No. 22-82

In the Supreme Court of the United States

CHARLES JOHNSON, PETITIONER

v.

THEHUFFINGTONPOST.COM, INCORPORATED

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Petitioner sued respondent, a news media organization, in the U.S. District Court for the Southern District of Texas. Petitioner contends that he was libeled by an article respondent published on its news website.

The article could be viewed for free by anyone anywhere around the world with access to the internet. The article never mentioned Texas. It did not refer to any activities in Texas. No sources for the article were located in Texas, and the article was not written or published in Texas. Respondent had no offices or employees in Texas, and it did not send any physical copies of the article into Texas.

Petitioner conceded below that the article did not specifically target Texas. He instead contended that the federal district court in Texas could exercise specific personal jurisdiction over respondent based on its general business activities in Texas, including that the website was available to people in Texas; Texas advertisers displayed advertisements on the website; and respondent targeted advertising to Texas residents.

The question presented is:

Whether a federal district court in Texas can exercise specific personal jurisdiction over petitioner's libel claim against respondent consistent with the Due Process Clause of the Fourteenth Amendment.

CORPORATE DISCLOSURE STATEMENT

Respondent TheHuffingtonPost.com, Inc. is an indirectly held subsidiary of BuzzFeed, Inc. BuzzFeed, Inc. is a publicly held company. Comcast Corporation is the only publicly held company that owns 10% or more of BuzzFeed, Inc.'s stock.

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BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-37a) is reported at 21 F.4th 314. The order of the district court (Pet. App. 38a-41a) is not published in the *Federal Supplement* but is available at 2020 WL 8116186.

JURISDICTION

The judgment of the court of appeals was entered on December 23, 2021. A petition for rehearing was denied on April 27, 2022 (Pet. App. 42a). The petition for a writ of certiorari was filed on July 26, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioner brought this suit against respondent in federal district court in Texas. He contends that res-

pondent published an article on its website that libeled him. The district court concluded that it lacked specific personal jurisdiction over respondent, Pet. App. 38a-41a, and the court of appeals affirmed, *id.* at 1a-25a.

A. Factual Background

1. Petitioner is a resident of Texas. Pet. App. 2a. Respondent is a news media organization. *Ibid.* It publishes news articles, investigative journalism, and opinion pieces on its website, www.huffpost.com. *Ibid.* Respondent is incorporated in Delaware and has its headquarters in New York. *Ibid.*; see C.A. App. 264. It does not maintain any offices or own any property in Texas. Pet. App. 2a; see C.A. App. 264.

Articles on respondent's website could be viewed cost-free by anyone located anywhere in the world with access to the internet. Pet. App. 3a & n.1; see C.A. App. 264. Visitors to the website could choose to pay for an ad-free experience and also could purchase merchandise on the website. Pet. App. 3a; see C.A. App. 355, 370.

2. This lawsuit arises out of a news article respondent published on the website in January 2019. Pet. App. 38a-39a; see C.A. App. 260-263 (full article).

The article reports on a meeting petitioner had with two Members of Congress in Washington, D.C. Pet. App. 39a. Petitioner's presence at the meeting caused controversy because he has a long history of making racist and anti-Semitic statements. C.A. App. 305-316. The article reports that both lawmakers "faced immediate backlash" for meeting with petitioner; both then condemned white supremacy and anti-Semitism and said they were unaware of petitioner's prior statements when they agreed to meet with him. *Id.* at 261-262.

The article provides background on petitioner's prior statements, including that he "question[ed] how many Jewish people were killed in the Holocaust"; "ran a crowdfunding site for white supremacists and neo-Nazis"; "said 'anti-racist is anti-white'"; and "was kicked off Twitter for threatening to 'take out' a Black Lives Matter activist." C.A. App. 261. The article provides hyperlinks to sources supporting each of those statements. See *ibid.*

The article does not mention Texas. Pet. App. 2a. It does not identify petitioner as a Texas resident or discuss anything that happened in Texas. *Ibid.* Neither of the two Members of Congress mentioned in the article represents Texas. *Id.* at 39a. The author of the article is based in New York. C.A. App. 257. He did not conduct any investigation in Texas, rely on any Texas sources, or even know that petitioner lives in Texas. Pet. App. 2a; C.A. App. 257. The article was not edited or published in Texas. Pet. App. 2a; C.A. App. 264.

