No. 19-369

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner Ford Motor Company is subject to specific personal jurisdiction in Minnesota when one of its cars injures a Minnesota resident in Minnesota, where Ford has deliberately targeted the Minnesota market and sold hundreds of thousands of cars in Minnesota, but where the particular car causing the injury was originally sold in a neighboring state.

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STATEMENT OF THE CASE

This is a products-liability suit brought by a Minnesota resident who was seriously injured on a Minnesota road when the passenger-side airbag of a 1994 Ford Crown Victoria failed to deploy during a car accident.

1. Petitioner Ford Motor Company is a global automaker that markets, sells, and services "a full line of cars, trucks, and SUVs" in all fifty states, including Minnesota. Pet. 4. Ford has sold hundreds of thousands of cars through its affiliated dealerships in Minnesota. Pet. App. 4a. Many of those cars were Crown Victoria sedans, including more than 2,000 from model year 1994 alone. *Id.*

Ford deliberately targets Minnesota as a market for new and used cars through a variety of activities in the state. These include television, print, and online advertisements, sponsorships of Minnesota sports teams and athletic events, and "direct mail advertisements to Minnesotans." Pet. App. 4a. Those marketing efforts promote Ford's brand and the features of its cars, including their safety. *Id.* 17a, 44a. "Ford also collects data from its dealerships in Minnesota for use in redesigns and repairs." *Id.* 4a.

2. In 2015, respondent Adam Bandemer—a Minnesota resident—was riding in a 1994 Crown Victoria in Minnesota when he "suffered a severe brain injury as a result of the passenger-side airbag not deploying" during an accident. Pet. App. 3a. The accident occurred when the driver, also a Minnesota resident, crashed into a snowplow. *Id.*

The Crown Victoria was registered in Minnesota and had been purchased secondhand in the state. Pet.

App. 25a. It turned out, however, that the car was originally sold by Ford in neighboring North Dakota. *Id.*

3. Following the accident, Mr. Bandemer sued Ford, the driver, and the car's owner in Minnesota state court. Pet. App. 3a. He asserted products-liability, negligence, and breach-of-warranty claims against Ford, as well as negligence claims against the driver and owner. *Id.* Ford moved to dismiss for lack of personal jurisdiction. *Id.*

a. This Court has held that a state's exercise of personal jurisdiction comports with due process if the defendant has "certain minimum contacts" with the state "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017) (citation omitted). In a state where the defendant "is fairly regarded as at home," those requirements are always satisfied and the defendant is subject to general jurisdiction—that is, it can be sued on any claim. *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1780 (2017) (citation omitted). Specific jurisdiction, in contrast, requires "an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State." *Id.* (brackets and citation omitted).

In a specific-jurisdiction case, the minimum-contacts inquiry focuses on "the relationship among the defendant, the forum, and the litigation." *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (citation omitted). In *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), this Court stated that a defendant has sufficient minimum contacts for specific jurisdiction if it "has 'purposefully directed' [its] activities at residents of the forum" and "the litigation results from alleged

injuries that 'arise out of or relate to' those activities." *Id.* at 472. If those minimum contacts exist, a court must also determine that the exercise of personal jurisdiction is reasonable. *Id.* at 476-77.

b. In this case, "Ford did not dispute that it had purposefully availed itself of the privilege of doing business in Minnesota or that jurisdiction was constitutionally reasonable." Pet. 32-33; *see* Pet. App. 3a. Instead, Ford argued only that Mr. Bandemer's claims did not arise out of or relate to Ford's extensive contacts with the state "because the Ford car involved in the accident was not designed, manufactured, or originally sold in Minnesota." Pet. App. 3a-4a.

The trial court denied Ford's motion. Pet. App. 48a-58a. The court held that personal jurisdiction was proper because Ford had consented to jurisdiction under Minnesota law by registering an agent for service of process. *Id.* 52a-56a.

4. The Minnesota Court of Appeals affirmed on alternative grounds, finding that Ford's contacts with Minnesota were sufficient to support the exercise of specific personal jurisdiction. Pet. App. 37a-47a.

5. The Minnesota Supreme Court affirmed in a 5-2 decision. Pet. App. 1a-36a.

a. The court first explained that, although Ford did not "contest the quality or quantity of its contacts with Minnesota," a review of those contacts was necessary to assess "'the relationship among the defendant, the forum, and the litigation.'" Pet. App. 9a (quoting *Walden*, 571 U.S. at 284). The court then described Ford's extensive sales, marketing, and data-collection efforts in Minnesota, concluding that those contacts "establish that Ford has purposely availed

itself of the privileges, benefits, and protections of the state of Minnesota." *Id.* 10a.[1]

b. The court then turned to "the connection of the cause of action to Ford's contacts." Pet. App. 11a. The court rejected Ford's proposed causal standard, under which "the defendant's contacts with Minnesota must have caused the plaintiff's claims." *Id.* 11a-12a (brackets and internal quotation marks omitted). The court explained that this Court has consistently instructed that specific personal jurisdiction is proper if the plaintiff's claim either "arise[s] out of" or "relate[s] to" the defendant's contacts with the forum. *Id.* 13a (citing *Bristol-Myers*, 137 S. Ct. at 1780). The court agreed with Mr. Bandemer that Ford's standard would eliminate the "relat[es] to" component of that inquiry and thereby represent a "'radical' shift in specific personal jurisdiction law." *Id.* 12a.

