACKSON: It's a document that we cannot find.

MR. YANG: I understand. I understand. And we would --

JUSTICE JACKSON: So he knows that the --

MR. YANG: -- we would likely run that argument that their venue is proper --

JUSTICE JACKSON: He knows --

MR. YANG: Yeah.

JUSTICE JACKSON: -- that the California investigation needs the document that he is hiding. Now I appreciate this is about falsification, but, in my hypothetical, I don't understand why his intent to withhold or remove or destroy this document wouldn't count --

MR. YANG: We --

JUSTICE JACKSON: -- under your theory.

MR. YANG: We would -- it may. It may, but it's different. Our case is easier here because he's doing something affirmative

as -- as opposed to preventing something from getting to the investigation, all right?

There is a different -- the -- there is a distinction. We may well argue that that is -- that is -- that destruction of documents where you specifically know where you're preventing it from going --

JUSTICE JACKSON: All right.

JUSTICE BARRETT: Mr. Yang, if you --

JUSTICE JACKSON: My final question -- go ahead. Go ahead.

JUSTICE BARRETT: If -- if you -- if you lost this case and we didn't want to rule out the hypothetical that Justice Alito gave you about fraud where it arrives -- it's somewhere else, it seems to me that if we -- we would not rule out that scenario if we simply looked at the statute and said the crime was complete when he created the document, and, you know, it was irrelevant for purposes of the statute that he e-mailed it to the agents, that leaves open the question that Justice Alito said, which is the -- the more significant one.

MR. YANG: Yeah. I think, if you were to construe what the nature of the crime is and

say that there's nothing beyond, that's true. That would distinguish this case, for instance, from 1512(i) because 1512(i)'s venue provision, the express venue provision, applies to attempted obstruction. 1512(c)(2), which Justice Sotomayor was talking about, does not simply address effected obstruction. It also -- expressly provides attempts to obstruct.

So it's the same kind of situation we have here. This is like a specific means of attempt. So, if Congress in 1512(i) specifically is telling you what the offense is, and that's different from this case, that would be -- if you reserve that, then you allow for Congress to define the offense because --

CHIEF JUSTICE ROBERTS: Thank you.

MR. YANG: -- Congress has a lot of authority to define offenses.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Justice Thomas, anything further?

Justice Alito?

Justice Sotomayor?

JUSTICE SOTOMAYOR: Who decides this additional element that's not in this statute,

that you have to intend to produce an effect in a particular place?

MR. YANG: It -- it's not an element.

JUSTICE SOTOMAYOR: So --

MR. YANG: It's not an element of the offense.

JUSTICE SOTOMAYOR: So how do we -- who decides it?

MR. YANG: Well, your Court -- the case law, the Court's case law -- your --

JUSTICE SOTOMAYOR: I thought that we had a case not so long ago about what happens if an element's not submitted to a jury.

MR. YANG: Okay. But there's a distinction. There is a question about what offense conduct creates a crime. Those are elements. We're not saying this is an element. What we're saying, however --

JUSTICE SOTOMAYOR: Just answer my question. Who decides that issue?

MR. YANG: Well, you decide what elements of the offense are by construing a statute. But our position is not that this is an element. Our position is that the -- the crime that is committed, when you -- understand

what the crime is, the crime doesn't have to be limited to offense elements.

JUSTICE SOTOMAYOR: But what of the charges --

MR. YANG: We know that from conspiracy.

JUSTICE SOTOMAYOR: The -- when you read a charge to a jury that a crime was committed in the Southern District of New York, if a defendant says this crime wasn't, we usually say to the jury tell us whether it was committed in New York or not. We don't let the judge decide it generally.

So this is now a new step in this venue.

MR. YANG: No. The -- if there were -- in this case, there was no request for a jury instruction. If there's not a request for a jury instruction and a jury finding venue, there is no need for it.

JUSTICE SOTOMAYOR: All right.

MR. YANG: But you could in a future case if you requested it. They just didn't request it.

JUSTICE SOTOMAYOR: Thank you.

CHIEF JUSTICE ROBERTS: Justice Kagan?

JUSTICE KAGAN: Could you tell me, Mr. Yang, what the difference is between your theory and the Ninth Circuit's theory?

