No. 20-177

In the Supreme Court of the United States

ALLY FINANCIAL INC.,

Petitioner,

v.

ALBERTA HASKINS, ET AL.,

Respondents.

On Petition For a Writ of Certiorari to the Supreme Court of Missouri

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE AMERICAN BANKERS ASSOCIATION, THE AMERICAN FINANCIAL SERVICES ASSOCIATION, AND THE NATIONAL AUTOMOBILE DEALERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE AMERICAN BANKERS ASSOCIATION, THE AMERICAN FINANCIAL SERVICES ASSOCIATION, AND THE NATIONAL AUTOMOBILE DEALERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

INTEREST OF THE *AMICI CURIAE*

The Chamber of Commerce of the United States of America (Chamber) is the world's largest business federation. It directly represents approximately 300,000 members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country.

The American Bankers Association (ABA) is the principal national trade association of the financial services industry in the United States. Founded in 1875, the ABA is the voice for the nation's $13 trillion banking industry and its employees. ABA members are located in all fifty States and the District of Columbia, and include financial institutions of all sizes and types, both large and small.

Founded in 1916, the American Financial Services Association (AFSA) is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

The National Automobile Dealers Association (NADA) is a trade association representing over

16,000 franchised new car and truck dealerships. NADA represents all franchised dealers—domestic and import—before Congress, federal agencies, the courts, the media, and the general public.

Amici frequently file briefs on matters of interest to their members. They file this brief to explain why the question presented warrants this Court's review.[1]

Many of *amici*'s members conduct business in States other than their place of incorporation and principal place of business, the two places where they would be subject to general personal jurisdiction. Those members therefore have a substantial interest in the rules under which States can subject nonresident corporations to specific personal jurisdiction. That is especially true in the class-action context. *Amici*'s members often are sued in putative multistate class actions in States where they are not subject to general personal jurisdiction.

Amici's members have a strong interest in ensuring that all class members, not just the named plaintiffs, are required to establish the prerequisites for specific personal jurisdiction. Otherwise, those companies will be forced to defend against claims that lack the requisite connection to the forum States, claims for which the companies could not reasonably have expected to be sued in those States. That would encourage abusive forum shopping and impose substantial harm on businesses and on the judicial system.

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[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici*, their members, and their counsel made a monetary contribution to its preparation or submission. All parties have consented to the filing of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case raises an important question that this Court left open in *Bristol-Myers Squibb Co.* v. *Superior Court*, 137 S. Ct. 1773 (2017) (*BMS*): Whether, in a class action, the Due Process Clause of the Fourteenth Amendment permits a court to exercise specific personal jurisdiction over the defendant with respect to all class members' claims, even though some class members' claims lack a sufficient connection to the forum.

That question has arisen with great frequency since *BMS*, and the state and federal courts have disagreed on the answer. In this case, the Missouri courts permitted the class action to proceed, even though many class members could not establish the necessary connection to the forum. The Seventh Circuit has agreed with that approach. When the issue was presented to the D.C. Circuit, the only judge who reached the merits disagreed with the Seventh Circuit's view. And the federal district courts have split on the question. That disagreement will persist without this Court's review. The issue is important, because plaintiffs frequently bring multi-state class actions, with enormous potential financial exposure to defendants.

The decision below is wrong. This Court's precedents establish that the Due Process Clause permits a court to exercise specific personal jurisdiction only when *every* plaintiff's claim has the necessary connection to the forum. That is true whether a case involves one plaintiff or many plaintiffs. The Court made just that point in *BMS*, when it held that a state court could not assert specific personal jurisdiction over the defendant with respect to all claims in a mass action,

when some plaintiffs' claims lacked the necessary connection to the forum. *Id.* at 1778-1779.

The only difference between this case and *BMS* is that *BMS* was a mass tort action and this case is a class action. But the same due process principles apply. Like the nonresident plaintiffs in *BMS*, many of the class members in this case could not bring their claims individually against petitioner in the forum, and they therefore may not join with others to bring them in that forum. After all, a class action is just a species of traditional joinder, and the Due Process Clause's protections do not change based on the number of plaintiffs or the procedural device used to aggregate multiple plaintiffs' claims.

