Nos. 19-368 & 19-369

IN THE
Supreme Court of the United States

FORD MOTOR COMPANY,
Petitioner,
v.
MONTANA EIGHTH JUDICIAL DISTRICT COURT, *et al.*,
Respondents.

FORD MOTOR COMPANY,
Petitioner,
v.
ADAM BANDEMER,
Respondent.

On Writs of Certiorari to the Supreme Courts of Montana and Minnesota

REPLY BRIEF FOR PETITIONER

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RULE 29.6 DISCLOSURE STATEMENT

The Rule 29.6 disclosure statement in the brief for petitioner remains accurate.

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INTRODUCTION

Specific jurisdiction requires a causal link between a defendant's forum contacts and a plaintiff's claims. Pet. Br. 15–17. That requirement flows from both this Court's cases and the federalism and fairness principles that underlie the Due Process Clause's limits on personal jurisdiction. *Id.* at 18–30. And that is all the Court needs to hold to resolve the question presented. Bench and bar alike already

apply a causal rule without issue in the majority of jurisdictions to have addressed this question. *Id.* at 44–45.

Respondents' primary response is to attack a strawman. They argue that a causal standard allows a product-liability plaintiff to sue *only* where the product was first sold. Not so. Plaintiffs may sue in any forum with the required causal link. The State of first sale is a proper forum, but it is hardly the only one.

Respondents' non-causal test, by contrast, has no basis in this Court's cases or the due-process principles underlying them and would be unworkable in practice. Respondents argue that specific jurisdiction is proper anywhere a plaintiff is injured by a product—even if the particular product that caused the plaintiff's injuries was made, designed, and sold elsewhere—so long as the defendant sells the same *kind* of product in the forum.

That position, however, is squarely foreclosed by *Bristol-Myers Squibb Co.* v. *Superior Court of California*, 137 S. Ct. 1773 (2017) and *Walden* v. *Fiore*, 571 U.S. 277 (2014), both of which Respondents barely discuss. The Court held in *Bristol-Myers Squibb* that selling the same kind of product in a State is insufficient for specific jurisdiction. And the Court has held twice—first in *Walden* and again in *Bristol-Myers Squibb*—that a foreseeable injury to the plaintiff in the forum is *also* insufficient to create specific jurisdiction.

Respondents' arguments would also place States' and plaintiffs' interests above defendants'. But "[d]ue process limits on the State's adjudicative authority principally protect the liberty of *the non-resident defendant*—not the convenience of plaintiffs or third parties." *Walden*, 571 U.S. at 284 (emphasis added). That Respondents' personal-jurisdiction test does precisely what this Court's cases forbid shows how flawed it is.

The Court should reverse.

ARGUMENT

I. RESPONDENTS' NON-CAUSAL APPROACH DISTORTS PRECEDENT.

A. Under The Proper Defendant-Focused Inquiry, Specific Jurisdiction Requires A Causal Connection.

1. Since *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), the Court's specific-jurisdiction cases have lined up with a causal rule. Where the Court has approved of the exercise of specific jurisdiction, it has noted that the defendant took or aimed some act at the forum State that led to the plaintiff's claim. Pet. Br. 21–22. And where the Court has found specific jurisdiction improper, a causal link was lacking. *Id.* at 22.

The Court's most recent cases also dictate a causal test. *Walden* held that "[f]or a State to exercise jurisdiction consistent with due process, the defendant's *suit-related conduct* must create a substantial

connection with the forum State." 571 U.S. at 284 (emphasis added). And *Bristol-Myers Squibb* explained that this means a defendant's "*relevant* conduct" must occur in the forum. 137 S. Ct. at 1781–82 (quoting *Walden*, 571 U.S. at 291). It is not enough that a defendant's conduct outside the forum "affected plaintiffs with connections to the forum State"—such as injuring a forum resident—even if that effect was "foreseeable." *Id.* (quoting *Walden*, 571 U.S. at 289, 291). And a defendant's forum-state conduct is not "sufficient—or even relevant" if it has no connection to a plaintiff's claim. *Id.* at 1781. Conduct counts only if it establishes "a connection between the forum and the *specific claims at issue*." *Id.* (emphasis added).

Respondents have hardly any response. They argue (at 26) that *Bristol-Myers Squibb* simply applied settled personal-jurisdiction precedents. Yes. Those settled precedents, applied here, require that a defendant's forum contacts cause the plaintiff's claims for specific jurisdiction to be proper. Pet. Br. 18–22.