The court then held that Mr. Bandemer's claims were sufficiently related to Ford's Minnesota contacts. It emphasized that this is not a case where a 1994 Crown Victoria "fortuitously ended up in Minnesota." Pet. App. 16a. Instead, "Ford has sold thousands of such Crown Victoria cars and hundreds of thousands of other types of cars to dealerships in Minnesota." *Id.* The court highlighted that "Ford directs marketing and advertisements directly to Minnesotans, with the hope that they will purchase and drive more Ford vehicles," and that in this case a "Minnesotan bought a Ford vehicle, and it is alleged that the vehicle did not

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[1] The Minnesota Supreme Court analyzes specific personal jurisdiction using five factors, which correspond to the purposeful-availment, relatedness, and reasonableness inquiries described in *Burger King*. Pet. App. 6a-7a.

live up to Ford's safety claims." *Id.* 17a. The court also emphasized that Ford "collected data on how its cars performed through Ford dealerships in Minnesota and used that data to inform improvements to its designs." *Id.* Because "[p]art of Bandemer's claim is that Ford failed to detect a defect in its vehicle design," the court concluded that "[t]hose activities, and the failure to detect, likewise relate to the claims here." *Id.*

The court added that even "[b]eyond Ford's sales, marketing, and research contacts with Minnesota," there was a further "'affiliation between the forum and the underlying controversy.'" Pet. App. 17a (quoting *Bristol-Myers*, 137 S. Ct. at 1781). "[T]he car crash and the injury to the plaintiff occurred in Minnesota," "the car was registered in Minnesota," and "the plaintiff and the driving defendant are Minnesota residents." *Id.* The court emphasized that those connections distinguish this case from *Bristol-Myers*, which involved "non-forum residents who did not allege that any relevant facts relating to their claim occurred in the forum." *Id.* (citing *Bristol-Myers*, 137 S. Ct. at 1782).

c. Finally, the court held that the exercise of jurisdiction was constitutionally reasonable—as Ford had conceded. Pet. App. 19a. Among other things, the court explained that Minnesota has a "strong interest" in adjudicating a suit that arose from an accident "on a Minnesota road" and involved "a Minnesota resident as plaintiff and both Ford—a corporation that does business regularly in Minnesota—and two Minnesota residents as defendants." *Id.*

d. Justice Anderson dissented, explaining that he would have held that Mr. Bandemer's claims were not sufficiently related to Ford's contacts with Minnesota. Pet. App. 21a-36a.

REASONS FOR DENYING THE WRIT

Ford asserts that even when one of its cars injures a resident in a state that it has deliberately targeted as a market, it cannot be sued in that state's courts if it happens that the particular car causing the injury was first sold in a neighboring state. Only a handful of state supreme courts have considered that argument, and they have uniformly rejected it. Ford cites no decision by any federal court of appeals or state high court finding a lack of personal jurisdiction on facts like these.

Unable to muster a genuine conflict, Ford tries to divert attention to what it portrays as a more general disagreement about the "arise out of or relate to" inquiry. But Ford exaggerates the extent of that disagreement, and this Court has recently and repeatedly denied petitions asserting similar conflicts and relying on many of the same cases.[2]

The Court should do the same here. This case does not even implicate the purported broader conflict, because courts on all sides of Ford's "four-headed split" (Pet. 18) have upheld the exercise of jurisdiction in cases like this. In addition, Ford's litigation strategy and other features of this case would make it a poor

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[2] *See, e.g.*, *Waite v. Union Carbide Corp.*, 139 S. Ct. 1384 (2019) (No. 18-998); *Exxon Mobil Corp. v. Healey*, 139 S. Ct. 794 (2019) (No. 18-311); *Aker Biomarine Antarctic AS v. Huynh*, 139 S. Ct. 64 (2018) (No. 17-1411); *GlaxoSmithKline LLC v. M.M.*, 138 S. Ct. 64 (2017) (No. 16-1171); *Hinrichs v. Gen. Motors of Can., Ltd.*, 137 S. Ct. 2291 (2017) (No. 16-789); *TV Azteca, S.A.B. de C.V. v. Ruiz*, 137 S. Ct. 2290 (2017) (No. 16-481); *MoneyMutual LLC v. Rilley*, 137 S. Ct. 1331 (2017) (No. 16-705); *AEP Energy Servs. v. Heartland Reg'l Med. Ctr.*, 135 S. Ct. 2048 (2015) (No. 14-1); *SNFA v. Russell*, 134 S. Ct. 295 (2013) (No. 13-104).

vehicle for considering the issues Ford seeks to raise. And on the merits, Ford's position finds no support in precedent, history, or the principles animating this Court's personal jurisdiction doctrine.

I. The Minnesota Supreme Court's decision does not conflict with any decision by another state high court or federal court of appeals.

