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

REPLY BRIEF IN SUPPORT OF CERTIORARI

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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.

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INTRODUCTION

The stakes in this case for manufacturers are high. As the Alliance of Automobile Manufacturers explains (at 12), the Minnesota Supreme Court's expansive view of the arise-out-of-or-relate-to requirement means that manufacturers "can be haled into a forum in which they do not reside based on the unilateral decisions of" third parties. That, in turn, "mak[es] it impossible for corporations to structure their affairs to limit the number of jurisdictions in which they can be sued." U.S. Chamber of Commerce et al. Amicus Br. 16–17.

The Minnesota Supreme Court aligned itself with a growing minority of jurisdictions that hold that

specific personal jurisdiction is proper even if the defendant's forum contacts did not cause the plaintiff's claims. By contrast, the majority of federal and state courts require at least *some* causal connection between a plaintiff's claims and a defendant's forum contacts.

This petition is an ideal vehicle to resolve this conflict. Ford did not contest the other two prongs of the tripartite specific-jurisdiction test, and the motion-to-dismiss posture guarantees undisputed facts. Not only that, but courts across the country regularly confront the question presented on similar facts, highlighting the need for this Court's guidance.

The petition should be granted.

ARGUMENT

I. THE PETITION IMPLICATES A CLEAR SPLIT.

1. A plaintiff's "cause of action" must "arise out of or relate to the foreign corporation's activities in the forum State" before a court can exercise specific personal jurisdiction consistent with due process. *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 414 (1984).

Federal courts of appeal and state supreme courts have settled on four different approaches to this requirement. A minority holds that a defendant's forum contacts need not have caused the plaintiff's claims, so long as the contacts relate in some unspecified sense to the subject of the plaintiff's claims. *See* Pet. 12–14. Six courts require that a defendant's forum contacts have been the but-for cause of a plaintiff's claims. *See id.* at 14–15. Eight require a stronger causal connection, akin to proximate cause. *See id.* at 15–17. And four more agree that *some*

causal connection is required, without adopting a clear standard. *See id.* at 17–18. And not only are courts in conflict, they *are asking* for clarification. *See, e.g.*, *Robinson* v. *Harley-Davidson Motor Co.*, 316 P.3d 287, 300 (Or. 2013).

2. Bandemer does not deny the split. He instead tries to move five of the 24 pieces around the board. His quibbles are wrong and beside the point.

Bandemer suggests that the First Circuit belongs in the no-causation camp because it requires only a "demonstrable nexus" between the claim and contacts. Opp. 13–14 (internal quotation marks omitted). But the court requires "the litigation itself" to be "founded *directly* on those activities," which it evaluates "with reference to the contacts the defendant creates with the forum." *C.W. Downer & Co.* v. *Bioriginal Food & Sci. Corp.*, 771 F.3d 59, 66 (1st Cir. 2014) (emphasis added and citation omitted). That is proximate cause.

Bandemer would likewise place the Eighth Circuit in the no-causation camp. He relies (at 14) on a decision that uses the phrase "relating to." But the case expressly found a causal connection. *See Downing* v. *Goldman Phipps, PLLC*, 764 F.3d 906, 913 (8th Cir. 2014) ("[D]efendants voluntarily went to Missouri" where they earned "the fees that are the subject matter of the current dispute.").

Bandemer further contends (at 14) that the Fourth Circuit has not spoken. Yet that court "requires that the defendant's contacts with the forum state form the basis of the suit." *Consulting Eng'rs Corp.* v. *Geometric Ltd.*, 561 F.3d 273, 278–279 (4th Cir. 2009). Bandemer calls this dicta. But the Fourth Circuit concluded that the plaintiff had "failed to

demonstrate" that the "causes of action it assert[ed] * * * *'arose from'* " the defendant's "contacts with Virginia." *Id.* at 281 n.9 (emphasis added).

Finally, Bandemer resists (at 14–15) placing Massachusetts in the but-for camp and the Fifth Circuit in the unspecified-causation camp because two cited cases involved long-arm statutes. Massachusetts adopted a but-for test *precisely because* its long-arm statute "assert[s]" personal jurisdiction "to the limits allowed by the [federal] Constitution." *Tatro* v. *Manor Care, Inc.*, 625 N.E.2d 549, 553 (Mass. 1994) (citation omitted). And the Fifth Circuit's "practice" of requiring causation (Pet. 18 n.2), holds even where no long-arm statute is at issue. *See In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, 753 F.3d 521, 547, 549 (5th Cir. 2014).