Respondents would also limit *Bristol-Myers Squibb* to its facts, claiming that it turned on the fact that nonresident plaintiffs did not live, or suffer an injury in, California. Resp. Br. 26. No. In *Bristol-Myers Squibb*, "as in *Walden*, all the conduct giving rise to the nonresidents' claims occurred elsewhere." 137 S. Ct. at 1782. Indeed, *Bristol-Myers Squibb* reiterated that *Walden* had "held that" a plaintiff's foreseeable in-forum injury does "not suffice to authorize juris-

diction." *Id.* at 1781–82 (quoting *Walden*, 571 U.S. at 291). That the nonresident plaintiffs had no connection with California simply made "the connection between the nonresidents' claims and the forum * * * even weaker" than in *Walden*. *Id.*

Respondents nonetheless contend that *Walden* said nothing about the arise-out-of-or-relate-to requirement. Resp. Br. 26. But *Walden* addressed the "minimum contacts" test, which encompasses both the purposeful-availment and the arise-out-of-or-relate-to prongs. 571 U.S. at 284–285. And *Bristol-Myers Squibb* applied *Walden* to find the latter not met. 137 S. Ct. at 1781–82; *see also id.* at 1787 (Sotomayor, J., dissenting) (disagreeing with the Court's reliance on *Walden* in an arise-out-of-or-relate-to case).

2. Respondents are wrong (at 16–17) that this Court has embraced a non-causal test. They read a single sentence of dictum from *World-Wide Volkswagen Corp.* v. *Woodson* as approving specific jurisdiction so long as a defendant sells the type of product that allegedly injured the plaintiff in the forum. *See* 444 U.S. 286, 297 (1980) ("if the sale of a product * * * arises from * * * efforts * * * to serve directly or indirectly, the market * * * it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury"). That sentence—on which Respondents rest their entire affirmative case—cannot bear their reading. As context makes clear, that sentence was addressing only the *purposeful-*

availment prong of specific jurisdiction, not the "arising out of" prong. The sentence just before it talks exclusively about purposeful availment. *See id.* ("When a corporation purposefully avails itself * * * ." (internal quotation marks omitted)). The sentence just after does, too. *See id.* at 298 ("[A] corporation that delivers its products into the stream of commerce * * * ."). For this reason, the Court's cases have rejected Respondents' gloss. Pet. Br. 35–36.

Yet Respondents insist the Court has "repeated[ly]" pointed to this sentence from *World-Wide Volkswagen* as a "paradigmatic" example of specific jurisdiction. Resp. Br. 17. It has not.

Keeton v. *Hustler Magazine, Inc.*, 465 U.S. 770 (1984) found that a New Hampshire court could exercise specific jurisdiction over a plaintiff's libel claim against a magazine publisher because of the causal connection between the defendant's in-forum publication and the plaintiff's claim. *Id.* at 781; *see Bristol-Myers Squibb*, 137 S. Ct. at 1782 (explaining that *Keeton* "relied principally on the connection between the circulation * * * and damage allegedly caused within the State"). *Keeton* referred to *World-Wide Volkswagen* to confirm that the *purposeful-availment* requirement was met. The defendant's regular distribution of its magazine in New Hampshire made its defamatory publication not an isolated or fortuitous contact with the State. *See Keeton*, 465 U.S. at 781 (publisher "continuously and deliberately exploited the New Hampshire market").

The same goes for *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462 (1985), which involved a Florida suit against a Michigan franchisee. The Court again identified a causal connection between the defendant's forum contacts and the plaintiff-franchisor's claims. The defendant franchisee "deliberately reached out * * * and negotiated with a Florida corporation" and "carried on a continuous course of direct communications by mail and by telephone" with the Miami-headquartered franchisor. *Id.* at 479, 481 (alteration and internal quotation marks omitted); *see also id.* at 475 ("Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State."). *Burger King* repeatedly cited *World-Wide Volkswagen* to show the franchisee had purposefully availed itself of Florida through its dealings with the franchisor. *See, e.g.*, *id.* at 474 (explaining that "foreseeability" does not establish purposeful availment); *id.* at 475 (purposeful availment requires more than " 'random,' 'fortuitous,' or 'attenuated' contacts"); *id.* at 486 (same).

