

WHITE-COLLAR CRIME

Has SCOTUS Scrapped Local Feds' Expansive View of Venue?

By Robert J. Anello and Richard F. Albert

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In the Southern and Eastern Districts of New York, federal prosecutors long have pushed to construe venue broadly, seeking creative ways to find a connection sufficient to take cases from one another, as well as to pursue cases from across the country and around the globe.

Young prosecutors soon learn that each local district has concurrent authority over certain “waters within” the other, such that SDNY prosecutors can assert venue when a plane carrying contraband passes over the Narrows on its way to land at a Queens airport. See *United States v. Ramirez-Amaya*, 812 F.2d 813 (2d Cir. 1987).

Another basis for the local feds’ expansive view has been the theory that certain criminal conduct having an effect in a New York district is eligible for prosecution here. The Second Circuit Court of Appeals has upheld this approach notwithstanding the Constitution’s safeguards of the right of a criminal defendant to be tried in the place where the crime was committed.

This effects-based approach to venue, however, may no longer stand following the Supreme Court’s June 11, 2026 decision in *Abouammo v. United States*, 608 U.S.—, 146 S.Ct. 1571 (2026). A unanimous court reversed the Ninth Circuit Court of Appeals and held that a defendant charged with falsifying a document with the intent to obstruct a federal investigation must be tried in the district



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where the falsification occurred, and not where the investigation was obstructed.

The *Abouammo* decision counsels that courts analyzing venue in criminal cases must look carefully at the specific elements of the crime charged and focus only on the conduct needed to complete the offense, not on locations affected by that conduct or associated with the statute’s *mens rea* requirement. *Abouammo* thus changes the venue landscape for white-collar practitioners.

Its practical impact will likely vary considerably, however, depending on the particular offense at issue, the existence or absence of a statutory venue provision, and whether the offense qualifies as a genuine inchoate crime.

This column examines some commonly charged white-collar statutes to analyze *Abouammo*’s potential reach. We conclude that *Abouammo* likely undermines Second Circuit precedent permitting venue for false statements and perjury charges

in locations where the effects of the statements are felt, but appears to leave intact existing venue precedent applicable to mail fraud, wire fraud and conspiracy charges.

Criminal Venue Law

The government's choice of the venue to prosecute a federal criminal case is subject to constitutional and statutory limitations. As the Supreme Court observed in *Abouammo*, venue in criminal cases "mattered more than might be supposed" to the nation's founders because prior to the Revolution Parliament passed laws directing that supposedly treasonous colonists be tried in England.

Accordingly, two separate sections of the Constitution safeguard a defendant's venue rights. Article III, Section 2, clause 3 of the Constitution requires that the trial of all crimes "be held in the state where the said crimes shall have been committed," and the Sixth Amendment further guarantees the accused the right to trial "by an impartial jury of the State and district wherein the crime shall have been committed."

To implement the constitutional rule, the Supreme Court articulated the locus delicti test, which instructs courts to determine where a crime was committed by first identifying the "conduct constituting the offense" and then determining where the criminal conduct occurred. *United States v. Rodriguez-Moreno*, 526 U.S. 275 (1999).

Federal Rule of Criminal Procedure 18 echoes these provisions, requiring the government "to prosecute an offense in a district where the offense was committed." The principal venue statute, 18 U.S.C. §3237(a), expands prosecutors' venue options by defining "continuing offenses" as "any offense against the United States begun in one district and completed in another, or committed in more than one district, may be... prosecuted in any district in which such offense was begun, continued, or completed."

Congress passed §3237(a) to make crimes involving the "use of the mails" a continuing offense in response to *United States v. Johnson*, 323 U.S. 273 (1944), a decision construing the happily now-

defunct National Dentures Act, which prohibited the use of the mails to send or bring into a state dentures not made by a dentist. The Supreme Court held that the venue for prosecution under that law was limited to the districts from which the dentures were sent and to which the dentures were brought.

Courts uniformly agree that venue is not a jurisdictional requirement. A defendant may, however, bring a pretrial motion seeking dismissal based upon improper venue. Fed. R. Crim. P. 12(b)(3).

The government bears the burden of establishing that its choice of venue is permissible for every charged count, a burden met by a mere preponderance of the evidence. Challenges to venue typically are difficult to win pretrial because whether the essential elements of the charged offense occurred in a given district is generally a question of fact for trial.

