No. 21-____

In the
Supreme Court of the United States

RALPH LEWIS,
Petitioner,
v.
POWER RESEARCH, INC. AND WANDA DAVIDSON,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Nevada

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Due Process Clause permits a state court to exercise specific personal jurisdiction over a non-resident defendant only when the plaintiff's claims "arise out of or relate to" the defendant's forum activities. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985).

The question presented is:

Whether the Nevada Supreme Court, in conflict with this Court's decision in *Walden v. Fiore*, 571 U.S. 277 (2014), and with decisions of the Texas Supreme Court, the Second, Fifth, and Seventh Circuits, correctly held that a State may exercise specific personal jurisdiction over a defendant where the defendant does not live or work in the State, and the relevant conduct occurred overseas, merely because the defendant "aimed" his conduct at a resident of a State and was an officer of a corporation organized in the State?

PARTIES TO THE PROCEEDING

Ralph Lewis, petitioner on review, was the appellant below and a defendant in the trial court. The Second Judicial District Court of the State of Nevada, in and for the County of Washoe, and the Honorable Scott N. Freeman, Chief District Judge, are the nominal parties below. Power Research, Inc. and Wanda Davidson are the real parties in interest, and are the appellees and plaintiffs below.

STATEMENT OF RELATED PROCEEDINGS

There are no proceedings that are directly related to this case.

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PETITION FOR WRIT OF CERTIORARI

Ralph Lewis respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Nevada in this case.

OPINIONS BELOW

The Nevada Supreme Court's opinion denying Lewis's writ of prohibition is reported at *Lewis v. Second Judicial District Court in and for County of Washoe*, 478 P.3d 872 (Nev. 2021). Pet. App. 1-7. The district court's opinion is not published. It is available at Pet. App. 8-17.

JURISDICTION

The Nevada Supreme Court entered judgment on January 15, 2021. This Court's jurisdiction rests on 28 U.S.C. § 1257(a). The Nevada Supreme Court's "judgment is plainly final on the federal issue" of whether the Due Process Cause permits the exercise of personal jurisdiction, and the issue "is not subject to further review in the state courts." *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 485 (1975). This Court has previously exercised jurisdiction to review questions of personal jurisdiction in cases with a similar procedural posture. *See, e.g., Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017 (2021).

CONSTITUTIONAL PROVISION 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.

INTRODUCTION

The Petitioner in this case, Ralph Lewis, is a California resident. He runs a Nevada company, Newport Fuel Solutions, Inc., that, as relevant here, recruited employees in China and Greece to work in China and Greece. Other than being an officer of Newport, he has no contacts with Nevada whatsoever. He does not work in Nevada, own anything in Nevada, visit Nevada, sell anything to Nevada, or buy anything from Nevada. Nor is Newport headquartered in Nevada.

The Nevada Supreme Court nonetheless held that Lewis was subject to Nevada personal jurisdiction because the *plaintiff*, Power Research, Inc., is a Nevada corporation, and Lewis allegedly committed "intentional acts" at the helm of a Nevada corporation that were "expressly aimed" at Nevada that caused harm Lewis "knew was likely to be suffered" in Nevada. The court so held based on this Court's decision in *Calder v. Jones,* 465 U.S. 783 (1984)—in the Nevada Supreme Court's view, *Calder* created an "effects test" that allows personal jurisdiction over a defendant any time his actions are knowingly "aimed" at and cause harm to a defendant in a State.

That was incorrect. This Court's precedent no longer allows the "aiming" test the Nevada Supreme Court relied on. This is because this Court, at a minimum, cabined and refined *Calder* in *Walden v. Fiore*, 571 U.S. 277 (2014). The *Walden* Court explained that "minimum contacts" for personal jurisdiction are decided by "the *defendant*'s contacts with the forum State itself, not the defendant's contacts with persons

who reside there." And "these same principles" apply when "intentional torts are involved." *Id.* at 283. Thus, the decision to publish a defamatory article in California in *Calder* triggered personal jurisdiction because California was the "focal point" of the tort—while in *Walden* confiscating the funds of Nevada residents in Atlanta did not create personal jurisdiction, because Nevada had nothing to do with the lawsuit. Under that test, Lewis personally had no contacts with Nevada other than working for a Nevada corporation, which could not possibly trigger specific personal jurisdiction here.

