No. 20-374

In the Supreme Court of the United States

CONTINENTAL RESOURCES, INC.,
Petitioner,

v.

ZACHARY BUCKLES, DECEASED, BY AND THROUGH HIS PERSONAL REPRESENTATIVE, NICOLE R. BUCKLES, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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January 22, 2021

QUESTION PRESENTED

May a nonresident corporation's allegedly tortious conduct in Montana provide a sufficient forum-related connection for courts to assert specific personal jurisdiction over that corporation in Montana?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other authorities

INTRODUCTION

The petition for certiorari goes to great lengths to obscure the feature of this case that is most relevant: It was petitioner Continental Resources' allegedly tortious conduct *in Montana* (inadequate supervision of an oil-drilling site from a Montana field office) that caused the plaintiffs' claims. The decision below—that Montana courts could assert specific jurisdiction over Continental for the company's Montana-based conduct, even though the injury itself occurred in North Dakota—is thus utterly unremarkable and unworthy of review.

Continental nevertheless hopes to ride the coattails of *Ford Motor Co. v. Montana Eighth Judicial District*, No. 19-368, and *Ford Motor Co. v. Bandemer*, No. 19-369, in which this Court granted certiorari to address whether there can be specific jurisdiction over a manufacturer of mass-produced goods when the specific widget that injured the plaintiffs was manufactured, designed, and sold outside the forum but the defendant regularly sold and marketed the same product within the forum and the product caused injury there.

The *Ford* cases present, if anything, the *opposite* problem from this one. In those cases, the injuries arose inside the forum while the acts or omissions giving rise to the claims arose outside it. Here, the injury occurred outside the forum (in North Dakota), while the allegedly tortious conduct giving rise to that injury occurred within it (in Montana). The plaintiffs here, unlike in the *Ford* cases, *do* allege a causal connection between Continental, Montana, and their claims. So, regardless of how this Court rules, the outcome of the *Ford* cases is unlikely to shed any light on this run-of-the-mill, factbound specific-jurisdiction case. Certiorari should be denied.

STATEMENT

The question in this case is whether Continental is subject to personal jurisdiction in Montana for claims arising out of the death of subcontractor Zachary Buckles at a North Dakota oil and gas extraction site that the company supervised from its Sidney, Montana field office. Jurisdictional discovery revealed that this supervision from the Montana office was extensive. From Montana, Continental employed regional and site-specific safety and operations managers, arranged site visits, and managed site safety at the site where Buckles died, as well as Continental sites throughout the Bakken region.

A. Factual background

1. Few geological features have been as central to the last two decades of American life as the Great Plains' Bakken formation. A vast shale oil deposit stretching over hundreds of thousands of square miles of North Dakota and Montana, the formation has fueled an extraordinary boom in domestic American oil and natural gas production, transforming the civic and natural landscape of the Great Plains. *See* Jad Mouawad, *Fuel to Burn: Now What?*, N.Y. Times (Apr. 10, 2012); Catrin Einhorn, *Billions of Barrels of Oil May Lie Under Northern Plains*, N.Y. Times (Apr. 11, 2008).

Continental has been at the center of it all. An Oklahoma corporation, the oil and gas company operates across the Great Plains, with field offices in Montana, North Dakota, and South Dakota, as well as Oklahoma and Texas. App. 44. In Montana alone, the company owns an interest in 508 oil and gas wells, and operates 348 of its own. *Id.*

2. This case concerns Continental's Montana-based supervision and testing of a North Dakota site, which the courts below termed the Columbus Federal/Tallahassee complex—a twenty-tank, five-well site producing crude oil and natural gas. Among the tasks required to run such a complex is the sensitive and dangerous task of oil gauging, or flow-testing—monitoring the flow rate of oil from a newly producing well into a holding tank by taking hourly manual readings of the level of crude in the tanks at an oil tank battery, checking for leaks, adjusting pumping system controls to hit desired flow rates, and ensuring that the oil leaves by truck or pipeline. App. 4.

