

No. 20-\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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BBB INDUSTRIES, LLC,

*Petitioner,*

*v.*

CARDONE INDUSTRIES, INC.,

*Respondent.*

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ON PETITION FOR A WRIT OF CERTIORARI TO  
THE SECOND COURT OF APPEALS OF TEXAS

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**PETITION FOR A WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Under the Due Process Clause, courts may exercise specific personal jurisdiction over out-of-state defendants only when the plaintiff's claim arises from or relates to sufficient contacts between the defendant and the state. Texas courts recognize an exception to this rule that operates as a form of supplemental specific personal jurisdiction: Once there is one claim for which jurisdiction is established, a trial court may in its discretion exercise jurisdiction over other claims against the same defendant, even if they do not arise from constitutionally sufficient forum contacts. The question presented is:

Is the Texas courts' supplemental specific personal jurisdiction doctrine inconsistent with the Due Process Clause?

**CORPORATE DISCLOSURE STATEMENT**

Petitioner in this Court, BBB Industries, LLC, is not publicly traded. It is a wholly owned subsidiary of SV-BBB Holdings, Inc. Its other, indirect corporate parents are: WCI-BBB Holdings, LLC; BBB Industries US Holdings, Inc.; GC EOS Buyer, Inc.; GC EOS Parent, Inc.; GC EOS Parent, Inc.; and GC EOS InvestCo, LLC. None of those companies are publicly traded.

**RELATED PROCEEDINGS**

*BBB Industries, LLC v. Cardone Industries, Inc.*, No. 19-0649 (Tex.) (petition for review denied June 5, 2020)

*BBB Industries, LLC v. Cardone Industries, Inc.*, No. 02-18-00025-CV (Tex. App.) (judgment entered May 9, 2019)

*In re Cardone Industries, Inc.*, No. 02-19-00073-CV (Tex. App.) (petition for writ of mandamus denied April 9, 2019)

*Cardone Industries, Inc. v. Joel Farina & BBB Industries, LLC*, No. 017-271617-14 (Dist. Ct. Tarrant Cnty.) (order denying special appearance Dec. 28, 2017)

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## INTRODUCTION

States may exercise specific personal jurisdiction over out-of-state defendants only if the plaintiff's claim arises from or relates to sufficient contacts between the defendant and the forum state. As this Court explained in *Bristol-Myers Squibb Co. v. Superior Court*, specific personal jurisdiction demands a claim-by-claim analysis: Courts must look at the allegations underlying each “specific claim[] at issue” to determine whether that claim is sufficiently connected to the forum state to establish jurisdiction. 137 S. Ct. 1773, 1781 (2017).

In a series of decisions, the Texas courts of appeals have circumvented this constitutional requirement by establishing what amounts to a form of supplemental specific personal jurisdiction. Under this doctrine, when a plaintiff asserts multiple claims and the defendant challenges jurisdiction only as to some of those claims, trial courts need not determine whether the challenged claims arise from or relate to sufficient contacts with the state. Instead, the trial court may ignore the jurisdictional question and simply decline to sever those claims from the other claims for which jurisdiction is uncontested. So long as the appellate courts conclude that the trial court did not abuse its discretion in declining to sever the challenged claims, the defendant is subject to jurisdiction in Texas—even if the challenged claims have no Texas connection.

The decision below is the third and most recent application of this doctrine by the Texas courts of appeals. Respondent Cardone Industries, an auto-

parts manufacturer, sued its leading competitor, Petitioner BBB Industries, in Texas state court in 2014. Cardone asserted claims arising exclusively out of the alleged conduct of a former Cardone employee who left to work for BBB. Although BBB has no significant operations in Texas, that employee worked out of his home there, so BBB did not contest jurisdiction.

Years later, Cardone filed an amended complaint<sup>1</sup> adding new claims that have nothing to do with that employee, and nothing to do with Texas. BBB accordingly challenged personal jurisdiction as to those new claims. The trial court rejected the challenge without explanation, and BBB appealed.

The Texas Court of Appeals declined to consider BBB's argument that Cardone failed to show the constitutionally required connection between its new claims and Texas. Instead, relying on a string of Texas appellate decisions recognizing the supplemental personal jurisdiction doctrine described above, the court held that BBB's appeal turned on whether the trial court "would have abused its discretion by finding" that the new claims "are not severable claims." Pet. App. 10a. The appellate court answered no, observing generally that "justice and convenience would be better served by allowing a single factfinder to determine all" of Cardone's claims against BBB "in a single suit," and that BBB would not be "unduly prejudiced" by the exercise of

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<sup>1</sup> In Texas courts, the plaintiff's pleading is styled a "petition," but for clarity we use the more common term "complaint" here.

jurisdiction, since it was already in the Texas courts anyway. Pet. App. 15a. The Texas Supreme Court denied BBB's petition for review.

The constitutionality of Texas' supplemental specific personal jurisdiction doctrine is a question of exceptional importance warranting the Court's immediate intervention. Three of the Texas courts of appeals have now endorsed the doctrine, none has ever rejected it, and the Texas Supreme Court has refused to correct the error, even though the doctrine plainly runs afoul of this Court's instruction that specific personal jurisdiction requires "a connection *between the forum and the specific claims at issue*," *Bristol-Myers*, 137 S. Ct. at 1781 (emphasis added)—not a connection between one claim and some other claim.