Despite *Walden*'s instructions, the courts of appeals and the State Supreme Courts are split on the continuing viability of *Calder's* "effects" test. Some courts reject it entirely, holding (correctly) that *Walden* effectively abrogated that part of *Calder*. Some courts, like the Nevada Supreme Court below, follow *Calder*, even while gesturing at *Walden's* holding. And some courts find middle positions, limiting *Calder* to intentional torts or even cabining *Calder* to defamation and torts like defamation.

This Court should take this case now to end this long-entrenched split on whether personal jurisdiction can be grounded on the Nevada Supreme Court's "aiming" theory. Otherwise, corporate officers and directors defending themselves against business torts could find themselves hailed into courts throughout the United States by mere happenstance of where the corporations they work for are organized. This Court has never authorized such a broad and limitless theory of personal jurisdiction.

Alternatively, this Court could grant, vacate, and remand the decision below in light of *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017 (2021). That foundational personal jurisdiction opinion bears directly on the Nevada Supreme Court's decision because it makes clear that *Calder* has little bearing on personal jurisdiction outside its narrow context.

STATEMENT

1. Ralph Lewis is a California resident who has never lived, worked, owned personal property in, or paid taxes in Nevada. Pet. App. 3. This includes the time he worked for plaintiff Power Research Inc, a corporation organized in Nevada but based in Texas. It is undisputed that Lewis did not make or direct sales in Nevada, did not solicit any customers in Nevada, and did not use any kind of trade secret allegedly owned by plaintiffs in Nevada. Pet. App. 3-4.

2. Lewis is the President of a Nevada corporation, Newport Fuel Solutions, Inc. Pet. App. 14. Newport and Power Research sharply compete in the Greek and Chinese market for marine fuel additives. Pet. App. 12-13. Even though both are Nevada corporations, they do not compete in Nevada. Pet. App. 13-14.

3. Plaintiffs alleged that Newport and Lewis improperly solicited Greek and Chinese employees (in Greece and China, not Nevada) in violation of their noncompete and confidentiality agreements. Pet. App. 2-3. Plaintiffs also allege that Newport and Lewis obtained, used, or disseminated some of Plaintiff's proprietary information. Pet. App. 2-3.

4. Lewis moved to dismiss the claims against him for lack of personal jurisdiction, because he is not a resident of Nevada and the claims at issue arose from actions undertaken in Greece and China, not Nevada. Pet. App. 2.

The district court denied the motion to dismiss, reasoning that when a party "purposefully direct[s] harm towards another Nevada corporation," this fact alone "establish[es] sufficient minimum contacts with Nevada for the exercise of personal jurisdiction…." Pet. App. 10-11, *citing Consipio Holding, B.V. v. Carlberg*, 282 P.3d 751 (Nev. 2012). The district court further observed that imposing personal jurisdiction on Lewis comported with "fair play and substantial justice" in part because Newport was already involved in the litigation. Thus, Lewis was already "indirectly defending" himself against Plaintiffs' claims. Finally, the district court held that Lewis should have reasonably anticipated being subject to personal jurisdiction in Nevada based on Nevada choice-of-law provisions in the confidentiality and non-compete agreements at issue. Pet. App. 15-16.

5. Lewis then petitioned the Nevada Supreme Court for a writ of prohibition. In that petition, Lewis explained that there could not be personal jurisdiction over Lewis simply on the basis of his work for a Nevada corporation. That would, Lewis argued, impermissibly expand the scope of federal personal jurisdiction far beyond the bounds of the Due Process clause.

The Nevada Supreme Court denied the writ of prohibition. Pet. App. 1-6. First, the court rejected the district court's reliance on *Consipio*. As the court correctly observed, Lewis was not sued in his capacity as an officer or director of Newport. Thus, *Consipio's* holding that a party can be sued in a State for actions as the officer or director of a corporation was not relevant. Pet. App. 6. Second, the court held there was personal jurisdiction over Lewis because under *Calder v. Jones*, 465 U.S. 783 (1984), he committed an "intentional act," which he "expressly aimed" at Nevada, and caused harm that he knew was "likely to be suffered" in Nevada. Pet. App. 5-6. "By incorporating Newport in Nevada and using an ownership interest in the company to induce employees from Power Research to breach their confidentiality and non-compete agreements, petitioner committed intentional acts expressly aimed at Nevada that caused harm that petitioner knew was likely to be suffered in the forum state." Pet. App. 5.

