No. 19-

IN THE
Supreme Court of the United States

FORD MOTOR COMPANY,
Petitioner,

v.

ADAM BANDEMER,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Minnesota

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Due Process Clause permits a state court to exercise specific personal jurisdiction over a non-resident defendant only when the plaintiff's claims "arise out of or relate to" the defendant's forum activities. *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 472 (1985) (internal quotation marks omitted).

The question presented is:

Whether the "arise out of or relate to" requirement is met when none of the defendant's forum contacts caused the plaintiff's claims, such that the plaintiff's claims would be the same even if the defendant had no forum contacts.

PARTIES TO THE PROCEEDING

Ford Motor Company, petitioner on review, was the appellant below and a defendant in the trial court.

Adam Bandemer, respondent on review, was the respondent below and the plaintiff in the trial court.

RULE 29.6 DISCLOSURE STATEMENT

Ford Motor Company has no parent corporation and no publicly held company owns 10% or more of Ford Motor Company's stock.

RELATED PROCEEDINGS

Minnesota Supreme Court:

Adam Bandemer v. *Ford Motor Company*, No. A17-1182 (Minn. July 31, 2019) (affirming denial of Ford's motion to dismiss for lack of personal jurisdiction)

Minnesota Court of Appeals:

Adam Bandemer v. *Ford Motor Company*, No. 77-CV-16-1025 (Minn. Ct. App. Apr. 23, 2018) (affirming denial of Ford's motion to dismiss for lack of personal jurisdiction)

Minnesota District Court, Seventh Judicial District:

Adam Bandemer v. *Ford Motor Company, et al.*, No. 77-CV-16-1025 (Minn. Dist. Ct. May 25, 2017) (district court proceeding)

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Ford Motor Company respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Minnesota in this case.

OPINIONS BELOW

The Minnesota Supreme Court's opinion is reported at 931 N.W.2d 744. Pet. App. 1a–36a. The Court of Appeals of Minnesota's opinion is reported at 913 N.W.2d 710. Pet. App. 37a–47a. The District Court's opinion is not reported but is available at 2017 WL 10185684. Pet. App. 48a–58a.

JURISDICTION

The Minnesota Supreme Court entered judgment on July 31, 2019. This Court's jurisdiction rests on

28 U.S.C. § 1257(a). The Minnesota Supreme Court's "judgment is plainly final on the federal issue" of whether the Due Process Clause permits the exercise of personal jurisdiction, and the issue "is not subject to further review in the state courts." *Cox Broad. Corp.* v. *Cohn*, 420 U.S. 469, 485 (1975). This Court has previously exercised jurisdiction to review questions of personal jurisdiction in cases with a similar procedural posture. *See, e.g.*, *BNSF Ry. Co.* v. *Tyrrell*, 137 S. Ct. 1549 (2017); *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915 (2011).

CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1, provides:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law.

INTRODUCTION

In the decision below, the Minnesota Supreme Court declined to adopt a "causal standard" for the exercise of specific personal jurisdiction, "under which the defendant's contacts with Minnesota must have caused the plaintiff's claims." Pet. App. 11a–12a (internal quotation marks and brackets omitted). It held that Respondent Adam Bandemer's claims "arose out of or related to" Ford's Minnesota contacts," even though Ford's contacts with Minnesota did not cause his injuries, and his claims would be exactly the same if Ford did no business in Minnesota. In doing so, the Minnesota Supreme Court allowed the *plaintiff's* contacts with the forum to drive its analysis. And in doing so, it joined a growing number of state high courts that have taken the

same approach. This Court should grant review to put a stop to this capacious view of specific personal jurisdiction.

As this Court has made clear, the Due Process Clause requires both that the defendant "have purposefully availed itself of the privilege of conducting activities within the forum State" *and* that the plaintiff's claim " 'arise out of or relate to' the defendant's forum conduct." *Bristol-Myers Squibb Co.* v. *Superior Court of Cal.*, 137 S. Ct. 1773, 1785–86 (2017) (internal quotation marks, brackets, and citation omitted). This requirement polices the line between specific and general personal jurisdiction. And it has divided the federal and state courts so deeply that the Court has twice granted certiorari to decide how closely a defendant's forum contacts must be connected to a plaintiff's claim for the arise-out-of-or-relate-to requirement to be met, only to leave the issue unresolved. *See Carnival Cruise Lines, Inc.* v. *Shute*, 499 U.S. 585, 589 (1991); *see also Bristol-Myers Squibb*, 137 S. Ct. at 1779.

The Court should not leave the question unanswered any longer. This Court has explained that for the required connection to exist, "the defendant's *suit-related conduct* must create a substantial connection with the forum State." *Walden* v. *Fiore*, 571 U.S. 277, 284 (2014) (emphasis added). Most courts have taken the Court at its word. They require a plaintiff's claim to have at least *some* causal connection to some act the defendant took in, or aimed at, the forum. But the decision below took a different path. Even though it recognized that Ford's out-of-state contacts were "those that *cause[d]* the claim," it nonetheless held that specific personal jurisdiction

was proper because "Ford's contacts *relate to* the claim." Pet. App. 15a–16a. The court did so out of an apparent preference for having the claim heard in Minnesota, emphasizing repeatedly that Bandemer, his injury, the vehicle, the other defendant, and the hospital where Bandemer was treated were in Minnesota. *Id.* at 3a, 16a–17a. But a defendant's constitutional due-process protections cannot be measured by a court's policy preferences.

This Court should grant the writ, rule that specific jurisdiction requires a causal connection between the defendant's forum contacts and a plaintiff's claims, and reverse the decision below.

STATEMENT

1. Petitioner Ford Motor Company is a global automaker headquartered in Michigan and incorporated in Delaware. *See* Pet. App. 58a. Ford designs, manufactures, markets, and services a full line of cars, trucks, and SUVs. One of those vehicles is the Crown Victoria sedan, which Ford manufactured until 2011.

In 2015, Respondent Adam Bandemer, a Minnesota resident, was the passenger in a 1994 Crown Victoria when the driver "rear-ended a Minnesota county snow plow, and the car ended up in a ditch." *Id.* at 3a. He alleges that the Crown Victoria's passenger-side airbag did not deploy in the crash, and that he suffered a severe brain injury as a result. *Id.*

Bandemer sued Ford, the driver, and the car's owner in Minnesota state court. *See id.* The car's owner—its fifth—had "registered the vehicle in Minnesota in 2013." *Id.* at 25a (Anderson, J., dissenting). Bandemer raised "products liability, negli-

gence, and breach of warranty claims against Ford and negligence claims" against the other defendants. *Id.* at 3a.