Texas is the second largest state in the Nation, measured not just by size but also by population and economy. It is also a national litigation hub, with more civil lawsuits filed in Texas each year than in any other state. The Texas courts' jurisdictional overreach threatens to upend due process constraints across the country as out-of-state citizens find themselves hauled into Texas to defend against claims having no connection to the state. The Constitution cries out for the Court's correction of this practice.

The petition should be granted.

## OPINIONS BELOW

The order of the Texas district court is unreported (Pet. App. 18a-19a). The Texas Court of Appeals' memorandum opinion (Pet. App. 1a-17a) is unreported but is available at 2019 WL 2042233. The Texas Supreme Court's order directing merits briefing (Pet. App. 21a-23a) is unreported. The Texas Supreme Court's order denying BBB's petition for review (Pet. App. 20a) is unreported. The Texas Court of Appeals' orders denying rehearing (Pet. App. 26a-27a) and denying rehearing en banc (Pet. App. 24a-25a) are unreported.

## JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a). The Texas Court of Appeals' decision on the federal issue of specific personal jurisdiction is "plainly final," *Calder v. Jones*, 465 U.S. 783, 787-88 & n.8 (1984), and the Texas Supreme Court denied BBB's petition for review on June 5, 2020. *See, e.g., Bristol-Myers*, 137 S. Ct. at 1778-79 (reviewing decision on pre-trial motion to quash service of summons). This petition is timely because it has been filed within 150 days of the Texas Supreme Court's denial of BBB's petition for review. Order Regarding Filing Deadlines, Supreme Court of the United States (Mar. 19, 2020).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

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

Rule 120a of the Texas Rules of Civil Procedure provides, in relevant part:

[A] special appearance may be made by any party either in person or by attorney for the purpose of objecting to the jurisdiction of the court over the person or property of the defendant on the ground that such party or property is not amenable to process issued by the courts of this State. A special appearance may be made as to an entire proceeding or as to any severable claim involved therein.

### STATEMENT OF THE CASE

#### ***Cardone Originally Sues BBB In Texas Based On Alleged Conduct In Texas.***

BBB, based in Alabama, and Cardone, based in Pennsylvania, are two of the country's largest automotive parts manufacturers. Pet. App. 1a-2a. In 2014, Cardone filed suit against BBB in Texas state court, asserting claims arising out of the alleged conduct of Joel Farina, a former Cardone executive. Pet. App. 2a, 65a-94a. Cardone alleged that, when Farina left Cardone in September 2013 and moved to a position at BBB, he took various trade secrets and other confidential information, which he and BBB used to unfairly compete with Cardone. Pet. App. 2a. Based on those allegations, Cardone asserted causes

of action for misappropriation of trade secrets and misappropriation of confidential information, among other things. Pet. App. 2a, 86a-92a. Cardone’s complaint explicitly stated that “each” of the claims “entails Defendants’ use and reliance upon the knowledge acquired by Farina through his employment with Cardone.” Pet. App. 85a-86a.

BBB does not have any manufacturing plants, distribution centers, or sales offices in Texas, and none of its major customers are based in Texas. 1 CR 495.<sup>2</sup> Because Farina worked out of his home in Texas and the alleged acts of misappropriation occurred there, however, BBB conceded that Texas had specific personal jurisdiction over Cardone’s Farina-based claims.

***Cardone Amends Its Complaint To Add New Claims Unconnected To Texas.***

Three-and-a-half years into the litigation, Cardone amended its complaint to add a new set of claims.<sup>3</sup> They appear in a new section, appended at the end of the “Factual Background” portion of the complaint, titled “BBB’s Additional Acts of Misappropriation of Cardone’s Trade Secrets.” Pet. App.

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<sup>2</sup> “CR” refers to the Clerk’s Record filed in the Texas Court of Appeals. A reference to “1 CR 495” means the material appears in the first volume of the Clerk’s Record on page 495.

<sup>3</sup> Cardone filed a “First Amended Petition” shortly after it filed its original petition, but the First Amended Petition made only minor changes to the original. What we refer to as Cardone’s “amended complaint” is, formally, its “Second Amended Petition.”



6a-7a, 52a-56a. These new claims have nothing to do with Farina’s alleged conduct and have no Texas connection.

Instead, the claims relate to a fierce competition between Cardone and BBB in the early 2010s to serve as a supplier of power-steering products to the National Automotive Parts Association (“NAPA”), a major auto-parts retailer. In its new claims, Cardone alleges that, in 2010, 2011, and 2014, NAPA voluntarily provided BBB with information relating to Cardone’s pricing and the terms of its supply agreement with Cardone. Pet. App. 6a-7a, 52a-56a. Cardone alleges that this information constitutes trade secrets, and that BBB improperly used it to win NAPA business. Pet. App. 52a-56a.