A panel of the Nevada Supreme Court thereafter denied reconsideration. On April 5, 2021, the Nevada Supreme Court denied Lewis's timely petition for en banc reconsideration. Pet. App. 18.

This petition follows.

REASONS FOR GRANTING THE PETITION

I. The Nevada Supreme Court's decision deepens a solid split among state courts of last resort and federal courts of appeals.

The Nevada Supreme Court applied *Calder v. Jones,* 465 U.S. 783 (1984) to hold that because Lewis "incorporate[ed] Newport in Nevada" and used "an ownership interest" in the company to induce employees in China and Greece to allegedly breach their agreements, he "committed intentional acts expressly aimed at Nevada." Pet. App. 5. In so holding, the court directly relied on the "effects test" for personal jurisdiction derived from *Calder* by some federal courts of appeals and State supreme courts. *See* Pet. App. 5, *citing Picot v. Weston*, 780 F.3d 1206, 1213-14 (9th Cir. 2015). In doing so, the court ignored *Walden v. Fiore*, 571 U.S. 227 (2014), which, properly understood, strictly cabined *Calder*.

The decision below thus conflicts with this Court's precedent, and splits with several circuits and State Supreme Courts. The Nevada Supreme Court misread *Calder's* core holding by impermissibly imposing a tort-specific "effects test" and replaced this Court's 2014 jurisdictional test in *Walden* with the test *Walden* effectively disavowed. This Court should resolve the conflict and limit the Nevada Supreme Court's misunderstanding of *Calder*.

A. The decision below conflicts with *Walden*, *Calder*, and this Court's broader personal jurisdiction case law.

1. A state court may exercise personal jurisdiction over a nonresident defendant only so long as there exist "minimum contacts" between the "defendant and the forum State." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980). The governing standard is that "[f]or a state to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection" with the state where suit is filed. *Walden*, 571 U.S. at 284. *See also Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985) ("Where a forum seeks to assert specific jurisdiction over an out-of-state defendant … [the Constitution] is satisfied if the defendant has purposefully directed his activities at residents of the forum") (cleaned up).

This Court's decision in *Calder v. Jones*, 465 U.S. 783 (1984) seemingly expanded this traditional test to allow personal jurisdiction over defendants whose out-of-state actions caused "effects" in a State. *Id.* at 787. But *Calder* was, first and foremost, a defamation case. The plaintiff there sued a national magazine's editor and one of its reporters in California because they allegedly defamed her in an article they wrote in Florida. 465 U.S. at 748. This Court held that California could exercise personal jurisdiction over the defendants because "California [was] the focal point of the story and of the harm suffered" and because of the "effects" of their conduct in California. *Id.* at 789.

2. Although most courts understood that "*Calder's* holding cannot be severed from its facts," *IMO Industries, Inc. v. Kiekert, AG*, 155 F.3d 254, 261 (3d Cir. 1998), in some circuits and state courts, *Calder* was understood as creating an "effects test" allowing personal jurisdiction in a forum whenever a defendant's intentional act is "targeted at a plaintiff whom the defendant knows to be a resident of the forum state," and the defendant knows "harm … is likely to be suffered in the forum state." *See, e.g., CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1077 (9th Cir. 2011).

3. Whatever the best reading of *Calder* alone, *Walden* decisively rejected that rubric. There, the Court held that *Calder's* personal jurisdiction holding rested on the defendant's ties to the state, not the injury of the plaintiff that resides there. *Walden*, 571 U.S. at 290-91. The Court emphasized that "[t]he proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way." *Id.* at 290. And, as a result, where all of a defendant's "relevant conduct" occurs outside the forum, "the mere fact that [its] conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction." *Id.* at 291.