To arrange for flow-testing at the Columbus Federal/Tallahassee complex, Continental engaged a Montana corporation, BH Flowtest, Inc. *Id.* Through a master services agreement, BH Flowtest agreed to perform the tasks listed above—together with ensuring that "everything ran smooth[ly]." *Id.* The parties agreed on a few other points: BH Flowtest was an independent contractor; neither it nor its principals, partners, employees, or subcontractors were servants, agents, or employees of Continental; BH Flowtest was an "expert" in the work it would perform; its employees and agents had been trained to follow applicable laws and work safely; and all of its equipment had been thoroughly tested and inspected for safety purposes. *Id.*

BH Flowtest didn't perform flow-testing itself. Instead, it subcontracted the task to a series of corporations and entities, all of which were also based in Montana: Black Rock Testing, Inc., which in turn subcontracted it to Janson Palmer (doing business as Black Gold Testing), who in turn subcontracted with Zachary Buckles (doing

business as Dozer Testing, Inc.)—a childhood friend who was just nineteen. *Id.*

Buckles and Janson began their manual tank-gauging duties at the Columbus Federal/Tallahassee complex in mid-March 2014. *Id.* For about six weeks, they established a routine: living out of an onsite trailer, they worked alternating twelve-hour day (Palmer) and night (Buckles) shifts, taking hourly manual readings of the level of crude in the site's tanks and sending reports back to Continental's office in Sidney, Montana. App. 3–5, 48. But on April 28, 2014, Buckles was found dead at the site—killed by exposure to toxic levels of hydrocarbon vapors. App. 48.

3. Like the Bakken itself, Continental's operations do not conform neatly to state boundaries. The site where Buckles died was no different: The field office that supervised the complex wasn't located in North Dakota, but just over the Montana border in a town called Sidney. App. 51.

The Sidney, Montana office provided close oversight over the subject site and many like it. Its employees managed production and daily operations, set flow rates, directed subcontractors' work, and managed safety conditions. App. 11, 48, 52.

For instance, Continental's Bakken Production Manager worked out of Montana to ensure that each tank battery was constructed, had personnel to take care of the well, and was producing safely. App. 50. And the company's Sidney Production Superintendent was responsible for daily well operations: Using a company vehicle, he circulated among the sites under the office's supervision, conducting regular well checks and ensuring that oil was getting sold, water moved out, and maintenance scheduled. App. 51.

Similarly, the Montana office's lease operator was responsible for checking equipment at the subject site daily as part of his regular route—including checking for leaks and other safety hazards and confirming that equipment was functioning properly. App. 13–14. While performing this role, he even saw Palmer long enough to say hello while Palmer worked the day shift, ask if there were "any problems," and "get numbers" from him. App. 14.

The Montana office also was closely involved in managing safety at the sites it supervised. It employed the head of Continental's companywide safety division, who also worked as the office's safety specialist. App. 48. And it imposed a range of safety measures, including conducting reviews to ensure that workers had proper Personal Protective Equipment (PPE) and holding monthly safety meetings in Sidney—some of which included training on how employees should conduct themselves around the gases present at tank and well sites. App. 51.

The company's measures weren't restricted to its employees. Although independent contractors didn't attend the Sidney meetings, they were required to "follow certain guidelines"—which Continental "made sure they did." App. 13, 50. "[E]veryone" working on a well site was required to carry a gas monitor. App. 14. The company's PPE reviews covered both employees and independent contractors. App. 51. And when company representatives working out of the Montana office observed an independent contractor not following safety guidelines, they would give direction to address the problem. App. 13. Finally, the company "retained ultimate authority" over its well sites, including the ability to "shut down the operation immediately if one of its employees observed something unsafe"

or to fire contractors who were not following guidelines "on the spot." App. 13.

