No. _____

IN THE

Supreme Court of the United States

CONTINENTAL RESOURCES, INC.,

Petitioner,

v.

ZACHARY BUCKLES EX REL. NICOLE R. BUCKLES AND NICOLE R. BUCKLES,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Zachary Buckles worked at an oil-production site in North Dakota where he died, allegedly as the result of tortious acts or omissions of contractors also working at the North Dakota site. The Montana Supreme Court held that Montana courts may exercise specific personal jurisdiction over the Oklahoma-based owner of the site, Continental Resources, Inc., based on the application of Montana law authorizing vicarious liability for the torts of independent contractors. The questions presented are:

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

2. Whether the Montana courts may exercise specific personal jurisdiction over an Oklahoma resident for claims arising from an accidental death on a North Dakota worksite consistent with the Due Process Clause of the Fourteenth Amendment and the principles of federalism it incorporates.

PARTIES TO THE PROCEEDING

Petitioner Continental Resources, Inc., was an appellee in the court below and a defendant in the trial court.

Respondents, Zachary Buckles, deceased (d/b/a Dozer Testing), by and through his personal representative Nicole Buckles and Nicole Buckles, personal representative on behalf of the heirs of Zachary Buckles, were appellants in the court below and plaintiffs in the trial court.

Respondents, BH Flowtest, Inc., Black Rock Testing, Inc., and Janson Palmer d/b/a Black Gold Testing, were appellees in the court below and defendants in the trial court.

RULE 29.6 DISCLOSURE STATEMENT

Continental Resources, Inc., has no parent corporation, and no publicly held company owns 10 percent or more of its stock.

RELATED PROCEEDINGS

Montana Supreme Court:

Buckles v. Continental Resources, Inc., et al., Nos. DA 19-0546 and DA 19-0548.

Buckles v. Continental Resources, Inc., No. DA 19-0162 (judgment entered April 28, 2020).

Buckles v. Continental Resources, Inc., No. DA 16-0659 (judgment entered September 21, 2017).

Montana Seventh Judicial District Court:

Buckles v. Continental Resources, Inc., et al., No. DV 2015-014 (judgment entered January 14, 2019).

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PETITION FOR A WRIT OF CERTIORARI

In *Ford Motor Co. v. Montana Eighth Judicial District Court*, No. 19-368 (argument scheduled Oct. 7, 2020), this Court is currently reviewing a Montana Supreme Court decision holding that specific personal jurisdiction can be predicated on contacts of the defendant with the forum state that lack any causal connection to the plaintiff's claims. As briefing proceeded in that case and its companion, *Ford Motor Co. v. Bandemer*, No. 19-369 (collectively, the "*Ford Motor* cases"), the Montana Supreme Court rendered an even more aggressive and less tenable application of Montana's long-arm statute. It found that a claim for an injury suffered in North Dakota by an individual working and living in North Dakota arising from alleged acts and omissions in North Dakota—not by the Oklahoma-based defendant, Continental Resources, Inc. ("Continental"), but by its subcontractors—can support specific jurisdiction in Montana over Continental. The Montana Supreme Court identified neither case-related contacts between Continental and Montana, nor even an injury in Montana, but instead reasoned that Montana law authorizing vicarious liability for the alleged torts of independent contractors provides a basis for the exercise of specific personal jurisdiction over Continental.

This *non-sequitur*—that state law authorizing vicarious liability satisfies the minimum-contacts requirement—is profoundly wrong and deepens the split of authority that justified the Court's review of the *Ford Motor* cases. A ruling in the Court's forth-

coming *Ford Motor* decision rejecting Montana's exercise of specific personal jurisdiction in the absence of in-state conduct giving rise to the action would be dispositive against jurisdiction here, because nothing about the claims would be different if Continental had no ties whatsoever with Montana. Thus, the need for review here is no less crucial than in the *Ford Motor* cases, and for the same reasons.

The Court's review is even *more* essential because no conceivable application of the Due Process Clause could support the decision below. This case bears no factual relation at all to Montana, and the court below did not find otherwise. Its conclusion that a legal fiction satisfies the minimum-contacts test treats the reach of Montana courts' jurisdiction as co-extensive with the reach of Montana law. This doctrine lacks any limiting principle and stands rejected by this Court's precedents, in decisions rejecting jurisdiction over defendants based on the acts of third parties, *see, e.g.*, *Rush v. Savchuk*, 444 U.S. 320, 331–32 (1980), and in those rejecting efforts to treat choice-of-law principles as coterminous with due-process principles, *see, e.g.*, *Hanson v. Denckla*, 357 U.S. 235, 254 (1958).

Indeed, the purported contacts with the forum are at least as spurious here as in *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S. Ct. 1773 (2017), where this Court recently rejected claims for acts that did not occur in the forum by non-residents who were not injured in the forum, and in *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549 (2017), where the Court reversed the Montana Supreme

Court's assumption of jurisdiction over claims with "no relationship to anything that occurred or had its principal impact in Montana," *id.* at 1559 n.4. Montana's interest here is equally weak. The Montana Supreme Court's assertion of jurisdiction despite a total absence of relevant, meaningful ties to this case privileges Montana's non-existent sovereign interests over those of the state where the alleged tort and injury occurred, North Dakota, and those of Continental's home state, Oklahoma. Concerns of interstate federalism are "decisive" in this instance. *Bristol-Myers*, 137 S. Ct. at 1780. The "territorial limitations on" Montana's power to adjudicate matters over which their sister sovereign states have greater interests "divest the State of its power to render a valid judgment." *Id.* at 1781.