Ford moved to dismiss the claims for lack of personal jurisdiction. *See id.* The parties stipulated that Ford, based in Michigan and incorporated under Delaware law, was not subject to general personal jurisdiction in Minnesota. *See id.* at 39a n.1; *id.* at 53a. Ford also explained that it was not subject to specific personal jurisdiction on Bandemer's claims because Ford had not taken any action in Minnesota that had any causal connection to those claims. *See id.* at 41a–42a, 56a–58a. The 1994 Crown Victoria at issue here "was not designed, manufactured, or originally sold in Minnesota." *Id.* at 3a–4a. It "was designed in Michigan; assembled in 1993 in Ontario, Canada; and sold in Bismarck, North Dakota in 1994." *Id.* at 25a (Anderson, J., dissenting). The "vehicle was first registered in Minnesota 17 years later, in 2011, by its fourth owner." *Id.*

The District Court denied Ford's motion to dismiss. Bandemer's claims presented a "typical commerce situation where a non-resident (Ford), acting outside the forum, places a product into commerce that ultimately causes harm inside the forum." *Id.* at 57a. It concluded that Ford had consented to general jurisdiction in Minnesota by registering to do business in the State. *See id.* at 56a.

2. The Minnesota Court of Appeals affirmed on the alternative ground that due process permitted the exercise of specific personal jurisdiction over Ford on Bandemer's claims. *See id.* at 46a–47a.

Minnesota applies a "five-factor test to determine whether the exercise of personal jurisdiction over a

foreign defendant satisfies federal due-process requirements." *Id.* at 41a. The first two factors—"the quantity of contacts with the forum state" and "the nature and quality of the contacts"—address purposeful availment. *Id.* The third factor—"the connection of the cause of action with the contacts"—addresses the arise-out-of-or-relate-to requirement. *Id.* The last two factors—"the interest of the state in providing a forum" and "the convenience of the parties"—"determine whether the exercise of jurisdiction is reasonable." *Id.* (internal quotation marks omitted). Ford "challenge[d] only the third factor, arguing that Bandemer's injury has no connection with Ford's contacts with Minnesota." *Id.*

The Minnesota Court of Appeals held that the third factor was met because Ford marketed its products to Minnesota residents and its marketing activities "related to" Bandemer's injury. *Id.* at 42a–44a. "Ford sent direct mail to consumers in Minnesota" and "sponsors many athletic, racing, and educational teams and events in Minnesota," such as "licens[ing] its 1966 Ford Mustang * * * as a model car for the Minnesota Vikings." *Id.* at 42a–43a & n.2. That these activities "did not specifically promote the Crown Victoria" was irrelevant because they "were designed to promote sales of Ford's vehicles to Minnesota consumers" and "Bandemer's injury was caused by a Crown Victoria sold to a Minnesota resident." *Id.* at 43a–44a.

3. The Minnesota Supreme Court affirmed in a 5-2 decision. *Id.* at 1a–36a.

a. The majority declined to adopt a "causal" standard for the "third factor" in Minnesota's specific personal jurisdiction test. *Id.* at 11a–12a. It instead

concluded that the " 'arising out of or relating to' standard" set out in this Court's precedents will be met so long as a defendant's in-forum actions merely relate—in some unspecified sense—to a plaintiff's claims. *Id.* at 13a.

The majority acknowledged that *Bristol-Myers Squibb* had held that the arise-out-of-or-relate-to requirement was *not* met where "all the conduct giving rise to the nonresidents' claims occurred elsewhere." *Id.* at 12a–13a (quoting 137 S. Ct. at 1781–82). But it nonetheless viewed that decision as consistent with its test because *Bristol-Myers Squibb* "repeated the 'arising out of or related to' standard in its opinion, which is hardly a repudiation of that standard" and was distinguishable because "there were *no* connections between the alleged injury to the out-of-state plaintiffs and the forum." *Id.* at 13a.

The majority further disagreed that this Court has "consistently applied a causal standard." *Id.* at 14a. *International Shoe Co.* v. *Washington*, 326 U.S. 310, 319 (1945) "for example, * * * described the connection standard" using the phrase " 'arise out of or are connected with.' " Pet. App. 14a. And *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 295 (1980) "emphatically described the defendants' complete lack of contacts with Oklahoma," which "would not have mattered" if a causal connection was required. Pet. App. 14a–15a.

Having ruled that due process requires no causal connection, the majority found that Bandemer's claims "relate[d] to" Ford's in-forum conduct. Ford "sold thousands of * * * Crown Victoria cars * * * to dealerships in Minnesota" and "the Crown Victoria is the very type of car that Bandemer alleges was

defective." *Id.* at 16a. Ford furthermore "collected data on how its cars performed * * * and used that data to inform improvements to its designs and to train mechanics," and Bandemer alleged "that Ford failed to detect a defect in its vehicle design." *Id.* at 17a. And Ford "directs marketing and advertisements directly to Minnesotans," and "[a] Minnesotan bought a Ford vehicle." *Id.* This, along with the location of the accident in Minnesota, the registration of the car in Minnesota, the Minnesota residence of the other defendants, and Bandemer's treatment in Minnesota, provided a sufficient connection "between the defendant Ford, the forum Minnesota, and the claims brought by Bandemer" to satisfy the requirements of due process. *Id.* at 17a–18a.

b. Justice Anderson, joined by Chief Justice Gildea, dissented. *Id.* at 21a–36a.

The dissent explained that "[t]he record is entirely insufficient to permit Minnesota to exercise specific personal jurisdiction over Ford in this litigation." *Id.* at 28a. "[A]ll of Ford's conduct that, according to Bandemer, relates to his claims"—the design of the airbag system, the assembly of the vehicle, and the sale of the vehicle—"took place more than 20 years before the accident, in states other than Minnesota." *Id.* There was "simply no relationship" between Ford's in-forum conduct and Bandemer's claims. *Id.* The majority's decision was "at a minimum, inconsistent with controlling Supreme Court jurisprudence and will likely lead other litigants and courts astray." *Id.* at 35a–36a.

The dissent further disagreed that Bandemer's claims even "related to" Ford's in-forum activities. The record showed only that Ford receives infor-

mation from dealerships nationwide that "*may* be used by Ford as it *considers future* designs." *Id.* at 27a n.3. "Nor do Ford's *current* advertising activities relate to Bandemer's claims, which plainly focus on the design, manufacturing, and sale of the *1994* Crown Victoria and its restraint system." *Id.* at 30a. The dissent stressed that there was no "link between any of Ford's generally national activities and the conduct related to the design, manufacturing, advertising, and sales of the Crown Victoria that is the focus of" Bandemer's claims. *Id.* at 29a–30a.