B. Procedural background

1. Following Zachary Buckles's death, his personal representative sued Continental, BH Flowtest, Black Rock, and Black Gold on behalf of Buckles and his heirs in Montana district court. Asserting that tank gauging of crude oil production tanks is an inherently dangerous activity, the complaint alleged that each of the defendants breached its duties under Montana and federal law by allowing the site to be operated from Montana with inadequate air monitoring equipment in place and by providing inadequate training for Buckles. App. 5. The complaint alleged claims for negligence, negligent infliction of emotional distress, and loss of consortium. App. 92–94.

Continental filed a motion to dismiss for lack of personal jurisdiction, arguing that the district court lacked either specific or general jurisdiction over the estate's claims against it. The district court summarily granted the motion, App. 85–86, but the Montana Supreme Court reversed with respect to specific jurisdiction and remanded for an evidentiary hearing. App. 5–6, 60.[1]

Following that evidentiary hearing, the district court reached the findings of fact summarized above, including that Continental's Sidney, Montana office exercised substantial oversight over the Columbus Federal/Tallahassee site. App. 46–52. But it nevertheless concluded that it lacked specific personal jurisdiction over Continental. According to the district court, because the "unsafe work

[1] Meanwhile, several of the other defendants sought a declaration of state law, and the district court concluded that Montana law applies. *See* App. 6 n.2.

site" where Buckles died was located in North Dakota, and because any inadequate training Buckles received "materialized" there, there was an insufficient connection between the litigation and Continental's Montana activities to support specific personal jurisdiction under Montana's long-arm statute. App. 56–57.

The Montana Supreme Court disagreed. In a majority and a concurrence, its justices identified two separate reasons why the evidence the parties had introduced was sufficient to withstand Continental's motion.

2. The majority's logic was that whether Continental was subject to specific personal jurisdiction in Montana in this case depended on whether Continental was vicariously liable for the torts of its contractors—a theory on which Buckles had made at least a "prima facie showing." App. 14 & n.3. The majority recognized that Montana courts may only exercise specific personal jurisdiction over nonresident defendants like Continental if there is a basis to do so under Montana's long-arm statute—and if the exercise of that jurisdiction comports with the "traditional notions of fair play and substantial justice embodied in the Due Process Clause of the Fourteenth Amendment." App. 16.

Whether due process is satisfied, the court explained, depends on whether "(1) the nonresident defendant purposefully availed itself of the privilege of conducting activities in Montana, thereby invoking Montana's laws; (2) the plaintiffs' claim arises out of or relates to the defendant's forum-related activities, and (3) the exercise of personal jurisdiction is reasonable." *Id.* (cleaned up).

In all this, the court recognized that the "primary focus" of the due-process inquiry was "the defendant's relationship to the forum state." App. 16 (cleaned up). It was

"not enough," for instance, for the defendant to have simply "general connections" with the forum state. App. 7–8. Instead, "the *suit* must arise out of or relate to the defendant's contacts with the *forum*." *Id.* (quoting *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1786 (2017)). As this Court had noted in *Walden v. Fiore*, 571 U.S. 277, 283 n.6 (2014), there must be "an affiliation between the forum and the underlying controversy, principally an activity or occurrence that takes place in the forum state and is therefore subject to the state's regulation." App. 8 (cleaned up). Nor could specific jurisdiction be premised on a defendant's "relationship with a third party, standing alone." App. 8 (citing *Bristol-Myers Squibb*, 137 S. Ct. at 1781).

And similar principles applied under Montana's long-arm statute: Montana courts may exert specific jurisdiction "over any person if the claim arises out of that person's transaction of business within the state." App. 9 (quoting *Grizzly Sec. Armored Express, Inc. v. Armored Group, LLC*, 255 P.3d 143, 147 (Mont. 2011)).

Beginning with the long-arm statute, the majority concluded that the parties had introduced sufficient evidence to withstand Continental's motion.