Bandemer tries (at 11–13) to downplay the split by pointing to district court cases, suggesting they show that the different approaches are merely different "verbal formulations." Opp. 15. Not so. Some examined whether the defendant's forum contacts had a connection to the plaintiff's claim.[1] Others did not discuss the relevant causation standard.[2] And some simply misstated the law.[3]

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[1] *See, e.g.*, *Antonini* v. *Ford Motor Co.*, No. 3:16-CV-2021, 2017 WL 3633287, at *4 (M.D. Pa. Aug. 23, 2017) (Plaintiff alleged she would not have purchased the vehicle but for Ford's advertising in the forum.); *Salgado-Santiago* v. *American Baler Co.*, 394 F. Supp. 2d 394, 403 (D.P.R. 2005) (Plaintiff purchased the defective baler from an authorized dealer in the forum, and defendant sent representatives to the forum to service it.).

[2] *See, e.g.*, *Moore* v. *Club Car, LLC*, No. 4:16-CV-00581-RBH, 2017 WL 930173, at *6 (D.S.C. Mar. 9, 2017); *Tarver* v. *Ford*

With the split intact, Bandemer does not argue that this case would come out the same way under any causal test. The Minnesota Supreme Court had to conclude that causation was *not* required before it could approve of specific jurisdiction. *See* Pet. App. 11a-13a. And as the dissent explained, "all of Ford's conduct that, according to Bandemer, relates to his claims"—designing the airbag system, assembling the vehicle, and selling the vehicle—"took place more than 20 years before the accident, in states other than Minnesota." *Id.* at 28a (Anderson, J., dissenting).

3. Because the split is real, and because it is outcome-determinative, Bandemer pivots. He claims (at 7–11) that courts have not split on a *different* question—whether a plaintiff's claims in a products-liability case can arise out of or relate to a defendant's forum contacts if the product in question was first sold outside the forum. That is, of course, not the question the petition presents. But these cases only confirm that the split is real.

a. The Alabama and West Virginia Supreme Courts' decisions demonstrate this most clearly. The Alabama Supreme Court recognized that this Court's precedents "require that, for specific jurisdiction to

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Motor Co., No. CIV-16-548-D, 2016 WL 7077045, at *7 (W.D. Okla. Dec. 5, 2016).

[3] *See, e.g.*, *Rhodehouse* v. *Ford Motor Co.*, No. 2:16-cv-01892-JAM-CMK, 2016 WL 7104238, at *2 (E.D. Cal. Dec. 5, 2016) (describing sliding-scale approach); *Griffin* v. *Ford Motor Co.*, No. A-17-CA-00442-SS, 2017 WL 3841890, at *3 (W.D. Tex. Sept. 1, 2017) (describing volume of goods sent into the forum as relevant to the arise-out-of-or-relate-to requirement).

exist, [the defendant's] in-state activity must "g[i]ve rise to the episode-in-suit." *Hinrichs* v. *General Motors of Canada, Ltd.*, 222 So. 3d 1114, 1137 (Ala. 2016) (per curiam; plurality) (quoting *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915, 923 (2011) and citing *Walden* v. *Fiore*, 571 U.S. 277, 284 (2014)).[4] In *Hinrichs*, the plaintiff—a passenger injured in an Alabama car accident—alleged design-defect claims, but the defendant had not designed, manufactured, or sold the vehicle in question in Alabama. *Id.* at 1116–17. The court found no specific jurisdiction because there was "no evidence of any suit-related contact between" the defendant and Alabama. *Id.* at 1138.

On rehearing, a majority of the Alabama Supreme Court considered, and expressly rejected, the West Virginia Supreme Court's contrary rule. The West Virginia court had considered a nearly identical suit brought by a passenger injured in a Ford vehicle not designed, made, or sold by Ford in the forum. *See State ex rel. Ford Motor Co.* v. *McGraw*, 788 S.E.2d 319, 324 (W. Va. 2016). *McGraw* found it sufficient that the plaintiff was injured in West Virginia and that the vehicle was purchased second-hand there. *See id*. *Hinrichs*, however, concluded that *McGraw* was neither "on point or persuasive" because it did "not deal with" *Walden*'s suit-related-conduct requirement. *Hinrichs*, 222 So. 3d at 1157–58.