This case presents an ideal opportunity for the Court to clarify due-process standards and confirm that its precedents mean what they say. The decision below was not a faithful application of the Constitution but an attempt (in the words of the dissent below) to "manufacture" jurisdiction where this Court's precedent plainly forbids it through adoption of a wholly new approach turning on the scope of forum-state law instead of contacts with the forum state. The Court should grant the Petition and reverse or, at a minimum, grant the Petition, summarily vacate the judgment below, and remand for reconsideration in light of its forthcoming decision in the *Ford Motor* cases.

OPINIONS BELOW

The Montana Supreme Court's decision is reported at 462 P.3d 223. Pet.App.1–41. The decision of the Montana Seventh Judicial District Court is unreported. Pet.App.42–58.

JURISDICTION

The Montana Supreme Court issued its judgment on April 28, 2020. This Court has jurisdiction under 28 U.S.C. § 1257(a). *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 482–83 (1975); *Calder v. Jones*, 465 U.S. 783, 788 n.8 (1984).

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.

Montana Rule of Civil Procedure 4(b)(1)(A) provides:

> All persons found within the state of Montana are subject to the jurisdiction of Montana courts. Additionally, any person is subject to the jurisdiction of Montana courts as to any claim for relief arising from the doing personally, or through an employee or agent, of…(A) the transaction of any business within Montana….

STATEMENT OF THE CASE

A. Factual Background

Continental is an independent oil and gas production company based in Oklahoma City, Oklahoma. It owns oil-production facilities in North Dakota, South Dakota, Oklahoma, and Montana. Pet.App.44. Among these facilities is an oil and gas well site and tank battery in North Dakota's Bakken region near Alexander, North Dakota. Pet.App.43.

Continental engaged an independent contractor, BH Flowtest, Inc., to perform manual, on-site tank gauging, or "flow-testing," of the crude-oil production tanks at the North Dakota site. Pet.App.44. Flow-testing involves monitoring the flow rate of oil from a newly producing well into a holding tank. Pet.App.4. BH Flowtest engaged its own subcontractor, Black Rock Testing, Inc., to assist, and Black Rock in turn subcontracted with an individual named Janson Palmer, who did business under the name Black Gold Testing. Pet.App.4. Palmer then subcontracted with Zachary Buckles, doing business as Dozer Testing. Continental had no contractual relationship with Black Rock Testing, Mr. Palmer, or Mr. Buckles. They were independent contractors of BH Flowtest, not agents of Continental.

At the time of injury, Messrs. Palmer and Buckles lived in North Dakota, at the well site. Beginning in January 2014, they had lived at various well sites in North Dakota, where they carried out the testing duties they had contracted to perform for Black Rock. They worked alternating 12-hour shifts at the North

Dakota site and lived in North Dakota at all times relevant to this case. Pet.App.5; Pet.App.48.

Continental retained ownership and ultimate authority over the North Dakota site, and Continental employees at a field office in Sidney, Montana, generally oversaw the site. Pet.App.48. But Continental's field office had basically no contact with its North Dakota subcontractors. Under Continental's contracts and policies, "subcontractors must procure their own safety equipment; contractors are not included in the Sidney, Montana monthly safety trainings held for employees; Continental does not train independent contractors; and Continental expects that subcontractors acquire on-the-job training necessary to perform their work." Pet.App.12.

While Continental employees stationed at the Montana office did occasionally come into contact with subcontractors at the North Dakota site during safety inspections, those contacts occurred *at* the North Dakota site, and *never* involved Buckles, who was unknown to Continental's employees. *See, e.g.*, Pet.App.13 ("Dusty Grosulak, Continental's Northern region health and safety coordinator, testified that he had, at times, conducted *spot inspections or examinations* and looked at the safety practices of subcontractors on Continental's properties." (emphasis added)); Pet.App.13 ("Other Continental representatives confirmed that, though they did not supervise the company's subcontractors, *if they were visiting a well site* and observed a contractor who was not following safety guidelines, they would give direction." (emphasis added)); Pet.App.13 ("Clint Dunn, who worked as

a lease operator for Continental at the time of Zachary's death, testified that he checked the equipment at the subject well site daily as part of his regular *North Dakota route*." (emphasis added)); *see also* Pet.App.49–50.

On April 28, 2014, Mr. Buckles died at the North Dakota site. Pet.App.5. The cause of death is disputed; the best evidence currently available (including a report of the North Dakota Department of Health State Forensic Medical Examiner) suggests that Mr. Buckles died of a heart attack unrelated to his work. The complaint, however, alleges that Mr. Buckles died from exposure to hydrocarbon vapors that he encountered while manually gauging oil tanks. Pet.App.5.

B. Procedural History

On March 2, 2015, the personal representative of Mr. Buckles and his estate (the "Estate") sued Continental, BH Flowtest Inc., Rock Testing, Inc., and Black Gold Testing in the Montana Seventh Judicial District Court, Richland County. Pet.App.44. The complaint alleged Defendants "had a duty…to maintain a safe oil well site and secure work area on the oil well site [i.e., the North Dakota site] pursuant to contract and in fact." Pet.App.92. It further alleged Defendants "breached that duty by allowing an inherently dangerous and unsafe well site [i.e., the North Dakota site] to be operated…." Pet.App.92.

