

IN THE SUPREME COURT OF THE UNITED STATES

No. 21-1168

ROBERT MALLORY, PETITIONER,

v.

NORFOLK SOUTHERN RAILWAY CO.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF PENNSYLVANIA

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE,
ENLARGEMENT OF ARGUMENT, AND DIVIDED ARGUMENT

Pursuant to Rule 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case, that the time for oral argument be enlarged to 70 minutes, and that the time be allotted as follows: 35 minutes for petitioner, 20 minutes for respondent, and 15 minutes for the United States. Petitioner and respondent both consent to this motion.

This case presents the question whether a state court may exercise general personal jurisdiction over a corporation based solely on that corporation's registration to do business in the State. The United States has filed a brief as amicus curiae supporting respondent, arguing that the exercise of general jurisdiction based on registration violates the Fourteenth Amendment.

The United States has a substantial interest in this case. Although this case involves a domestic defendant and domestic conduct, the theory of jurisdiction asserted here would apply equally to suits against foreign defendants based on foreign conduct. As the United States has previously explained, theories of personal jurisdiction that would allow U.S. courts to exercise general jurisdiction over foreign defendants can have a significant effect on the United States' diplomatic relations and foreign trade. See U.S. Br. at 2-3, Daimler AG v. Bauman, 571 U.S. 117 (2014) (No. 11-965); U.S. Br. at 1-2, Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915 (2011) (No. 10-76); U.S. Br. at 1, Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408 (1984) (No. 82-1127). Foreign governments' objections to some U.S. courts' expansive views of general jurisdiction have in the past impeded the negotiation of international agreements on the reciprocal recognition and enforcement of judgments. See U.S. Br. at 2-3, Daimler, supra (No. 11-965). And foreign enterprises may be

reluctant to invest or do business in the United States if the price of admission is consenting to answer here for all their conduct worldwide. See id. at 2.

In addition, Congress has enacted a statute that treats defendants who have engaged in certain activities as having consented to personal jurisdiction in the United States. See 18 U.S.C. 2334(e) (Supp. I 2019). Petitioner argues (Br. 46) that a ruling against him would call into question the constitutionality of that statute. Quoting (ibid.) a brief filed by the United States, petitioner also claims that the United States' arguments in defense of that statute apply equally to the state law challenged here. The United States has a substantial interest in explaining how that statute differs from the state law challenged here.

More broadly, the United States has an interest in limits on the personal jurisdiction of state courts. Because the Federal Rules of Civil Procedure allow a federal district court to exercise "the jurisdiction of a court * * * in the state where the district court is located," Fed. R. Civ. P. 4(k)(1)(A), the Fourteenth Amendment's limits on state-court jurisdiction often constrain federal courts -- and often apply to suits brought by the United States itself. Further, because state courts may hear cases arising under federal law, limits on state courts' personal jurisdiction can affect claims brought under federal statutes. Indeed, this case involves a claim under the Federal Employers Liability

Act, 45 U.S.C. 51-60, a federal statute that, among other things, makes railroads liable to their employees for negligence.

The United States has previously presented oral argument as amicus curiae in cases concerning constitutional limits on personal jurisdiction. See, e.g., Bristol-Myers Squibb Co. v. Superior Court, 137 S. Ct. 1773 (2017) (No. 16-466); BNSF Ry. Co. v. Tyrrell, 137 S. Ct. 1549 (2017) (No. 16-405); Daimler, supra (No. 11-965); Walden v. Fiore, 571 U.S. 277 (2014) (No. 12-574); Good-year, supra (No. 10-76). The United States' participation in oral argument in this case accordingly may be of material assistance to the Court.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

SEPTEMBER 2022