The rule applied below, if left uncorrected by this Court, would cause substantial harm to businesses and to the judicial system. It would enable plaintiffs to make an end-run around the Due Process Clause by bringing nationwide class actions anywhere they could find one plaintiff with the requisite connection to the forum. That, in turn, would eliminate the predictability that due process affords corporate defendants to allow them to structure their primary conduct. It also would allow the forum State to decide claims over which it has little legitimate interest, to the detriment of other States' interests. For all of those reasons, the Court should grant the petition for a writ of certiorari and reverse the decision below.[2]

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[2] If Court does not grant plenary review, it should hold the petition pending the disposition of *Ford Motor Co.* v. *Montana Eighth Judicial District Court*, No. 19-368, and *Ford Motor Co.* v. *Bandemer*, No. 19-369 (cases consolidated and oral argument scheduled for Oct. 7, 2020), then vacate the decision below and remand for further proceedings. See Pet. 25-27.

ARGUMENT

I. The Question Presented Is Recurring And Important

Just three Terms ago, the Court held in *BMS* that the Due Process Clause forbids a California court from asserting specific personal jurisdiction over claims of nonresident plaintiffs in a mass tort action, because those claims lacked the necessary connection to the forum State. 137 S. Ct. at 1781-1782. The Court explained that the state court must have personal jurisdiction over *all* plaintiffs' claims; it is not enough that the state court had personal jurisdiction over *some* plaintiffs' claims. *Id.* at 1781.

BMS was a mass action, not a class action under Federal Rule of Civil Procedure 23 or its state counterparts. The Court therefore did not decide whether its decision "also appl[ies] to a class action in which a plaintiff injured in the forum State seeks to represent a nationwide class of plaintiffs, not all of whom were injured there." *BMS*, 137 S. Ct. at 1789 n.4 (Sotomayor, J., dissenting). But that question has arisen with great frequency since the decision in *BMS*, and the state and federal courts have disagreed on the answer.

The federal appellate judges that have addressed the issue have split. The Seventh Circuit held that *BMS* "does not govern" in the class-action context and that class members other than the named plaintiffs are not required to establish personal jurisdiction over the defendant. *Mussat* v. *IQVIA, Inc.*, 953 F.3d 441, 445, 447 (7th Cir. 2020). That court primarily relied on procedural differences between class actions and mass actions to justify its holding. *Id.* at 446-447.

This issue also was presented to the D.C. Circuit. That court did not decide the issue, concluding that it should wait to decide the issue until the class-certification stage, rather than the motion-to-dismiss stage. See *Molock* v. *Whole Foods Mkt. Grp., Inc.*, 952 F.3d 293, 298 (D.C. Cir. 2020). But in a separate opinion, Judge Silberman reached the merits, and he disagreed with the Seventh Circuit's view. *Id.* at 305-310 (Silberman, J., dissenting). He explained that "Due process protect[s] [a defendant] from being haled into" court "on claims that had no independent connection to the forum," and that is true whether the case concerns one plaintiff's claim or many plaintiffs' claims. *Id.* at 306 (Silberman, J., dissenting).

Dozens of federal district courts have addressed this issue. See Pet. 13. A number of them have held that a court need not find that it has personal jurisdiction over all class members' claims to comply with the Due Process Clause.[3] But other district courts have disagreed, holding that all class members, not

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[3] See, *e.g.*, *Prescott* v. *Bayer HealthCare LLC*, No. 20-0102, 2020 WL 3505717, at *2-*3 (N.D. Cal. June 29, 2020); *Munsell* v. *Colgate-Palmolive Co.*, No. 19-12512, 2020 WL 2561012, at *7-*8 (D. Mass. May 20, 2020); *Murphy* v. *Aaron's, Inc.*, No. 19-cv-601, 2019 WL 2079188, at *15-*17 (D. Colo. Apr. 30, 2020); *Sotomayor* v. *Bank of Am., N.A.*, 377 F. Supp. 3d 1034, 1038 (C.D. Cal. 2019); *Al Haj* v. *Pfizer Inc.*, 338 F. Supp. 3d 815, 820 (N.D. Ill. 2018); *Sanchez* v. *Launch Technical Workforce Solutions, LLC*, 297 F. Supp. 3d 1360, 1365-1366 (N.D. Ga. 2018); *Fitzhenry-Russell* v. *Dr. Pepper Snapple Grp., Inc.*, No. 17-cv-564, 2017 WL 4224723, at *5 (N.D. Cal. Sept. 22, 2017); *In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, No. 09-md-2047, 2017 WL 5971622, at *12-*21 (E.D. La. Nov. 30, 2017).