The majority acknowledged that a nonresident did not subject itself to specific jurisdiction in Montana merely by communicating or entering into a contract with a Montana resident. App. 10. But that wasn't the basis for specific personal jurisdiction here. Instead, the parties had introduced evidence that Continental did much more, engaging in "substantial" business activity in Montana—which was linked to the Columbus Federal/Tallahassee site through the Sidney office's oversight. *See* App. 10, 11–12, 15. And

the estate had made a prima facie showing that Continental's Montana business activity was linked to its claims too.

Under Montana law, the majority explained, Continental generally was not liable for torts committed at the complex by its independent contractors—such as the failure to provide adequate training or equipment to subcontractors like Buckles. App. 12 (citing *Beckman v. Butte-Silver Bow County*, 1 P.3d 348, 350 (Mont. 2000)). But there are exceptions: Montana law provides that employers are vicariously liable when "(1) there is a non-delegable duty based on contract; (2) the activity is inherently or intrinsically dangerous; or (3) the general contractor negligently exercises control reserved over a subcontractor's work." App. 12 (quoting *Stricker v. Blaine County*, 453 P.3d 897, 901 (Mont. 2019)).

One of these exceptions might well apply in this case—especially the second. After all, the Montana Supreme Court had already concluded that trenching activities on a worksite are inherently dangerous. *See* App. 12 (citing *Beckman*, 1 P.3d at 353). And Continental did not dispute that safety concerns were "paramount in the oil and gas industry"; to the contrary, its agents and employees had testified at length about the safety measures the company imposed on employees and contractors alike. App. 12–14.

But the majority stopped short of holding that Buckles had successfully made out a vicarious liability theory. Instead, it held that that was a fact question—and that, because the relevant jurisdictional facts were "intertwined with the merits," it was preferable to defer a final decision on the jurisdictional issues for trial. App. 14 & n.3 (quoting *Data Disc, Inc. v. Systems Tech. Assoc., Inc.*, 557 F.2d 1280, 1285 n.2 (9th Cir. 1977)).

Similar logic applied to the due-process inquiry. Continental's "extensive business activities in Montana" demonstrated that it "purposefully availed itself of the privilege of conducting activities within" the state. App. 17. And that fact, together with proof that Continental was vicariously liable due to the inherently dangerous nature of its operations would be sufficient to ensure that specific jurisdiction in Montana "would not offend traditional notions of fair play and substantial justice." App. 17.

3. Concurring and joined by two of his colleagues, Justice Sandefur explained that he would go one step further than the majority: Rather than resting his conclusion on the existence of issues of fact, he explained that he would "more affirmatively hold" that the exercise of specific Montana jurisdiction was proper. App. 18, 29. And that was true not just with respect to the vicarious liability theory the majority had outlined, but with a direct liability theory, too. *See* App. 23.

Here, Justice Sandefur explained, there was evidence that Continental had "substantial claim-related business contact with the North Dakota well site *from* Montana." App. 21–22. By "narrow[ly] focusing" on the "situs of injury and chain of independent contractors separating Continental therefrom," the district court had in fact overlooked *two* distinct bases for specific jurisdiction. App. 22–23. First, as the majority had suggested, that Continental was "vicariously liable based on a nondelegable duty of care arising from the alleged abnormally dangerous activity or peculiar risk of harm at issue." App. 23. And second, that Continental was directly liable for the injury based on the Montana field office's retention of control over the well site's operations and conditions. App. 23.

In both cases, Buckles had done more than show a prima facie case—he had presented sufficient evidence to establish specific jurisdiction. *See* App. 24–25. As the majority had recognized, Continental exercised management and supervisory control over daily operations at the well site and maintained the right and authority to set flow rates as well as to determine the standards of performance of independent contract work. App. 22. And Continental's contract with BH Flowtest didn't defer or delegate site responsibility—instead, Continental "retained ultimate authority and control," which it exercised to ensure that contractors and employees alike complied with basic safety requirements. App. 22.