1. Continental moved to dismiss for lack of personal jurisdiction, and the district court granted that motion. *See* Pet.App.85. The Estate appealed, and the

Montana Supreme Court reversed and remanded. The court agreed with the district court that general personal jurisdiction is not available against Continental in Montana, because Continental is based in Oklahoma and is not at home in Montana, but concluded that specific jurisdiction might be available. The court reasoned that "it does not appear beyond doubt that [the Estate] has failed to establish the Montana Court's specific personal jurisdiction over Continental," because the Estate "presented evidence that [the Estate] argues demonstrates that oversight of the well-site at issue was conducted by Continental's Sidney office, and that Continental contracted with Montana entities to service the wells." Pet.App.72–73. The court remanded for jurisdictional discovery and a hearing to determine "whether Continental's oversight of the wells at issue—which it acknowledges was conducted from its Sidney office—contributed to the operation of 'an inherently dangerous and unsafe well site' as alleged by Buckles." Pet.App.72–73.

Justice McKinnon dissented, observing that the Estate already had taken jurisdictional discovery, which unearthed "no disputed facts, but rather an absence of any facts establishing suit-related conduct on the part of Continental, other than a train of contracts with subcontractors and an injury occurring in North Dakota." Pet.App.81.

2. On remand, the district court (presided over by a new district judge) allowed months of additional discovery, held an evidentiary hearing, and again con-

cluded that Continental is not subject to specific personal jurisdiction in Montana. It reasoned that "[t]his litigation arose out of an alleged unsafe work site and events that occurred at the oil well site located in North Dakota" and "that Continental did not create a substantial connection with Montana to be subject to specific personal jurisdiction *in this suit*, because both Zachary's alleged insufficient training and his death occurred in North Dakota." Pet.App.57 (emphasis in original).

On appeal, the Montana Supreme Court again reversed and remanded. The majority opinion identified no error of the district court in determining whether Continental's Sidney, Montana, activities "contributed to the operation of 'an inherently dangerous and unsafe well site' as alleged by Buckles." Pet.App.74. Instead, it held that specific personal jurisdiction may be premised on the application of state law. It reasoned that, under Montana law's expansive "non-delegable duty doctrine," Continental might "be held liable for the torts, if any, of its independent contractors" in North Dakota based on "Continental's oversight of the North Dakota well that it managed from its Sidney office in Montana." Pet.App.15. And, it concluded, that duty arising under Montana law "supplies the necessary affiliation between the forum and the underlying controversy." Pet.App.15 (quotation marks omitted). The court did not explain how holding Continental liable under Montana law for acts or omissions of subcontractors *in North Dakota* amounted to a Montana contact.

Justice McKinnon again dissented. She observed that there was no "relevant, suit-specific conduct…in Montana"; instead, the relevant conduct was solely Continental's alleged failure "to secure a safe worksite and provide for adequate safety equipment and training" in North Dakota. Pet.App.30. She criticized the majority's "use of Montana's non-delegable duty doctrine to manufacture jurisdiction" and opined that "[t]he affiliation between the suit-related conduct and the forum…is determined by the defendant's contacts which he himself has created, not by doctrinal law of the forum state." Pet.App.35–36. "Under the Court's reasoning, any business, entity, or person with a contact or connection to Montana is subject to the specific jurisdiction of Montana courts for potentially any conduct done within the fifty states or internationally, if that defendant can be brought within the reach of Montana's non-delegable duty doctrine, or, for that matter, some other Montana law." Pet.App.36.

Justice McKinnon also found the majority's assertion of jurisdiction incompatible with "principles of federalism," which protect non-resident defendants—like Oklahoma-based Continental—from being forced to "submi[t] to the coercive power of a State that may have little legitimate interest in the claims in question." Pet.App.34 (quotation marks and citation omitted). She observed that, "[h]ere, North Dakota and Oklahoma have significant interests in the policies and laws respecting the oil industry as conducted within the confines of each State's borders," that each "offer Buckles a forum," and that both "have strong

sovereign interests in the welfare of their workers and business owners related to oil production in their respective states." Pet.App.36. For its part, the majority opinion did not address interstate federalism or explain why Montana's sovereign interests supersede those of North Dakota and Oklahoma.

REASONS FOR GRANTING THE PETITION

Review is essential in this case for the same reasons review was granted in the *Ford Motor* cases. This Court has yet to clarify the degree of connection between a defendant's forum-related contacts and a plaintiff's cause of action that is sufficient to establish specific personal jurisdiction, and the decision below deepens the split of authority on the issue. There is no colorable contention that Continental's Montana-related contacts are a cause of the Estate's claims, and so a ruling in the *Ford Motor* cases that such causation is required would preclude Montana courts' exercise of jurisdiction in this case.

Even if the Court affirms in the *Ford Motor* cases, review is still warranted here. The decision below goes far beyond the Montana and Minnesota decisions under review in the *Ford Motor* cases and would be untenable under any conceivable standard that comports with the Court's precedents. Unlike in those cases, here there is no injury in the forum, there is no relevant *factual* contact between Continental—an Oklahoma resident—and the forum, and the forum has no colorable claim to a sovereign regulatory interest over safety in a sovereign sister state, North Dakota.