Importantly, Cardone’s amended complaint does not link its new NAPA-based allegations to its original Farina-based allegations in any way. Cardone does not allege that Farina played any role in NAPA’s alleged wrongful disclosures (most of which allegedly occurred before he left Cardone for BBB). On the contrary, the new section detailing “BBB’s Additional Acts of Misappropriation of Cardone’s Trade Secrets” opens by declaring that the allegations are “[a]side from and in addition to those acts outlined above,” relating to Farina. Pet. App. 52a. And while the amended complaint vaguely asserts that BBB used the information obtained from NAPA “to unfairly compete with Cardone at times while BBB maintained a presence ... in Texas,” it never identifies any specific act that occurred in Texas or any other link between its new NAPA-based allegations and Texas. Pet. App. 54a.

In the “Causes of Action” section at the close of its amended complaint, however, Cardone did not add “counts” for the new NAPA-based claims, as would be the usual practice under both Texas and federal law. *See* Tex. R. Civ. P. 50 (“Each claim founded upon a separate transaction or occurrence ... shall be stated in a separate count ... whenever a separation facilitates the clear presentation of the matters set forth.”); Fed. R. Civ. P. 10(b) (“If doing so would promote clarity, each claim founded on a separate transaction or occurrence ... must be stated in a separate count ...”). Instead, Cardone revised the existing “counts” to purportedly encompass its new NAPA-based claims. Hence, whereas Cardone originally asserted that “BBB acquired Cardone’s trade secrets from Farina and BBB knew or should have known that Farina’s disclosure of Cardone’s trade secrets to BBB was improper,” Cardone’s amended complaint alleges that “BBB improperly acquired Cardone’s trade secrets from Farina *and other sources ....*” Pet. App. 56a-57a, 86a (emphasis added).

Cardone’s attempt to shoehorn the NAPA-based claims into its Texas suit was prompted by a suit BBB brought against Cardone in Cardone’s home state of Pennsylvania. BBB discovered that between 2012 and 2014, Cardone repeatedly accessed BBB’s confidential, trade secret documents from a secure NAPA sales website. 1 CR 308-09. Cardone employees circulated these documents internally, with warnings like, “If anyone asks, you do not know where this came from,” and used them to undercut BBB in the competition for NAPA’s business. 1 CR 299. Cardone has never denied that it injected its

own NAPA-based claims into the Texas suit because it wants the NAPA-related dispute litigated first in what it apparently regards as a more congenial forum than its home state. Indeed, Cardone has explicitly invoked the “preclusive effect” that it hopes the Texas suit will have on the Pennsylvania proceeding as a reason why the court should “continu[e] to exercise jurisdiction” over its NAPA-based claims.<sup>4</sup>

***The Texas Courts Deny BBB’s Jurisdictional Challenge Without Considering Whether The New Claims Satisfy The Requirements For Specific Personal Jurisdiction.***

In response to the amended complaint, BBB entered a special appearance in the trial court under Texas Rule of Civil Procedure 120a, the procedural mechanism in Texas for challenging personal jurisdiction. BBB argued that “[t]he Court lacks specific jurisdiction over BBB with respect to the newly asserted claims” because Cardone did not allege they arise out of or relate to forum contacts with Texas.<sup>5</sup> 1 CR 199. The trial court denied BBB’s jurisdictional challenge without explanation.

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<sup>4</sup> Brief of Appellee at 40, *BBB Indus., LLC v. Cardone Indus., Inc.*, No. 02-18-00025-CV (Tex. App. May 4, 2018).

<sup>5</sup> Texas’ long-arm statute, Tex. Civ. Prac. & Rem. Code § 17.042, is coterminous with the federal constitutional limits on personal jurisdiction. *Guardian Royal Exch. Assurance, Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 226 (Tex. 1991).

BBB appealed to the Texas Court of Appeals.<sup>6</sup> Again, BBB argued that there was “no specific personal jurisdiction over BBB with respect to Cardone’s new claims because: (1) the new claims do not arise out of sufficient minimum contacts with Texas and (2) asserting jurisdiction does not comply with traditional notions of fair play and substantial justice.”<sup>7</sup>

Cardone’s response was that, because it had not added new “causes of action” to the amended complaint but rather expanded its original causes of action, the new claims were not claims at all, just additional allegations. Cardone argued that “claims” for specific personal jurisdiction purposes are defined solely by abstract legal labels, like “fraud” or “misappropriation of trade secrets.”<sup>8</sup> Hence, any new allegations that a plaintiff can lump under a given legal label—even if totally unconnected to the original allegations—are all part of the same, indivisible claim. In other words, Cardone argued, it had defeated any personal jurisdictional challenge to its new NAPA-based allegations (which had nothing to do with Texas) by grouping them with its original Farina-based allegations (which did).

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<sup>6</sup> Texas law provides for an interlocutory appeal as a matter of right from an order granting or denying a special appearance. Tex. Civ. Prac. & Rem. Code § 51.014(a)(7). Such an appeal automatically stays the trial. *See id.* § 51.014(b).

<sup>7</sup> *See* Brief of Appellant at 34, *BBB Indus., LLC v. Cardone Indus., Inc.*, No. 02-18-00025-CV (Tex. App. Mar. 9, 2018).