just the named plaintiffs, are required to establish the prerequisites for specific personal jurisdiction.[4]

Moreover, although most multi-state class actions are adjudicated in federal court because of the Class Action Fairness Act, 28 U.S.C. 1332(d), 1453, 1711-1715 (CAFA), the issue can arise in state court as well. This case illustrates the point. After this Court decided *BMS*, petitioner moved to decertify the nationwide class, squarely raising the question presented. The Missouri trial court denied that motion, necessarily rejecting petitioner's argument. See Pet. App 7a-10a. And the Missouri Court of Appeals allowed the nationwide class to proceed. See *id.* at 3a-5a.[5]

The disagreement will persist unless this Court steps in. The personal-jurisdiction issue here can arise any time a plaintiff files a nationwide or multi-state class action against a defendant in a forum other than where the defendant is subject to general per-

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[4] See, *e.g.*, *Carpenter* v. *Petsmart*, 441 F. Supp. 3d 1028, 1034-1035 (S.D. Cal. 2020); *Garvey* v. *Am. Bankers Ins. Co. of Fla.*, No. 17-0986, 2019 WL 2076288, at *2-*3 (N.D. Ill. May 10, 2019); *In re Dicamba Herbicides Litig.*, 359 F. Supp. 3d 711, 723-724 (E.D. Mo. 2019); *Leppert* v. *Champion Petfoods USA Inc.*, No. 18-4347, 2019 WL 216616, at *4-*5 (N.D. Ill. Jan. 16, 2019); *Chavez* v. *Church & Dwight Co.*, No. 17-1948, 2018 WL 2238191, at *10-*11 (N.D. Ill. May 16, 2018); *Practice Management Support Servs., Inc.* v. *Cirque du Soleil, Inc.*, 301 F. Supp. 3d 840, 864 (N.D. Ill. 2018); *DeBernardis* v. *NBTY, Inc.*, No. 17-6125, 2018 WL 461228, at *1-*2 (N.D. Ill. Jan. 18, 2018); *Wenokur* v. *AXA Equitable Life Ins.*, No. 17-cv-165, 2017 WL 4357916, at *4 n.4 (D. Ariz. Oct. 2, 2017).

[5] Petitioner could not remove the case under CAFA because it began as a breach-of-contract action against respondents, who then brought class-action counterclaims. See *Home Depot U.S.A., Inc.* v. *Jackson*, 139 S. Ct. 1743, 1748 (2019).

sonal jurisdiction (its States of incorporation and principal place of business). Many pending cases present the question, including pending appeals in the Sixth and Ninth Circuits.[6]

There is every reason to believe that issue will continue to arise with great frequency. The plaintiffs' bar frequently brings putative class actions on a multi-state basis. The Federal Judicial Center has reported that nearly three-quarters of class actions involve class members from more than two States, and approximately one-third of class actions are brought as nationwide class actions. See Willging & Wheatman, *An Empirical Examination of Attorneys' Choice of Forum in Class Action Litigation* 6, 17 (Fed. Judicial Ctr. 2005). In the context of the Telephone Consumer Protection Act, 47 U.S.C. 227, for example, more than one-third of the thousands of lawsuits filed in a one-year period were brought as nationwide class actions. See Becca Wahlquist, *TCPA Litigation Sprawl*, U.S. Chamber Inst. for Legal Reform, at 3 (Aug. 2017) (reporting data on cases filed between August 1, 2015, and December 31, 2016).