The dissent rejected the majority's decision as incompatible with this Court's repeated warning that courts not blur the lines between general and specific personal jurisdiction. The focus on advertisements and sales of *other* vehicles "cannot sustain the exercise of specific personal jurisdiction." *Id.* at 32a. This Court "squarely rejected a similar quantity-over-quality argument in *Bristol-Myers Squibb*," as a " 'loose and spurious form of general [personal] jurisdiction.' " *Id.* at 32a–33a (quoting 137 S. Ct. at 1781). The majority's " 'dispute-blind' " analysis had committed the oft-reversed error of " 'elid[ing] the essential difference' between specific and general jurisdiction." *Id.* at 33a–34a (quoting *BNSF Ry.*, 137 S. Ct. at 1559 n.4 and *Goodyear*, 564 U.S. at 931).

The dissent also rejected the majority's reliance on the actions of third parties other than Ford to establish specific personal jurisdiction. The "due process right belongs to the defendant." *Id.* at 35a. The majority's "reliance on the activities of persons other than Ford—the injured plaintiff, the co-defendant who was driving, and the third party who brought the car into Minnesota—is fundamentally flawed."

Id. As the dissent explained, "[i]f the actions of someone other than the individual with the protected liberty interest may expose that individual to a forum's judicial power, then individual liberty interest is at most a misnomer." *Id.* (internal quotation marks and citation omitted).

This petition follows.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW DEEPENS AN ENTRENCHED SPLIT AMONG FEDERAL COURTS OF APPEALS AND STATE COURTS OF LAST RESORT.

There is a deep conflict among federal and state courts over what connection due process requires between a plaintiff's claims and a non-resident defendant's forum contacts for a court to exercise specific personal jurisdiction. Most courts have held that a plaintiff's suit does not arise out of or relate to a defendant's forum-state contacts unless those contacts in some way caused the plaintiff's injury. By contrast, six courts—the highest courts of the District of Columbia, Minnesota, Montana, Texas, and West Virginia, as well as the U.S. Court of Appeals for the Federal Circuit—allow the exercise of specific personal jurisdiction when the plaintiff would have suffered the same injuries, and thus had the same claims, even if the defendant had never made contact with the forum. And this split persists despite this Court's recent personal-jurisdiction precedent. This Court should grant certiorari to resolve the question once and for all.

A. Courts continue to interpret the arise-out-of-or-relate-to requirement differently.

1. The confusion among federal courts of appeals and state courts of last resort as to this requirement began following its introduction and has only deepened since. The Court first stated in *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408 (1984) that specific jurisdiction requires that a plaintiff's "cause of action" "arise out of or relate to the foreign corporation's activities in the forum State." *Id.* at 414. But the Court did not address "what sort of tie between a cause of action and a defendant's contacts with a forum is necessary," or even whether these two phrases "describe different connections." *Id.* at 415 n.10.

In the over three-and-a-half decades since *Helicopteros*, this Court has reiterated this requirement but not yet answered these key questions. *See J. McIntyre Mach., Ltd.* v. *Nicastro*, 564 U.S. 873, 881 (2011) (plurality op.); *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 473 n.15 (1985); *see also Bristol-Myers Squibb*, 137 S. Ct. at 1788 n.3 (Sotomayor, J., dissenting). And it is not for lack of opportunity. The Court has twice granted certiorari to determine the required connection between a plaintiff's claims and a defendant's forum contacts, but in both cases ruled without reaching the question. *See Carnival Cruise Lines*, 499 U.S. at 589; *Bristol-Myers Squibb*, 137 S. Ct. at 1779.

"[G]iven little guidance as to how much of a nexus is required," *Michelin N. Am., Inc.* v. *De Santiago*, ___ S.W.3d ___, No. 08-17-00119-CV, 2018 WL 3654919, at *15 (Tex. Ct. App. 2018), courts have

adopted four different approaches to the arise-out-of-or-relate-to requirement.

No Causal Connection Required. The highest courts of the District of Columbia, Minnesota, Montana, Texas, and West Virginia, and the Federal Circuit have held that the required connection exists so long as there is some general relationship between a defendant's forum contacts and a plaintiff's claims. In these courts, no causation is necessary. The requirement can be met even if the plaintiff's injury would have been identical in a world where the defendant did no business in the forum.

The Minnesota Supreme Court adopted the no-causation approach below. Ford had asked it to "adopt a causal standard for this prong, under which the defendant's contacts with Minnesota must have caused the plaintiff's claims for personal jurisdiction over the defendant to be proper." Pet. App. 11a–12a (internal quotation marks and brackets omitted). The decision below, however, "decline[d] to adopt Ford's causal standard." *Id.* at 15a. Although Ford's *out-of-state* activities "*cause[d]* the claim," the court held that specific personal jurisdiction was consistent with due process because the claim "*relate[d] to*" Ford's in-state contacts. *Id.* at 15a–16a. The court believed that phrase required only a "substantial connection between the defendant Ford, the forum Minnesota, and the claims brought by Bandemer." *Id.* at 18a. And that connection existed because Ford "sold thousands of such Crown Victoria cars and hundreds of thousands of other types of cars" in Minnesota, "collected data on how its cars performed" in Minnesota, and "directs marketing and advertisements directly to Minnesotans." *Id.* at

16a–17a. Thus, although Bandemer did not allege that Ford had taken any action in Minnesota involving him or the vehicle he was riding in, the Minnesota Supreme Court found that Ford's Minnesota acts related to *other* vehicles provided the required nexus. *See id.*

The Montana and Texas Supreme Courts, the District of Columbia Court of Appeals, the West Virginia Supreme Court of Appeals, and the Federal Circuit have adopted similar tests. Just a few months ago, the Montana Supreme Court held that due process does not require a causal connection between a defendant's forum contacts and a plaintiff's claims: It is enough that the "claims relate to" the defendant's in-forum "activities." *Ford Motor Co.* v. *Montana Eighth Judicial Dist. Court*, 443 P.3d 407, 415–416 (Mont. 2019) ("*Gullett*"). The Texas Supreme Court has likewise said that its "standard does not require proof that the plaintiff would have no claim 'but for' the contacts, or that the contacts were a 'proximate cause' of the liability." *TV Azteca, S.A.B. de C.V.* v. *Ruiz*, 490 S.W.3d 29, 52–53 (Tex. 2016). The West Virginia Supreme Court has echoed the decision below, asking only whether the exercise of specific personal jurisdiction is "constitutionally fair and reasonable" and holding that the answer can be yes even if the claim did not "ar[i]se out of or result[ ] from any forum-related activities on the part of" the defendant. *State ex rel. Ford Motor Co.* v. *McGraw*, 788 S.E.2d 319, 342–343 (W. Va. 2016). The Federal Circuit considers whether the defendant's conduct "relate[s] in some material way" to the plaintiff's suit, an "interpretation of the 'arise out of or related to' language" that it acknowledges "is far more permissive than either the 'proximate cause' or the

'but for' analyses." *Avocent Huntsville Corp.* v. *Aten Int'l Co.*, 552 F.3d 1324, 1336–37 (Fed. Cir. 2008). And the D.C. Court of Appeals has rejected "strict causation-based tests" in favor of a test requiring only "a 'discernible relationship' between [the plaintiff's] claim and the" defendant's conduct. *Shoppers Food Warehouse* v. *Moreno*, 746 A.2d 320, 333, 336 (D.C. 2000) (en banc) (citation omitted).