That leaves Respondents (at 18) with a dissent and a footnote. As for the dissent in *J. McIntyre Machinery, Ltd.* v. *Nicastro*, 564 U.S. 873 (2011), "comments in a dissenting opinion about legal principles and precedents are just that: comments in a dissenting opinion." *Georgia* v. *Public.Resource.Org, Inc.*, 590 U.S. __, slip op. at 15 (2020) (internal quotation marks and alteration omitted). And as for the foot-

note, it merely "illustrated the respective provinces of general and specific jurisdiction over persons" through "[c]olloquy at oral argument"; it did not answer the question presented here. *Daimler AG* v. *Bauman*, 571 U.S. 117, 127 n.5 (2014).

3. Respondents also place heavy weight (at 25) on the "aris[e] out of or relate[] to" phrasing in *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 414 n.8 (1984), arguing that each sub-phrase creates a separate basis for jurisdiction. But Respondents do not acknowledge that *Helicopteros* itself was agnostic as to whether the two parts of the phrase meant different things, or even whether they referred to general jurisdiction. *See Helicopteros*, 466 U.S. at 415 n.10; *see also* DRI Amicus Br. at 8–9 & n.2 (discussing the evolution of this footnote). Nor do Respondents acknowledge that this Court has repeatedly omitted the phrase "relate to" when describing the second prong of specific personal jurisdiction. Pet. Br. 36–37. And Respondents' myopic focus on the word "or" is not how judicial opinions should be read. *See, e.g.*, *Nevada* v. *Hicks*, 533 U.S. 353, 372 (2001) ("this is an opinion, bear in mind, not a statute"); *TMW Enters., Inc.* v. *Fed. Ins. Co.*, 619 F.3d 574, 578 (6th Cir. 2010) (explaining that courts "frequently say two (or more) things when one will do or say two things as a way of emphasizing one point"); *see also FCC* v. *Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009) (referring to "the Administrative Procedure Act's arbitrary or

capricious standard" (alteration and internal quotation marks omitted)).

If "arise out of or relate to" created two distinct specific-jurisdiction tests, the Court presumably would have said so in the intervening 36 years. Instead, all the cases point *toward* a causal test. Pet. Br. 20–22. In *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915 (2011), for example, the plaintiffs argued that the distribution of certain Goodyear tires in North Carolina "demonstrated" the defendants' "calculated and deliberate efforts to take advantage of the North Carolina market." *Id.* at 930 n.6 (internal quotation marks omitted). The Court disagreed. The tires involved in the plaintiffs' accident were made and sold abroad, and "even regularly occurring sales of a product in a State [could] not justify the exercise of jurisdiction over a claim unrelated to those sales." *Id.*

4. Respondents fault Ford for supposedly failing to ground its causal test in the "original meaning of the Due Process Clause." Resp. Br. 22. But the "long * * * settled" standard from *International Shoe* itself reinforces the "limitation[s] on the sovereignty of" the States that are "express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment." *World-Wide Volkswagen*, 444 U.S. at 291, 293; *see also* Washington Legal Foundation Amicus Br. 4–11 (explaining how a causal test reinforces core constitutional values). That presumably explains why Respondents stick to *International Shoe*'s minimum-contacts framework without offer-

ing an original-meaning analysis to ground their mere-relatedness standard.[1] The Due Process Clause's original meaning is baked into the doctrine.

B. A Causal Test Furthers The Principles Behind Due-Process Limits On Specific Jurisdiction.

A causal test furthers the federalism and predictability principles underlying the due-process limits on personal jurisdiction. It ensures that States do not regulate conduct beyond their borders and that defendants have fair notice of where their conduct will subject them to suit. Pet. Br. 23–30; Washington Legal Foundation Amicus Br. 16–17.

Respondents contend that these principles favor them because States have an interest in providing a forum for injured citizens and because Ford will not be burdened by litigating in States where its vehicles are sold. Resp. Br. 27–29, 34–35. But this Court has

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[1] In a similar vein, Respondents' *amici* contend that *International Shoe* cited approvingly two cases that they say embraced a mere-relatedness test. States Amicus Br. 11–12. The cases did not. *See International Harvester Co. of Am.* v. *Kentucky*, 234 U.S. 579, 585 (1914) (criminal antitrust case against defendant who undertook "a continuous course of business in the solicitation of orders" that resulted in machines being "delivered within the state of Kentucky"); *Commercial Mut. Accident Co.* v. *Davis*, 213 U.S. 245, 250 (1909) (plaintiff sued to collect on an insurance policy after defendant sent an agent to the forum to investigate the claim).

already said where those interests are considered: as part of the third-step, totality-of-the-circumstances inquiry that comes into play only "[w]hen minimum contacts have been established." *Asahi Metal Indus. Co.* v. *Superior Court of Cal.*, 480 U.S. 102, 114 (1987). However "strong" States' and third-parties interests' may be, they cannot displace the due-process requirement that the plaintiff's claims must be causally linked to the *defendant's* forum contacts. *Nicastro*, 564 U.S. at 886–887 (plurality op.).