The question presented is an important one, because it implicates the fairness protections guaranteed by the Due Process Clause. This Court has long recognized that it would be fundamentally unfair to

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[6] See *Canady* v. *Anthem Cos.*, petition for appeal granted, No. 20-504 (6th Cir. Aug. 19, 2020); *Moser* v. *Benefytt, Inc.*, appeal pending, No. 19-56224 (9th Cir. docketed Oct. 24, 2019). In addition, the Fifth Circuit recently remanded a case presenting the issue for the district court to address the merits in the first instance, while acknowledging that "courts have split on how *Bristol-Meyers* applies to class actions." *Cruson* v. *Jackson Nat'l Life Ins.*, 954 F.3d 240, 247 n.4 (5th Cir. 2020).

require a defendant to defend a lawsuit in an unfamiliar forum that lacks a connection to the lawsuit. See, *e.g.*, *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 292 (1980). This Court has also recognized that the high stakes of class actions increase the pressure on defendants to settle claims, regardless of their merits. See *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 350 (2011). That hydraulic settlement pressure expands with the size of the class, and it is at its apex in nationwide class actions like this one.

II. The Decision Below Is Wrong

The Missouri courts erred in allowing the nationwide class to proceed. This Court's precedents, including *BMS*, establish that personal jurisdiction must be assessed on a plaintiff-by-plaintiff, claim-by-claim basis. That principle applies to class actions just as it applied to the mass tort action in *BMS*. If some putative class members cannot show the necessary connection between their claims and the defendant's activities in the forum – and they therefore could not maintain their claims as individual actions in the forum – the class action may not encompass those claims.

A. *BMS* confirms that specific personal jurisdiction must exist for each plaintiff's claim

1. To exercise specific jurisdiction over a defendant, a court must conclude that the defendant's "suit-related conduct" creates a substantial connection with the forum State. *Walden* v. *Fiore*, 571 U.S. 277, 284 (2014). The court must find a substantial relationship between the forum, the defendant, and the particular plaintiff's claim, so that it is "reasonable" to call the defendant into that court to defend against that claim. *World-Wide Volkswagen*, 444 U.S. at 292.

That limitation on personal jurisdiction reflects the fairness concerns animating the Due Process Clause. See, *e.g.*, *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 464, 472 (1985). The limitations on personal jurisdiction imposed by the Due Process Clause "give[] a degree of predictability to the legal system" by allowing "potential defendants," particularly corporate defendants, to have "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. The Due Process Clause also protects important federalism interests, by preventing States from reaching beyond their borders to adjudicate claims over which they "may have little legitimate interest." *BMS*, 137 S. Ct. at 1780-1781.

2. In *BMS*, this Court applied those settled principles in a case involving multiple plaintiffs. The case involved 86 California residents and 592 plaintiffs from other States who sued BMS in California, alleging injuries from taking the drug Plavix. 137 S. Ct. at 1778. The nonresident plaintiffs did not claim any connections with California. *Id.* at 1781. Nonetheless, the California Supreme Court upheld the state court's assertion of specific jurisdiction over the nonresidents' claims, on the theory that the nonresidents' claims were "similar in several ways" to the claims of the California residents (for which there was specific jurisdiction). *Id.* at 1778-1779.

This Court reversed, finding no "adequate link between the State and the nonresidents' claims." *BMS*, 137 S. Ct. at 1781. The fact that "*other* plaintiffs" (the resident plaintiffs) "were prescribed, obtained, and ingested Plavix in California – and allegedly sustained the same injuries as did the nonresidents – does not allow the State to assert specific jurisdiction over the

nonresidents' claims." *Ibid.* The defendant must have a sufficient relationship to the forum with respect to each plaintiff's claim. *Ibid.* That is true even when the claims raised by the resident and nonresident plaintiffs are similar. *Ibid.*

The *BMS* Court relied on the fairness, predictability, and federalism interests underlying its specific jurisdiction decisions. The Court's "primary concern" in assessing the California court's exercise of specific jurisdiction was "the burden on the defendant," which included both "the practical problems resulting from litigating in the forum" and "the more abstract matter of" requiring a defendant to "submit[] to the coercive power of a State" lacking any legitimate interest in the dispute. *BMS*, 137 S. Ct. at 1780. Without the necessary link to the forum for each plaintiff's claim, the Court explained, it would be unfair to require the defendant to appear in the forum to answer that claim. *Ibid.* "What is needed – and what is missing here – is a connection between the forum and the *specific claims at issue*." *Id.* at 1781 (emphasis added).