The decision below is indefensible even under the most expansive rendition of the minimum-contacts test and suggests a troubling willingness of state courts to contrive new doctrines to expand their own jurisdiction at the expense of the due process and interstate-federalism principles this Court has announced and repeatedly acted to enforce. The Court should intervene here as it has in the past to apply federal constitutional dictates where they are at the greatest risk of being thwarted. At a minimum, it should grant this Petition, summarily vacate the decision below, and remand for further consideration in light of its disposition of the *Ford Motor* cases.

I. This Petition Raises Issues that Overlap Substantially, If Not Completely, with Those the Court Will Decide in the *Ford Motor* Cases

A. The issues in this case and those in the *Ford Motor* cases are substantially related, and the Court's forthcoming ruling in the *Ford Motor* cases may prove dispositive in this case. The Court granted certiorari in the *Ford Motor* cases to determine whether "the 'arise out of or relate to' requirement" of specific jurisdiction "is met when none of the defendant's forum contacts caused the plaintiff's claims, such that the plaintiff's claims would be the same even if the defendant had no forum contacts." Petition for Certiorari, *Ford Motor Co. v. Montana Eighth Judicial District Court*, No. 19-368, at (i) (Sept. 18, 2019) ("*Ford* Petition"). As the Court is well aware, there is a multi-way split of authority on this question: some courts require a proximate causal connection between the

defendant's contacts and the plaintiff's cause of action, some require a less restrictive but-for causal connection, and others require merely a loose discernable relation. *O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 318–19 (3d Cir. 2007) (discussing this split of authority and collecting cases); *Ford* Petition 11–18 (same). The Court granted certiorari to determine what standard faithfully implements the due-process requirement of the Fourteenth Amendment.

Its decision may prove dispositive here because application of *any* causation standard would require dismissal. There is no basis to contend that Continental's contacts with Montana were a but-for cause, let alone a proximate cause, of the claims against it. *See O'Connor*, 496 F.3d at 318 (observing that the proximate-cause test is more stringent than the but-for cause test). The claims would be the same if Continental had supervised the North Dakota site from a North Dakota field office or from its headquarters in Oklahoma, or if it had never maintained any business whatsoever in Montana. That is readily apparent because the court below did not predicate jurisdiction on anything Continental did (in Montana or elsewhere), but on the application of Montana law under which Continental might "be held liable for the torts, if any, of its independent contractors." Pet.App.15. The acts or omissions of Continental's independent contractors would have been the same no matter the extent or quality of Continental's activities in Montana.

Accordingly, this case presents the same question as the *Ford Motor* cases, and a holding that recognizes a causation requirement would preclude exercise of

personal jurisdiction here. Indeed, the Montana Supreme Court made no pretense of imposing a causation test, nor would that have made sense when that court rejected any causation requirement in the decision under review in the *Ford Motor* cases. *Ford Motor Co. v. Montana Eighth Judicial Dist. Court*, 443 P.3d 407, 415 (Mont. 2020). Although the Montana Supreme Court in this case originally contemplated that the Estate might identify actions at the Sidney, Montana, field office that "contributed to" the alleged injuries in North Dakota, Pet.App.74, the Estate was unable to do so, and the court permitted the case to proceed on the theory that Continental may be vicariously liable for the actions of independent contractors, Pet.App.15. The "necessary affiliation" the court required, Pet.App.15, was not, and could not have been, a causal one. The decision below then turns on the validity of the Montana Supreme Court's *Ford Motor Co.* decision.

B. The decision below also deepens the circuit split that warranted this Court's review in *Ford Motor Co.* As noted, many courts have held that, for due-process purposes, "a tort 'arise[s] out of or relate[s] to' the defendant's activity in a state only if the activity is a 'but-for' cause of the tort," *Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1314 (11th Cir. 2018) (citation omitted), and that a plaintiff cannot establish personal jurisdiction over a defendant unless he "show[s] that he would not have suffered an injury 'but for' [the defendant's] forum-related conduct," *Menken v. Emm*,

503 F.3d 1050, 1058 (9th Cir. 2007). No such allegation is plausible here, nor was any such fact proven or found by the courts below.

There can be no serious question, then, that the result here would have been the opposite had this case been adjudicated in one of the jurisdictions that employ a causation test. Many decisions in such jurisdictions reject jurisdiction in circumstances factually akin to those present here. *See, e.g.*, *Carmona v. Leo Ship Mgmt., Inc.*, 924 F.3d 190, 197–98 (5th Cir. 2019) (finding no personal jurisdiction over claim on third party's allegedly negligent act of stowing pipes aboard the ship while it was outside the United States, because claim did not arise from forum-related contacts of defendant); *Waldman v. Palestine Liberation Org.*, 835 F.3d 317, 323 (2d Cir. 2016) (finding no causal relation between foreign organization's Washington, D.C., office and overseas terrorist attacks and thus rejecting claim of specific personal jurisdiction); *Danziger & De Llano, LLP v. Morgan Verkamp LLC*, 948 F.3d 124, 130 (3d Cir. 2020) (finding no proximate-cause connection between lawsuit in Pennsylvania and subsequent dispute over alleged fee-referral agreement concerning proceeds from that lawsuit).

Thus, if the Court adopts a causation standard of any kind in the *Ford Motor* cases, the decision below will be rendered untenable. The Court should grant this Petition and reverse for that reason. At a minimum, it should hold this case pending decision of the *Ford Motor* cases and then, as warranted, grant, vacate, and remand for further consideration.