Ford asserts that the Minnesota Supreme Court's decision conflicts with decisions of courts of appeals and other state high courts in "identical product-liability cases." Pet. 19-20. According to Ford, that conflict implicates a broader disagreement on the meaning of the relatedness inquiry. Pet. 11-19. Ford is wrong on both counts—and it overstates the broader disagreement in any event.

A. Ford cannot show that any state high court or federal court of appeals would decide this case differently.

The Minnesota Supreme Court held that Ford is subject to specific personal jurisdiction here because: (1) Ford deliberately targeted the Minnesota market; (2) Ford sold tens of thousands of cars in Minnesota—including thousands of the specific model at issue here; and (3) a Ford car injured a Minnesota resident in Minnesota. Pet. App. 9a-10a, 15a-18a. Based on those circumstances, the court held that Mr. Bandemer's claim was sufficiently related to Ford's contacts with the state even though the specific car that injured him was originally sold in North Dakota. No state high court or federal court of appeals has rejected the exercise of jurisdiction in a case with similar facts.

1. For many decades, it was uncontroversial that a company in Ford's position was subject to personal

jurisdiction. For example, in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), neither Audi nor Volkswagen disputed that they could be sued in Oklahoma when one of their cars caused an injury in the state, even though the car was first sold in New York. *Id.* at 288 n.3; *see J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 907 (2011) (Ginsburg, J., dissenting). As recently as 2014, it appears that even Ford did not dispute that it was subject to personal jurisdiction on these facts.[3] Only in the past few years have a handful of manufacturers—led by Ford itself—begun challenging this long-held understanding.

2. No federal circuit court has considered that novel challenge. Only three other state high courts have had the opportunity to do so, and all have rejected the argument Ford advances here.

The Montana Supreme Court held that Ford was subject to personal jurisdiction in Montana when one of its cars injured a Montana resident, even though Ford "sold [the car] for the first time to a dealer in Washington." *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 443 P.3d 407, 411 (Mont.), *petition for cert. pending*, No. 19-368 (filed Sept. 18, 2019). The court described Ford's efforts to target the Montana market and concluded that personal jurisdiction was proper because the plaintiff's claim was "tied to Ford's activities of selling, maintaining, and repairing vehicles in Montana." *Id.* at 416.

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[3] *See, e.g.*, *Castillo v. Ford Motor Co.*, No. 14-cv-1253, 2014 WL 1466854, at *1 (C.D. Cal. Apr. 15, 2014) (car first sold in Texas); *Butler v. Ford Motor Co.*, 724 F. Supp. 2d 575, 578-79, 584 n.2 (D.S.C. 2010) (car first sold in Virginia); *Ex parte Ford Motor Co.*, 47 So. 3d 234, 236 (Ala. 2010) (car first sold in Tennessee).

The West Virginia Supreme Court likewise rejected Ford's argument that it could not be sued for an in-state injury caused by a Ford car that was first "sold to a dealer in Florida." *State ex rel. Ford Motor Co. v. McGraw*, 788 S.E.2d 319, 342 (W. Va. 2016). The court emphasized that, under this Court's decisions, the proper focus of the personal jurisdiction inquiry in a products-liability case is not the location of a "discrete individual sale," but "the development of a market for products in a forum." *Id.* at 343.

The Illinois Supreme Court reached a similar conclusion, upholding the exercise of personal jurisdiction over a helicopter parts manufacturer where the individual part was originally sold outside of Illinois, but the manufacturer regularly sold and serviced parts in Illinois, and the plaintiff was injured in Illinois. *Russell v. SNFA*, 987 N.E.2d 778, 781-83, 797 (Ill.), *cert. denied*, 134 S. Ct. 295 (2013).

3. Ford purports to have identified four decisions finding a lack of personal jurisdiction in circumstances "materially indistinguishable" from this case. Pet. 19-20. But Ford fails to elaborate on those decisions, and for good reason: Even a superficial review quickly reveals stark distinctions. Among other things, all four cases involved defendants who had virtually no contacts with the forum state.

In *Montgomery v. Airbus Helicopters, Inc.*, 414 P.3d 824 (Okla. 2018), the court held that companies that had manufactured an ambulance helicopter and one of its parts were not subject to personal jurisdiction in Oklahoma because they "did not aim [their] products at Oklahoma markets" and did not "solicit business" from "Oklahoma residents." *Id.* at 834. The court specifically distinguished those defendants from

a company like Ford, emphasizing that "the emergency helicopter industry is not a traditional industry with a traditional manufacturer selling products to masses of consumers." *Id.*

In *Hinrichs v. General Motors of Canada, Ltd.*, 222 So. 3d 1114 (Ala. 2016) (plurality opinion), *cert. denied*, 137 S. Ct. 2291 (2017), the plurality agreed with GM Canada that it was not subject to personal jurisdiction in Alabama because it had no contacts with the state at all. It had never, for example, "served the markets of Alabama directly or through distributorships, dealerships, or sales agents within Alabama." *Id.* at 1118 (citation omitted); *see id.* at 1141.[4]

In *D'Jamoos v. Pilatus Aircraft Ltd.*, 566 F.3d 94 (3d Cir. 2009), the court held that an airplane manufacturer was not subject to personal jurisdiction in Pennsylvania because it had not "advertised or marketed its products in Pennsylvania" and there was no indication that it had ever sold any aircraft to persons in Pennsylvania. *Id.* at 99 & n.4.