1. *Federalism*. A causal test serves the Due Process Clause's jurisdiction-allocating function by respecting the "territorial limitations on the power of the respective States." *Hanson* v. *Denckla*, 357 U.S. 235, 251 (1958). Under a causal test, jurisdiction is proper where the defendant did some act in or directed at the forum that the plaintiff's suit will use the forum State's coercive power to regulate. *See* Pet. Br. 23. Without a causal test, States will "reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system" to regulate acts occurring elsewhere. *World-Wide Volkswagen*, 444 U.S. at 292.

Respondents do not disagree that a causal rule allocates jurisdiction in this way. They instead argue (at 31) that Ford mistakenly "equat[es]" a State exercising jurisdiction over a defendant with regulating a defendant's conduct. But the mistake is Respondents'; this Court has repeatedly held that exercising jurisdiction over a suit is one way States regulate the conduct underlying the claims. *See*

Goodyear, 564 U.S. at 919 (referring to an "activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation"); *Burger King*, 471 U.S. at 473 (non-resident defendants are "subject to regulation and sanctions in the other State for the consequences of their activities"). For good reason: Being subject to jurisdiction in a State means being subject to a binding judgment that sister States must recognize. *See Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797, 805 (1985). And even if another State's law governs the merits, *see infra* at 13 n.2, where a case is heard will still affect the conduct of litigation and the composition of the jury. *See* Restatement (Second) of Conflict of Laws § 122 (1971). That itself is a form of regulation.

Respondents concede that a causal test allocates jurisdiction to States with a relevant interest in the plaintiff's claims. Resp. Br. 29. They argue, however, that this test does not sufficiently accommodate a State's interest in providing a forum for its injured citizens. *Id.* at 27; *see* States Amicus Br. 30. Yet the Court has already explained that States' dispute-resolution interests are considered *later* in the personal-jurisdiction calculus: If the purposeful-availment and arise-out-of-or-relate-to requirements are met, *then* a court can weigh whether "some other considerations would render jurisdiction unreasonable, *Burger King*, 471 U.S. at 477, such as "the forum State's interest in adjudicating the dispute." *Bristol-Myers Squibb*, 137 S. Ct. at 1786 (internal quotation

marks omitted). This sequencing makes sense: A forum State's generalized interest in making it easier for its citizens to sue says nothing about the defendant's connection with that State. A State's interest in "protecting its citizens from defective products" by providing a forum "cannot supersede either the mandate of the Due Process Clause or the limits on judicial authority that Clause ensures." *Nicastro*, 564 U.S. at 886–887 (plurality op.) (internal quotation marks omitted).

A causal test will often accommodate States' interests, anyhow. *Bristol-Myers Squibb* proves the point. Respondents note that no one questioned California's exercise of personal jurisdiction over claims by Californians injured in California. Resp. Br. 27. But that was because Bristol-Myers Squibb took actions in or aimed at California that *led* to those plaintiffs' claims, not because the California plaintiffs were Californians. *See Bristol-Myers Squibb*, 137 S. Ct. at 1778 (referring to "$900 million" of California sales of the drug that allegedly injured the plaintiffs). The same is true of Respondents' nutritional-supplement example (at 28): If a company's fraudulent in-state advertising violates a State's deceptive-practices law, then the State may prosecute the fraudulent advertising. *See, e.g.*, Minn. Stat. § 325F.67 (misdemeanor fraudulent advertising prosecuted by the county attorney). The State's claim arises directly from the company's in-state marketing activities.