II. The Decision Below Extends Beyond the Montana Supreme Court's *Ford Motor Co.* Holding and Merits Review Even if the Court Affirms *Ford Motor Co.*

Even if this Court affirms the Montana Supreme Court's *Ford Motor Co.* decision and adopts a discernable-relation standard, the Court's review is still required. The decision below goes far beyond the *Ford Motor* decisions in many ways and cannot stand under any plausible interpretation of the minimum-contacts test. It speaks volumes that the author of the Montana Supreme Court's *Ford Motor Co.* decision, Justice McKinnon, dissented from the decision below.

A. The Injury Did Not Occur in Montana

In the *Ford Motor* cases, the injury was suffered in the forum by a resident of the forum. The Montana Supreme Court cited "the plaintiff's in-state use of the product and resulting claim" as essential elements of jurisdiction, *Ford Motor*, 443 P.3d at 415, and the *Ford Motor* respondents assert that their theory of jurisdiction is only available where a defendant "causes an injury in the forum state," Brief of Respondents, *Ford Motor Co. v. Montana Eighth Judicial District Court*, No. 19-368, at 16 (March 30, 2020) ("*Ford* Respondents' Br."). Although that theory is itself attenuated—since a *defendant's* contact with the forum is essential for personal jurisdiction, *Walden v. Fiore*, 571 U.S. 277, 289 (2014)—it has at least some force, as an injury in the forum may help establish a defendant's contact with the forum, *id.* at 290 (holding that an injury in the forum may be relevant "insofar as it

shows that the defendant has formed a contact with the forum State").

But even that tenuous link is missing here: Mr. Buckles's death occurred in North Dakota, where he lived at all times relevant to this case. Drawing a Montana connection from the injury is impossible.

In this respect, this case is like *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S. Ct. 1773 (2017), which rejected specific personal jurisdiction in California over product-liability claims by non-residents because "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.* at 1781. The same is true here. Mr. Buckles did not work in Montana, he was not trained in Montana, the allegedly dangerous conditions did not exist in Montana and were not created or maintained there, and he was not injured in Montana. *See Ford Motor*, 443 P.3d at 417 (distinguishing *Bristol-Meyers* because the plaintiff "was injured while driving the Explorer in Montana"). When combined with the fact that no pertinent Montana conduct on Continental's part could be cited, these facts confirm the total absence of any discernable connection between this case and Montana. *See Bristol-Myers*, 137 S. Ct. at 1782 (calling the claim to jurisdiction at issue "even weaker" than in *Walden* because, *inter alia*, the plaintiffs did "not claim to have suffered harm in [the forum] State").

Ultimately, the jurisdictional holding of the decision below did not depend on "an affiliation between the forum and the underlying controversy," *id.* at 1781 (quotation marks omitted), but on *unrelated* activities of Continental in Montana. Insofar as the court relied on contacts of Continental itself with Montana (rather than asserted ties of third parties), the court identified no contact relevant to the Estate's claims. Instead, it posited that "Continental's extensive business activities in Montana demonstrate that it purposefully availed itself of the privilege of conducting activities within this state." Pet.App.16. But *Bristol-Meyers* repudiated the position that "the strength of the requisite connection between the forum and the specific claims at issue" may be "relaxed if the defendant has extensive forum contacts that are unrelated to those claims." 137 S. Ct. at 1781. The Montana Supreme Court's approach to specific jurisdiction here was precisely the kind of "loose and spurious form of general jurisdiction" that *Bristol-Meyers* condemned. *Id.*

The fact remains that Continental's various Montana operations have no meaningful tie to the accident and injury in North Dakota, and nothing in the majority opinion below suggests otherwise. That the court predicated jurisdiction on alleged acts of independent contractors, not Continental, only confirms this total disconnect.

B. The Asserted Tie With Montana Is a Legal Contrivance, Not a Case-Related Connection in Fact

Unlike in the *Ford Motor* cases, the only case-related tie between Continental and Montana is one of law, not fact. The Montana Supreme Court held that a corporation is subject to suit wherever it may be held "liable for the torts…of its independent contractors." Pet.App.15. But this Court has repeatedly defined the contacts with the forum as "activities" that, in fact, "the defendant has 'purposefully directed'…at residents of the forum." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (citation omitted); *see also J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 882 (2011) ("The defendant must 'purposefully avai[l] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.'" (quoting *Hanson*, 357 U.S. at 253). The decision below shifts the question from what contacts "the 'defendant *himself* creates with the forum State," *Walden*, 571 U.S. at 284 (quoting *Burger King*, 471 U.S. at 475), to what legal doctrine might reach the defendant under the forum state's law, as construed by the forum state's courts.

This is a significant extension of the *Ford Motor* cases. The *Ford Motor* respondents claim case-related factual ties—not merely legal ties—between the defendant and the forum states, contending that Ford "deliberately cultivate[d] a market for a product in the forum state and…that product cause[d] an injury in the forum state." *Ford* Respondents' Br. 10. Here, by contrast, the majority opinion found no case-related

connection in fact between Continental and Montana, but instead asserted jurisdiction based on a legal doctrine that subcontractors' torts may be deemed Continental's by operation of Montana law.