Finally, in *Kuenzle v. HTM Sport-Und Freizeitgeräte AG*, 102 F.3d 453 (10th Cir. 1996), a Missouri resident purchased ski bindings in Switzerland and brought them to Wyoming, where she was injured. *Id.* at 454. The court rejected the exercise of personal jurisdiction over the manufacturer, an Austrian company that "conduct[ed] no business in Wyoming" and "[sold] its products in the United States only through

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[4] The plurality did not suggest that the Alabama courts would have lacked jurisdiction over the company that was similarly situated to Ford—namely, the U.S.-based GM entity that marketed GM cars throughout the United States and that had originally sold the car at issue in Pennsylvania. *Hinrichs*, 222 So. 3d at 1140.

an independent distributor." *Id.* at 455-57. The court reasoned that the plaintiff's claim "did not arise out of" any contacts the manufacturer had with Wyoming, but it declined to decide whether such a relationship is required "[b]ecause the parties ha[d] not briefed or argued the issue." *Id.* at 457 & n.4.

B. This case does not implicate any broader disagreement about the relatedness inquiry.

Lacking any plausible split on the facts presented here, Ford attempts to shift focus to what it portrays as a broader disagreement about the relatedness inquiry. According to Ford, the lower courts have adopted at least four different tests for relatedness, which Ford labels "no causal connection," "but-for causal connection," "stronger causal connection," and "unspecified causal connection." Pet. 12-18 (capitalization altered). Even if that were true, *but see infra* Part I.C, the disagreement would not be implicated here. Courts that Ford places in each of the other three categories have reached the same result as the Minnesota Supreme Court in cases like this one:

But-For Causal Connection (Pet. 14-15)

- A California court exercised personal jurisdiction over Ford based on an accident in California, even though the car was originally sold in Canada. *Rhodehouse v. Ford Motor Co.*, No. 16-cv-1892, 2016 WL 7104238, at *3-4 (E.D. Cal. Dec. 5, 2016).
- A South Carolina court exercised personal jurisdiction over a golf cart manufacturer based on an injury in South Carolina, even though the cart was originally sold in Georgia. *Moore*

v. Club Car, LLC, No. 16-cv-581, 2017 WL 930173, at *5-7 (D.S.C. Mar. 9, 2017).

Stronger Causal Connection (Pet. 15-17)

- A Wisconsin court exercised personal jurisdiction over Ford based on an accident in Wisconsin, even though the car was originally sold in Oklahoma. *Thomas v. Ford Motor Co.*, 289 F. Supp. 3d 941, 943, 947-48 (E.D. Wis. 2017).
- A Pennsylvania court exercised personal jurisdiction over Ford based on an accident in Pennsylvania, even though the car was originally sold in New York. *Antonini v. Ford Motor Co.*, No. 16-cv-2021, 2017 WL 3633287, at *3, *6 (M.D. Pa. Aug. 23, 2017).
- A Puerto Rico court exercised personal jurisdiction over a manufacturer based on an injury in Puerto Rico, even though the product was originally sold in Tennessee. *Salgado-Santiago v. Am. Baler Co.*, 394 F. Supp. 2d 394, 403-06 (D.P.R. 2005).

Unspecified Causal Connection (Pet. 17-18 & n.2)

- A Texas court exercised personal jurisdiction over Ford based on an accident in Texas, even though the car was originally sold in Michigan. *Griffin v. Ford Motor Co.*, No. 17-cv-442, 2017 WL 3841890, at *3 (W.D. Tex. Sept. 1, 2017).
- An Oklahoma court exercised personal jurisdiction over Ford based on an accident in Oklahoma, even though the car was originally sold in Indiana. *Tarver v. Ford Motor Co.*,

No. 16-cv-548, 2016 WL 7077045, at *5-6 (W.D. Okla. Dec. 5, 2016).

As Ford notes (Pet. 30 n.5), a few district courts considering similar facts have reached the opposite result. *See, e.g.*, *Gaillet v. Ford Motor Co.*, No. 16-13789, 2017 WL 1684639, at *3-4 (E.D. Mich. May 3, 2017). But that conflict among district courts does not warrant this Court's review. Sup. Ct. R. 10. And as these decisions illustrate, Ford is wrong to assert that Mr. Bandemer's claims "would have been dismissed by any court that requires some causal link." Pet. 20. To the contrary, a court's position within Ford's purported split on the relatedness inquiry does not predict how it would resolve a case like this one.

C. Ford overstates the extent of the broader disagreement about the relatedness inquiry.

In any event, Ford exaggerates the extent of the broader disagreement about the relatedness inquiry, and that disagreement would not warrant this Court's intervention even if it were implicated here.