Accordingly, supervisory employees were dispatched from the Sidney, Montana office to direct site operations and with the "duty to detect and correct on-site safety problems." App. 24. Put together, these relationships provided "ample evidence upon which Buckles could conceivably prove that the alleged breach of duty by Continental at least partially occurred in or arose from Montana." *Id.*

All this meant that Buckles met the Montana long-arm statute's requirement that the asserted claims for relief arose from "any business" conducted by Continental within Montana. App. 25 (citing Mont. R. Civ. P. 4(b)(1)(A)). And he met the requirements of due process, too. *See* App. 26–28. By engaging in substantial business activity in Montana, Continental purposefully benefited from the privilege of conducting business in the state and subjecting itself to Montana laws. App. 27. The same logic that supported long-arm jurisdiction explained why the claim at issue arose from or related to Continental's forum-related activities. And the exercise of specific personal jurisdiction was reasonable, too. App. 27–28.

Appearing in Montana would impose a minimal burden on Continental. App. 28. Montana's interest in the dispute was "no less than North Dakota's." *Id.* And adjudication in Montana would serve Buckles's "interest and prerogative to choose the forum" without unfair or undue burden on Continental. *Id.*

REASONS FOR DENYING THE WRIT

This petition presents no issues worthy of this Court's review. Its lead argument obscures the key jurisdictional fact in this case: the plaintiffs' allegations that the petitioner's allegedly tortious conduct occurred in the forum state. Because the question in the *Ford* cases is just the opposite, it will make no difference to this case how this Court rules in those cases. Nothing else about this case independently warrants this Court's attention either. The Montana Supreme Court's decision below was factbound, closely tied up with yet-unresolved merits questions, and supported by arguments in the alternative. Accordingly, this Court should deny the petition.

I. This Court's decision in the *Ford* cases will make no difference in this case.

A. This Court granted certiorari in the *Ford* cases to resolve a question that has no bearing on the issues presented here. In those cases, the question presented is whether a state court may exercise specific personal jurisdiction over the manufacturer of a mass-produced product for claims based on an injury sustained in the forum state when the product was marketed, sold, and serviced in the forum state—but the specific widget or item that caused the injury was designed, made, and sold elsewhere. *See* Petition for Certiorari, *Ford Motor Co. v. Montana Eighth Judicial District Court*, No. 19-368, at 3–4 (Sept. 18, 2019).

This case presents essentially the opposite jurisdictional facts. There, the acts or omissions that allegedly gave rise to Ford's liability—the manufacture, design, and sale of the vehicles that injured the plaintiffs—occurred outside the forum, while the car accident that injured the plaintiffs occurred within it. By contrast, here, the acts or omissions giving rise to Continental's liability—inadequate supervision of its well and tank site—occurred within the forum (in Montana), while the injury occurred outside of it (in North Dakota). In light of this difference, the outcome of the *Ford* cases is very unlikely to illuminate the question of specific personal jurisdiction in this case.

The remote relationship between the *Ford* cases and this one is made apparent when one considers the question presented in those cases, framed as Ford put it: "[W]hether the 'arise out of or relate to' requirement is met when none of the defendant's forum contacts caused the plaintiff's claims, such that the plaintiff's claims would be the same even if the defendant had no forum contacts." *Id.* at i.

If, as Ford urges, the "arise out of or relate to" prong of specific personal jurisdiction is not met when none of the defendant's forum contacts caused the plaintiffs' claims, nothing would change here: The plaintiffs *did* allege that Continental's in-forum contacts caused their claims. Put differently, if Continental didn't do the things it did (or failed to do) at the Sidney, Montana office, then the claims *wouldn't* be the same—because those claims depend on the plaintiffs' allegations that the supervision that Continental provided from Montana was inadequate.