B. This Court's reasoning in *BMS* applies equally to class actions

In a putative class action, as in the mass tort action in *BMS*, multiple plaintiffs attempt to bring similar claims against the same defendant in the same forum. To assert personal jurisdiction over the plaintiffs' claims, the court must find the requisite connection between the defendant and the forum for "the specific claims at issue," *BMS*, 137 S. Ct. at 1781, meaning each putative class member's claim. See *Molock*, 952 F.3d at 306 (Silberman, J., dissenting). The fact that *some* class members can establish specific personal jurisdiction over the defendant for their claims does not allow them to bootstrap jurisdiction

for the claims of *other* class members. See *BMS*, 137 S. Ct. at 1779, 1781; *Walden*, 571 U.S. at 286.

The *BMS* Court's concern was that the defendant could not reasonably expect, based on its activities within the forum, that it would be subject to suit there for claims by nonresident plaintiffs that are unconnected to the forum. *BMS*, 137 S. Ct. at 1780; see *World-Wide Volkswagen*, 444 U.S. at 297. That concern applies equally to mass actions and putative class actions. "A court that adjudicates claims asserted on behalf of others in a class action exercises coercive power over a defendant just as much as when it adjudicates claims of named plaintiffs in a mass action." *Molock*, 952 F.3d at 307 (Silberman, J., dissenting). "A defendant is therefore entitled to due process protections – including limits on assertions of personal jurisdiction – with respect to all claims in a class action for which a judgment is sought." *Ibid.*

A contrary rule would disregard the interests of other States. Allowing a State to assert jurisdiction over the claims of a putative nationwide class, based on a single named plaintiff's connection to the forum, would permit the forum State to decide claims as to which it has insufficient legitimate interest, infringing on the authority of other States. See *BMS*, 137 S. Ct. at 1780. Whether multiple plaintiffs' claims are presented in a mass action or in a putative class action, a forum State's exercise of specific jurisdiction is justified only when it has a legitimate interest in adjudicating those particular claims.

If the rule were otherwise, plaintiffs could circumvent *BMS* by bringing cases as class actions rather than as multiple individual lawsuits or mass actions. *BMS* involved 678 plaintiffs from 34 States asserting similar tort claims against BMS in California. 137 S.

Ct. at 1778. Respondents in this case are two Missouri residents who wish to represent a nationwide class of approximately 390,000 people in Missouri state court, to bring claims based on petitioner's repossession of vehicles in all 50 States and the District of Columbia. Pet. 2 n.1. Respondents do not attempt to limit the class to individuals whose vehicles were repossessed in Missouri. It would make no sense to allow the nonresident plaintiffs in this case to proceed with their claims when the Court prohibited the nonresident plaintiffs from doing so in *BMS*.

This Court therefore should grant the petition and hold that a named plaintiff in a class action cannot represent class members who would be precluded by the Due Process Clause from asserting their claims individually in the forum State.

C. Lower courts' reasons for refusing to apply *BMS* in the class-action context lack merit

The courts that have not applied *BMS* in the class-action context have offered a number of justifications for their approach, none of which has merit.

1. First, some courts, including the Seventh Circuit, have decided that class members need not establish specific personal jurisdiction with respect to their claims because of procedural differences between mass actions and class actions. Among other things, they have relied on this Court's statement in *Devlin* v. *Scardelletti*, 536 U.S. 1, 9-10 (2002), that class members not named in the complaint "may be parties for some purposes and not for others." See *Mussat*, 953 F.3d at 447; *Fitzhenry-Russell*, 2017 WL 4224723, at *5. But the *Devlin* Court held that those class mem-

bers *are* considered parties for purposes of appeal because they are bound by the judgment. 536 U.S. at 10-11. If class members who are not named in the complaint are considered parties for protecting their own interests that are affected by a binding judgment, surely they are considered parties for purposes of personal jurisdiction, a constitutional defense protecting a defendant's interests in not being haled into an unfair forum and being bound by its judgment.