<sup>8</sup> *See* Brief of Appellee at 21, *BBB Indus., LLC v. Cardone Indus., Inc.*, No. 02-18-00025-CV (Tex. App. May 4, 2018).

The Texas Court of Appeals affirmed the denial of BBB's special appearance. It began its analysis by assuming that, contrary to Cardone's arguments, the amended complaint did set forth a new set of "NAPA-based misappropriation claims," separate from the "Farina-based claims" asserted in Cardone's earlier complaint. Pet. App. 11a, 15a-16a.

Remarkably, the appellate court then held that it need not consider whether the new NAPA-based misappropriation claims were sufficiently tied to Texas to establish specific personal jurisdiction. Instead, following a line of decisions from other Texas courts of appeals, the court held that the question on appeal was simply whether "the trial court would not have abused its discretion by finding that Cardone's NAPA-based misappropriation claims are not severable" from the Farina-based claims. Pet. App. 15a-16a. The court answered yes, reasoning that the trial court would have acted within its discretion in declining to sever the new claims under the state law severance standard because it "could have found" that the new claims overlapped with the original claims such that "justice and convenience would be better served by allowing a single factfinder to determine [them] ... in a single suit." Pet. App. 15a. The court of appeals thus affirmed the denial of BBB's special appearance on that ground, without "address[ing] jurisdictional contacts as they relate to Cardone's [new claims]." Pet. App. 16a n.12.

BBB petitioned for review by the Texas Supreme Court, which ordered full briefing on the merits. Pet.

App. 21a-23a.<sup>9</sup> BBB again argued that the exercise of jurisdiction over Cardone’s NAPA-based claims violated the Due Process Clause, and urged the Texas Supreme Court to reject the line of cases from the Texas courts of appeals permitting supplemental specific personal jurisdiction. Those decisions, BBB contended, improperly allow “a procedural severability inquiry to supplant the constitutional requirements of specific personal jurisdiction.” Petitioner’s Brief on the Merits at 19, *BBB Indus., LLC v. Cardone Indus., Inc.*, No. 19-0649 (Tex. Dec. 18, 2019). BBB urged the Texas Supreme Court to reject those decisions’ approach to Texas Rule of Civil Procedure 120a because it “sets the Texas courts on a collision course with constitutional due process requirements.” *Id.* at 39. Following the merits briefing, the Texas Supreme Court denied BBB’s petition for review. Pet. App. 20a.

### REASONS FOR GRANTING THE PETITION

The Texas courts’ supplemental personal jurisdiction doctrine plainly violates this Court’s precedent establishing that specific personal jurisdiction requires a connection between the forum contacts and the specific claims at issue.

The adoption of this unconstitutional doctrine by the state with the largest civil litigation docket in

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<sup>9</sup> Review in the Texas Supreme Court involves a three-stage process. A party seeking review first files a petition for review, after which the respondent may file a response and the petitioner may reply. *See* Tex. R. App. P. 53. The Texas Supreme Court may then either deny the petition or order full briefing on the merits. Tex. R. App. P. 55.1.

the country is an issue of national importance warranting this Court’s intervention. Texas’ jurisdictional overreach erodes interstate federalism and threatens to deprive citizens across the country of their constitutional right to fair warning of what conduct may subject them to a state’s jurisdiction.

**I. The Texas Courts Of Appeals Have Adopted A Supplemental Specific Personal Jurisdiction Doctrine.**

The decision below marks the third time the Texas courts of appeals have held that trial courts may adjudicate claims that do not satisfy the requirements for specific personal jurisdiction, so long as it would not be an abuse of discretion to refuse to sever those claims from another claim for which jurisdiction is uncontested. *See* Pet. App. 10a (BBB’s jurisdictional challenge hinges on “whether the trial court would have abused its discretion by finding that Cardone’s NAPA-related misappropriation allegations are not severable claims”); *Shen v. Chen Zhao Hua*, No. 05-17-00280-CV, 2018 WL 1407099, at \*2 (Tex. App. Mar. 21, 2018) (“the controlling issue” in adjudicating a jurisdictional challenge is whether the challenged claims “are severable from” the claims for which jurisdiction is established, a determination that is reviewed for “abuse of discretion”); *Man Indus. (India) Ltd. v. Bank of Tokyo-Mitsubishi UFJ, Ltd.*, 309 S.W.3d 589, 592-93 (Tex. App. 2010) (because “the trial court did not abuse its discretion in determining that the Bank’s cross-claim was ... not severable[,] ... the trial court did not err in determining it had personal jurisdiction over Man as to the Bank’s cross-claim”).

In each decision, the court of appeals' reasoning proceeds the same way. The decisions begin by observing that Texas' special appearance rule, which is the procedural mechanism for challenging personal jurisdiction in the state, allows litigants to enter a special appearance only as to "any severable claim." *See* Pet. App. 8a; *Shen*, 2018 WL 1407099, at \*2; *Man Indus.*, 309 S.W.3d at 591. Then, the courts observe that "a trial court's decision on whether a claim is severable" is reviewed "for an abuse of discretion." Pet. App. 8a; *Shen*, 2018 WL 1407099, at \*2; *Man Indus.*, 309 S.W.3d at 591. And then they note that under Texas law, "[a]n appearance that does not comply with" the special appearance rule "is a general appearance and waives a party's objection to personal jurisdiction." Pet. App. 10a; *Shen*, 2018 WL 1407099, at \*2; *Man Indus.*, 309 S.W.3d at 593.