But-For Causal Connection Required. Another set of courts, including the Fourth, Ninth, and Eleventh Circuits and the highest courts of Arizona, Massachusetts, and Washington, has held that the required connection exists only if the defendant's forum-state conduct is a but-for cause of the plaintiff's injury. These courts hold that a plaintiff cannot establish personal jurisdiction over a defendant unless he "show[s] that he would not have suffered an injury 'but for' [the defendant's] forum-related conduct." *Menken* v. *Emm*, 503 F.3d 1050, 1058 (9th Cir. 2007); *see also Waite* v. *All Acquisition Corp.*, 901 F.3d 1307, 1314 (11th Cir. 2018) ("[A] tort 'arise[s] out of or relate[s] to' the defendant's activity in a state only if the activity is a 'but-for' cause of the tort." (citation omitted)); *Consulting Eng'rs Corp.* v. *Geometric Ltd.*, 561 F.3d 273, 278–279 (4th Cir. 2009) (holding that specific jurisdiction "requires that the defendant's contacts with the forum state form the basis of the suit"); *Williams* v. *Lakeview Co.*, 13 P.3d 280, 284–285 (Ariz. 2000) (en banc) (requiring "a causal nexus between the defendant's * * * activities and the plaintiff's claims"); *Tatro* v. *Manor Care, Inc.*, 625 N.E.2d 549, 553 (Mass. 1994) (adopting "a 'but for' test"); *Shute* v. *Carnival Cruise Lines*, 783 P.2d 78, 81–82 (Wash. 1989) (en banc) ("We adopt the 'but for' test * * * .").

Courts that take this approach have explained that "[t]he 'but for' test is consistent with the basic function of the 'arising out of' requirement—it preserves the essential distinction between general and specific jurisdiction." *Shute* v. *Carnival Cruise Lines*, 897 F.2d 377, 385 (9th Cir. 1990), *rev'd on other grounds*, 499 U.S. 585 (1991). Courts applying the but-for test ask a question the decision below rejected: whether "[i]n the absence of" the defendant's forum contacts, the plaintiff's "injury would not have occurred." *Id.* at 386; *cf.* Pet. App. 15a–16a (noting that "no part of Ford's allegedly tortious conduct—designing, manufacturing, warrantying, or warning about the 1994 Crown Victoria—occurred in Minnesota" (internal quotation marks and brackets omitted)).

Stronger Causal Connection Required. Another set of courts holds that the arise-out-of-or-relate-to requirement demands something more than but-for causation, although they have not settled on a single formulation.

The First and Sixth Circuits have said that a plaintiff's injuries must be "proximately caused" by the defendant's forum-state contacts. The First Circuit has explained that "[a] 'but for' requirement * * * has in itself no limiting principle; it literally embraces every event that hindsight can logically identify in the causative chain." *Harlow* v. *Children's Hosp.*, 432 F.3d 50, 61 (1st Cir. 2005) (quoting *Nowak* v. *Tak How Invs., Ltd.*, 94 F.3d 708, 715 (1st Cir. 1996)). As a result, "due process demands something like a 'proximate cause' nexus," which "correlates to foreseeability, a significant component of the jurisdictional inquiry." *Id.* (citations omitted). The Sixth Circuit agrees that "more than mere but-for causa-

tion is required to support a finding of personal jurisdiction," particularly given that "the Supreme Court has emphasized that only consequences that *proximately* result from a party's contacts with a forum state will give rise to jurisdiction." *Beydoun* v. *Wataniya Rests. Holding, Q.S.C.*, 768 F.3d 499, 507–508 (6th Cir. 2014) (citing *Burger King Corp.*, 471 U.S. at 474).

The Third and Seventh Circuits, and the Nevada, New Hampshire, Oklahoma, and Oregon high courts have reached a similar conclusion, although they have not used the term "proximate cause." These courts agree that specific personal jurisdiction "requires a closer and more direct causal connection than that provided by the but-for test." *O'Connor* v. *Sandy Lane Hotel Co.*, 496 F.3d 312, 323 (3d Cir. 2007); *see, e.g.*, *uBID, Inc.* v. *GoDaddy Grp., Inc.*, 623 F.3d 421, 430 (7th Cir. 2010) (explaining that "[b]ut-for causation would be 'vastly overinclusive,' haling defendants into court in the forum state even if they gained nothing from those contacts").[1]

But they have declined to adopt a "mechanical" formula for describing their causation standard; rather, each has said that it conducts a "fact-sensitive" inquiry to determine whether the assertion of jurisdiction is "intimate enough to keep * * * personal jurisdiction reasonably foreseeable."

[1] The Eleventh Circuit recently stated that it applies a but-for standard. *See supra* p. 14. Earlier decisions, however, "utilized a fact-sensitive analysis consonant with the principle that foreseeability constitutes a necessary ingredient of the relatedness inquiry." *Oldfield* v. *Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1223 (11th Cir. 2009).

O'Connor, 496 F.3d at 323; *see uBID*, 623 F.3d at 430 (same); *Montgomery* v. *Airbus Helicopters, Inc.*, 414 P.3d 824, 834 (Okla. 2018) (holding that although "the harm * * * occurred in this State" that "alone, without * * * further direct and specific conduct with this State directly related to the incident giving rise to the injuries, is insufficient for asserting specific personal jurisdiction"); *Petition of Reddam*, 180 A.3d 683, 691 (N.H. 2018) (describing the requirement as "a flexible, relaxed standard" under which "the defendant's in-state conduct must form an important, or at least material, element of proof in the plaintiff's case" (internal quotation marks omitted)); *Tricarichi* v. *Cooperative Rabobank, U.A.*, 440 P.3d 645, 652 (Nev. 2019) ("[T]he claims must have a specific and direct relationship or be intimately related to the forum contacts." (internal quotation marks omitted)); *Robinson* v. *Harley-Davidson Motor Co.*, 316 P.3d 287, 300 (Or. 2013) (en banc) ("[T]he activity may not be only a but-for cause of the litigation; rather, the nature and quality of the activity must also be such that the litigation is reasonably foreseeable by the defendant."). In all of these courts, specific jurisdiction still remains inappropriate if "the plaintiff would not have been injured" in the absence of "contacts between the defendant and the forum state." *Nowak*, 94 F.3d at 712.