B. Procedural History

1. Petitioner filed this lawsuit in federal district court in the Southern District of Texas. Pet. App. 2a. He claims that respondent libeled him because the article stated that he is a "noted Holocaust denier and white nationalist." Pet. App. 2a; C.A. App. 175 (complaint).[1]

The complaint alleges that respondent had the following connections to Texas: Respondent's website was freely accessible worldwide, including in Texas; respondent offered a paid, ad-free experience and

[1] The day he filed this lawsuit, petitioner demanded that respondent retract the article. Respondent added an "update" to the article that quotes a statement from petitioner about his previous statements. C.A. App. 176-177; see *id.* at 263.

merchandise to all visitors, including Texas residents; advertisers from Texas displayed advertisements on the website; and respondent collected location information from website users, including users in Texas, in order to target advertising to them. Pet. App. 3a; see C.A. App. 172; see also Pet. 3-4 (block quote reprinting totality of petitioner's personal jurisdiction allegations). Respondent moved to dismiss for lack of personal jurisdiction and for failure to state a claim. Pet. App. 3a.

2. The district court dismissed the complaint on personal jurisdiction grounds. See Pet. App. 38a-41a. Petitioner "concede[d] there is no general [personal] jurisdiction" over respondent in Texas. *Id.* at 39a. The court then determined that petitioner could not establish specific personal jurisdiction over respondent in Texas. *Id.* at 39a-40a.

The court observed that it could exercise specific personal jurisdiction over respondent only if respondent had sufficient purposeful contacts with Texas, and petitioner's cause of action "arise[s] out of or relate[s] to" those contacts. Pet. App. 40a. Here, the court explained, there was no link between the allegedly libelous article and Texas: "[T]he Article contains no reference to Texas and does not refer to [petitioner's] Texas activities, residence, or work"; "Texas was neither the subject matter of the Article nor the supplier of sources for the Article"; petitioner "has not alleged that the Article drew upon Texas sources"; and there "is no evidence that the Article was directed at Texas residents more than residents from other states." *Ibid.*

3. The court of appeals affirmed. See Pet. App. 1a-25a. Applying this Court's precedents, the court explained that a court in Texas can exercise specific

personal jurisdiction over a defendant only if the defendant "purposefully avail[ed] itself of the privilege of conducting activities in the forum State"; the plaintiff's claim "'arise[s] out of or relate[s] to' those purposeful contacts"; and the exercise of jurisdiction is fair and reasonable to the defendant. *Id.* at 5a (quoting *Ford Motor Co.* v. *Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024-1025 (2021)). Here, the court concluded, those requirements were not satisfied, because petitioner did not connect his libel claim to respondent's purposeful business activities in Texas. *Id.* at 10a.

Petitioner's claim for libel, the court explained, arose out of the publication of the article, but the article "has no ties to Texas." Pet. App. 7a. "The story does not mention Texas" and "it used no Texan sources." *Ibid.* Petitioner had to "show that HuffPost's story targeted Texas in some way," but he "never pleaded" any links between the article and respondent's activities in Texas. *Id.* at 8a, 10a.

Instead, the court stated, petitioner relied generally on respondent's business activities in Texas, which did not distinguish Texas from any other state. Pet. App. 3a. Petitioner cited allegations that the website is "universal[ly] accessib[le]" and that "Texans visited the site, clicking ads and buying things there." *Id.* at 10a. But those connections were insufficient to support specific personal jurisdiction, the court explained, because the allegedly libelous article did not arise out of or relate to them. *Id.* at 11a-14a.

The court explained that simply "[m]aking a website that's visible in Texas" is not enough to support jurisdiction because respondent does not control "[t]he place from which a person visits [its] site," and petitioner did not allege that respondent "solicited Texan

visits to the alleged libel." Pet. App. 11a-13a. Further, selling merchandise and ad-free experiences to Texans could not support specific personal jurisdiction, the court determined, because petitioner's claim relates solely to the publishing of the article, not to the sale of any merchandise or services. *Id.* at 11a. Petitioner's view, if accepted, would allow a court in any state to assert specific personal jurisdiction over a website for any claim related to the website, thereby "collaps[ing] the distinction between specific and general jurisdiction." *Id.* at 18a.[2]

Judge Haynes dissented. Pet. App. 26a-37a. In her view, the Texas court could assert specific personal jurisdiction because respondent "has fulsome circulation in Texas" and "actively exploited the forum through Texas-specific advertising." *Id.* at 32a (Haynes, J., dissenting).

