

No. 25-576

In the Supreme Court of the United States

STEPHEN BUYER, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether sufficient evidence supported venue in the district where petitioner's unlawful securities trading offenses were prosecuted, where there was testimony that relevant portions of his securities transactions occurred at a data center and a server in that district.

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OPINIONS BELOW

The summary order of the court of appeals (Pet. App. 1a-21a) is available at 2025 WL 855773. The decision and order of the district court (Pet. App. 22a-30a) is available at 2023 WL 2495919.

JURISDICTION

The judgment of the court of appeals was entered on March 19, 2025. A petition for rehearing was denied on June 11, 2025 (Pet. App. 31a-32a). On August 22, 2025, Justice Sotomayor extended the time within which to file a petition for a writ of certiorari to and including November 10, 2025, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted on two counts of deploying manipulative or deceptive devices in connection with the purchase or sale of securities, in violation of 15 U.S.C. 78j(b) and 78ff; and two counts of securities fraud, in violation of 18 U.S.C. 1348. Pet. App. 3a. The court of appeals affirmed. *Id.* at 1a-21a.

1. After serving as a Member of Congress from 1993 to 2011, petitioner began working as a consultant in the telecommunications industry. Presentence Investigation Report ¶ 12. Through his relationships with clients, petitioner twice acquired and misappropriated material nonpublic information regarding the upcoming acquisitions of publicly traded companies. Pet. App. 3a. He then made hundreds of thousands of dollars in profits by exploiting that information to trade ahead of the acquisitions. *Ibid.*

First, in 2018, petitioner learned from an executive at T-Mobile U.S. Inc. that it was planning to acquire Sprint Corporation. Pet. App. 3a. Petitioner used that information to purchase Sprint stock before the acquisition was publicly disclosed, and then sold that stock for a profit of more than \$126,000 after the acquisition was announced. *Ibid.* Second, in 2019, petitioner learned from an employee at Guidehouse, Inc., that it was planning to acquire Navigant Consulting Inc. *Ibid.* Again, petitioner used the material nonpublic information he had obtained to purchase stock in the company to be acquired, and he sold that stock after the news became public, netting more than \$227,000 in profits. *Ibid.*

Evidence offered at trial established that “securities trades—the criminal act at issue—consist of multiple steps, including execution” (matching a buyer and a seller), “clearing” (post-execution reporting and recording of changed ownership), “and settlement” (the exchange of money for securities). Pet. App. 15a-16a; see *United States v. Chow*, 993 F.3d 125, 134 (2d Cir. 2021) (defining terms). The trades here were of stocks on the New York Stock Exchange (NYSE), which is located in Manhattan. Pet. App. 16a, 26a. And a government witness testified that “part of the process of clearing [petitioner]’s trades took place at a data center located in Purchase, New York,” and that “[petitioner]’s trades were ‘completed’ only once they were written to storage on * * * [a] server located in Manhattan.” *Id.* at 16a, 26a; see Gov’t C.A. Br. 41 n.9 (explaining trading process). Both Manhattan and Purchase, New York, are in the Southern District of New York. See Pet. App. 26a.

2. A grand jury in the Southern District of New York indicted petitioner on two counts of deploying manipulative or deceptive devices in connection with the purchase or sale of securities, in violation of 15 U.S.C. 78j(b) and 78ff; and two counts of securities fraud, in violation of 18 U.S.C. 1348. Indictment 1-20. The jury found petitioner guilty on all counts. Pet. App. 3a.

The district court rejected petitioner’s argument that he was entitled to acquittal as a matter of law on the theory that the government had failed to prove by a preponderance of the evidence that venue was proper in the Southern District of New York. See Pet. App. 22a-30a. The court observed that the government had “readily” satisfied its burden based on evidence that petitioner’s stock trades “took place” on the NYSE and

that his purchase orders for Sprint and Navigant stock had been executed in that district. *Id.* at 25a-26a.

3. The court of appeals affirmed. Pet. App. 1a-21a. The court began by observing that petitioner's offenses of conviction involve "transacting in securities based on" material nonpublic information and that the relevant venue statutes thus permitted the government to prosecute petitioner in any district in which those transactions (or any part thereof) took place. *Id.* at 15a; see 15 U.S.C. 78aa(a) ("Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred."); 18 U.S.C. 3237(a) ("[A]ny offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.").