By contrast, if the Court declines to adopt Ford's novel proximate-cause test and instead holds that the

"arise out of relate to" prong is satisfied when a defendant has deliberately cultivated a market for its product in the state and that product causes injury in the state, the plaintiffs and Continental are still right where they started. That these conditions could be sufficient for specific personal jurisdiction does not, of course, mean that they are necessary.

Either way, regardless of how this Court decides the *Ford* cases, the outcome here is the same.

B. The dissimilarities between this case and the *Ford* cases go beyond the formal question presented. The concerns raised by the *Ford* cases are also uniquely tied to the general context in which they arise: the sale of mass-produced consumer products, like cars, that are made and sold in one state but resold used in another.

The *Ford* cases, in other words, deal with a quintessentially modern legal problem: When companies mass-produce products to be sold in multiple states in a national market, and one of those products injures a consumer, how should courts evaluate whether it is consistent with due process for the company to be haled into the courts of a state of which the company is not a resident? Changes in the structure of the American economy over the past century have made this question and those like it a persistent and unresolved feature of the personal jurisdiction jurisprudence. "[T]echnological progress," this Court has explained, has heightened the "need for jurisdiction over nonresidents," while "progress in communications and transportation" has made "the defense of a suit in a foreign tribunal less burdensome." *Hanson v. Denckla*, 357 U.S. 235, 250–51 (1958). But at the same time, the Fourteenth Amendment's Due Process Clause acts as "an instrument of interstate federalism" to ensure that there

are more "affiliating circumstances" between a claim, a defendant, and a forum than simply existing together as part of an increasingly integrated national economy. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 294–95 (1980).

In mass-market products liability cases, this Court has found its way to a balance. Due process requires more than foreseeing that a product distributed in a few states might be taken elsewhere. *See id.* at 297–98. But a manufacturer's efforts to serve an out-of-state market "directly or indirectly" may be sufficient when those sales are "not simply an isolated occurrence" and the manufacturer's "allegedly defective merchandise" was a "source of injury to its owner or to others." *Id.*; *see also, e.g.*, *Keeton v. Hustler Magazine*, 465 U.S. 770, 781 (1984) (nationwide publication "continuously and deliberately" exploiting an out-of-state market).

These considerations have little relevance to the question here: Whether an Oklahoma corporation may be haled into Montana courts when it conducts allegedly deficient supervision of oil and well sites from its Montana field office. Even if it were jurisdictionally relevant that the injury occurred just twenty miles over the Montana border in North Dakota, it wouldn't be for any of the reasons evaluated in cases involving mass-market products, such as the extent of the market Continental has cultivated in Montana or whether it was foreseeable to Continental that its acts or omission might lead to injuries in (or outside) the forum state.

C. Continental's argument to the contrary ignores all of this, insisting that the state-law vicarious-liability theory on which the court below premised its specific-jurisdiction conclusion raises causation questions similar to

those at issue in the *Ford* cases. But that is plainly mistaken. As explained above, the plaintiffs *do* allege a causal connection between Continental, Montana, and their claims. Continental's extensive supervision of the site from its Montana field office—including retaining the authority to set flow rates, dispatching employees to direct site operations and correct safety problems, allocating safety equipment, and even firing workers who didn't comply—establishes a direct relationship between Continental's Montana operations and the conditions at the site of injury. App. 13–14.

The fact that specific jurisdiction may turn on vicarious liability under Montana state law doesn't counsel otherwise. The purpose of vicarious liability is to cause employers to take protective measures that they might prefer to contract out. *See* W. Page Keeton et al., *Prosser and Keeton on Torts* § 69, at 500–01 (5th ed. 1984); Alan O. Sykes, *The Economics of Vicarious Liability*, 93 Yale L.J. 1231, 1236–39 (1984). Treating safety measures at a dangerous oilwell site as non-delegable duties does not mean that Continental's Montana conduct was irrelevant, but instead establishes a direct link between Buckles's injury and the company's acts or omissions in its Montana-based supervision of the site.