These observations lead to the conclusion that, in any multi-claim case where an out-of-state defendant contests jurisdiction as to only some of the plaintiff's claims, the jurisdictional challenge ultimately rests on whether the trial court would be within its discretion in concluding that the contested claims are not severable from the uncontested ones. If the court "would not have abused its discretion by so finding," then the defendant could not properly enter a special appearance. *See* Pet. App. 16a; *Shen*, 2018 WL 1407099, at \*3; *Man Indus.*, 309 S.W.3d at 590. And if the party could not properly enter a special appearance, its special appearance actually "constitute[d] a general appearance," by which it consented to jurisdiction as to all claims. Pet. App. 16a; *see also Shen*, 2018 WL 1407099, at \*4; *Man Indus.*, 309 S.W.3d at 593.



These decisions are explicit that this procedural severance analysis obviates any need to assess whether the challenged claims arise from or relate to sufficient contacts with the forum state. As the court of appeals explained in *Man Industries*, the case that originated this jurisdictional doctrine, where “the trial court did not err in denying [a] special appearance based on its conclusion that the [contested claim] is not severable,” the appellate court may “determine[] that the trial court had personal jurisdiction on this basis,” without assessing whether the contested claims arise from sufficient Texas contacts. 309 S.W.3d at 593; *see also Shen*, 2018 WL 1407099, at \*4. The decision below is likewise explicit that because the trial court had discretion to decline to sever the new NAPA-based claims, the court of appeals would not “address jurisdictional contacts” with respect to those claims. Pet. App. 16a n.12.

The line of reasoning adopted in these decisions effectively functions as a form of supplemental specific personal jurisdiction. Under the Texas courts’ approach, specific jurisdiction is founded not upon a connection between the claims at issue and the forum state, but upon the connection between one claim and another claim. Hence, in the decision below, the court of appeals concluded that it could exercise jurisdiction over Cardone’s NAPA-based claims because they “involve some of the same issues, facts, and evidence” as Cardone’s Farina-based claims, for which jurisdiction was uncontested. Pet. App. 15a. Similarly, in the other decisions, the Texas courts of appeals allowed for jurisdiction based on their determination that the trial court could have found that the claims are “interwoven” with one an-

other, *Man Indus.*, 309 S.W.3d at 592, or that, though they arise out of different conduct, they involve “common factual matter,” *Shen*, 2018 WL 1407099, at \*3.

The facts of these cases demonstrate the dramatic expansion in personal jurisdiction this doctrine effects. In *Man Industries*, the doctrine permitted a Texas court to adjudicate claims asserted by a Japanese bank against a company based in India. *See* 309 S.W.3d at 590-91. In *Shen*, the doctrine permitted a Texas court to adjudicate a dispute between a Hong Kong resident and a California resident about the ownership of rare red diamonds, located in Hong Kong. *See* 2018 WL 1407099, at \*2. In both cases, moreover, the new claims, for which personal jurisdiction was contested, were asserted by *new parties*, who had intervened in an existing lawsuit. *See Man Indus.*, 309 S.W.3d at 591; *Shen*, 2018 WL 1407099, at \*2. Yet the Texas courts reasoned that, by not objecting to personal jurisdiction as to the claims asserted by the original plaintiffs, the defendants waived any right to challenge jurisdiction as to new claims asserted by a separate party that was not previously involved in the litigation.

Likewise, in the decision below, the court of appeals held that the trial court could exercise jurisdiction over misappropriation claims asserted by one company, not based in Texas, against another company, also not based in Texas, relating to their competition to serve as a supplier for a third company, also not based in Texas. Nowhere in the court’s decision does it identify a single link between Cardone’s NAPA-based claims and Texas that might establish

that those claims arise from or relate to contacts with the State. Instead, the basis for jurisdiction is purely derivative: The appellate court concluded that because “Cardone’s Farina-based claims and its NAPA-based claims involve some of the same issues, facts, and evidence,” it was within the trial court’s discretion to exercise jurisdiction over the NAPA-based claims. Pet. App. 15a.

The “some overlap” that purportedly justified that exercise of discretion, moreover, is minimal and bears no resemblance to the analysis of jurisdictional contacts required by the Due Process Clause. Cardone’s Farina-based claims and its NAPA-based claims arise from distinct factual allegations, occurring years apart. Cardone has never alleged that NAPA played any role in Farina’s alleged theft of its trade secrets information when he moved from Cardone to BBB in 2013. Nor has Cardone ever alleged that Farina played any role in NAPA’s alleged wrongful conduct, almost all of which occurred years before he left Cardone. The only link between the two sets of claims is that they both allege misappropriation by the same defendant. The court of appeals nonetheless held that the trial court had discretion to conclude that “justice and convenience would be better served by allowing a single factfinder to determine all Cardone’s misappropriation claims against BBB in a single suit.” Pet. App. 15a.