At bottom, Respondents' arguments about States' comparative interests are choice-of-law arguments in

personal-jurisdiction garb. *See* Resp. Br. 29. But Respondents acknowledge (at 32), that the due-process limits on specific jurisdiction and choice-of-law are distinct. *See Hanson*, 357 U.S. at 254 ("The issue is personal jurisdiction, not choice of law."). A State "does not acquire * * * jurisdiction by being the 'center of gravity' of the controversy, or the most convenient location for litigation." *Id.* It acquires jurisdiction through the "the acts of" the defendant that tie together the defendant, the forum State, and the plaintiff's particular claims. *Id.*[2]

Respondents note (at 29–30) that Ford once moved to dismiss a mass action, where the plaintiffs were "residents of all 50 states, plus Canada and Puerto Rico" on *forum non conveniens* grounds. *Cyr* v. *Ford Motor Co.*, No. 345751, 2019 WL 7206100, at *1 (Mich. Ct. App. Dec. 26, 2019) (per curiam). But a

[2] Respondents' conflict-of-laws discussion shows why importing a comparative-interest analysis into the minimum-contacts analysis "would unduly complicate the test for jurisdiction." U.S. Amicus Br. 24. Respondents offer no reason why a state-law question should govern a defendant's federal constitutional rights. Nor do they offer any rule for when the States' rules would be sufficiently uniform to gain constitutional status. *Compare* Resp. Br. 32–33 (offering one interpretation of the majority rule), *with* U.S. Amicus Br. 25–26 (offering another). These difficulties led to the rejection of a comparative-interest analysis in one constitutional context. *See Franchise Tax Bd. of Cal.* v. *Hyatt*, 538 U.S. 488, 496 (2003) (Full Faith and Credit Clause). The Court should "heed the[se] lessons learned" here. *Id.* at 499.

state-law *forum non conveniens* dismissal is warranted only if personal jurisdiction is proper in the more-convenient forum. *See id.* at *7 n.9 (plaintiffs did not allege "the subject vehicles were purchased in states other than those in which the associated plaintiffs reside"). Like the reasonableness prong of specific personal jurisdiction, *forum non conveniens* calls for a weighing of potential forum States' relative interests in the litigation. The arise-out-of-or-relate-to prong does not. *See Hanson*, 357 U.S. at 254.

Finally, no case supports Respondents' contention (at 31) that purposeful availment alone protects the federalism interests underlying the due-process limits on personal jurisdiction. Any number of a defendant's activities could satisfy the purposeful-availment requirement. *See Bristol-Myers Squibb*, 137 S. Ct. at 1781. The arise-out-of-or-relate-to requirement serves an additional jurisdiction-allocating function, "divest[ing] the State of its power to render a valid judgment" if there is no "connection between the forum and *the specific claims at issue*." *Id.* (emphasis added and internal quotation marks omitted). Yet Respondents overlook this function entirely.

2. *Predictability*. A defendant must have "fair warning that a particular activity may subject [it] to the jurisdiction of a foreign sovereign." *Burger King*, 471 U.S. at 472 (internal quotation marks omitted). A causal test gives defendants that warning by tying specific jurisdiction to an act *the defendant* took in or

aimed at the forum. A defendant will know what it has done and where, and will thus have notice of where and on what claims it can be sued. Pet. Br. 26–27.

Respondents do not dispute that a causal test provides the notice that due process requires. They instead contend that due process requires only that Ford be able "to predict" that it might be sued in a given forum. Resp. Br. 34. But bare "foreseeability alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause." *World-Wide Volkswagen*, 444 U.S. at 295 (internal quotation marks omitted). Mere foreseeability would "impermissibly allow[ ] a plaintiff's contacts with the defendant and forum to drive the jurisdictional analysis." *Walden*, 571 U.S. at 289. Ford can predict, in some sense, that a person might purchase a decades-old used vehicle fifth-hand in any State and suffer an injury there. But the location of that injury is pure happenstance from the relevant perspective—Ford's. The location of a plaintiff's injury says nothing about whether Ford's "challenged conduct" ties it to the forum. *Id.*

The foreseeability that due process demands is that which "allows potential defendants to structure their primary conduct with some minimum assurance as to where *that conduct* will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297 (emphasis added). Respondents brush aside defendants' need to "more precisely" predict where they will be subject to suit, Resp. Br. 34–35, but

precision is what allows defendants to "act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State." *World-Wide Volkswagen*, 444 U.S. at 297; *see also* Chamber Amicus Br. 27–28.

Without a causal test, the *only* way a defendant can *know* that it will not be sued in a given State is to exit that State's market altogether. Respondents concede as much. Resp. Br. 35, 42–43. But they give no reason why companies should be put to that drastic choice.