The Abouammo Decision

While he was an employee of Twitter, Ahmad Abouammo allegedly provided confidential company information about two Saudi dissidents to a Saudi government official in exchange for \$300,000. After Abouammo left Twitter and moved to Seattle, two San Francisco-based FBI agents flew to Seattle to interview him.

During the interview, Abouammo denied wrongdoing, and, when asked for documents to support his assertion that the payments were for independent consulting work, Abouammo paused the interview, fabricated an invoice and emailed it to one of the agents. The agents returned to San Francisco, where they discovered that the document had been created the day of the interview.

Abouammo was indicted in the Northern District of California for violating 18 U.S.C. §1519, which criminalizes knowingly falsifying a document "with the intent to impede, obstruct, or influence" a federal investigation. He moved to dismiss for improper venue both before and after trial, arguing that he could only be tried in the Western District of Washington, where the falsification occurred.

The district court disagreed, reasoning that §1519's "intent to obstruct" element made the

“contemplated effects” of the falsification part of the offense’s “essential conduct,” permitting trial wherever the investigation the defendant intended to obstruct was located. Abouammo was convicted at trial, and the Ninth Circuit affirmed.

The Supreme Court unanimously reversed the conviction. Justice Kagan, writing for the court, articulated a two-step framework for determining venue: first, identify “the conduct constituting the offense—the things a defendant must do to violate the statute”; second, find “the place where those criminal acts occurred.”

The court held that “[t]he only prohibited act [in §1519] is the falsification of a document; once a person has committed that act with the requisite intent, he need do nothing more to violate the law.” The court found that the Ninth Circuit had erred by treating the “contemplated effects” of the falsification as essential conduct, holding that *mens rea* elements are irrelevant to the venue analysis.

In a footnote, the court expressly disclaimed any impact of its ruling on statutes with their own venue provisions, such as §1512(i), which applies to other obstruction-of-justice statutes codified in §1503 and §1512. The court also rejected the government’s analogy between §1519 and conspiracy.

In doing so, the court discussed and did not disturb the existing conspiracy venue rule, which permits trial wherever any overt act occurred. The court observed that such rule applies only to truly inchoate offenses: attempt, conspiracy, and solicitation.

False Statements: *United States v. Coplan* One Second Circuit venue ruling that appears undermined by *Abouammo* is *United States v. Coplan*, 703 F.3d 46 (2d Cir. 2012), which addressed a charge under the false-statements statute, 18 U.S.C. §1001. That section requires that the government prove a defendant (1) knowingly and willfully, (2) made a materially false, fictitious, or fraudulent statement, (3) in relation to a matter within the jurisdiction of a federal department or agency.

In *Coplan*, the Second Circuit confronted an S.D.N.Y. venue challenge by Brian Vaughn, an Ernst & Young tax professional charged with making false statements to the IRS during a deposition conducted in Nashville, Tennessee.

The Second Circuit disagreed, holding that “[p]roving the materiality of Vaughn’s false statements in Tennessee necessarily requires evidence that those statements were conveyed to or had an effect on the IRS investigators.” The court treated the materiality element, specifically the downstream effect of the statement on decisionmakers in Manhattan, as part of the offense’s “essential conduct” for venue purposes, thereby pulling venue to SDNY.

Following *Abouammo*, the Second Circuit’s analysis in *Coplan* appears to no longer be valid. Materiality under §1001 asks whether a statement has a “natural tendency to influence, or [is] capable of influencing, the decision of the decisionmaking body to which it was addressed.” *United States v. Adekanbi*, 675 F.3d 178, 182 (2d Cir. 2012).

Just as *Abouammo* held that whether an investigation was actually obstructed is irrelevant to where the §1519 crime was committed, the actual or contemplated effect of a false statement on decisionmakers in a distant district should be irrelevant to where a §1001 offense was committed.

A false statement is either material or immaterial the moment it is made, based on its capacity to influence, and under *Abouammo*’s logic the crime is complete, and venue fixed, at that place.

Relatedly, the Second Circuit’s decision in *United States v. Reed*, 773 F.2d 477 (2d Cir.1985), which allowed for venue in SDNY for prosecution on a perjury charge pursuant to 18 U.S.C. §1623 based on deposition testimony provided in California for a civil action filed in SDNY, also appears at odds with *Abouammo*. 773 F.2d at 482-84.