MR. YANG: The Ninth Circuit, I think, isn't focusing as much on the -- kind of the doctrinal basis of having an intent and an effect in the district. I -- I think they were just looking at the statutory intent element but weren't fleshing it out. Ours is a refinement. We don't think our position is that -- inconsistent, at least in the context of this case, with the Ninth Circuit's.

But they -- you know, they didn't have the same briefing as you have here in terms of fleshing out what the -- the significance of the statutory intent element and what that means for the nature of the crime that is committed when you're analyzing venue.

JUSTICE KAGAN: Okay. Thank you.

CHIEF JUSTICE ROBERTS: Justice Gorsuch?

Justice Kavanaugh?

JUSTICE KAVANAUGH: 1512(i), your friend on the other side suggested that you

think part of that might be unconstitutional. And I -- I didn't think that was correct, and I want to make sure that's not correct.

MR. YANG: No. No. It -- there -- there is a question about whether 1512(i), certainly, the -- the prong that's relevant is -- and this is reproduced at page 32 of our brief. It's -- in the first paragraph towards this bottom third. Venue is proper in the district in which the official proceeding, whether or not pending or about to be instituted, was intended to be effected.

JUSTICE KAVANAUGH: Right.

MR. YANG: Right? So that is an intent -- like, you have to intend the district to be effected, where -- where to proceed. So that is -- arguably, you could read that one of two ways. You could say all that's required is an intent. Your focus, you know it's happening in the Northern District of California, you intend it; that's enough. That's different than our position here. We would defend that that's --

JUSTICE KAVANAUGH: Correct. I got that.

MR. YANG: That -- we would -- we would -- we would --

JUSTICE KAVANAUGH: But, for 1512(i), that's enough, right?

MR. YANG: And we would -- I'm -- I guess you get to make this call, but I -- I suspect we will defend that as a constitutional exercise of defining the crime.

But you could also construe that. If you look at the legislative history, which we cite later down on the page, they talk specifically about killing a witness in Maryland, where the prosecution -- where there was a -- he was scheduled to testify in D.C.

JUSTICE KAVANAUGH: Mm-hmm.

MR. YANG: Right? And then it -- we don't quote this part, but it says, you know, they're providing jurisdiction where the obstruction is felt. Where the obstruction is felt, that -- evokes the question of whether actually the effect is required too. And so there's a -- there's an interpretive question.

If you interpret it only to require intent, it's different. We still would defend it. But you could also require -- interpret it

to be exactly what we're saying here, which is you intend and have an effect in the district.

JUSTICE KAVANAUGH: And then, if you do not prevail in this case, obviously, one of the concerns --

MR. YANG: Yeah.

JUSTICE KAVANAUGH: -- in writing the opinion will be ripple effects. Here's your opportunity to tell us -- in the event you don't prevail, what you're concerned about for the next case. You've covered a -- little of that with Justice Alito, I think.

MR. YANG: Yeah. I -- I -- I think this really comes up a lot in these kind of inchoate crime types of theories, particularly in the context of obstructions of justice, attempted obstructions of justice.

So Chapter 63, which you discussed at some length in Pugin, I think, you -- you -- there -- Congress has specifically addressed venue for purposes of 1503 and 1512 and 1512(i), but there are other provisions where there are inchoate attempt crimes there too.

Our view is that because Congress was simply resolving a circuit conflict in the --

in the favor of the majority as clarifying where the offense was, that should be understood, you have to construe 1512 -- excuse me, 1519 in the corpus of that body of law and construe it similarly.

Now it's possible you could construe it differently, and if that's the case, then our argument would not -- would not get us -- to home. But, if you were to simply construe this provision saying Congress hasn't spoken to the nature of the offense as it has done in 1512(i) with respect to 1503 and 1512, that would leave open the door for Congress to clarify, speak more clearly, with respect to where it thinks these inchoate --

JUSTICE KAVANAUGH: Okay.

MR. YANG: -- crimes take place.

JUSTICE KAVANAUGH: Thank you.

CHIEF JUSTICE ROBERTS: Justice Barrett?

JUSTICE BARRETT: Just a clarifying question that I hope is very simple. Did I understand you correctly to say that you don't think the intent to cause effects is enough to create venue in the place where the actus reus

occurred?

MR. YANG: Not on this statute because, unlike 1512(i), if you --

JUSTICE BARRETT: But it would under 1512(i) --

MR. YANG: If you construe --

JUSTICE BARRETT: -- intent to cause effects is enough?