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[4] Later cases adopted this opinion as the view of the full Court. *Ex parte Int'l Creative Mgmt. Partners, LLC*, 258 So. 3d 1111, 1117–18 (Ala. 2018); *Ex parte Maint. Grp., Inc.*, 261 So. 3d 337, 346–349 (Ala. 2017).

b. Bandemer further contends that other product-liability cases were decided on purposeful-availment grounds. Opp. 9–11. But each discussed the arise-out-of requirement in detail. *See Montgomery* v. *Airbus Helicopters, Inc.*, 414 P.3d 824, 833–834 (Okla. 2018) (emphasizing suit-related-contacts requirement and holding that a third party's "unilateral choice" to fly the product into the forum was insufficient, even where "[m]ost of the harm" occurred in the forum); *D'Jamoos ex rel. Estate of Weingeroff* v. *Pilatus Aircraft Ltd.*, 566 F.3d 94, 106 (3d Cir. 2009) (explaining that grounding specific personal jurisdiction on in-forum location of the accident would "impermissibly * * * remove the 'arising from or related to' requirement from the specific jurisdiction test."); *Kuenzle* v. *HTM Sport-Und Freizeitgeräte AG*, 102 F.3d 453, 456–457 (10th Cir. 1996) (explaining that "contacts must reflect purposeful availment *and* the cause of action must arise out of those contacts" and declining specific jurisdiction because plaintiff's accident "would have occurred" in the forum "even if [the defendant] had made none of the contacts"). Bandemer's claims would be dismissed in these jurisdictions.

II. THE PETITION OFFERS A CLEAN VEHICLE.

Bandemer offers up three supposed vehicle issues. Opp. 17–20. None have merit.

1. Bandemer first argues (at 17) that Ford presenting a clean question of law is a vice, not a virtue. In general, the opposite is true, and there is no personal jurisdiction exception. *See* Stephen M. Shapiro et al., *Supreme Court Practice* 272–275 (10th ed. 2013). The Due Process Clause's *application* will turn on a

case's facts. But the Constitution's requirements do not.

The very case Bandemer cites undermines his insistence that this Court sets out only fact-bound rules. The *Nicastro* plurality stated that its purposeful-availment requirement applies *regardless* of the cause of action. *See J. McIntyre Mach., Ltd.* v. *Nicastro*, 564 U.S. 873, 885 (2011) (plurality). And it rejected hazy generalities for personal jurisdiction, viewing them as "inconsistent with the premises of lawful judicial power" and risking "significant expenses" devoted only to "the preliminary issue of jurisdiction." *Id.* at 883, 885.

Bandemer notes (at 17) that this Court has sometimes resolved a broad question presented on narrower grounds. But that simply reflects that the Court sometimes declines "to issue a sweeping ruling when a narrow one will do." *McWilliams* v. *Dunn*, 137 S. Ct. 1790, 1800 (2017).

2. Bandemer next suggests (at 18) that the Court should never take up a specific personal jurisdiction case because once, in *Nicastro*, it issued a splintered opinion. But the issue that gave the *Nicastro* concurrence pause—how purposeful availment applies on the Internet, *see Nicastro*, 564 U.S. at 890 (Breyer, J., concurring in judgment)—is not present here. The Internet may uniquely affect how a defendant makes contact with a forum, and thus may uniquely affect whether that defendant has purposefully availed itself of the forum. But the arise-out-of requirement takes a defendant's forum contacts as a given and compares them to the plaintiff's claims, to ensure that the connection between the two is sufficient. What amounts to a sufficient connection—the

question presented here—does not turn on how a defendant made contact with the forum, and Bandemer never says otherwise.

3. Bandemer next suggests (at 19–20), but does outright argue, that there is some causal relationship between his claims and Ford's Minnesota contacts. That would surprise anyone who had read his briefs. His complaint did not allege a causal connection. *See* Dist. Ct. Doc. 2. His Minnesota Supreme Court brief did not identify a causal connection. Bandemer Minn. Sup. Ct. Br. 4–19. As the dissent below explained, "all 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). That is why the Minnesota Supreme Court *first* found that due process does not require a causal connection and *then* found that some unspecified similarity between a defendant's in-forum contacts and a plaintiff's claim satisfies due process. *Id.* at 11a–13a.

Nor could Bandemer identify a causal connection on the facts he alleged. The 1996 Ford Mustang's status as the official car of the Minnesota Vikings, for example, did not cause Bandemer's negligence, products-liability, and breach-of-warranty claims. *Id.* at 42a–43a & n.2. Ford's collection of data on unspecified vehicles to inform *future* design choices did not cause Bandemer's claims either. *Id.* at 17a. There is "simply no relationship" between Ford's in-

forum conduct and his claims. *Id.* at 28a (Anderson, J., dissenting).[5]

III. THE DECISION BELOW WAS WRONG.

Bandemer defends the Minnesota Supreme Court's holding that the arise-out-of-or-relate-to requirement can be satisfied so long as a defendant has enough in-forum contacts that look enough like the kinds of contacts that could give rise to a similar enough claim by another plaintiff. That is not how specific—that is, "case-linked," *Bristol-Myers Squibb Co.* v. *Superior Court of Cal.*, 137 S. Ct. 1773, 1780, 1785 (2017)—personal jurisdiction works.