In *Reed*, the district court dismissed the perjury charge on venue grounds relying on a line of case law confirming that “the crime of perjury is complete the moment the oath is taken,” and the Court of Appeals recognized that “[t]he criminal acts alleged here were committed in California.” 773 F.2d at 483.

Nevertheless, the *Reed* court relied on a “substantial contacts test” that considers factors including the “nature of the crime, the locus of the effect of the criminal conduct and the suitability of each district for factfinding” to allow for venue in the SDNY. *Reed*’s analysis and holding do not appear to survive *Abouammo*.

Mail and Wire Fraud: 18 U.S.C. §1341 and §1343

In contrast, evaluation of venue in mail and wire fraud prosecutions in the Second Circuit likely will remain intact post-*Abouammo*. The elements of §1341 and §1343 are: “(1) a scheme to defraud, (2) money or property as the object of the scheme, and (3) use of the mails or wires to further the scheme.” *Bascunan v. Elsaca*, 927 F.3d 108 (2d Cir. 2019).

As the Second Circuit recognized in *United States v. Ramirez*, 420 F.3d 134, 144 (2d Cir. 2005), when analyzing venue, “[w]hile a scheme to defraud is certainly one of three essential elements of mail fraud, it is not an essential conduct element... It is the *mens rea* element of mail fraud.” Instead, the third element—misuse of mails or wires—encompasses the essential conduct.

Under *Abouammo*’s framework, then, the essential conduct element for venue purposes appears to be the act of mailing a letter or transmitting a wire in furtherance of the scheme, rather than the execution of the scheme itself.

Critically, and somewhat counterintuitively based on the statute’s history, the Second Circuit has held that the “continuing crime” statute, 18 U.S.C. §3237(a), does not apply to mail fraud. In *United States v. Brennan*, 183 F.3d 139 (2d Cir. 1999), the government prosecuted the CEO of an airline insurance consortium in the Eastern District of New York for mail fraud on the basis that the mailings at issue were routed through John F. Kennedy or LaGuardia airports, though they were not sent from or received in the Eastern District. The court reversed the conviction on venue grounds.

The court applied a rigorous *Abouammo*-style analysis to find that the specific conduct prohibited by §1341 is that referenced in its language—depositing or receiving mail, or causing it to be delivered—not the ongoing “use of the mails,” such that mail fraud falls outside the scope of § 3237(a). Not all circuits agree. See, e.g., *United States v. Canal Barge Co., Inc.*, 631 F.3d 347 (6th Cir. 2011).

Conversely, the Second Circuit consistently has interpreted § 3237(a) as encompassing wire fraud

prosecutions because the prohibited wire transmission is itself a “continuing” act that passes through each district along its path. See *United States v. Kim*, 246 F.3d 186, 191 (2d Cir. 2001) (affirming wire fraud is a continuing offense under §3237(a)); see also *United States v. Rutigliano*, 790 F.3d 389 (2d Cir. 2015).

The Second Circuit’s interpretation of the relevant statutes in mail and wire fraud cases thus does not appear to be directly undermined by *Abouammo*. The caveat is that “Congress lacks the power to finally decide” whether a venue rule is constitutional, *Abouammo*, 146 S.Ct. at 1577 n.3. Thus, in the right case, if venue is fixed in a district that a wire merely “passed through,” such a reading of §3237(a) could be a worthy subject for the first-ever successful constitutional challenge to a venue statute.

Conspiracy: Venue Rule Appears Unaffected

As noted, *Abouammo* discussed, and did not disturb, the venue rule for conspiracy, which permits trial wherever any overt act occurred. See *Whitfield v. United States*, 543 U.S. 209, 218 (2005). Thus, following *Abouammo*, a conspiracy charge appears to continue to offer prosecutors among the most expansive options for venue.

Conclusion

The *Abouammo* decision demands that lower courts analyze venue with precision: identify the statute’s essential conduct elements, determine where those acts occurred, and resist the temptation to expand venue by folding effects or *mens rea* into the analysis. For defense counsel, depending on the statute charged, this methodology may provide a sharpened tool to successfully challenge venue.

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