Applying those principles to petitioner's case, the court of appeals found that the government had "offered evidence that securities trades—the criminal act at issue—consist of multiple steps" and that those steps "took place at least in part in" the Southern District of New York. Pet. App. 15a-16a. Specifically, the court cited evidence that part of the process of clearing petitioner's trades took place at a data center in Purchase, New York; that petitioner's trades were "completed" only after having been written to storage on a server in Manhattan; and that the NYSE is itself headquartered in the Southern District of New York. *Id.* at 16a. Accordingly, the court found sufficient evidence that petitioner's "fraudulent trades were 'continued' or 'completed'" in the Southern District of New York, and venue was therefore proper in that district. *Id.* at 17a.

ARGUMENT

Petitioner contends (Pet. 16-35) that the court of appeals erred by holding “that venue lies wherever an exchange is physically headquartered,” even if the relevant stock trades were effectuated on computer servers located elsewhere. In this case, however, the lower courts relied on trial evidence establishing that petitioner’s trades were continued and completed at least in part within the Southern District of New York. Petitioner’s factbound objection to the sufficiency of that evidence does not merit this Court’s review.

1. The Venue Clause of the Constitution requires that criminal trials “shall be held in the State where the said Crimes shall have been committed.” U.S. Const. Art. III, § 2, Cl. 3. The Sixth Amendment’s Vicinage Clause further provides for trial “by an impartial jury of the State and district wherein the crime shall have been committed.” U.S. Const. Amend. VI. And Federal Rule of Criminal Procedure 18, which this Court has approved, tracks the constitutional provisions by specifying that “the government must prosecute an offense in a district where the offense was committed.” Fed. R. Crim. P. 18; see *Rules of Criminal Procedure, Order*, 323 U.S. 821 (1944); 18 U.S.C. App. 18, at 1970 (1946) (Rule 18) (“[T]he prosecution shall be had in a district in which the offense was committed.”).

This Court has long recognized that the Constitution, as its text reflects, confers a “right to be tried in the district * * * ‘wherein the crime shall have been committed,’” not a right to be tried “where the accused * * * [wa]s personally at the time of committing the crime.” *In re Palliser*, 136 U.S. 257, 265 (1890); see *Smith v. United States*, 599 U.S. 236, 243 (2023). The Court has also made clear that a criminal offense can be

“committed” in more than one district, such that “a trial may be held ‘where any part’ of a crime ‘can be proved to have been done.’” *Id.* at 244 (quoting *United States v. Rodriguez-Moreno*, 526 U.S. 275, 281 (1999), which quotes *United States v. Lombardo*, 241 U.S. 73, 77 (1916)).

The inquiry into where the particular “crime” was “committed,” U.S. Const. Amend. VI, necessarily focuses on the nature of the offense. The general rule is that venue will be proper in any district in which the defendant effectuated “an essential conduct element” of the offense. *Rodriguez-Moreno*, 526 U.S. at 280. And with respect to the securities-fraud offenses of which petitioner was convicted, Congress has provided that the essential conduct for venue purposes comprises “any act *or transaction* constituting the violation,” 15 U.S.C. 78aa(a) (emphasis added), and a prosecution can proceed “in any district in which such offense was begun, continued, or completed,” 18 U.S.C. 3237(a).

Petitioner accordingly acknowledges (Pet. 15) that venue for his offenses was proper “in any district where [his] relevant conduct or the transaction in securities occurred.” And as both of the courts below correctly recognized, the trial evidence established that petitioner’s “fraudulent trades were ‘continued’ or ‘completed’ in” the Southern District of New York. Pet. App. 17a; see *id.* at 25a-26a. That evidence included testimony about the “multiple steps” that the relevant transactions comprised; the location of one step (clearing) partially “at a data center located in Purchase, New York”; and the “‘complet[ion]’” of the trades “only once they were written to storage on” a “server located in Manhattan.” *Id.* at 16a.

Petitioner does not meaningfully rebut that assessment of the trial evidence. He never contends that the

lower courts clearly erred in finding that “securities trades * * * consist of multiple steps, including execution, clearing, and settlement,” and that certain of those steps occurred in the Southern District of New York. Pet. App. 15a-16a. And his assertion of ambiguity as to whether the relevant “trades were settled in the Southern or Eastern Districts of New York” (based on the two servers used to clear and settle NYSE stock trades), Pet. 34 n.6, disregards the court of appeals’ express “conclu[sion] that testimony offered at trial supports a finding that the trades are completed only once they are written to storage simultaneously on both servers,” Pet. App. 16a n.4.