1. To begin with, Ford simply mischaracterizes the positions of several jurisdictions.

For example, Ford asserts that the First Circuit has adopted a proximate cause test (Pet. 15), which Ford classifies as the strictest standard. But the First Circuit expressly disclaimed such a test, holding that "strict adherence to a proximate cause standard in all circumstances is unnecessarily restrictive." *Nowak v. Tak How Invs., Ltd.*, 94 F.3d 708, 715 (1st Cir. 1996), *cert. denied*, 520 U.S. 1155 (1997). More recent First Circuit decisions reflect this "relaxed, flexible standard," eschewing causal language and requiring only a "demonstrable nexus" between the claim and

the defendant's contacts with the state. *E.g.*, *Knox v. MetalForming, Inc.*, 914 F.3d 685, 690-91 (1st Cir. 2019) (citation omitted); *PREP Tours, Inc. v. Am. Youth Soccer Org.*, 913 F.3d 11, 18 (1st Cir. 2019); *Adelson v. Hananel*, 652 F.3d 75, 81 (1st Cir. 2011).

Similarly, Ford asserts that the Eighth Circuit uses an "unspecified causal connection" standard. Pet. 17-18 (capitalization altered). In fact, the Eighth Circuit has not adopted a causal standard of any kind. It holds that jurisdiction is appropriate if "the litigation results from injuries relating to the defendant's activities in the forum." *Downing v. Goldman Phipps, PLLC*, 764 F.3d 906, 913 (8th Cir. 2014) (brackets, ellipsis, and citation omitted). And it has emphasized that it takes a "flexible approach" to "the 'relate to' aspect" of the inquiry. *Myers v. Casino Queen, Inc.*, 689 F.3d 904, 912-13 (8th Cir. 2012) (citation omitted).

Ford also relies on cases that were decided on grounds irrelevant to relatedness. For example, in *Consulting Eng'rs Corp. v. Geometric Ltd.*, 561 F.3d 273 (4th Cir. 2009), the Fourth Circuit held that the defendant's contacts did "not support the conclusion that [the defendant] purposefully availed itself of the privilege of doing business in Virginia." *Id.* at 279. The court never addressed the relatedness inquiry. *Id.* at 280-81. Ford likewise errs in asserting that *Tatro v. Manor Care, Inc.*, 625 N.E.2d 549 (Mass. 1994), adopted "a 'but for' test." Pet. 14 (citation omitted). The language Ford quotes was interpreting "the Massachusetts long-arm statute," not the Due Process Clause. *Tatro*, 625 N.E.2d at 553. Ford makes the same error in citing *Prejean v. Sonatrach, Inc.*, 652 F.2d 1260 (5th Cir. 1981), which attributes a causal requirement only

to the Texas long-arm statute. *Id.* at 1265, 1269-70; *see* Pet. 18 n.2.

2. To be sure, Ford has identified some lower court decisions that use different verbal formulations to describe the relatedness inquiry. Some courts have even characterized those differences as a circuit conflict—though they often do not agree among themselves or with Ford about which jurisdictions belong in which category, or even what the categories are. *See, e.g.*, *Chew v. Dietrich*, 143 F.3d 24, 29 (2d Cir. 1998); *Nowak*, 94 F.3d at 714-15. But those differences have existed for decades, and this Court has nonetheless declined numerous invitations to step in. *See supra* note 2.

Rightfully so. Ford's purported conflict relies on decisions arising in widely varying factual and legal contexts, ranging from a patent declaratory judgment action, *Avocent Huntsville Corp. v. Aten Int'l Co.*, 552 F.3d 1324, 1328 (Fed. Cir. 2008); to online copyright infringement, *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1068 (10th Cir. 2008); to defamation, *TV Azteca, S.A.B. de C.V. v. Ruiz*, 490 S.W.3d 29, 35 (Tex. 2016), *cert. denied*, 137 S. Ct. 2290 (2017); to false imprisonment and malicious prosecution, *Beydoun v. Wataniya Rests. Holding, Q.S.C.*, 768 F.3d 499, 504 (6th Cir. 2014); to business tort and contract claims, *Consulting Eng'rs Corp.*, 561 F.3d at 275-76. But this Court has held that the "'minimum contacts' test" is "not susceptible of mechanical application." *Kulko v. Superior Court*, 436 U.S. 84, 92 (1978) (citation omitted). Both the nature of the defendant's contacts with the forum and the relationship between those contacts and the plaintiff's claims will differ greatly in such disparate contexts.

"In the business context," for example, the Fourth Circuit has considered "factors" such as "whether the parties contractually agreed that the law of the forum state would govern disputes" and "whether the performance of contractual duties was to occur within the forum." *Consulting Eng'rs Corp.*, 561 F.3d at 278. In a defamation case, by contrast, the Supreme Court of Texas focused, among other things, on whether the defendant "knew the statements would be broadcast" in the forum. *TV Azteca*, 490 S.W.3d at 42-43.

It is thus hazardous to assume, as Ford does, that a court that used a particular standard to assess relatedness in one case (say, a patent declaratory judgment action) would necessarily use the same approach if confronted with a very different case (say, malicious prosecution). To the contrary, courts have recognized the need for context-dependent "flexibility," emphasizing that "relatedness cannot merely be reduced to one tort concept for all circumstances." *Nowak*, 94 F.3d at 716; *see also, e.g.*, *Myers*, 689 F.3d at 912-13.