1. To argue that the arise-out-of-or-relate-to prong does not require a causal connection, Bandemer relies solely on *World-Wide Volkswagen*, a *purposeful availment* precedent. Opp. 21. There, this Court

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[5] The clean legal question on representative facts sets this case apart from the other petitions Bandemer (at 6 n.2) identifies. *See, e.g.*, *Waite* v. *All Acquisition Corp.*, 901 F.3d 1307, 1310 (11th Cir. 2018), *cert. denied sub nom Waite* v. *Union Carbide Corp.*, 139 S. Ct. 1384 (2019) (No. 18-998) (mem.) (correctly applying *Bristol-Myers*); Br. in Opp. 28–29, *Exxon Mobil Corp.* v. *Healey*, 139 S. Ct. 794 (2019) (No. 18-311) (civil investigative demand that could become moot); Br. in Opp. 29–30, *Aker Biomarine Antarctic AS* v. *Huynh*, 139 S. Ct. 64 (2018) (No. 17-1411) (unpublished decision of intermediate state appellate court); Br. in Opp. 10–12, *GlaxoSmithKline LLC* v. *M.M. ex rel. Meyers*, 138 S. Ct. 64 (2017) (No. 16-1171) (invited error); Br. in Opp. 8–11, *MoneyMutual LLC* v. *Rilley*, 137 S. Ct. 1331 (2017) (No. 16-705) (jurisdictional issue). The Court held and then denied the others after *Bristol-Myers*. *See Hinrichs* v. *General Motors of Canada, Ltd.*, 137 S. Ct. 2291 (2017) (No. 16-789) (mem.); *TV Azteca, S.A.B. de C.V.* v. *Ruiz*, 137 S. Ct. 2290 (2017) (No. 16-481) (mem.).

explained that "[w]hen a corporation purposefully avails itself" of a forum, it "has clear notice" it may be sued there. *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297 (1980) (internal quotation marks and citation omitted). "*Hence*," the next sentence says, "it is not unreasonable to subject" a defendant to suit where "the sale of a product * * * arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market." *Id.* (emphasis added). Bandemer's invocation of *World-Wide Volkswagen* thus shows the problem with his no-causation rule: It muddles the purposeful-availment requirement and the arising-out-of requirement, and blurs general and specific personal jurisdiction. That is because mere relatedness relies not on the "activity g[iving] rise to the episode-in-suit," *Goodyear*, 564 U.S. at 923, but on "unconnected activities in the [forum]." *Bristol-Myers Squibb*, 137 S. Ct. at 1781.

2. Bandemer next invokes (at 23) the disjunctive phrasing of "arise out of or relate to." But *Helicopteros* itself refused to answer "whether the terms 'arising out of' and 'related to' describe different connections between a cause of action and a defendant's [forum] contacts." 466 U.S. at 415 n.10. And this Court has never found specific personal jurisdiction where causation was lacking. Pet. 22–23.

Bandemer also argues (at 22) that so long as an accident occurs in the forum, and a plaintiff is injured in the forum, *Bristol-Myers* held that specific jurisdiction is proper. *Bristol-Myers* holds that the fact a plaintiff "suffered foreseeable harm" in the forum is *not* enough for specific jurisdiction. 137 S. Ct. at 1781 (quoting *Walden*, 571 U.S. at 289).

"[C]ontacts between [Bandemer] and the forum State" cannot establish a link between Ford's forum contacts and his claims. *Walden*, 571 U.S. at 284.

Though Bandemer sees (at 24–25) no value in a causation requirement, its role is clear. It ensures that states will not "reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system" in exercising jurisdiction. *World-Wide Volkswagen Corp.*, 444 U.S. at 292; *accord Bristol-Myers*, 137 S. Ct. at 1781 ("[T]he Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment." (citation omitted)); *see also* U.S. Chamber of Commerce et al. Amicus Br. 18–19. Otherwise, a suit could regulate a defendant's *out-of-forum* conduct that caused a plaintiff's claims. *See Goodyear*, 564 U.S. at 918 (explaining that the "assertion of jurisdiction exposes defendants to the State's coercive power").

3. Finally, Bandemer claims that a causal rule may lead to "illogical" results because it may require a plaintiff to split his suit between multiple forums. Opp. 26. But the Due Process Clause "principally protect[s] the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties," *Walden*, 571 U.S. at 284, and personal jurisdiction must be proved "as to each defendant." *Rush* v. *Savchuk*, 444 U.S. 320, 332 (1980). The result is that sometimes a plaintiff will not be able to establish personal jurisdiction over every defendant he would like to sue in a single forum. There is nothing illogical about enforcing the Due Process Clause's clear commands.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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