Unspecified Causal Connection Required. The Second, Eighth, and Tenth Circuits, and the Supreme Court of Alabama, recognize that due process requires at least *some* causal connection between a plaintiff's claims and a defendant's forum contacts. But they have not settled on a precise test. The Eighth Circuit requires some causal connection but has "not restricted the relationship between a de-

fendant's contacts and the cause of action to a proximate cause standard." *Myers* v. *Casino Queen, Inc.*, 689 F.3d 904, 912–913 (8th Cir. 2012). It has instead "emphasized the need to consider the totality of the circumstances" in a manner "consistent with * * * a flexible approach when construing the 'relate to' aspect of the Supreme Court's standard." *Id.* (internal quotation marks omitted); *see also Hinrichs* v. *General Motors of Canada, Ltd.*, 222 So. 3d 1114, 1140 (Ala. 2016) (per curiam) (holding that this Court's precedents establish "the requirement that the claim against the defendant have a suit-related nexus with the forum state before specific jurisdiction can attach"). The Tenth Circuit has declined to "pick sides" between the "but-for and proximate causation tests." *Dudnikov* v. *Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1079 (10th Cir. 2008) (Gorsuch, J.). And the Second Circuit has, after first setting out the but-for and proximate-causation approaches, stated that its standard "depends on the relationship among the defendant, the forum, and the litigation." *SPV Osus Ltd.* v. *UBS AG*, 882 F.3d 333, 344 (2d Cir. 2018) (internal quotation marks omitted).[2]

2. This four-headed split persists—and indeed has deepened—even after this Court's most recent per-

[2] The Fifth Circuit has not formally addressed the causation question, but it has in practice required a causal connection between a plaintiff's claims and a defendant's forum contacts. *See Carmona* v. *Leo Ship Mgmt., Inc.*, 924 F.3d 190, 198 (5th Cir. 2019); *Prejean* v. *Sonatrach, Inc.*, 652 F.2d 1260, 1269–70 (5th Cir. 1981); *see also Tamburo* v. *Dworkin*, 601 F.3d 693, 708 (7th Cir. 2010) (describing the Fifth Circuit as applying a but-for test).

sonal-jurisdiction decision in *Bristol-Myers Squibb*. *Bristol-Myers Squibb* did not explain "exactly how a defendant's activities must be tied to the forum for a court to properly exercise specific personal jurisdiction over a defendant." *SPV Osus*, 882 F.3d at 344; *see also Waite*, 901 F.3d at 1315 (explaining that *Bristol-Myers Squibb* "imposed no explicit but-for causation requirement" but "neither did [it] reject such a requirement, nor is [the] opinion inconsistent with one"); *Triple Up Ltd.* v. *Youku Tudou Inc.*, 235 F. Supp. 3d 15, 26 (D.D.C. 2017) ("The Supreme Court has yet to pass on this issue.").

Absent guidance from this Court, the split will continue to persist. On the one side, the Minnesota Supreme Court in the decision below and the Montana Supreme Court have adopted a no-causation standard just this year. *See supra* p. 13. On the other, courts have adhered to their causal approaches following *Bristol-Myers Squibb*. *See, e.g.*, *Exxon Mobil Corp.* v. *Attorney Gen.*, 94 N.E.3d 786, 797 (Mass. 2018) (applying *Tatro*); *Estate of Thompson ex rel. Thompson* v. *Phillips*, 741 F. App'x 94, 98–99 (3d Cir. 2018) (applying *O'Connor*); *Waite*, 901 F.3d at 1315 (continuing "to apply the but-for causation requirement from" its previous cases); *Morrill* v. *Scott Fin. Corp.*, 873 F.3d 1136, 1151 (9th Cir. 2017) (applying *Menken*). The split remains intractable and requires this Court's intervention to resolve.

B. These different approaches lead to different results in identical product-liability cases.

This split has led courts to reach different outcomes in cases materially indistinguishable from this one: a product-liability suit in which a plaintiff seeks

to recover for an injury from a product that the defendant did not design, manufacture, or sell within the forum. Under the decision below, a defendant will be subject to personal jurisdiction in any forum in which it advertises or sells the allegedly defective product, or a similar one, even if nothing the defendant did in the forum involved the particular product that allegedly injured the plaintiff. *See* Pet. App. 15a–17a. But all other causal-standard courts to address the issue have held that specific personal jurisdiction is lacking on these facts. *See, e.g.*, *D'Jamoos ex rel. Estate of Weingeroff* v. *Pilatus Aircraft Ltd.*, 566 F.3d 94, 106 (3d Cir. 2009); *Kuenzle* v. *HTM Sport-Und Freizeitgeräte AG*, 102 F.3d 453, 455 (10th Cir. 1996); *see also Airbus Helicopters*, 414 P.3d at 833–834; *Hinrichs*, 222 So. 3d at 1157. As this shows, Bandemer's claims would have been dismissed by any court that requires some causal link to satisfy the arising-out-of requirement. "[A]ll of Ford's conduct that, according to Bandemer, relates to his claims took place more than 20 years before the accident, in states other than Minnesota." Pet. App. 28a (Anderson, J., dissenting). This reality underscores the need for this Court's review: It is the disagreement over the standard—not different facts—that is leading to different outcomes in the lower courts.

The split is especially problematic because the relevant federal circuits in several no-causation States apply a different test for the arise-out-of-or-relate-to requirement. The Minnesota Supreme Court below adopted a no-causal-connection standard, but the Eighth Circuit has adopted an approach consistent with courts that "emphasize the importance of proximate causation, but * * * allow a slight loosening of

that standard when circumstances dictate." *Myers*, 689 F.3d at 912–913 (internal quotation marks omitted); *accord Downing* v. *Goldman Phipps, PLLC*, 764 F.3d 906, 913 (8th Cir. 2014). Applying this standard, courts within the Eighth Circuit have dismissed claims similar to Bandemer's for lack of personal jurisdiction. *See, e.g.*, *Fullerton* v. *Smith & Nephew, Inc.*, No. 1-18CV245 RLW, 2019 WL 2028712, at *4 (E.D. Mo. May 8, 2019) ("Simply stating that a company marketed, promoted, and sold a product in Missouri does not establish specific jurisdiction."); *Goellner-Grant* v. *JLG Indus., Inc.*, No. 4-18CV342, 2018 WL 3036453, at *2 (E.D. Mo. June 19, 2018) ("The presence of a distribution network in Missouri for JLG lifts unrelated to the lift at issue in this litigation is not relevant to this Court's specific jurisdiction inquiry."). The same conflict exists between Montana federal and state courts. *Compare Gullett*, 443 P.3d at 415 (permitting specific personal jurisdiction because the claims "relate[d] to" the defendant's in-state conduct even though its "out-of-state conduct—placing the product into the stream of commerce—technically led to the plaintiff's in-state use of the product and resulting claim"), *with Menken*, 503 F.3d at 1058 ("[T]he Ninth Circuit follows the 'but for' test." (citation omitted)).[3]