II. This case would be a poor vehicle for addressing the issues Ford seeks to raise.

For at least three reasons, this case and the Montana case in which Ford has filed a parallel petition (No. 19-368) would be poor vehicles for addressing the issues that Ford seeks to raise even if those issues otherwise warranted this Court's review.

1. First, Ford has asked this Court to accept or reject a single causation standard for *all* specific personal jurisdiction cases, regardless of context. Neither Ford's question presented (Pet. i) nor its merits argument (Pet. 22-29) are tied to the factual or

legal context of this suit. By asking this Court to take up a question framed at such a high level of generality, Ford seeks a significant departure from the Court's established approach.

This Court has "clarif[ied] the contours" of specific personal jurisdiction in a "common-law fashion," on a case-by-case basis. *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 885 (2011) (plurality opinion). The Court has granted certiorari to provide guidance tailored to specific recurring contexts, including products-liability suits. *See, e.g.*, *id.* at 877-78; *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 105 (1987); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 287 (1980). And it has focused on curbing outlier assertions of state authority that depart from "[w]ell-established principles." *Walden v. Fiore*, 571 U.S. 277, 291 (2014); *see also, e.g.*, *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1781 (2017). Ford's sweeping question presented is inconsistent with that careful, case-by-case approach.

Ford will surely respond that in *Bristol-Myers*, this Court granted a petition with a materially identical question presented. *See* Pet. for Writ of Cert. at i, *Bristol-Myers*, 137 S. Ct. 1773 (No. 16-466). But the Court pointedly declined to resolve the broad causation question presented and briefed by the petitioner in that case. *See Bristol-Myers*, 137 S. Ct. at 1788 n.3 (Sotomayor, J., dissenting). Indeed, that broad question was barely even discussed during oral argument. Instead, the Court issued a narrow decision correcting the California Supreme Court's departure from "settled principles of personal jurisdiction" in the specific context of that mass tort case. *Id.* at 1783 (majority opinion). And the Court has denied other

petitions presenting similar questions both before and after *Bristol-Myers*. *See supra* note 2. Ford is thus wrong to presume (Pet. 3, 29) that the grant of certiorari in *Bristol-Myers* reflected a judgment that the broad question framed in the petition warranted review.

2. Even if this Court were inclined to make a broad pronouncement about the relatedness inquiry, the Court's experience in *Nicastro* confirms that this would not be an appropriate case in which to do so. There, the Court granted certiorari to decide whether a foreign manufacturer could be subjected to personal jurisdiction in New Jersey when one of its machines caused an injury in the state. *Nicastro*, 564 U.S. at 878-79 (plurality opinion). But no opinion commanded a majority, in part because Justices Breyer and Alito concluded that the case was "an unsuitable vehicle for making broad pronouncements that refashion basic jurisdictional rules." *Id.* at 890 (Breyer, J., concurring in the judgment). They explained that the case involved a traditional physical product distributed through traditional channels, and thus did not implicate the "modern concerns" raised by now-ubiquitous internet marketing and distribution. *Id.* And they deemed it "unwise to announce a rule of broad applicability without full consideration of the modern-day consequences." *Id.* at 887.

This case suffers from exactly the same defect. Like *Nicastro*, it involves a traditional physical product distributed through traditional channels, and thus presents no opportunity to address the "modern concerns" that Justices Breyer and Alito identified. And that defect is magnified here because the universal causation requirement that Ford asks this

Court to adopt is vastly broader than the products-liability-specific standard at issue in *Nicastro*.

3. Finally, this case does not present the question framed in the petition. Ford asks the Court to decide "[w]hether 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." Pet. i. But it is not correct that Mr. Bandemer's "claims would be the same even if [Ford] had no forum contacts" with Minnesota.

Ford actively fosters the secondary market for buying and selling used Ford cars in Minnesota. It promotes its brand and its products through advertisements and other marketing efforts that directly target Minnesotans. Pet. App. 4a, 9a-10a. Ford also guarantees the availability of repairs in Minnesota and maintains ongoing warranties in the state. Opp. to Mot. to Dismiss Ex. 1, Admission Nos. 17, 32, 34-36. All of those activities (and others) encourage Minnesota residents to buy Ford cars—both new and used. And here, Mr. Bandemer alleges that he was injured by a defective Ford car that a Minnesota resident purchased used in Minnesota. Pet. App. 25a.

As these activities illustrate, moreover, Ford differs from many other manufacturers of consumer goods because it maintains an ongoing relationship with its products even years after they are sold. Of particular relevance here, it uses its network of dealerships—including dealerships in Minnesota—to collect data for use in redesigns of its products. Pet. App. 17a. And as the Minnesota Supreme Court emphasized, "[p]art of Bandemer's claim is that Ford failed to detect a defect in its vehicle design." *Id.*

Courts around the country have found a causal relationship between similar Ford contacts and claims like Mr. Bandemer's. *See supra* Part I.B. Accordingly, even if this Court were inclined to decide how the relatedness inquiry should apply when "none of the defendant's forum contacts caused the plaintiff's claims" (Pet. i), it should await a case in which that premise is actually true.