Walden further clarified that because the *Calder* defendants wrote the defamatory piece "for publication in California," defendants' libelous conduct "actually occurred *in* California." *Id.* at 287. The particular "nature of the libel tort" was therefore largely responsible for the "strength" of defendants' connection

to the forum. *Id.* The Court did not mention "express aiming" at all, except to note that *Calder* had used the phrase in rejecting the defendants' arguments that they could not be subject to jurisdiction because their employer chose to circulate the magazine in California. *Id.* at 288.

The court below conducted none of the careful analysis required by *Walden*. Instead, the Nevada Supreme Court held only that because Lewis was involved with a Nevada company, and because his alleged actions had effects on a Nevada plaintiff that he supposedly knew about, that is enough to make him at home in Nevada for the purposes of personal jurisdiction. At most, it gestured at *Walden* in passing, and failed to engage with the point that *Calder's* rule was designed not for business torts but for defamation—an unusual situation with broadly different features than those at issue here. Simply put: the Nevada Supreme Court's decision did not follow this Court's precedent on personal jurisdiction.

B. The Circuits and State Supreme Courts Are Divided Over How To Interpret *Calder* In Light Of *Walden*.

The Nevada Supreme Court's analysis in this case is no lone outlier. Instead, it is part of a deep and unmoving split among circuits and state Supreme Courts about the continuing viability and *content* of the so-called "effects test" set forth in *Calder*. Both State Supreme Courts and Federal courts of appeals cannot agree on *Calder's* meaning, especially in the context of business torts like those alleged here. Indeed, they have not been able to decide what *Calder* means since

it was issued. *See also U.S. v. Swiss American Bank, Ltd.*, 274 F.3d 610, 624 (1st Cir. 2001) ("Courts have struggled somewhat with *Calder's* import"); Robert J. Condlin, *"Defendant Veto" or "Totality of the Circumstances"? It's time for the Supreme Court to Straighten Out the Personal Jurisdiction Standard Once Again*, 54 Cath. U. L. Rev. 53, 95 (2004) (*Calder* "has proved particularly troublesome in the lower federal and state courts").

The Nevada Supreme Court's analysis in this case departs from that of other state Supreme Courts. For instance, the Supreme Court of Texas rejected a plaintiff's request that it adopt the "effects test" for deciding specific jurisdiction. *Old Republic National Ins. Title Co. v. Bell*, 549 S.W.3d 550, 565 (Tex. 2018). Instead, the court explained that *Walden* "clarified" that the test laid out in *Calder* requires that the "effects" of the tort must connect the *defendant* to the forum state." *Id. See also Ex Parte LED Corp., Inc.*, 303 So.3d 1160, 1168 (Al. 2020) (holding that *Walden* "refined" the "effects test" such that it was properly limited to only intentional torts). Other courts, such as the Utah Supreme Court, have found the questions presented by *Calder* and *Walden* so difficult that they have been forced to repudiate their own understandings of those cases. *See Raser Tech., Inc. v. Morgan Stanley & Co.*, 449 P.3d 150 n. 13 (Utah 2019) (noting that the court's own previous decision "overstate[d] *Walden's* holding). *See also Noll v. American Biltrite, Inc.*, 395 P.3d 1021, n. 7 (Wash. 2017) (recognizing that *Walden* applies with full force to intentional tort cases).

Federal courts of appeals too have disagreed on *Walden* and *Calder*. The Second, Fifth, and Seventh Circuits have each rejected the "aiming" argument accepted by the Nevada Supreme Court below, recognizing that *Walden* at a minimum clarifies and cabins *Calder*.

The Seventh Circuit has rejected a plaintiff's argument that "a defendant should be subject to personal jurisdiction in any state at which it 'aimed its actions.'" *Ariel Invs. v. Ariel Capital Partners*, 881 F.3d 520, 522 (7th Cir. 2018). As Judge Easterbrook explained, the plaintiff's "aiming" argument was "incompatible with *Walden*; it is exactly what [the Ninth Circuit] had held, and not a single Justice accepted the position." *Id*. The Seventh Circuit also rejected the plaintiff's argument that *Calder* allows for knowledge of in-state harm to confer personal jurisdiction. Id. at 522-523. "As *Walden* observed, because publication to third parties is an element of libel, the defendants' tort [in *Calder*] occurred in California." *Id*. at 523.