These different approaches give plaintiffs every reason to bring suit in the courthouse they believe

[3] The same appears to be true for Texas state and federal courts. *Compare TV Azteca*, 490 S.W.3d at 52–53 (no causal connection required), *with Prejean*, 652 F.2d at 1270 ("[T]hese activities have not been shown to have the slightest causal relationship with the decedent's wrongful death.").

will be more receptive to their claims. That is particularly easy to do in products-liability suits like this one; a plaintiff's attorney will usually have no trouble finding an in-forum defendant who has had some contact with the product and whose joinder will destroy complete diversity. *See* Pet App. 3a (noting that Bandemer named the driver and driver's father as defendants). This potential for "[f]orum shopping" is "a substantial reason for granting certiorari." *Yee* v. *City of Escondido*, 503 U.S. 519, 538 (1992). The Court should do so here.

II. THE DECISION BELOW WAS WRONG.

The Minnesota Supreme Court sided with a growing number of courts that allow the exercise of specific personal jurisdiction—that is, "case-linked" personal jurisdiction, *Bristol-Myers Squibb*, 137 S. Ct. at 1780, 1785—even where the defendant's forum contacts have no link to the plaintiff's case. This Court has never endorsed that result, and the decision below demonstrates that courts are straying further from this Court's precedents. The Court's review is urgently needed.

1. A state court's exercise of specific personal jurisdiction does not comply with the Due Process Clause unless "the defendant's *suit-related conduct* * * * create[s] a substantial connection with the forum State." *Walden*, 571 U.S. at 284 (emphasis added). The Court has adhered to this requirement from the beginning. *International Shoe* found specific jurisdiction proper where there was a causal connection: "The obligation which [was] sued upon arose out of th[e] [defendant's] very activities" in the State. 326 U.S. at 320. *McGee* v. *International Life Insurance Co.*, 355 U.S. 220 (1957) did the same: "[T]he suit

was based on a contract which had substantial connection with that State." *Id.* at 223; *accord Burger King Corp.*, 471 U.S. at 479 ("[T]his franchise dispute grew directly out of a contract which had a substantial connection with that State." (internal quotation marks and emphasis omitted)). And so did the other decisions in which this Court has approved of specific personal jurisdiction. *See, e.g.*, *Calder* v. *Jones*, 465 U.S. 783, 790 (1984) ("[P]etitioners are primary participants in an alleged wrongdoing intentionally directed at a California resident * * * ."); *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 776 (1984) (referring to "in-state libel"). And the Court has hewed to this view when disapproving of the exercise of specific personal jurisdiction, as well. *See, e.g.*, *Bristol-Myers Squibb*, 137 S. Ct. at 1781 ("[W]hat is missing * * * is a connection between the forum and *the specific claims at issue*." (emphasis added)); *BNSF Ry.*, 137 S. Ct. at 1559 ("[I]n-state business * * * does not suffice to permit the assertion of general jurisdiction over claims * * * that are unrelated to any activity occurring in Montana."); *Walden*, 571 U.S. at 291 ("Petitioner's relevant conduct occurred entirely in Georgia * * * .").

A contrary approach—like the Minnesota Supreme Court's below—"elide[s] the essential difference between case-specific and all-purpose (general) jurisdiction." *Goodyear*, 564 U.S. at 927. General personal jurisdiction permits courts to hear "causes of action arising from dealings entirely distinct from [a defendant's in-forum] activities," where the defendant is "at home." *Daimler AG* v. *Bauman*, 571 U.S. 117, 127 (2014) (internal quotation marks omitted). "Specific jurisdiction," by contrast, "depends on an * * * activity or an occurrence that takes

place in the forum State and is therefore subject to the State's regulation" and "is confined to adjudication of issues deriving from, or connected with, *the very controversy that establishes jurisdiction*." *Goodyear*, 564 U.S. at 919 (emphasis added and internal quotation marks omitted). Without some causal connection between a plaintiff's claims and the defendant's forum contacts, a defendant may be haled into court based not on the "activity g[iving] rise to the episode-in-suit," *id.* at 923, but based on "a defendant's unconnected activities in the [forum]." *Bristol-Myers Squibb*, 137 S. Ct. at 1781. That is exactly the kind of "loose and spurious form of general jurisdiction" that this Court has rejected. *Id.*

2. The decision below flouts these rules. It allows a court to exercise specific personal jurisdiction based on a defendant's *general* contacts with a forum, unconnected to the plaintiff's suit. The Minnesota Supreme Court held that so long as Ford sold "Crown Victoria cars and * * * other types of cars to dealerships in Minnesota," "collected data on how its cars performed through Ford dealerships," and "direct[ed] marketing and advertisements directly to Minnesotans," it may be sued in Minnesota on any claim that involves a Ford vehicle, even if—as here—Ford took no action in Minnesota involving the subject vehicle or its owner. Pet. App. 16a–17a. This Court has rejected that logic before, holding in *Bristol-Myers Squibb* that "the mere fact that *other* plaintiffs were prescribed, obtained, and ingested" the allegedly defective drug in the forum State—and allegedly sustained the same injuries the nonresidents did—"does not allow the State to assert specific jurisdiction over the nonresidents' claims." 137 S. Ct. at 1781. The Court should reject that logic again here.

That *other* Minnesotans bought Ford vehicles in Minnesota and might be permitted to bring *other* product-defect claims against Ford in Minnesota does not mean that *these* claims can be brought against Ford in Minnesota. *See* Pet. App. at 32a–33a ("The number of other vehicles that Ford sold in Minnesota is irrelevant for another reason: the Supreme Court squarely rejected a similar quantity-over-quality argument in *Bristol-Myers Squibb*." (Anderson, J., dissenting)). That is the essence of specific jurisdiction, and what distinguishes it from notions of general jurisdiction.