MR. YANG: If you view 1512(i) as only requiring just the intent, not the effect.

JUSTICE BARRETT: Mm-hmm.

MR. YANG -- then we would say yes, that would be a -- that would be a sufficient basis for venue so that this -- so this -- this case has both constitutional questions and it has statutory questions, and the two are always intertwined because the question for venue is where is the crime committed, but the question of what the crime is requires understanding what Congress intended to the -- for the crime.

Now the crime is -- we know this cannot be the case. The crime is more than the offense elements. We know that to be the case. We know that to be the case from conspiracy. Overt acts traditionally aren't --

JUSTICE BARRETT: But conspiracy, Justice Gorsuch is right, conspiracy is a different kind of crime. I mean, it is continuing, and then you can be prosecuted for any of the acts within the scope of the -- conspiracy committed by your co-conspirators.

MR. YANG: The Pinkerton liability point is important, and it -- it -- what it does is it sweeps in actions that you don't do because they're of co-conspirators, but it doesn't change the nature of what's the -- the inchoate offense. The reason the offense continues is because it's not an agreement to just say we're coming to an agreement. It's an agreement with the specific intent to do more, to commit this further crime.

JUSTICE BARRETT: Okay. Let me put --

MR. YANG: That's the same thing that we have here.

JUSTICE BARRETT: Okay. Let -- one other question. Has the statute of limitations on this offense expired?

MR. YANG: I actually --

JUSTICE BARRETT: If you don't know. I was just wondering if we could be --

MR. YANG: I actually don't know. If you're asking whether he would retry him --

JUSTICE BARRETT: Yeah.

MR. YANG: -- you know, that decision has not been made, but I'll give you one fact that may counsel against it, which is he was sentenced to 42 months of imprisonment for all six of his offenses, including this.

There was a sentencing error that the Ninth Circuit remanded for. And so, even though upholding all the offenses, it went back for resentencing, and by that time, he'd already served all 42 months, including the sentence for this crime.

JUSTICE BARRETT: This one, okay. Thanks.

MR. YANG: So, in terms of practical retrial, that would weigh as a factor that we would consider.

CHIEF JUSTICE ROBERTS: Justice Jackson?

JUSTICE JACKSON: In the case of U.S. versus Rodriguez-Moreno in 1999, at Footnote 2, we noted that "the government argues that venue may also be permissibly based upon the effects

of a defendant's conduct in a district other than the one in which the defendant performs the acts constituting the offense."

MR. YANG: Yes.

JUSTICE JACKSON: And we -- went on to say, "we express no opinion as to whether the government's assertion is correct."

MR. YANG: Yes.

JUSTICE JACKSON: So here today, do you at least concede that you're asking us for a new rule?

MR. YANG: We don't think it's new because we think it's rooted in cases like --

JUSTICE JACKSON: No, but the Court reserved it in this prior case and said we express no opinion as to it. So today you're asking us to apply or to adopt the rule that you previously offered and that we expressed no opinion on, is that correct?

MR. YANG: Yes. But just because Rodriguez-Moreno didn't express an opinion on it doesn't mean that there aren't prior cases that speak to the issue, like Lamar, like Ford, which in extraterritorial context, which the question's basically the same, which is --

JUSTICE JACKSON: Right, but as --
MR. YANG: -- did the offense occur in the jurisdiction --
JUSTICE JACKSON: -- as of 19- -- as of 1999, the Court had not understood itself to have answered that question and the government was offering it and we said we're expressing no opinion, correct?
MR. YANG: No. I think that's over-reading it. Expressing no opinion is different from saying we haven't resolved the question.
JUSTICE JACKSON: Thank you.
MR. YANG: It's just not resolving it there.
CHIEF JUSTICE ROBERTS: Thank you, counsel.
MR. YANG: Thank you.
CHIEF JUSTICE ROBERTS: Mr. Loss-Eaton, rebuttal?

REBUTTAL ARGUMENT OF TOBIAS S. LOSS-EATON
ON BEHALF OF THE PETITIONER

MR. LOSS-EATON: So I think my friend really hung his hat on the analogy to conspiracy. I -- his silver bullet in his view

is that you can be tried anywhere an overt act is undertaken further if it's a -- conspiracy, even for conspiracies where an overt act is not an element.