The Second and Fifth Circuits have also rejected personal jurisdiction claims based on *Calder*. The Second Circuit held that even in the context of an intentional tort, the Constitution requires "much more purposefully directed contact with the forum" than attacks that were intended to injure Americans. *Waldman v. Palestinian Liberation Organization*, 835 F.3d 317, 338 (2d Cir. 2016). The "jurisdictional inquiry in *Calder* focused on the relationship among the defendant, the forum, and the litigation," not on the *effects* of the defendant's actions. *Id*. (citing *Walden*,

571 U.S. at 287). Thus, that analysis was inapplicable. *Id.*

The Fifth Circuit agreed—simply being "aware" that the effects of one's tortious conduct would be "felt in [the forum]" does not establish personal jurisdiction. *Sangha v. Navig8 ShipManagement Private Limited*, 882 F.3d 96, 104 n.3 (5th Cir. 2018) (*citing Walden*, 571 U.S. at 289-290). And at least one judge on the Fifth Circuit has acknowledged what is clear from the cases—that "effects" jurisdiction is "rare" and that this Court has "moved away from an effects-based analysis." *Defense Distributed v. Grewal*, 971 F.3d 485, 498 (5th Cir. 2020) (Higginson, J., concurring).

Still other courts have limited the "effects test" to allegations of intentional torts. The Eleventh Circuit limits the *Calder* "express aiming" argument to when the plaintiff has brought an "intentional tort" claim. *See Aviation One of Fla., Inc. v. Airborne Ins. Consultants (PTY), Ltd.*, 722 F. App'x 870, 882 (11th Cir. 2018) (per curiam); *see also Licciardello v. Lovelady*, 544 F.3d 1280, 1287-88 (11th Cir. 2008). Express aiming does not apply to torts based on negligence. *Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339, 1357 n.11 (11th Cir. 2013). The Third Circuit has also held that an intentional-tort claim is required to trigger a *Calder* analysis. *Marten v. Godwin*, 499 F.3d 290, 297 (3d Cir. 2007); *see also Isaacs v. Arizona Bd. of Regents*, 608 F. App'x 70, 74 (3d Cir. 2015) (per curiam). The Tenth Circuit has gone even further. It has directly "question[ed]" whether, in view of *Walden*, *Calder*'s analysis "extend[s] beyond the defamation context" at all. *Old Republic Ins. Co. v.*

Continental Motors, Inc., 877 F.3d 895, 916 n.34 (10th Cir. 2017).

The chasm between the Nevada Supreme Court and the Second, Fifth, Seventh, and Tenth Circuits and the Texas Supreme Court makes all the difference. Under the *Calder*-only test, the fact that Lewis' actions caused harm "that the defendant knows is likely to be suffered in the forum state" is enough to trigger jurisdiction. In all of these other jurisdictions, it is not. Applying a correct understanding of *Walden* and *Calder*, the Nevada Supreme Court would have been required to decide whether Nevada was the "focal point" of the alleged tort (a phrase that does not appear in the Nevada Supreme Court's opinion). As explained below in Part II, it is hard to imagine how a Court could conclude that Lewis had purposefully availed himself of Nevada with respect to this case.

II. The decision below was wrong.

Under the correct standard of review, that set forth in both *Walden* and *Calder* combined, there is no personal jurisdiction over Lewis for the claims in this case. Lewis does not live in, work in, or visit Nevada for work. *See, e.g., Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 773-74 (1984) (noting that physical entry into a State is a relevant contact for personal jurisdiction purposes). He has no personal connection to the forum.

The mere fact that Lewis is an officer of a Nevada corporation that is involved in this litigation is certainly not enough to trigger personal jurisdiction. *See Shaffer v. Heitner*, 433 U.S. 186, 216 (1977). Nor, of course, is the fact that the *plaintiff* is a Nevada

corporation enough. *See Walden*, 134 S. Ct. at 1122 ("We have consistently rejected attempts to satisfy the defendant-focused minimum contacts inquiry by demonstrating contacts between the plaintiff … and the forum State"). There must be a specific factual connection between *Lewis*, as a person, and Nevada, which neither of these facts provide.