II. The factbound issues that this case actually presents make it a poor candidate for certiorari.

Regardless of its relationship to the *Ford* cases, this case presents a poor candidate for certiorari to review the Montana court's assessment of the relevance of Continental's Montana-based tortious activity. Continental seeks review of a factbound set of issues that the court below acknowledged may be further illuminated by trial. And, by a separate writing, the court below laid out a distinct

theory by which specific personal jurisdiction was appropriate here, further minimizing the usefulness of this Court's intervention.

To begin with, the jurisdictional issues in this case are factually complex—and ultimately tied up with yet unresolved merits issues. *See* App. 14–16. To arrive at its current procedural posture—review of Continental's motion to dismiss—the parties have made multiple trips to the Montana Supreme Court, *see* App. 1–41, 59–84, and conducted months of jurisdictional discovery, including numerous depositions, *see* App. 46–52.

That personal jurisdiction issues may be complicated and factbound is no surprise. As this Court has emphasized, the personal-jurisdiction test "is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite 'affiliating circumstances' are present." *Kulko v. Superior Court*, 436 U.S. 84, 92 (1978). But this case isn't just complicated because it has required the Montana courts to disentangle the relationship between Continental's Sidney, Montana office and its well sites, or among its various contractors and subcontractors. As the decision below explained, this is also the rare case where jurisdictional facts are so intertwined with the merits that the Montana Supreme Court thought they were best resolved together at trial. App. 14 & n.3.

That feature of the case would make it difficult or impossible for this Court to meaningfully review the decision below at this juncture. To be sure, that there has not yet been a trial on the merits does not, as a jurisdictional matter, preclude this Court's review when a judgment "is plainly final on the federal issue and is not subject to further review in the state courts." *Calder v. Jones*, 465 U.S.

783, 788 n.8 (1984) (quoting *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 485 (1975)). But, as a prudential matter, there is little point in reviewing the federal-law question at this juncture. The plaintiffs have adduced sufficient jurisdictional facts to establish a prima facie case of specific personal jurisdiction—and the final determination of that issue, at least under the theory adopted by the court below, depends on underlying merits questions.

Nor is there any jurisdictional or prudential basis for this Court to entertain Continental's plea for error correction concerning vicarious liability under Montana law. For one thing, the Montana Supreme Court got the law right. The allegedly deficient supervision of the drilling site by Continental and its agents in Montana provides a clear "affiliation between the forum and the underlying controversy." *Bristol-Myers Squibb*, 137 S. Ct. at 1781 (cleaned up). That Continental's liability for those deficiencies depends in part on the application of a "legal" doctrine, as petitioner emphasizes (at 19–24), makes no difference at all—just as it would make no difference if its liability hinged on the "legal" questions whether Buckles was an employee or an independent contractor, or on the interpretation of some term in one of Continental's contracts.

And in any event, the concurrence below amply demonstrates that Continental was *either* directly or vicariously responsible—through its Montana-based acts or omissions—for the safety conditions at the drilling site where Buckles was injured and died.

Under either theory, the other due-process requirements are easily met here, too. Continental's Sidney operations, including its agents' supervision failures, constitute "activities" it has "purposefully directed" at the forum. *Keeton*, 465 U.S. at 472. And Montana courts'

jurisdiction here is reasonable. Continental is not burdened by defending itself in a state in which it has extensive operations; Montana has a clear interest, albeit one shared by North Dakota, in adjudicating whether corporate agents operating within its borders provide adequate supervision over dangerous well sites, and it is efficient and within the plaintiffs' interests to resolve this controversy in the same state of which the plaintiffs and the subcontractors all are citizens. *See World-Wide Volkswagen*, 444 U.S. at 292; *Bristol-Myers Squibb*, 137 S. Ct. at 1786.

CONCLUSION

This Court should deny Continental Resources' petition for a writ of certiorari.

Respectfully submitted,

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