3. *Fairness*. Respondents argue that a causal rule does not serve plaintiffs' interests. *Id.* at 35. As with the forum State's interest, "the plaintiff's interest in obtaining convenient and effective relief" is a factor in the *reasonableness* prong and comes into play "[o]nce" the minimum contacts test is satisfied. *Burger King*, 471 U.S. at 477 (internal quotation marks omitted). Here too, the reason is simple: Due-process limits on jurisdiction "principally protect[ ] the liberty of the nonresident defendant—not the interests of the plaintiff." *Walden*, 571 U.S. at 290 n.9.

To the extent fairness considerations inform the arise-out-of-or-relate-to prong, they support a causal test. A causal rule places jurisdiction in the forum States where "the conduct giving rise to the * * * claims" took place. *Bristol-Myers Squibb*, 137 S. Ct. at 1782. It thus locates jurisdiction where a defend-

ant can more readily find the evidence and witnesses needed to rebut a plaintiff's claims. "[P]laintiffs' interests in suing in an even wider range of forums" do not justify imposing greater burdens on defendants' ability to mount a defense. U.S. Amicus Br. 28.

Respondents argue (at 44–45) that the reasonableness prong already "adequately" protects defendants. But it is the purposeful-availment and arise-out-of-or-relate-to prongs that "give specific content to the 'fair play and substantial justice' concept." *Goodyear*, 564 U.S. at 923. Reasonableness—the only prong for which the defendant bears the burden—is a safety valve. *See Burger King*, 471 U.S. at 477. Indeed, this Court has invoked reasonableness just once to find specific jurisdiction improper. *See Asahi*, 480 U.S. at 113–116.[3]

In any event, Respondents' assumption that a causal rule is not in plaintiffs' interests is misguided. Plaintiffs generally buy and use products where they live. *See* U.S. Amicus Br. 26–27. A causal rule permits these plaintiffs to sue in their home State. But where there is no causal link between a plaintiff's claims and his home forum, a causal rule locates jurisdiction where *both* sides can most-easily

[3] Respondents similarly invoke (at 45) *forum non conveniens*. But as they concede, *forum non conveniens* is a state-law doctrine. *See Burger King*, 471 U.S. at 477. States are free to reject it, and it does not adequately protect defendants' constitutional liberty interests.

litigate the case. These cases prove the point: The evidence and witnesses most relevant to Ford's liability will be where Ford designed, manufactured, and sold the products, not where the accident occurred. And, in practice, the nationwide network of plaintiffs' counsel means that "the notion that it is difficult for a plaintiff to bring suit in a foreign jurisdiction is neither apparent nor real." DRI Amicus Br. 22.

II. RESPONDENTS' TEST WOULD UPEND SETTLED PERSONAL-JURISDICTION PRECEDENT.

A. A Relatedness Test Is Formless.

For all of Respondents' claims (at 36) that a causal test is "unmanageable," it is their mere-foreseeability test that will bog cases down. Respondents seek a holding "that where a product has caused an injury in a forum state, and the defendant has systematically cultivated a market for that product in the state, jurisdiction over the defendant for claims arising from that injury is appropriate." Resp. Br. 42. That standard would leave courts with a myriad of questions to sort through for years to come. *See* Product Liability Advisory Council Amicus Br. 15–16.

To start, Respondents do not explain what the relevant "product" is. *See* Pet. Br. 27–28. Does the product involved in the plaintiff's suit need to be the same type as one sold in the forum, or the same make and model? Does the product need to be the exact same type, or just similar? And must the

product have the exact same set of features? *See* States Amicus Br. 21 (attempting to justify a mere-relatedness test because "[m]ass-produced vehicles are * * * all made according to the same design").

Nor do Respondents explain what amounts to "cultivat[ing] a market." Must a defendant advertise the product in the forum? Sell the product directly? Provide technical support for the product? What if a company merely improves its brand recognition generally? *See* Bandemer Pet. App. 4a, 9a–10a (relying on Ford providing a 1966 Ford Mustang to the Minnesota Vikings).

Nor do Respondents explain what counts as "systematically." Does one year of sales count? What about six months? And what if the defendant long-since stopped selling the specific product in the forum State? *See* Bandemer Ford Minn. Sup. Ct. Opening Br. 19 (explaining that Ford stopped manufacturing the Crown Victoria in 2011, two years before the owner of the Crown Victoria involved in Bandemer's accident purchased it used).