When a court certifies a class, it makes class members parties to the suit for purposes of adjudicating the merits of their claims and binding them to a judgment. See *Smith* v. *Bayer Corp.*, 564 U.S. 299, 313 (2011) (contrasting "an unnamed member of a proposed but uncertified class," who does not qualify as a party to the litigation, with "an unnamed member of a *certified* class"). Before the court takes that step, it must first ensure that its assertion of jurisdiction over those claims is compatible with the defendant's rights under the Due Process Clause.

Some courts have also noted that class members other than the named plaintiffs are not considered in assessing diversity jurisdiction or venue. See *Mussat*, 953 F.3d at 447; *Al Haj*, 338 F. Supp. 3d at 820. But unlike the rules governing diversity jurisdiction and venue, which are examples of purely "procedural rules," *Devlin*, 536 U.S. at 10, personal jurisdiction is a constitutional defense rooted in due process.

None of these procedural differences provides a basis for courts to disregard the Due Process Clause. A class action is merely a "species" of "traditional joinder" that permits the court "to adjudicate claims of multiple parties at once, instead of in separate suits." *Shady Grove Orthopedic Assocs., P.A.* v. *Allstate Ins.*,

559 U.S. 393, 408 (2010) (plurality opinion). "Due process requires that there be an opportunity to present every available defense," *Lindsey* v. *Normet*, 405 U.S. 56, 66 (1972) (internal quotation marks omitted), including a personal jurisdiction defense. In the class-action context, the Rules Enabling Act confirms this point. It specifies that rules of procedure, including Rule 23, "'shall not abridge, enlarge[,] or modify any substantive right,'" *Amchem Prods., Inc.* v. *Windsor*, 521 U.S. 591, 613 (1997) (quoting 28 U.S.C. 2072(b)), including the right to put on a defense, see *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338, 367 (2011).

Nothing about the class action device overrides the due process principles recognized by this Court. The class-action mechanism "is not a license for courts to enter judgments on claims over which they have no power." *Molock*, 952 F.3d at 307 (Silberman, J., dissenting). Plaintiffs therefore cannot use the class-action device to avoid the due process constraints on specific personal jurisdiction.

2. Some courts have attempted to distinguish mass tort actions from class actions on the ground that a case must meet the requirements of Rule 23 (or a state counterpart) to be certified as a class action. In their view, compliance with those requirements satisfies due process. See *Mussat*, 953 F.3d at 447; *Molock* v. *Whole Foods Mkt., Inc.*, 297 F. Supp. 3d 114, 126 (D.D.C. 2018), aff'd on other grounds, 952 F.3d 293. On the contrary, the requirements of Rule 23 differ from, and do not satisfy, the due process requirements to establish personal jurisdiction.

Due process requires a substantial relationship between the defendant, the forum, and the particular claim. Nothing in Rule 23 ensures that that relationship exists. Rule 23 requires that the plaintiffs' claims

be similar, and that the named plaintiffs' claims be typical of other class members' claims. But this Court already has held that mere similarity of claims or a relationship between the plaintiffs is not enough to satisfy the due process limits on personal jurisdiction. *BMS*, 137 S. Ct. at 1781.

3. Some district courts have permitted class actions to proceed without requiring unnamed class members to establish personal jurisdiction over their claims in order to "promot[e] expediency in class action litigation." *Fitzhenry-Russell*, 2017 WL 4224723, at *5. But the desire for efficiency cannot override constitutional rights. See, *e.g.*, *Free Enter. Fund* v. *Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 499 (2010). The Due Process Clause "is not intended to promote efficiency or accommodate all possible interests"; "it is intended to protect the particular interests of the person" whose rights are at stake. *Fuentes* v. *Shevin*, 407 U.S. 67, 90 n.22 (1972). The due process limitations on personal jurisdiction, in particular, "protect the liberty of the nonresident defendant – not the convenience of plaintiffs." *Walden*, 571 U.S. at 284; see *BMS*, 137 S. Ct. at 1780-1781 ("[R]estrictions on personal jurisdiction" apply "even if the forum State is the most convenient location for litigation.") (internal quotation marks omitted).