In any event, even if he had raised a meaningful factual argument, his factbound dispute with the determinations of both lower courts would not warrant this Court’s review. See Sup. Ct. R. 10 (“A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.”). This Court “do[es] not grant a [writ of] certiorari to review evidence and discuss specific facts.” *United States v. Johnston*, 268 U.S. 220, 227 (1925). And “under * * * the ‘two-court rule,’ the policy has been applied with particular rigor when [the] district court and court of appeals are in agreement as to what conclusion the record requires.” *Kyles v. Whitley*, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting); see *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949).

2. Petitioner errs in characterizing (Pet. 33) the court of appeals’ reliance on the location of the data center and the server as merely “backup arguments” for a holding that in fact relied on the location of the NYSE itself. The court did note that “[t]he government *also*

offered evidence that [petitioner] traded on the New York Stock Exchange (‘NYSE’), headquartered in [the Southern District of New York],” and stated that such evidence *also* “supports venue.” Pet. App. 16a (emphasis added). And the court’s discussion of the legal framework had similarly “further” noted, after setting forth the general statutory rules, that it had previously “held that ‘[w]here the defendant is charged with an offense involving the trading of securities on a stock exchange located in the [Southern District of New York], venue in that district is appropriate.’” *Id.* at 15a (quoting *United States v. Chow*, 993 F.3d 125, 143 (2d Cir. 2021)). But the NYSE’s location was, at most, an alternative basis for its venue decision here.

The court of appeals was explicit in its recognition that venue would be proper in the Southern District of New York so long as “any * * * transaction constituting the violation occurred” or the offense was “‘completed’” there. Pet. App. 15a (quoting 15 U.S.C. 78aa(a) and 18 U.S.C. 3237(a))—a proposition that petitioner does not contest. And the court of appeals found both that “(1) part of the process of clearing [petitioner]’s trades took place at a data center” in the Southern District of New York, and that “(2) [the] trades were ‘completed’ only once they were written to storage” on a server in that district. *Id.* at 16a. And the court did not suggest that either of those bases for venue depended on the fact that the NYSE was “also” located in the same district. *Ibid.*

Moreover, petitioner overreads (Pet. 17) the court of appeals’ purported “insider-trading venue rule.” The court of appeals has previously stated that, “[w]here the defendant is charged with an offense involving the trading of securities on a stock exchange located in the

[Southern District of New York], venue in that district is appropriate.” *Chow*, 993 F.3d at 143. But in that case, the court of appeals credited evidence not only that the relevant exchange was headquartered in the Southern District of New York, but also that the actual purchases of shares at issue “were executed, cleared, and recorded” there. *Ibid.* And its decision relied on cases finding venue proper when defendants were aware of facts putting them on notice that their trades would actually occur in the Southern District of New York. *Ibid.* (citing *United States v. Svoboda*, 347 F.3d 471, 483 (2d Cir. 2003), cert. denied, 541 U.S. 1044 (2004), and *United States v. Geibel*, 369 F.3d 682, 697-698 (2d Cir.), cert. denied, 543 U.S. 999 (2004), and 544 U.S. 979 (2005)); see *Svoboda*, 347 F.3d at 483 (finding that a “savvy investor” “could reasonably foresee that his trades would likely be executed” in the Southern District of New York); *Geibel*, 369 F.3d at 697 (affirming venue as to only some insider-trading counts, for which the evidence demonstrated purchases through an exchange “in New York”).

3. After the petition for a writ of certiorari was filed in this case, this Court granted review in *Abouammo v. United States*, No. 25-5146 (argued Mar. 30, 2026), to decide whether a prosecution for knowingly falsifying a record with the intent to obstruct a federal investigation, in violation of 18 U.S.C. 1519, may be brought in the district of the investigation at which the obstructive conduct was directed. Petitioner did not reference the then-pending petition in *Abouammo* or request that his petition be held pending its disposition.

Nor would that course be warranted. As discussed above, the court of appeals’ decision in this case was predicated on its understanding of the “transaction

constituting the violation,” as that term is used in 15 U.S.C. 78aa(a). Pet. App. 15a. Neither Section 78aa nor any other provision relating to “transaction[s]” is implicated in *Abouammo*. Accordingly, this Court’s resolution of the question presented in that case is unlikely to inform the appropriate disposition of this one.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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