Respondents do not even acknowledge—much less answer—these questions, but there is no avoiding them. Most States' long-arm statutes authorize personal jurisdiction to the limits of due process. *See generally* Douglas D. McFarland, *Dictum Run Wild: How Long-Arm Statutes Extended to the Limits of Due Process*, 84 B.U. L. Rev. 491, 497 (2004). And there is no shortage of plaintiffs willing to test these limits. *See, e.g.*, States Amicus Br. 4–6 (expressing a

preference for aggressively asserting personal jurisdiction). Courts will thus be required under Respondents' test to decide how similar is similar enough, how big a presence is big enough, and how long is long enough.

These questions also show that it is Respondents who "conflate" the purposeful-availment and arise-out-of-or-relate-to requirements. *Cf.* Resp. Br. 26, 42; States Amicus Br. 7. A test that asks if a defendant has "systematically cultivated" the market in a given forum State, Resp. Br. 42, is just another way of asking if a defendant's contacts with the market are not "random, fortuitous, or attenuated." *Burger King*, 471 U.S. at 475 (internal quotation marks omitted). This is to be expected, as Respondents derive their test solely from purposeful-availment precedent. *See supra* pp. 5–7. The purposeful-availment test has proven difficult to apply. *See, e.g.*, *Nicastro*, 564 U.S. at 885 (plurality op.) ("The conclusion that the authority to subject a defendant to judgment depends on purposeful availment * * * does not by itself resolve many difficult questions of jurisdiction that will arise in particular cases."). That is all the more reason not to merge it into the arise-out-of-or-relate-to prong.

B. Policy Concerns Do Not Warrant Departing From Clear Due-Process Rules.

1. Respondents contend that a causal rule would be too difficult to apply. Resp. Br. 36 (citing *Dudnikov* v. *Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063

(10th Cir. 2008) (Gorsuch, J.)). But Respondents do not disagree that the majority of jurisdictions to address this question have already adopted a causal test (Pet. Br. 44–45), nor do they point to any jurisdiction that, having adopted a causal standard, has found it unmanageable.

Indeed, Respondents' cited case rejected a non-causal test, explaining that it "inappropriately blurs the distinction between specific and general personal jurisdiction." *Dudnikov*, 514 F.3d at 1078. And Respondents primarily take issue with the proximate-cause standard,[4] which the Court need not adopt to resolve this case. The question is only whether *some* causal link is needed. Pet. Br. 42; U.S. Amicus Br. 29.

Even so, Respondents' fears that courts would be stymied by a proximate-cause test are overblown. A proximate-cause standard is grounded in this Court's precedent. *See Burger King*, 471 U.S. at 474 (a defendant must "account in other States for consequences that arise proximately from such activities"). And under it, all a court must do is determine whether an "operative fact[]"—that is, something material to the plaintiff's claim against the defendant—that took place in the forum will support juris-

[4] Respondents apparently agree that, as between but-for and proximate causation, only proximate causation provides a meaningful limit on States' exercise of personal jurisdiction. *See* Resp. Br. 37 & n.1.

diction. *Rush* v. *Savchuk*, 444 U.S. 320, 329 (1980). A "purely jurisdictional allegation" of an act the defendant took in or aimed at the forum "with no substantive" connection to the plaintiff's claims will not. Lea Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 Sup. Ct. Rev. 77, 82.

A causal test *minimizes* the need for jurisdictional discovery. *Cf.* Resp. Br. 40. Unlike Respondents' preferred standard, a proximate-cause test does not require a plaintiff to investigate the extent of a defendant's similar contacts with the forum. *See* Alliance for Automotive Innovation et al. Amicus Br. 22-24 (discussing effect of Respondents' test on discovery); Institute of International Bankers Amicus Br. 4-11 (describing impact on third-party discovery). It instead limits the jurisdictionally relevant facts to those underlying the elements of the plaintiff's claims. PhRMA Amicus Br. 20.

Nor will plaintiffs be unable to identify the States that could exercise jurisdiction over their claims. *Cf.* Resp. Br. 36–42. A causal test offers plaintiffs a range of forums. Sales are recorded when they take place—a plaintiff could sue there. U.S. Amicus Br. 27. Durable goods generally have ways to track their origins. A tire, for example, has a tire identification number, which includes a "plant code" indicating where it was manufactured—a plaintiff could sue there. Tire Identification and Recordkeeping, 80 Fed. Reg. 19,553, 19,554 (Apr. 13, 2015); *see also* JA11–12 (citing these numbers for the tires at issue).