And the problem with that view, in addition to the points that various members of the Court have made about conspiracy being a unique, ongoing collective enterprise, is that if you look at the cases in which the Court adopted that rule for conspiracy, it did not think about it at all in the terms that my friend is describing.

In Hyde in 1912, the Court first allowed venue for conspiracy where an overt act was committed even though the conspiracy was formed elsewhere, and, there, an overt act was an element.

But the Court explained the integral role of the overt act in giving the conspiracy life and continuing it forward, and it quoted in -- a New York case from the 1830s that said, wherever the conspirators act, there, they renew or, perhaps to speak more properly, they continue their agreement.

So, in allowing venue based on overt

acts, the Court conceptualized the overt act as itself being the agreement in a real sense because an agreement without any overt acts really doesn't matter. It doesn't do anything.

And so then, in Trenton Pottery and Socony-Vacuum, which are the two cases that the Court was summarizing in Whitfield, which the government cites so many times in its briefs, the Court then applied Hyde to conspiracies where an overt act was not an element, essentially with no real analysis beyond saying, yes, that's still true here.

In Socony-Vacuum, the Court said that the overt acts supplied part of the continuous cooperation necessary to keep the conspiracy alive. So I think it's very clear from those opinions that the Court conceptualized of an overt act, whether required as a standalone element or not, as being part of the actus reus of the conspiracy itself.

And it was on that basis that the Court allowed venue. And, of course, here, that is not true for the effects that the government is vaguely asserting happened in San Francisco.

Beyond that, my friend returned a few times to the analogy of someone aiming a gun from Seattle at San Francisco and pulling the trigger. I -- to the extent Mr. Abouammo was aiming anything at anybody, it was at the people who were sitting in his living room in Seattle.

Whether the investigation was ongoing in San Francisco or anywhere else I -- I suspect was probably not top of mind. There were federal agents sitting in his living room in Seattle and he wanted them to go away and so, to that extent, I think, Justice Barrett, it is the same as the AirDrop analogy or printing out the paper and handing it to them. His conduct was in Seattle and it was directed at people who were in Seattle.

Nor is conspiracy an inchoate offense in any other way. The literal -- dictionary definition of an inchoate offense is solicitation, attempt, conspiracy. This is none of those.

This is not an attempt offense because it applies only to a specific kind of conduct and not to a substantial step of whatever type.

And it's not an attempt -- offense because it doesn't incorporate any objective offense whose elements you would have to think about.

And I do think that distinguishes a lot of the hypotheticals that the Court asked about. Justice Alito, the -- the hypothetical that you raised about fraud that is attempted to be committed by transmitting a document. I think, under most of the fraud statutes, and, certainly, once you start thinking about attempt, there's no problem with venue there on our theory as long as that transmission is part of the actus reus that you're talking about.

And for an attempted fraud, it would be because that would be a substantial step. It might even be fraud itself depending on what the effects were. So I don't think those kinds of situations are implicated.

I do also want to emphasize, of course, all we're talking about here is where this crime can be tried. There's a temptation sometimes when you're talking about these issues to think that we're trying to immunize the conduct from prosecution.

That is not what's going on here. All

we're talking about is the appropriate place of trial, and that is where the offense was committed.

A lot of the Court's questions, I think, underscore the problems with the government's rule. I think, you know, fully 80 percent of the questions that I heard were just trying to figure out what the government's rule is, how it works, and what relationship, if any, it has to the statutory text.

And I think Mr. Yang's answers underscore that it is deeply unclear, the relationship to the actual statutory text and elements is extremely attenuated, and, as you were getting at, Justice Sotomayor, it's very unclear how it would actually work.

The facts that the government wants you to rely on to uphold Mr. Abouammo's conviction here were not charged in the indictment and they were never found by the jury. On what basis then can you uphold the conviction even on the government's theory? And even if you adopt that theory for future cases, does that mean the government now has to charge those facts in the indictment and prove

them at trial?

It is a much simpler approach that will do no violence to the law simply to say what the Court has always said: We are looking to where you committed the essential conduct elements of the offense, and, here, all of the essential conduct elements were committed in Seattle.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

The case is submitted.

(Whereupon, at 11:22 a.m., the case was submitted.)

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