Moreover, that view fails to take into account defendants' countervailing interests in defending the claims against them on the merits. Expanding the class requires the defendant to evaluate and defend against additional claims and significantly raises the potential damages exposure – reducing the likelihood that those claims will be adjudicated on the merits. This case proves the point: Respondents wish to represent hundreds of thousands of plaintiffs to recover

over $4.6 billion in statutory damages alone. Pet. 3 & n.2. An expanded class means that the claims are less likely to be litigated to final judgment, no matter how dubious their merits. Defendants in class actions already face tremendous pressure to capitulate to what Judge Friendly termed "blackmail settlements." Henry J. Friendly, *Federal Jurisdiction: A General View* 120 (1973); accord *Concepcion*, 563 U.S. at 350 (recognizing the "risk of 'in terrorem' settlements that class actions entail"). That settlement pressure is substantially greater in a nationwide class action.

4. Relatedly, some courts have refused to apply *BMS* under the belief that doing so "would require plaintiffs to file fifty separate class actions in fifty or more separate district courts across the United States." *E.g.*, *In re Chinese-Manufactured Drywall*, 2017 WL 5971622, at *19. That is incorrect. Plaintiffs can file a nationwide class action anywhere the defendant is subject to general personal jurisdiction. See *BMS*, 137 S. Ct. at 1783 ("Our decision does not prevent the California and out-of-state plaintiffs from joining together in a consolidated action in the States that have general jurisdiction over BMS."); see also, *e.g.*, *Molock*, 952 F.3d at 309 (Silberman, J., dissenting).

That outcome is sensible, because a defendant would expect that it could be sued in its home State by plaintiffs from any State for any type of claim. Indeed, that is the essence of general personal jurisdiction. See, *e.g.*, *BNSF Ry.* v. *Tyrrell*, 137 S. Ct. 1549, 1558-1559 (2017). Plaintiffs also could bring suit in one place if all class members' claims arose out of the defendant's constitutionally relevant contacts with the forum, regardless of where the class members happen to reside.

III. If Left Uncorrected, The Rule Applied By The Court Below Would Harm Businesses And The Judicial System

The decision below not only violates core due process principles, but the approach to personal jurisdiction it represents would impose serious, unjustified burdens on the business community and the courts. These burdens provide an additional, compelling reason to grant review.

A. The Missouri courts' approach encourages abusive forum shopping

Not long ago, the plaintiffs' bar relied heavily on expansive theories of general jurisdiction to bring nationwide or multi-state suits in plaintiff-friendly "magnet jurisdictions." U.S. Chamber Inst. for Legal Reform, BMS *Battlegrounds: Practical Advice for Litigating Personal Jurisdiction After* Bristol-Myers 3-5 (June 2018), https://bit.ly/2TulA0d. This Court responded to that abuse by limiting general personal jurisdiction to the places the defendant corporation can fairly be considered "at home." *BNSF Ry.*, 137 S. Ct. at 1558. Even a "substantial, continuous, and systematic course of business" by the defendant in the forum State, the Court explained, is not enough to support general jurisdiction. *Daimler AG* v. *Bauman*, 571 U.S. 117, 138 (2014).

But if the lower court's certification of a nationwide class containing hundreds of thousands of individuals based on the claims of the two Missouri respondents were accepted, the plaintiffs' bar would be able to make an end-run around those limits on general personal jurisdiction by bringing cases as class actions. A nationwide class action could be filed anywhere that even a single individual with the requisite

forum connection is willing to sign up as a named plaintiff even though the State has no "legitimate interest" in the vast majority of the putative class's claims. *BMS*, 137 S. Ct. at 1780; see *DeBernardis*, 2018 WL 461228, at *2 (noting that "forum shopping is just as present in multi-state class actions" as it is in "mass torts").

Permitting such a nationwide class action to be brought on a specific jurisdiction theory – especially when nearly all of the plaintiffs are nonresidents and have claims based on out-of-state conduct – would in effect "reintroduce general jurisdiction by another name" and on a massive scale. Linda J. Silberman, *The End of Another Era: Reflections on* Daimler *and Its Implications for Judicial Jurisdiction in the United States*, 19 Lewis & Clark L. Rev. 675, 687 (2015). Just as with expansive theories of general personal jurisdiction, the forum State's assertion of authority in those circumstances would be "unacceptably grasping." *Daimler AG*, 571 U.S. at 138-39 (internal quotation marks omitted).