III. The Minnesota Supreme Court's decision was correct.

A straightforward application of settled principles confirms that Ford was subject to specific personal jurisdiction in Minnesota. Ford's rigid causal standard, in contrast, finds no support in history, precedent, or principle.

A. Ford was subject to specific personal jurisdiction in Minnesota.

A defendant is subject to specific personal jurisdiction if it has sufficient minimum contacts with the forum state such that maintenance of the suit would not offend "traditional notions of fair play and substantial justice." *Walden v. Fiore*, 571 U.S. 277, 283 (2014) (citation omitted). In *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), this Court concluded that a defendant is subject to specific personal jurisdiction if it "purposefully avails itself of the privilege of conducting activities within the forum State"; if the suit "arise[s] out of or relate[s] to" those activities; and if the exercise of jurisdiction is reasonable. *Id.* at 472, 475-76. The Minnesota Supreme Court correctly held that all three requirements are satisfied here.

1. Ford has always conceded that it purposefully availed itself of the privilege of selling cars to

Minnesotans. Pet. 32-33. It could scarcely have done otherwise: Ford heavily marketed its cars in Minnesota, sold thousands of 1994 Crown Victoria sedans and hundreds of thousands of other cars in Minnesota, maintained ongoing warranty and repair policies in Minnesota, and collected data from Minnesotans that it used to improve the design of its products. Pet. App. 16a-17a; Opp. to Mot. to Dismiss Ex. 1, Admission Nos. 17, 32, 34-36.

2. When a manufacturer like Ford deliberately cultivates a state as a market for its cars, a claim that one of those cars has injured a resident in the state is sufficiently related to those contacts to support the exercise of personal jurisdiction. This Court made precisely that point in *World-Wide Volkswagen*:

> [I]f the sale of a product of a manufacturer . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer . . . to serve, directly or indirectly, the market for its product in other States, 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 to its owner or to others.

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). Nothing about that reasoning turns on the location of the product's original sale. To the contrary, as Justice Ginsburg recently explained, *World-Wide Volkswagen* made clear that "an objection to jurisdiction" in Oklahoma by the automaker in that case "would have been unavailing"—even though the car at issue was first sold in New York. *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 906-07 (2011) (Ginsburg, J., dissenting); *see* Pet. App. 15a.

The exercise of personal jurisdiction here is also supported by this Court's most recent specific-jurisdiction case, *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017). There, this Court held that the California courts could not exercise personal jurisdiction over the manufacturer of the drug Plavix, because the claims at issue were brought by non-residents who "were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California." *Id.* at 1781. The Court reaffirmed that, under this Court's "settled principles," the paradigmatic basis for specific jurisdiction is an "affiliation between the forum and the underlying controversy," such as "an activity or an occurrence that takes place in the forum State." *Id.* (citation omitted).

Nothing in *Bristol-Myers* suggested that if a California resident had bought her Plavix across the state line in Arizona but had then ingested the drug and suffered the injury in California, the California courts would have lacked jurisdiction over her claim. So too here: A Minnesota car accident causing injury to a Minnesota resident provides the affiliation that was lacking in *Bristol-Myers*. Pet. App. 17a-18a.

3. Finally, Ford has never denied that Minnesota's exercise of jurisdiction in this case is "constitutionally reasonable." Pet. 32-33. Minnesota "has a 'manifest interest' in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors," *Burger King*, 471 U.S. at 473. Minnesota is the site of the accident and home to both Mr. Bandemer and Ford's co-defendants. Pet. App. 19a. And it would strain credulity for Ford to suggest that it would suffer any hardship from litigating in the state.

B. There is no basis for Ford's strict causation requirement.

Ford proposes a rigid requirement that a plaintiff's injury must have been caused by the defendant's forum contacts to justify jurisdiction. Ford is coy about what circumstances would satisfy that new test, but it makes clear that, at minimum, a suit based on a defective product cannot go forward if the product was not designed, manufactured, or originally sold in the forum state. Pet. 31-32. That rigid rule finds no support in precedent, history, or principle, and it would yield illogical results.

1. Ford asserts that its rigid causation requirement is compelled by this Court's precedents. Not so. This Court's decisions instruct that a plaintiff's claims must "arise out of or relate to" the defendant's forum contacts. *Bristol-Myers*, 137 S. Ct. at 1780 (brackets omitted). The Court has consistently used that disjunctive formulation for more than three decades. *See, e.g.*, *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984) ("arise out of or relate to"). It has used similar disjunctive formulations since it adopted its modern approach to personal jurisdiction. *See Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945) ("arise out of or are connected with"). As Ford tacitly acknowledges (Pet. 25-26), it seeks to jettison half of the Court's longstanding articulation of the relatedness inquiry. It is thus Ford, not the Minnesota Supreme Court, that urges a departure from precedent.