The Court should review and reject this extension of specific personal jurisdiction beyond the realm of fact and into the realm of law, which effectively permits state law to override the limitations of federal due-process principles. As the dissent below recognized, the Montana Supreme Court's approach here would create specific jurisdiction over any defendant "if that defendant can be brought within the reach of Montana's non-delegable duty doctrine, or, for that matter, some other Montana law." Pet.App.36. That approach is incompatible with the limitations on "the power of a sovereign to prescribe rules of conduct" that would apply outside "its sphere." *J. McIntyre Mach.*, 564 U.S. at 879. Whereas this Court's precedent holds that "[j]urisdiction is power to declare the law," *id.* at 879–80 (quoting *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83, 94 (1998)), the decision below reads Montana law to empower Montana courts to declare jurisdiction.

That approach also erases the distinction between specific and general jurisdiction, because any business with activities in Montana might arguably be subject to Montana law. *Cf. Bristol-Myers*, 137 S. Ct. at 1781 (rejecting state court's attempt to fashion "a loose and spurious form of general jurisdiction"). And it would institute state supreme courts as the ultimate arbitrators of personal jurisdiction and insulate their determinations from review in this Court, there

being little basis for the Court to conclude that state law does not, in reality, reach the defendant once a state court of highest resort concludes that it does.[1]

This all is, of course, plain wrong. At least two settled principles under this Court's precedent already preclude this approach.

First, "a defendant's relationship with a plaintiff *or third party*, standing alone, is an insufficient basis for jurisdiction." *Walden*, 571 U.S. at 286 (emphasis added). As long ago as *Rush v. Savchuk*, 444 U.S. 320 (1980), the Court rejected as "plainly unconstitutional" a state supreme court's attempt "to attribute [one defendant's] contacts to [another] by considering the 'defending parties' together and aggregating their forum contacts." *Id.* at 331–32. The attributional theory of jurisdiction applied below is no different and fares no better. According to the court below, Continental's relationship with independent contractors, standing alone, can be sufficient to establish personal jurisdiction. But *Rush* forecloses this theory of attribution.

In fact, this theory fares worse than the one rejected in *Rush* because the court below identified no Montana contacts by Continental's independent contractors as the basis for jurisdiction. Instead, it cited only

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[1] The Court's prerogative to review the outer reaches of state law under the Due Process Clause and Full Faith and Credit Clause are no substitute for minimum-contacts standards, as the Clauses place only "modest restrictions on the application of forum law." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 818 (1985).

North Dakota contacts, since Continental's independent contractors are accused of maintaining dangerous conditions in North Dakota, not in Montana.[2] Another odd feature of the Montana Supreme Court's approach is its attribution of the contractors' torts to a specific field office of Continental in Montana. Pet.App.15. Ordinarily, vicarious liability attributes torts of others to an *entity*, not a *building*. Standard principles of vicarious liability would have attributed the torts to Continental's corporate person, the "possessor" of the "land" in question, Restatement (Second) of Torts § 414A (1965), which is headquartered and incorporated in Oklahoma, not in Montana. This is yet another respect in which the approach erases the difference between general and specific personal jurisdiction.

Second, this Court has consistently rejected the theory that the minimum-contacts test is met simply because a state's substantive law may apply to the merits of a case. *Burger King*, 471 U.S. at 481–82 (The Court's precedent "has emphasized that choice-of-law analysis—which focuses on all elements of a transaction, and not simply on the defendant's conduct—is

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[2] Nor can a theory of agency support the decision below. *See Daimler AG v. Bauman*, 571 U.S. 117, 134–35 & n.13 (2014). The court below did not find that Continental maintained "the right to substantially control its" independent contractors' activities, *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1025 (9th Cir. 2017), nor did the Estate attempt to show or argue this. The court below relied on "[e]xceptions" to the rule under Montana law that a defendant "is not liable for any torts committed by its independent contractors," Pet.App.12, not on an agency theory.

distinct from minimum-contacts jurisdictional analysis—which focuses at the threshold solely on the defendant's purposeful connection to the forum."); *Hanson*, 357 U.S. at 254 ("The issue is personal jurisdiction, not choice of law. It is resolved in this case by considering the acts of the [defendant]."); *Kulko v. Superior Court of California In & For City & Cty. of San Francisco*, 436 U.S. 84, 98 (1978) ("[T]he fact that California may be the 'center of gravity' for choice-of-law purposes does not mean that California has personal jurisdiction over the defendant." (quotation marks omitted)); *see also J. McIntyre*, 564 U.S. at 886 ("A sovereign's legislative authority to regulate conduct may present considerations different from those presented by its authority to subject a defendant to judgment in its courts."). This Court has set a clear ordering of the inquiry: courts must first determine whether the assertion of jurisdiction satisfies due process and only then determine the source of law to apply on the merits. *See, e.g.*, *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 778 (1984) ("The question of the applicability of New Hampshire's statute of limitations to claims for out-of-state damages presents itself in the course of litigation only after jurisdiction over respondent is established.").

The decision below gets this backwards, subjecting a corporation to suit on the basis of the possible application of state law. Pet.App.15. That approach could hardly be more at odds with this Court's decisions holding that the source of law does not determine due-process norms. The inquiries are unrelated.

And, again, this position is even worse than those previously rejected in cases where it was apparent that the forum state was likely "the 'center of gravity' of the controversy." *Hanson*, 357 U.S. at 254. Here, even if the choice-of-law and jurisdictional inquiries did overlap, there is no apparent reason why Montana law would apply to a claim for injuries suffered at a North Dakota worksite by an individual living in North Dakota stemming from conditions allegedly maintained in North Dakota on property owned by an Oklahoma company.