And there is no logical stopping point. Out-of-state class members could outnumber the in-state named plaintiffs and other class members by 500:1, or even 5000:1, and still invoke specific jurisdiction. In *BMS*, the nonresident plaintiffs outnumbered the California plaintiffs 592 to 86. 137 S. Ct. at 1778. In the class-action context, the ratio of out-of-state class members to in-state class members could be the same or larger.

This is a real, not hypothetical, problem. For example, in *Fitzhenry-Russell*, a lawsuit brought in California, the district court noted "that 88% of the class members are not California residents," a number it characterized as "decidedly lopsided." 2017 WL

4224723, at *5. Yet that court still exercised personal jurisdiction "as to the putative nationwide class claims." *Ibid.* Similarly, in *Braver* v. *Northstar Alarm Services, LLC*, the court permitted a single Oklahoma named plaintiff to represent a nationwide class of 239,630 people located "across most of the country." 329 F.R.D. 320, 332 (W.D. Okla. 2018). If class members are proportionally distributed across the country, then almost 99% of the claims have no connection to the forum. See also, *e.g.*, *Maclin* v. *Reliable Reports of Tex., Inc.*, 314 F. Supp. 3d 845, 847 (N.D. Ohio 2018) (in opt-in collective action, only 14 of 438 total employees, or about 3%, worked in Ohio, the forum State).

This case proves the point: Respondents are two named plaintiffs purporting to represent a nationwide class of approximately 390,000 individuals located in all 50 states and the District of Columbia. See Pet. 2 & n.1. While the petition does not specify, the number of non-Missouri class members likely is much greater than the number of class members whose vehicles were repossessed in Missouri.

This forum shopping violates basic principles of federalism. Under the rule reflected in the decision below, courts in the forum State can decide claims over which they have little legitimate interest, including claims based on conduct that occurred exclusively in other States. That substantially infringes on the authority of those other States to control conduct within their borders. As the Court recognized in *BMS*, defendants should not have to "submit[] to the coercive power of a State" with "little legitimate interest in the claims in question." 137 S. Ct. at 1780.

B. The Missouri courts' approach makes it exceedingly difficult for businesses to predict where they could be sued

Relatedly, the Missouri courts' approach would make it nearly impossible for corporate defendants to predict where plaintiffs could bring high-stakes, multi-state class-action lawsuits based on a specific personal jurisdiction theory. That in turn would inflict significant economic harm.

The due process limitations on specific personal jurisdiction "give[] a degree of predictability to the legal system" so that "potential defendants" are able to "structure their primary conduct" by knowing where their conduct "will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297. That "[p]redictability is valuable to corporations making business and investment decisions." *Hertz Corp.* v. *Friend*, 559 U.S. 77, 94 (2010) (rejecting expansive interpretation of "principal place of business" in CAFA).

Under existing standards for specific personal jurisdiction, a company "knows that . . . its potential for suit [in a State] will be limited to suits concerning the activities that it initiates in the state." Carol Rice Andrews, *The Personal Jurisdiction Problem Overlooked in the National Debate About "Class Action Fairness,"* 58 SMU L. Rev. 1313, 1346 (2005). But if a court need not have specific jurisdiction over the claims of all class members, a company could be forced into a State's court to answer for claims entirely unrelated to that State.

Businesses that sell products or services nationwide, or employ individuals in several States across the country, would have no way of avoiding nationwide class action litigation in any of those States. As

a result, they could be forced to litigate a massive number of claims in one State even though most, or even virtually all, of the claims arose from out-of-state conduct – no matter how "distant or inconvenient" the forum State. *World-Wide Volkswagen*, 444 U.S. 292. That result would eviscerate the predictability and fairness guaranteed by the Due Process Clause.

The harmful consequences of this unpredictability would not be limited to businesses. The costs of litigation surely would increase if businesses are forced to litigate high-stakes class actions in unexpected forums. And some of that cost increase would invariably be borne by consumers in the form of higher prices.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, the petition should be held pending the Court's decision in *Ford Motor Co.* v. *Montana Eighth Judicial District Court*, No. 19-368, and *Ford Motor Co.* v. *Bandemer*, No. 19-369, and then disposed of as appropriate in light of the decision in those cases.

Respectfully submitted.

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SEPTEMBER 2020