As to the other two actual allegations on which the courts below relied (i.e., that Lewis obtained confidential trade secrets and used shares in Newport to recruit the employees), the district court did not find that they occurred in Nevada. Instead, the district court relied on these allegations because they involved Nevada-incorporated companies. But again, in neither of these two cases did Lewis do *anything* in Nevada sufficient to subject him to personal jurisdiction.

For example, Plaintiffs allege that Lewis obtained confidential information from PRI; however, this did not occur in Nevada because Lewis never worked for PRI (or anyone else) in Nevada and, therefore, did not receive any information from PRI in Nevada. Notably, PRI had no employees or offices in Nevada. Moreover, PRI has not asserted that it provided Lewis confidential information in Nevada. Absent any claim or evidence to show that the allegation itself occurred in Nevada, the inconsequential fact that PRI is incorporated in Nevada does not qualify or suffice as a forum contact to support jurisdiction.

Similarly, Plaintiffs allege that Lewis used Newport shares to induce other employees to violate their confidentiality agreements with PRI. This also did not occur in Nevada. Neither Lewis nor the employees lived

in Nevada and the offer was made by e-mail in Greece, not Nevada, where the employee at issue, Michael Hristodoulakis, lives. Pet. App. 13-14. The e-mail makes no mention of Newport's Nevada incorporation and there is no evidence that the Nevada incorporation of Newport factored into the offer made to Hristodoulakis. Lewis could have offered an ownership interest in a California or Mississippi company and it would not matter because the crux of the claim is that Lewis offered ownership in a company, not that he offered ownership in a Nevada company specifically. *See Walden*, 571 U.S. at 290 (holding that Respondents "lacked access to their funds in Nevada not because anything independently occurred there, but because Nevada is where respondents chose to be at a time when they desired to use the funds seized by petitioner. Respondents would have experienced this same lack of access in California, Mississippi, or wherever else they might have traveled. ..") As for the Nevada Supreme Court's passing reference to the choice-of-law provisions, those are a red herring. A choice-of-law provision cannot, by itself, support a district court's exercise of personal jurisdiction. *Burger King*, 471 U.S. at 482.

Absent any claim and evidence to show that the factual allegations occurred in Nevada, the district court improperly relied on the inconsequential Nevada incorporations of PRI and Newport to exercise personal jurisdiction over Lewis. The case against Lewis should have been dismissed for lack of personal jurisdiction.

III. The petition squarely presents this important question.

This case is an ideal vehicle for this Court to resolve the important and commonly recurring question presented. There is no question that the issues here are entirely legal in nature. Personal jurisdiction was decided at the motion-to-dismiss stage, meaning there are no disputed facts. *See Baker v. Eighth Judicial Dist. Court*, 116 Nev. 527, 531 (2000) (holding that the Nevada courts review a district court's legal determination about personal jurisdiction de novo). Nor could there be. No one disputes that Lewis does not live, work, pay taxes in, or participate in Nevada's economy in any way other than being an officer of Newport. Pet App. 3-4. The only contested issue is one of law.

Next, the question of what connection due process requires between a plaintiff's claim and the defendant's forum contacts is outcome-determinative. All agree that Lewis is not subject to general personal jurisdiction in Nevada. Further, the facts and circumstances in this case are straightforward. It thus involves none of the procedural quirks or unusual fact patterns that could muddy review. *See Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773, 1777–78, 1783 (2017) (mass action); *Exxon Mobil Corp. v. Attorney General*, 94 N.E.3d 786, 790 (Mass. 2018), *cert. denied sub nom.*, *Exxon Mobil Corp. v. Healey*, 139 S. Ct. 794 (2019) (mem.) (civil investigative demand); *Teck Metals Ltd. v. Confederated Tribes of the Colville Reservations*, 905 F.3d 565 (9th Cir. 2018), *cert*

denied sub nom. Teck Metals Ltd. v. Confederated Tribes, 139 S. Ct. 2693 (2019) (CERCLA).