C. Montana Has No Colorable Sovereign Interest in this Case

Unlike in the *Ford Motor* cases, where Montana and Minnesota have arguable sovereign interest in regulating the safety of their own highways, Montana has no colorable sovereign interest in standards of safety at oil fields in North Dakota. On that score, the respondents in *Ford Motor* contend that "the states with the most at stake in cases" where defective parts are alleged to cause highway accidents are those where the accidents occur. *Ford* Respondents' Br. 11 (contending that that there is "no state with a greater interest than the state where the victim was injured."); *see also Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 755 (Minn. 2019) ("Minnesota has a vital interest in protecting the safety and rights of its residents, in regulating the safety of its roadways, and in safeguarding Ford's co-defendants' rights" and that "Minnesota is also the most convenient forum, as the site of the accident and treatment for the injury"); *Ford*

Motor, 443 P.3d at 415 (rejecting test focused on "limited factors" that would, in the Montana Supreme Court's view, "unduly restrict courts of this state").

But even if the Court agrees—which is far from certain, given the *Ford Motor* petitioner's compelling contention that sovereign interests are only considered after a causal relation between the contacts and claims is established, Petitioner's Reply 10–11—there is no analogous interest here. Mr. Buckles worked and lived in North Dakota and was allegedly injured there. Any standard of safety at the North Dakota site is clearly North Dakota's concern. No state has a greater interest in this case than North Dakota. Montana, by contrast, has "little legitimate interest" in regulating oil production and field safety in North Dakota. *Bristol-Myers*, 137 S. Ct. at 1780.

This serves not only to distinguish this case from the *Ford Motor* cases, but also to establish an independent basis to reject jurisdiction. As this Court has repeatedly explained, "'[t]he sovereignty of each State…implie[s] a limitation on the sovereignty of all its sister States.'" *Id.* at 1780 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980)) (edit marks in original). "And at times, this federalism interest may be decisive." *Id.* If that is so in any case, it is so here. The Estate has no interest in "proceeding with the cause in the plaintiff's forum of choice," *id.*, when the North Dakota courts stand ready to adjudicate claims arising from events in North Dakota.

So too do the courts of Oklahoma, where Continental is based and subject to general jurisdiction. Montana has no interest in regulating how an Oklahoma company does business with independent contractors, and the doors of Oklahoma's courts are also open to the Estate. Consequently, Montana's assumption of jurisdiction comes not only at Continental's expense, but also at the expense of the North Dakota and Oklahoma courts. North Dakota's interests are paramount, Oklahoma's are weighty, Montana's are insignificant, and the decision below is plainly wrong.

Yet the decision below had precisely nothing to say about North Dakota's and Oklahoma's sovereign interests, nothing to say about interstate federalism more generally, and no response to the dissent's arguments on these points. *See* Pet.App.32. But this Court's precedent regards other states' interests as relevant and even potentially "decisive." *Bristol-Meyers*, 137 S. Ct. at 1780. Rather than follow this Court's instruction, the decision below instead applied the three-part test championed in the *Bristol-Meyers* dissent, *compare* Pet.App.16, *with* 137 S. Ct. at 1785–86, and added to it a "presumption of reasonableness" favoring a state's assertion of jurisdiction. Pet.App.17 (holding that "we need not address the remaining elements" of due process when this presumption applies). In this way, the decision below divests interstate federalism of its place of "primary concern," *Bristol-Meyers*, 137 S. Ct. at 1780, substituting in its place a heavy-handed presumption that can be "overcome only by presenting a compelling case that juris-

diction would be unreasonable," Pet.App.16 (quotation marks and citation omitted). No different from the "sliding scale" test rejected in *Bristol-Meyers*, this new presumption amounts to the kind of "loose and spurious form of general jurisdiction" that cannot be "square[d] with this Court's precedents." 137 S. Ct. at 1781.

This all is improper. Simply put, presumptions in favor of jurisdiction have no role in a due-process analysis where "the 'primary concern' is "the burden on the defendant." *Id.* at 1780 (quoting *World-Wide Volkswagen*, 444 U.S. at 292). This Court should grant the petition to reject this ill-conceived and unsound approach.

III. The Court's Intervention Is Necessary To Address Continued Resistance to Its Personal-Jurisdiction Precedents and To Prevent Further Mischief

The decision below also raises issues of unquestionable national importance meriting review for reasons independent of the ongoing split of authority. The Court has in recent years reviewed and reversed many assertions of personal jurisdiction, even in the absence of a disagreement among the lower courts. *See, e.g.*, *Walden*, 571 U.S. at 282 (certiorari granted without an apparent split of authority); *Daimler*, 571 U.S. at 125 (same); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923 (2011) (same); *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1555 (2017) (same). These decisions, and the Court's review of the *Ford Motor* cases, exemplify how important personal-

jurisdiction rules are to interstate federalism and the constitutional order. Personal-jurisdiction questions present matters of unique federal importance and sensitivity, given the necessity of nationally uniform principles and the reality that, at least in principle, state courts have a unique incentive to contort or flout federal law in this area. When a state's highest court adjudicates a personal-jurisdiction dispute, it is adjudicating how the Due Process Clause operates as "a limitation on the sovereignty" it exercises. *World-Wide Volkswagen*, 444 U.S. at 293.