3. The justifications the Minnesota Supreme Court offered for its result cannot be squared with this Court's precedents.

First, the Minnesota Supreme Court brushed aside *Bristol-Myers Squibb* because the decision applied "settled principles." Pet. App. 13a (quoting 137 S. Ct. at 1781). In doing so, it ignored the lesson to be learned from how this Court has applied those principles: It has never approved of specific personal jurisdiction without a causal connection between the defendant's forum contacts and the plaintiff's claim. The repeated quotations of the "relate to" language in this Court's cases do not save the decision below, for the same reason. The actual holdings, and outcomes, in this Court's opinions provide no reason to think that "arise out of" and "relate to" mean different things. *See Helicopteros*, 466 U.S. at 415 n.10 ("declin[ing] to reach * * * whether the terms 'arising out of' and 'related to' describe different connections between a cause of action and a defendant's contacts with a forum"); *TMW Enters., Inc.* v. *Federal Ins. Co.*, 619 F.3d 574, 578 (6th Cir. 2010) (Sutton, J.) (Courts

"frequently say two (or more) things when one will do or say two things as a way of emphasizing one point.").

The decision below also distinguished *Bristol-Myers Squibb* because Bandemer, unlike the non-resident plaintiffs in *Bristol-Myers Squibb*, was injured in the forum. Pet. App. 13a–14a. But *Bristol-Myers Squibb* mentioned the location of the non-residents' injuries to show that case for specific personal jurisdiction was "even weaker" than in *Walden*. *Walden* still "illustrate[d]" the requirement that there be a connection between the defendant's in-state actions and the plaintiff's claims. *Bristol-Myers Squibb*, 137 S. Ct. at 1781. There was no specific jurisdiction over the *Walden* defendant even though the plaintiffs "suffered foreseeable harm" in the forum because the defendant's "relevant conduct occurred entirely" out-of-State. *Id.* at 1781–82 (emphasis omitted) (quoting *Walden*, 571 U.S. at 289, 291). *Bristol-Myers Squibb* then explained that the non-resident plaintiffs' claims in *Bristol-Myers Squibb* were "even weaker" because they were "not California residents and do not claim to have suffered harm in that State." *Id.* at 1782. The Court's statement that the *Bristol-Myers Squibb* plaintiffs had an "even weaker" claim to having satisfied the connection requirement than the *Walden* plaintiffs does not change the Court's holding that the *Walden* plaintiffs' claims *also* did not have a sufficient connection to make specific jurisdiction proper. *See id.* at 1781–82. Here, as in *Walden*, all of Ford's "relevant conduct occurred entirely" outside of Minnesota. 571 U.S. at 291; *see also* Pet. App. 15a–16a (conceding that Ford's "contacts * * * that *cause[d]* the claim" occurred outside Minnesota).

That makes specific jurisdiction over Ford on the claims improper.

Second, the Minnesota Supreme Court claimed that if it adopted a causation standard, it would "read[] out of the *World-Wide Volkswagen* decision everything the majority wrote about the defendant's lack of contacts with Oklahoma." Pet. App. 15a. Not so. *World-Wide Volkswagen* dealt with the distinct requirement that a defendant "purposefully avail[] itself of the privilege of conducting activities within the forum." 444 U.S. at 297 (internal quotation marks omitted); *see id.* at 295 (Defendants "avail themselves of none of the privileges and benefits of Oklahoma law."). The Minnesota Supreme Court elsewhere indicated that it fully understood *World-Wide Volkswagen*'s scope. It invoked the case—correctly—when setting out the purposeful availment requirement. Pet. App. 7a–8a. *World-Wide Volkswagen* simply did not address the arising-out-of-requirement, meaning nothing in the decision indicates that this Court believed the *only* obstacle to specific personal jurisdiction there was the lack of purposeful availment. It thus cannot support the Minnesota Supreme Court's interpretation of the requirement below.

At bottom, the Minnesota Supreme Court's decision appears to rest on its belief that the Minnesota courts *should* be open to Bandemer's claim. The decision below repeatedly emphasizes the number of Minnesotans involved in the accident, including the other vehicle—"a Minnesota county snow plow"—the first responders—"Minnesota county law enforcement"—and so on—"Minnesota doctors." *See, e.g.*, Pet. App. 3a, 9a–10a, 16a–18a. Yet, as the dissent

explained, none of this speaks to the "arise out of or relate to" requirement. "Whatever other requirement these facts meet, they do not establish that Ford's Minnesota contacts relate to Bandemer's litigation." *Id.* at 34a (Anderson, J. dissenting). The actions of a third-party—especially of third parties with *no* connection to Ford—cannot satisfy this requirement. *See Walden*, 571 U.S. at 284 ("We have consistently rejected attempts to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State."). "Due process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties." *Id.* The Minnesota Supreme Court's focus on fairness ignored these key principles. "If the actions of someone other than the individual with the protected liberty interest may expose that individual to a forum's judicial power, then individual liberty interest is at most a misnomer." Pet. App. 35a (Anderson, J. dissenting) (internal quotation marks and citation omitted).

4. The problems with the Minnesota Supreme Court's decision go beyond doctrine. When it comes to jurisdictional principles like personal jurisdiction, "courts benefit from straightforward rules under which they can readily assure themselves of their power to hear a case." *Hertz Corp.* v. *Friend*, 559 U.S. 77, 94 (2010). By contrast, "[c]omplex jurisdictional tests complicate a case, eating up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims." *Id.* A causal test has the redeeming quality of being "simple to apply." *Id.* at 95. Courts

and counsel routinely apply causation requirements in other contexts, and can readily transfer them to this one. A non-causal standard, by contrast, is formless, asking whether a defendant's undifferentiated sets of contacts with the forum satisfy some judge's notion of whether a defendant's forum contacts—which, it is not clear—are "sufficiently related to the claims"—how, it is not clear. Pet. App. 11a (internal quotation marks omitted). And if a trial judge's notion of whether that relationship exists differs from an appellate panel's, a case will be forced to start over in some other State after final judgment. That is to no one's benefit.

III. THE PETITION SQUARELY PRESENTS THIS IMPORTANT QUESTION.

The proper construction of the arise-out-of-or-relate-to requirement is unquestionably important, as the Court has twice recognized in granting certiorari to resolve it. *See supra* p. 3. Moreover, the two most-recent state high courts to address the requirement have concluded that this requirement can be met even where the defendant's forum contacts had no effect on a plaintiff's claims. *See* Pet. App. 15a–17a; *Gullett*, 443 P.3d at 415.[4] This case offers this Court the ideal vehicle to bring uniformity to courts' approaches.

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[4] Ford is simultaneously filing a substantively similar petition for certiorari seeking review of the Montana Supreme Court's decision in *Gullett*. *See* Petition for Writ of Certiorari, *Ford Motor Co.* v. *Montana Eighth Judicial Dist. Court*, No. 19-__ (filed Sept. 18, 2019).