And general jurisdiction provides "at least one clear and certain forum" in the unlikely event that a plaintiff cannot identify *any* jurisdiction in which the defendant took an act relevant to his claims. *Daimler*, 571 U.S. at 137.

2. Respondents suggest (at 41) that it is not clear how a causal rule would work across different areas of law. This is a problem for Respondents, not Ford. Respondents' test is specific to the products-liability context. Resp. Br. 42 (in-forum injury and "defendant has systematically cultivated a market for that product in the state"); States Amicus Br. 3 (arguing this test is appropriate for "design defects" cases). But it is not at all obvious how a mere-relatedness test would work in, for example, a contract case. What level of contacts with the forum would establish relatedness? Would the contacts all need to be *contract*-related? Would they need to be related to the same *kind* of contract at issue in the plaintiff's claim? This confusion does not arise under a causal test. A court simply looks at the plaintiff's contract claim and asks if the defendant did something in or directed at the forum that caused the claim. *See Burger King*, 471 U.S. at 479 (looking to "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing").

3. Respondents also contend (at 40–41) that a causal test would require a plaintiff with claims against multiple defendants to bring separate suits in different forum States. But personal jurisdiction

must be proved with respect to each defendant. Pet. Br. 45 (citing *Rush*, 444 U.S. at 332). So with or without a causal rule, a plaintiff may need to bring multiple suits to reach the full set of defendants. As this Court has repeatedly "explained, '[t]he requirements of *International Shoe* . . . must be met as to each defendant over whom a state court exercises jurisdiction.' " *Bristol-Myers Squibb*, 137 S. Ct. at 1783 (quoting *Rush*, 444 U.S. at 332)). Respondents, however, do not acknowledge *Rush*'s rule at all. Their silence is telling.

III. THERE IS NO CAUSAL LINK BETWEEN RESPONDENTS' CLAIMS AND FORD'S MONTANA OR MINNESOTA CONDUCT.

Under any causal test, Ford is not subject to personal jurisdiction in Montana or Minnesota on Respondents' claims. Nothing Ford did in those States contributed in any way to Respondents' injuries; if Ford had no contacts with either Montana or Minnesota, Respondents' claims would be identical. Pet. Br. 45–48. And neither Respondent claimed there was a causal link below or at the petition stage. *See* Bandemer Br. in Opp. 20–27; Gullett Br. in Opp. 24.

Respondents' attempts to kick up dust come too late and are meritless. Respondents question Ford's basis "for confidently asserting that" a causal connection is lacking, and go far beyond the record in listing any contact Ford has or had with Montana or Minnesota since 1903. *See* Resp. Br. 4–7, 20–21. But Respondents had every chance below to identify a

causal connection between Ford's forum contacts and their claims. They cannot try to do so for the first time now. *See Sprietsma* v. *Mercury Marine*, 537 U.S. 51, 56 n.4 (2002).

Even if Respondents' assertions had a basis in the record, they would not add up to causation. Respondents do not argue, for example, that any Ford-franchised dealership performed maintenance relevant to their claims on their vehicles, that their injuries resulted from faulty Ford aftermarket parts, or that the vehicle owners were motivated to purchase their vehicles by Ford's in-state marketing. Resp. Br. 4–7, 20–21.[5] That is, even now, Respondents still do not argue that any Ford forum contact led to their injuries. *See id.* at 20–21.

At the end of the day, Respondents' resort to every conceivable connection between Ford and the forums highlights how far they have strayed from settled due-process principles. A causal test keeps the focus where it belongs: on the "defendant's suit-related

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[5] The United States suggests (at 28) that, in a different case, a defendant's generalized cultivation of a resale market might render it "subject to jurisdiction * * * with respect to used cars." But the "unilateral activity of another party" in selling a used vehicle to the plaintiff "is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction." *Helicopteros*, 466 U.S. at 417.

conduct." *Walden*, 571 U.S. at 284. The Court should adopt it.

CONCLUSION

For these reasons, and those in the opening brief, the judgments of the Montana and Minnesota Supreme Courts should be reversed.

Respectfully submitted,

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APRIL 2020