## II. Texas' Supplemental Specific Personal Jurisdiction Doctrine Conflicts With The Due Process Clause And This Court's Precedents.

Texas' supplemental personal jurisdiction doctrine cannot be squared with the Due Process Clause or this Court's precedents. Specific personal jurisdiction demands "a connection between the forum and the specific claims at issue." *Bristol-Myers*, 137 S. Ct. at 1781. That requirement derives from the basic distinction between general jurisdiction and specific jurisdiction. Whereas "[a] court with general jurisdiction may hear any claim against [the] defendant, even if all the incidents underlying the claim occurred in a different State, ... specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Id.* at 1780 (internal citations and quotation marks omitted).

*Bristol-Myers* applied that principle to reject an approach to jurisdiction adopted by the California courts. In that case, a group of plaintiffs, including both California residents and nonresidents, brought suit in California state court, asserting claims based on the drug Plavix. 137 S. Ct. at 1778. All of the plaintiffs asserted the same "13 claims under California law, including products liability, negligent misrepresentation, and misleading advertising claims." *Id.* The California Supreme Court held that, because "[b]oth the resident and nonresident plaintiffs' claims are based on the same allegedly defective product and the assertedly misleading marketing and promotion of that product, which al-

legedly caused injuries in and outside the state,” it could exercise specific jurisdiction over the nonresidents’ claims on the basis of the forum contacts underlying the residents’ claims. *Bristol-Myers Squibb Co. v. Superior Court*, 377 P.3d 874, 888 (Cal. 2016). “BMS’s nationwide marketing, promotion, and distribution of Plavix,” the California Supreme Court held, “created a substantial nexus between the non-resident plaintiffs’ claims and the company’s contacts in California concerning Plavix.” *Id.*

This Court reversed. It rejected the notion that a state court may exercise specific jurisdiction over one claim because it has a “substantial nexus” with another claim that arises from constitutionally sufficient forum contacts. The California Supreme Court’s decision contravened “settled principles regarding specific jurisdiction” because it “found that specific jurisdiction was present without identifying any adequate link between the State and the nonresidents’ claims.” *Bristol-Myers*, 137 S. Ct. at 1781. The nonresidents “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.* They could not establish specific jurisdiction over their particular claims simply because they were “similar to” other claims that did arise out of sufficient California contacts. *Id.*

Like the California courts’ approach to specific personal jurisdiction that this Court rejected in *Bristol-Myers*, Texas’ approach allows courts to exercise jurisdiction without identifying any adequate link between Texas and the claims at issue. In none of the decisions articulating and applying Texas’ sup-

plemental personal jurisdiction doctrine did the courts ever identify any connection between the forum and the specific claims for which jurisdiction had been challenged. Instead, jurisdiction rested on links between those claims and other claims, which led the courts of appeals to conclude that the trial court had discretion to exercise jurisdiction over the contested claims.<sup>10</sup>

Like the jurisdictional rule rejected in *Bristol-Myers*, Texas’ supplemental jurisdiction doctrine erodes the fundamental distinction between general jurisdiction and specific personal jurisdiction. The result is a “loose and spurious form of general jurisdiction,” 137 S. Ct. at 1781: The defendant, having appeared to contest the merits of a claim that arises from or relates to sufficient contacts with the forum state, is presumed to have unknowingly consented to jurisdiction as to any other claim that the court, within its broad discretion, might conclude should not be severed from the uncontested claim. What “is missing” in Texas’ approach—as under the California approach rejected in *Bristol-Myers*—“is a connection between the forum and the specific claims at issue.” *Id.*

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<sup>10</sup> None of the Texas courts of appeals have suggested that Texas Rule of Civil Procedure 120a requires them to treat this severance analysis as a substitute for satisfying due process. To the extent Cardone so argues, that would provide no defense of the supplemental personal jurisdictional doctrine because federal constitutional requirements necessarily take precedence.

Unsurprisingly, the Texas courts’ supplemental specific personal jurisdiction doctrine sets Texas at odds with other states that have correctly construed *Bristol-Myers* as clarifying that specific personal jurisdiction must be established with respect to each claim asserted against an out-of-state defendant. See, e.g., *Lawson v. Simmons Sporting Goods, Inc.*, 569 S.W.3d 865, 871 (Ark. 2019) (*Bristol-Myers* requires court to abandon framework that treated “the relationship of [the defendant’s forum] contacts with the cause of action” as merely a factor in assessing jurisdiction in favor of a framework that requires that “the cause of action must arise from or relate to the defendant’s contacts with the forum state”); *Raser Techs., Inc. ex rel. Houston Phoenix Grp., LLC v. Morgan Stanley & Co.*, 449 P.3d 150, 164 (Utah 2019) (holding, based on *Bristol-Myers*, that “[t]o test jurisdiction, the district court should have separately analyzed each plaintiff, its claims, its claims’ connections to the forum, and each defendant’s connections to the forum in relation to those claims”).