Ford also asserts that a rigid causation requirement is necessary to avoid conflating specific and general jurisdiction. Pet. 24. Again, Ford is mistaken. The Minnesota Supreme Court expressly premised its

decision on (among other things) the fact that the accident at issue here occurred in Minnesota and that Mr. Bandemer's claim alleges a defect in a type of car that Ford has sold in Minnesota. Pet. App. 17a. It did not hold that Ford could be sued in Minnesota based on an accident that occurred in another state, or a Minnesota accident involving a model of car that Ford had not sold in the state. And it did not remotely suggest that the Minnesota courts could exercise general jurisdiction over Ford for claims unrelated to Minnesota, such as a slip-and-fall in its Michigan factory or a contract dispute stemming from its negotiations with a South Carolina dealership.

2. Ford does not even attempt to ground its strict causation standard in the original meaning of the Due Process Clause or in any historical tradition. And its rule likewise finds no justification in fairness or federalism, the two principles that have animated the Court's modern personal jurisdiction doctrine.

First, this Court's decisions emphasize the importance of fairness and predictability for defendants. The Court has reasoned that a defendant should not be "subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" *Burger King*, 471 U.S. at 471-72 (citation omitted). The Court has also explained that businesses should be able to rely on "a degree of predictability to the legal system that allows [them] 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.

Ford's strict causation requirement does not serve those interests. The Minnesota Supreme Court held

that Ford was subject to suit in this case because it had deliberately targeted the Minnesota market and sold thousands of cars there. Pet. App. 16a. In light of those extensive in-state sales, it was eminently predictable that Ford would be haled into court in cases like this one. Indeed, at the time of discovery in this case, Ford was defending eighty-seven products-liability suits in Minnesota. Opp. to Mot. to Dismiss Ex. 1, Interrogatory No. 10. Given this "clear notice" that its deliberate targeting of the Minnesota market subjects it to suit in the state, Ford can "alleviate the risk of burdensome litigation by procuring insurance" or "passing the expected costs on to customers." *World-Wide Volkswagen*, 444 U.S. at 297. And a smaller manufacturer that deemed the risk of litigation in Minnesota "too great" could avoid that risk altogether by simply "severing its connection with the State." *Id.*

Second, the Court has stated that the Due Process Clause ensures that states "do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen*, 444 U.S. at 292. It does so by ensuring that defendants need not submit to the jurisdiction of states with "little legitimate interest in the claims in question." *Bristol-Myers*, 137 S. Ct. at 1780. But as this case illustrates, Ford's causal rule does not serve that goal: Minnesota has a compelling interest in providing a forum for Minnesota residents injured by defective products in Minnesota, and Ford does not point to any state with a greater interest in this dispute. Pet. App. 19a.

3. Ford asserts that its proposed causal test would be "simple to apply." Pet. 28 (citation omitted). Even if that were true, it would be no justification for adopting

a rule that lacks support in precedent, history, or principle. But Ford is mistaken. Causation doctrine is notoriously thorny and uncertain, *see, e.g.*, *Prosser and Keeton on the Law of Torts* 263 (5th ed. 1984), and Ford itself never definitively explains what relationships would be sufficient to satisfy its causal standard in a case like this—let alone how it would apply to the myriad other circumstances that courts around the country confront on a daily basis.

4. Finally, Ford's strict causal requirement would yield illogical results.

Start with this case. Ford's arguments imply (though Ford is careful not to concede) that specific jurisdiction would be available in North Dakota, where the Crown Victoria at issue was originally sold. But, as is typical in cases like this, Mr. Bandemer has sued not just Ford, but also the driver and owner of the car that injured him. Pet. App. 3a. There is no reason to think that those Minnesota residents are subject to personal jurisdiction in North Dakota (or Michigan or Delaware, where Ford is subject to general jurisdiction). Ford's rule would thus require Mr. Bandemer (and every other plaintiff in this common circumstance) to litigate closely related factual issues in different fora, thereby burdening the judicial system with duplicative litigation.

Broadening the lens makes matters worse. As Ford emphasizes, this is a simple case: "a single-vehicle, one-plaintiff, one-manufacturer-defendant tort suit." Pet. 33. But even in the automobile-accident context, many suits are more complex. In one typical fact pattern, for example, a plaintiff has claims against both the car's manufacturer and the company that made a defective component, such as the tires. If the

car and tires were first sold in different states—a not-uncommon occurrence—Ford's rule would require the plaintiff to sue in (at least) two different jurisdictions.[5] And the resulting burden and risk of inconsistent verdicts would fall not just on plaintiffs, but also on defendants who would be unable to implead other parties who they believe are responsible for the accident.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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[5] *See, e.g.*, *Rodriguez v. Ford Motor Co.*, No. A-1-CA-35910, 2018 WL 7021969, at *1-2, *4 (N.M. Ct. App. Dec. 21, 2018) (van originally sold in Kentucky, tire originally sold in Oklahoma, accident in New Mexico); *Butler v. Ford Motor Co.*, 724 F. Supp. 2d 575, 578-79, 584 n.2, 589 (D.S.C. 2010) (car originally sold in Virginia, tire originally sold in Georgia, accident in North Carolina).