1. As this Court's decisions have cabined general personal jurisdiction to its proper role, the question of when specific personal jurisdiction can be exercised has come to the forefront. *See Daimler*, 571 U.S. at 128 ("[S]pecific jurisdiction will * * * form a considerably more significant part of the scene." (internal quotation marks omitted)). And the arise-out-of-or-relate-to requirement is what separates specific from general personal jurisdiction. *See Helicopteros*, 466 U.S. at 414 & n.8. Yet just at the moment it has become *more* important to understand specific personal jurisdiction—and thus to understand this requirement—the lower courts have diverged even further. The time has come for this Court to answer the questions it first posed in *Helicopteros* 35 years ago.

The arising-out-of-or-related-to question is particularly important in products-liability suits. The question frequently arises in cases involving companies, like Ford, that manufacture vehicles.[5] This same issue also arises in suits against companies that manufacturer helicopters and helicopter parts,[6]

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[5] *See, e.g.*, *Gaillet* v. *Ford Motor Co.*, No. 16-13789, 2017 WL 1684639, at *3–4 (E.D. Mich. May 3, 2017); *Pitts* v. *Ford Motor Co.*, 127 F. Supp. 3d 676, 685–686 (S.D. Miss. 2015); *see also Robinson*, 316 P.3d at 294 (motorcycles); *Moore* v. *Club Car, LLC*, No. 4:16-CV-00581-RBH, 2017 WL 930173, at *6 (D.S.C. Mar. 9, 2017) (golf carts).

[6] *See, e.g.*, *Helicopter Transp. Servs., LLC* v. *Sikorsky Aircraft Corp.*, 253 F. Supp. 3d 1115, 1131–32 (D. Or. 2017); *Marks* v. *Westwind Helicopters, Inc.*, No. 6:15-1735, 2016 WL 5724300, at *8 (W.D. La. Jan. 20, 2016); *Airbus Helicopters*, 414 P.3d at 833–834.

tires,[7] and other mobile products.[8] Because these products—particularly vehicles—are often moved or resold across state lines, the question of where a defendant can be sued on claims arising from the product's manufacture or design is important and recurring.

Under the decision below, defendants who make products like these—or any other movable product—will be subject to personal jurisdiction anywhere they do business, so long as their forum contacts relate to a plaintiff's claim in some unspecified way that a court deems to be a "a substantial connection." Pet. App. 18a. That result is unacceptable. Due-process limits are supposed to "give[] a degree of predictability" so that "potential defendants" can "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). Yet under the no-causation rule adopted in the decision below, Ford could not have altered its relevant conduct—its allegedly tortious acts related to the 1994 Crown Victoria—to avoid suit in Minnesota. Ford instead

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[7] *See, e.g.*, *Marin* v. *Michelin N. Am., Inc.*, No. SA-16-CA-0497-FB, 2017 WL 5505323, at *8–11 (W.D. Tex. Sept. 26, 2017); *Denman Tire Corp.* v. *Compania Hulera Tornel, S.A. de C.V.*, No. DR-12-CV-027-AM/VRG, 2014 WL 12564118, at *10 (W.D. Tex. Mar. 31, 2014); *Rodriguez* v. *Fullerton Tires Corp.*, 937 F. Supp. 122, 128 (D.P.R. 1996), *aff'd*, 115 F.3d 81 (1st Cir. 1997).

[8] *See, e.g.*, *Whitley* v. *Linde Heavy Truck Div. Ltd.*, No. 16-10005-JGD, 2018 WL 2465360, at *6 (D. Mass. June 1, 2018) (forklifts); *Dierig* v. *Lees Leisure Indus., Ltd.*, No. 11-125-DLB-JGW, 2012 WL 669968, at *9, *14 (E.D. Ky. Feb. 28, 2012) (pull-tent trailer).

could only stop doing business, or at least some uncertain portion of its business, in Minnesota. So long as Ford conducts some automobile-related business in Minnesota, under the decision below, it will be subject to suit by any person injured in Minnesota by one of its vehicles. This result may be foreseeable, but it gives the defendant no control over where it will be subject to suit for a given set of conduct. And that control is what matters for due-process purposes. *See id.*

2. This case is an ideal vehicle for this Court to resolve this important, recurring question. The only contested issue is one of law. There are no disputed material facts because the personal-jurisdiction question was decided at the motion-to-dismiss stage. *See Juelich* v. *Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 570 (Minn. 2004) ("At the pretrial stage * * * the plaintiff's allegations and supporting evidence are to be taken as true."). Bandemer does not dispute that the Crown Victoria he was riding in "was designed in Michigan; assembled in 1993 in Ontario, Canada; and sold in Bismarck, North Dakota in 1994." Pet. App. 25a (Anderson, J., dissenting). It was not manufactured, designed, or sold by Ford in Minnesota.

The question of what connection due process requires between a plaintiff's claim and the defendant's forum contacts is also outcome-determinative here. All agree that Ford is not subject to general personal jurisdiction in Minnesota. *See id.* at 8a n.2. And Ford did not dispute that it had purposefully availed itself of the privilege of doing business in Minnesota

or that jurisdiction was constitutionally reasonable under the circumstances. *See id.* at 9a, 19a.[9] Not only that, but this case arises on typical, and straight-forward, facts—a single-vehicle, one-plaintiff, one-manufacturer-defendant tort suit. It thus involves none of the procedural quirks that could muddy review. *See, e.g.*, *Bristol-Myers Squibb*, 137 S. Ct. at 1777–78, 1783 (mass action); *Exxon Mobil Corp.*, 94 N.E.3d at 790, *cert. denied sub nom.*, *Exxon Mobil Corp.* v. *Healey*, 139 S. Ct. 794 (2019) (mem.) (civil investigative demand). By taking this case, this Court can resolve not just the causation question, but can do so on the most-common facts that lower courts face. It should do so.

[9] The consent-by-registration issue addressed by the district court below (Pet. App. 53a–56a) is no barrier to this Court's review. This Court has previously granted certiorari to review an important personal-jurisdiction question despite the presence of the same consent issue. *See BNSF Ry.*, 137 S. Ct. at 1555. The Minnesota Supreme Court and Court of Appeals did not address the issue. *See* Pet. App. 4a–5a n.1; *id.* at 46a n.3. This Court can address the specific personal jurisdiction question and allow the Minnesota courts to address the consent issue in the first instance, as it has before. *See BNSF Ry.*, 137 S. Ct. at 1559 ("The Montana Supreme Court did not address this contention, so we do not reach it." (internal citation omitted)).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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