On that score, it is notable that this Court just three years ago reversed the Montana Supreme Court's personal-jurisdiction decision in *BNSF*, a set of two consolidated cases markedly similar to this one. As in this case, the plaintiffs in *BNSF* brought their claims in Montana state courts, "although [they] did not reside in Montana, nor were they injured there." 137 S. Ct. at 1553. As in this case, the defendant company was "not incorporated in Montana and does not maintain its principal place of business there." *Id.* at 1559. As in this case, the Montana Supreme Court adopted a theory of personal jurisdiction predicated, not on meaningful factual ties between the defendant and the forum, but on a contrived application of the substantive law that would govern the case, the Federal Employers' Liability Act—a theory this Court found cuts directly against extant due-process jurisprudence, which "does not vary with the type of claim asserted or business enterprise sued." *Id.* at 1559. And, as in this case, the arguments in favor of jurisdiction in *BNSF* ultimately reflected little more than the

Montana Supreme Court's disagreement with governing due-process jurisprudence. *Id.* at 1559 n.4.[3]

Although *BNSF* differs from this case in that it concerned general rather than specific personal jurisdiction, that difference only highlights the errors below. In *BNSF*, the fact that the plaintiffs' claims had "no relationship to anything that occurred or had its principal impact in Montana" was deemed proof positive that specific jurisdiction was not even plausibly implicated. *Id.*; *see also id.* at 1558 ("Because neither Nelson nor Tyrrell alleges any injury from work in or related to Montana, only the propriety of general jurisdiction is at issue here."). It is perplexing, to say the least, that the Montana Supreme Court would follow the *BNSF* decision with a determination that specific jurisdiction lies in a case equally unrelated to, and having no effect on, Montana.[4]

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[3] An additional similarity is that Justice McKinnon dissented in both cases. *BNSF*, 137 S. Ct. at 1555; *see also id.* at 1557 (quoting favorably Justice McKinnon's arguments).

[4] The Montana Supreme Court may not be alone among state courts of highest resort in its resistance to recognizing jurisdictional limitations. It is a curious pattern that the split of authority justifying certiorari in the *Ford Motor* cases (and in this case) is, by and large, a split between state and federal courts. Numerous state courts of last resort have adopted the most lenient minimum-contacts test, the discernable-relationship test. *See, e.g.*, *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 753 (Minn. 2019), *TV Azteca, S.A.B. de C.V. v. Ruiz*, 490 S.W.3d 29, 52–53 (Tex. 2016); *State ex rel. Ford Motor Co. v. McGraw*, 788 S.E.2d 319, 342–343 (W. Va. 2016); *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 333, 336 (D.C. 2000) (en banc). By contrast, nearly every federal court of appeals has applied some form of causation standard. *See, e.g.*, *Harlow v. Children's Hosp.*, 432 F.3d 50, 61

Whatever may be said of the similarities between the decision below and *BNSF*, and whatever trend these decisions may reflect, the logic of the decision below presents a potential for unlimited mischief, in the Montana courts and others. The Montana Supreme Court's treatment of its own application of state law as the source of jurisdictionally significant minimum contacts takes control of jurisdiction from the defendant and hands it to the courts, so that "any" defendant can be "subject to the specific jurisdiction of Montana courts for potentially any conduct done within the fifty states or internationally" simply by the reach "of Montana's non-delegable duty doctrine, or, for that matter, some other Montana law." Pet.App.36. And its use of a "presumption of reasonableness" in place of an inquiry into federalism interests this Court so recently held "may be decisive," *Bristol-Meyers*, 137 S. Ct. at 1780, strips away that protection from defendants. It takes little imagination

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(1st Cir. 2005); *SPV Osus Ltd. v. UBS AG*, 882 F.3d 333, 344 (2d Cir. 2018); *O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 323 (3d Cir. 2007); *Consulting Eng'rs Corp. v. Geometric Ltd.*, 561 F.3d 273, 278–79 (4th Cir. 2009); *Carmona v. Leo Ship Mgmt., Inc.*, 924 F.3d 190, 198 (5th Cir. 2019); *Beydoun v. Wataniya Rests. Holding, Q.S.C.*, 768 F.3d 499, 507–08 (6th Cir. 2014); *uBID, Inc. v. GoDaddy Grp., Inc.*, 623 F.3d 421, 430 (7th Cir. 2010); *Myers v. Casino Queen, Inc.*, 689 F.3d 904, 912–13 (8th Cir. 2012); *Menken v. Emm*, 503 F.3d 1050, 1058 (9th Cir. 2007); *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1079 (10th Cir. 2008); *Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1314–15 (11th Cir. 2018).

to see that the opinion below lacks any cabining principle and paves the path for unlimited exercise of jurisdiction over non-residents.

If nothing else, the decision makes specific jurisdiction the product of principles that are difficult to discern in hindsight and impossible to predict in advance. That is just another respect in which the Montana Supreme Court's approach here does not square with this Court's longstanding jurisprudence. According to that jurisprudence, "the Due Process Clause gives 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." *Burger King*, 471 U.S. at 472 (quotation marks omitted). Under the approach of the decision below, no assurance is possible.

In short, the Court should not let the decision below stand. At stake are both the due process principles the Court has carefully set down in decades of jurisprudence and the principles of federal sovereignty and limits to state-court sovereignty over other states' territory and affairs. The Court should intervene and reject this potential revolution in due process.

CONCLUSION

The Court should grant the petition and reverse the decision below or, alternatively, grant the Petition, summarily vacate the judgment below, and remand for reconsideration in light of its forthcoming decisions in the *Ford Motor* cases.

Respectfully submitted,

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