Finally, the case is presented in an important factual posture. Lewis is a director of a Nevada company. Nevada is one of the top destinations for incorporation in the United States. As one observer noted long ago, "Nevada has attempted to become the western Delaware." William L. Cary, *Federalism and Corporate Law: Reflections Upon Delaware*, 83 Yale L. J. 663, 665 (1974). *See also* Jill E. Fisch, *The Peculiar Role of the Delaware Courts in the Competition for Corporate Charters*, 68 U. Cin. L. Rev. 1061, 1067 (2000) ("In addition to adopting the Delaware statute, the Nevada legislature adopted Delaware case law."). If the Nevada Supreme Court's erroneous conception of personal jurisdiction is allowed to prevail here, many officers and directors will be subjected to suit in Nevada *solely* by virtue of their work for a Nevada corporation, even though they do not actually do *anything* in Nevada or have anything to do with Nevada. Again, to be clear, no one is saying that the Nevada corporation itself can escape Nevada jurisdiction. The question here is about an officer whose only connection to Nevada is the corporation itself. The so-called "effects test" cannot be stretched so far.

By taking this case, this Court can resolve the question of *Calder's* and the "effects test's" continuing viability on facts that are likely to arise in the future.

IV. In the alternative, the Court should grant, vacate, and remand this case in light of *Ford*.

Although this case deserves plenary review for the reasons described above, a GVR order would also be an appropriate way to dispose of this case. Under the "prevailing standard," *Elmbrook School District v. Doe*, 134 S. Ct. 2283 (2014), a GVR should be granted "where an intervening factor has arisen that has a legal bearing upon the decision." *Lawrence v. Chater*, 516 U.S. 163, 168-169 (1996) (per curiam); *see also Youngblood v. West Virginia*, 547 U.S. 867, 875 (2006) (Kennedy J., dissenting) (explaining that "issuing a GVR order in light of some new development" is "traditional practice").

The standard for issuing a GVR is not as demanding as the standard for a grant of certiorari. A GVR order is warranted whenever, "in light of intervening developments," there [i]s a 'reasonable probability' that the Court of Appeals would reject a legal premise on which it relied and which may affect the outcome of the litigation." *Tyler v. Cain*, 533 U.S. 656, 666 n. 6 (2001) (quoting *Chater*, 516 U.S. at 167). *See also Wellons v. Hall*, 130 S. Ct. 727, 721 (2010) (per curiam). This is so because a GVR "conserves the scarce resources of this Court," "assists the court below by flagging a particular issue that it does not appear to have fully considered," and "assists this Court by procuring the benefit of the lower court's insight before we rule on the merits." *Lawrence*, 516 U.S. at 167.

This Court's recent decision in *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct.

1017 (2021) is a critical precedent in personal jurisdiction jurisprudence that requires such a reappraisal by the Nevada Supreme Court. First, there is not a single mention of *Calder's* supposed "effects" test in that case. Instead, this Court emphasized that the correct standard for assessing jurisdiction is whether there was an "activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Id.* at 1025. Thus, "*only* when a [party] exercises the privilege of conducting activities within a state" can it be held to account in that state. *Id.* (cleaned up). In short, what this Court found persuasive in *Ford* was that the company did "substantial business in Montana and Minnesota" (the opposite of the facts here) and therefore there was a "affiliation" between the forum and the underlying controversy. *Id.* at 1025-25.

Under that correct standard, there is no such connection between Lewis and Nevada. To be sure, Lewis is an officer of a Nevada company. But that alone can't possibly fall within the *Ford* test, which requires a party to have "continuously and deliberately exploited" a State's market. *Id.* at 1027. As explained above, Plaintiffs cannot point to a single thing Lewis did inside Nevada. There is no "strong relationship among the defendant, the forum, and the litigation." *Id.* at 1028. As a result, this case at a minimum should be GVRed to allow the Nevada Supreme Court to apply the correct test as clarified by this Court in *Ford*.

CONCLUSION

The Court should grant the Petition for Writ of Certiorari. In the alternative, and at a minimum, the

petition should be granted, the judgment vacated, and the case remanded to the Nevada Supreme Court for reconsideration in light of *Ford*.

Respectfully submitted,

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