Texas’ approach also places it in conflict with several federal courts of appeals, which have likewise recognized that “[t]here is no such thing as supplemental specific personal jurisdiction.” *Seiferth v. Helicopteros Atuneros, Inc.*, 472 F.3d 266, 275 n.6 (5th Cir. 2006) (quoting 5B Charles Alan Wright and Arthur R. Miller, *Federal Practice & Procedure* § 1351, at 299 n.30 (3rd ed. 2004)); see also *Phillips Exeter Acad. v. Howard Phillips Fund, Inc.*, 196 F.3d 284, 289 (1st Cir. 1999) (“Questions of specific jurisdiction are always tied to the particular claims asserted”); *Remick v. Manfredy*, 238 F.3d 248, 255 (3d Cir. 2001) (“Such a determination is claim specific

because a conclusion that the District Court has personal jurisdiction over one of the defendants as to a particular claim ... does not necessarily mean that it has personal jurisdiction over that same defendant as to ... other claims.”).

### **III. The Constitutional Of Texas’ Supplemental Specific Personal Jurisdiction Doctrine Is An Issue of Exceptional Importance Warranting This Court’s Immediate Intervention.**

Given Texas’ size and importance to the national economy, its adoption of this unconstitutional jurisdictional doctrine is an issue of critical importance warranting this Court’s immediate intervention. More civil lawsuits are filed in Texas each year than in any other state.<sup>11</sup> The jurisdictional overreach of the Texas courts subverts interstate federalism and threatens the due process rights of citizens across the country who may find themselves defending against claims in Texas without fair warning.

The constitutional limits the Due Process Clause places on the exercise of personal jurisdiction are rooted in three principles. First, they secure “interstate federalism” by ensuring 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 Corp. v. Woodson*, 444 U.S. 286, 292, 294 (1980). Second, they guarantee

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<sup>11</sup> See *Examining The Work of State Courts: An Overview of 2015 State Court Caseloads*, Court Statistics Project, National Center for State Courts 5 (2016), <https://tinyurl.com/y497nv6w>.



potential defendants “fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (internal quotation marks and citations omitted). Third, and most fundamentally, they safeguard “traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal citations omitted).

Texas’ supplemental specific personal jurisdiction doctrine undermines each of these principles.

1. *Federalism*. The “restrictions” the Due Process Clause places “on personal jurisdiction ‘are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States.’” *Bristol-Myers*, 137 S. Ct. at 1780 (quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958)). They derive from the federalist system that the Constitution establishes. The Framers “intended that the States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts.” *World-Wide Volkswagen*, 444 U.S. at 293. The retention of that sovereign power “implied a limitation on the sovereignty of all of its sister States—a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment.” *Id.* Accordingly, “the reasonableness of asserting jurisdiction over the defendant must be assessed in the context of our federal system of government” because the “Due Process Clause ensures not only fairness, but also the orderly administration of the laws.” *Id.* at 293-94.

Texas’ supplemental specific personal jurisdiction doctrine wholly ignores these considerations, undermining the “orderly administration of the laws” by precipitating jurisdictional conflicts between states. By limiting jurisdiction to claims that arise out of or relate to sufficient forum contacts, the settled rules of personal jurisdiction limit the instances in which multiple states can properly assert specific personal jurisdiction over a given claim. Texas’ doctrine, by contrast, foments jurisdictional conflicts. By giving courts discretion to exercise jurisdiction over claims that do not arise from or relate to sufficient forum contacts, Texas’ approach will lead courts to “assert jurisdiction in an inappropriate case,” thereby “upset[ting] the federal balance, which posits that each State has a sovereignty that is not subject to unlawful intrusion by other States.” *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 884 (2011) (plurality opinion); *see also id.* at 899 (Ginsburg, J., dissenting) (noting concern that expansive approach to personal jurisdiction could result in one state “tread[ing] on the domain, or diminish[ing] the sovereignty, of any other State”).

That risk is not hypothetical. The cases in which the Texas courts have applied this doctrine make clear that it fosters jurisdictional gamesmanship, whereby a party exploits Texas’ loose approach to jurisdiction to circumvent another suit already pending in another state. In *Man Industries*, for instance, the doctrine allowed a Japanese bank to intervene in a Texas suit and seek declaratory judgment against a party that had already sued it in New York. 309 S.W.3d at 591. And in the decision at issue here, Cardone exploited the doctrine in an open attempt to

circumvent litigation currently pending in Pennsylvania. *See supra* pp. 8-9.

Texas' supplemental specific personal jurisdiction doctrine supplants the fundamental constitutional constraints on jurisdiction inherent in the states' status as distinct sovereigns. It replaces these constraints with a mere exercise of discretion, driven by generalized considerations of "convenience," "justice," and "undu[e] prejudice[]." Pet. App. 15a.

Specific personal jurisdiction, however, does not turn merely on "the practical problems resulting from litigating in the forum"; it "also encompasses the more abstract matter of submitting to the coercive power of a State that may have little legitimate interest in the claims in question." *Bristol-Myers*, 137 S. Ct. at 1780. In *Bristol-Myers*, the company did not dispute that the California courts had jurisdiction to adjudicate the claims by the California residents. *Id.* at 1779. The company also conceded that the nonresidents' claims were "materially identical" to the residents' claims. *Id.* at 1785 (Sotomayor, J., dissenting). If considerations of convenience and prejudice were sufficient, jurisdiction over the nonresidents' claims would undoubtedly have been established. But this Court instead found that the "federalism interest" was "decisive." *Id.* at 1780. "[E]ven if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State," the Court explained; "even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the 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.” *Id.* at 1780-81 (quoting *World-Wide Volkswagen*, 444 U.S. at 294).

2. *Predictability.* The Due Process Clause protects individuals’ right to “fair warning that a particular activity may subject them to the jurisdiction of a foreign sovereign.” *Burger King*, 471 U.S. at 472 (internal citations and alterations omitted). By limiting the exercise of personal jurisdiction to circumstances in which “the defendant has purposefully directed his activities at residents of the forum, and the litigation results from alleged injuries that arise out of or relate to those activities,” *id.* at 472-73 (internal citations, alterations, and quotation marks omitted), the Due Process Clause guarantees “a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.” *World-Wide Volkswagen*, 444 U.S. at 297.

Texas’ supplemental specific personal jurisdiction doctrine erases this predictability. Under Texas’ approach, specific jurisdiction is not confined to circumstances where “the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.” *Id.* Instead, jurisdiction rests on the exercise of discretion by the trial court, guided by general considerations of “convenience,” “justice,” and “undu[e] prejudice[.]” Pet. App. 15a. Basing jurisdiction on such an unmoored, unpredictable inquiry deprives defendants of “clear notice” of where they are “sub-

ject to suit” and undermines the rule of law. *World-Wide Volkswagen*, 444 U.S. at 297; *see also* Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175, 1179 (1989).

3. *Traditional notions of fair play and substantial justice.* The constitutional constraints on personal jurisdiction are anchored in “traditional notions of fair play and substantial justice.” *Int’l Shoe*, 326 U.S. at 316 (internal citations omitted). Specifically, they embody a notion of reciprocity: When a defendant “purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws,” it is fair that the forum state in turn be allowed “to enforce an obligation that arose from” those activities. *Hanson*, 357 U.S. at 252-53.

Texas’ supplemental specific personal jurisdiction doctrine ruptures this reciprocity, allowing the exercise of jurisdiction over claims in the absence of any purposeful availment. Instead, the appropriateness of jurisdiction under Texas’ approach ostensibly derives from consent: If a trial court would be within its discretion in declining to sever claims, the defendant can be construed as having entered a general appearance and thereby waived any objection to jurisdiction. Pet. App. 15a-16a; *Man Indus.*, 309 S.W.3d at 593; *Shen*, 2018 WL 1407099, at \*3.

That “consent,” however, is pure fiction. Here, for instance, the Texas Court of Appeals concluded that BBB “generally appeared” when Cardone first brought the lawsuit in 2014. At that time, however, Cardone asserted claims arising exclusively out of

the alleged conduct of a single Cardone employee. The operative pleading said so explicitly, declaring that “each” of Cardone’s allegations “entails Defendants’ use and reliance upon the knowledge acquired by Farina through his employment with Cardone.” Pet. App. 85a-86a. BBB’s decision not to contest specific personal jurisdiction over claims that Cardone expressly declared arose exclusively out of the alleged conduct of Farina, a Texas resident, cannot be construed as evincing general consent to the Texas courts’ jurisdiction over any claim that Cardone might want to assert against it.

Similarly, in the other decisions adopting the doctrine, the claims at issue were asserted by intervenors, who weren’t even involved in the litigation when it first began. *See Shen*, 2018 WL 1407099, at \*2; *Man Indus.*, 309 S.W.3d at 591. Yet that did not stop the Texas appellate courts from concluding the out-of-state-defendant could be construed as having entered a general appearance and consented to the courts’ jurisdiction as to as-of-yet unasserted claims, by individuals or entities who were not even parties to the litigation.

Further confirming that the consent underlying Texas’ approach to specific personal jurisdiction is pure fiction, there is no way a litigant can ever withhold it. Suppose a defendant has been sued in Texas state court, on claims that the defendant acknowledges are properly subject to specific personal jurisdiction in Texas. That defendant knows about Texas’ supplemental specific personal jurisdiction doctrine, however, and wants to avoid consenting to jurisdiction as to any other claims. What can the defendant

do? Nothing. It cannot challenge the court's jurisdiction as to claims that have not yet been asserted but that the defendant fears might be asserted as some point in the future. And by appearing to contest the merits of the claims that *have* been asserted, the defendant will be construed as having consented to jurisdiction as to any other claim that the court, acting in its broad discretion based on considerations of "convenience" and "justice," might decline to sever—even if those claims have nothing to do with Texas whatsoever.

By allowing courts to exercise jurisdiction based on "consent" that the defendant never gave and never had a chance to withhold, the Texas courts contravene traditional notions of fairness and substantial justice. This Court's review is critical to stop the Texas courts' repeated application of a jurisdictional doctrine that deprives out-of-state defendants of due process.

**CONCLUSION**

This Court should grant the petition.

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September 3, 2020