4. Petitioner filed a petition for rehearing, which the court of appeals denied, with seven judges dissenting. Pet. App. 44a-56a.

ARGUMENT

Petitioner contends (Pet. 7) that the court of appeals erred in holding that the complaint's allegations fail to establish specific personal jurisdiction over respondent for his libel claim. The court of appeals faithfully applied this Court's settled precedents, and its decision is correct. Further, there is no disagreement in the courts of appeals on the question presented. The cases from the other circuits that peti-

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[2] In addition to affirming the dismissal of the complaint, the court of appeals held that the district court did not abuse its discretion in denying petitioner jurisdictional discovery. Pet. App. 24a-25a. Petitioner does not challenge that holding in the petition.

tioner cites do not involve libel claims, and the different outcomes in the cases simply reflect their different claims and different facts. Petitioner does not show any reason why the Court should address the personal jurisdiction rules applicable to libel claims.

In any event, this case would be a poor vehicle for further review, because petitioner did not allege *any* connections between respondent's Texas-related business activities and his libel claim, relying instead on respondent's business activities generally—an approach that effectively would subject respondent to general jurisdiction in all fifty states. Further review is therefore unwarranted.

I. THE DECISION BELOW IS CORRECT

The court of appeals correctly applied this Court's settled precedents to the facts of this case. It recognized that petitioner cannot establish specific personal jurisdiction over respondent because he has not alleged that his libel claim arises out of, or relates to, respondent's purposeful contacts with Texas. In fact, as the court of appeals recognized, petitioner *conceded* that the article does not target Texas.

A. The Court Of Appeals Correctly Applied Settled Specific Personal Jurisdiction Principles To The Facts Of This Case

1. The Due Process Clause of the Fourteenth Amendment limits a federal district court's power to exercise personal jurisdiction over a defendant in a case premised on diversity jurisdiction. *Walden* v. *Fiore*, 571 U.S. 277, 283 (2014). In explaining the due process limits, this Court consistently has distinguished between general (or "all-purpose") jurisdiction, and specific (or "case-linked") jurisdiction. *Ford*, 141 S. Ct. at 1024; see, *e.g.*, *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915, 919 (2011);

Burger King Corp. v. *Rudzewicz*, 471 U.S. 462, 472-473 & 473 n.15 (1985). General jurisdiction extends to "any and all claims" against a defendant, whereas specific jurisdiction relates only to a particular claim. *Ford*, 141 S. Ct. at 1024-1025 (internal quotation marks omitted). To establish specific jurisdiction over a claim, the plaintiff must show both that the defendant took "some act by which [it] purposefully avail[ed] itself of the privilege of conducting activities within the forum State," and that the plaintiff's claims "arise out of or relate to the defendant's contacts with the forum." *Id.* at 1024, 1026 (internal quotation marks omitted). Here, petitioner has conceded that he cannot establish general personal jurisdiction over respondent in Texas; the case is only about specific personal jurisdiction. Pet. App. 39a.

Simply doing business in a state—even a substantial amount of business—is not sufficient to establish specific personal jurisdiction. See, *e.g.*, *Bristol-Myers Squibb Co.* v. *Superior Ct.*, 137 S. Ct. 1773, 1781 (2017) ("For specific jurisdiction, a defendant's general connections with the forum are not enough."); *Daimler AG* v. *Bauman*, 571 U.S. 117, 132 (2014) ("[A] corporation's continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity." (internal quotation marks omitted)).

Instead, "what is needed * * * is a connection between the forum and the specific claims at issue." *Bristol-Myers*, 137 S. Ct. at 1781. The plaintiff must sufficiently connect the defendant's purposeful contacts with the state to the cause of action, *i.e.*, the cause of action must "arise out of or relate to" those contacts. *Ford*, 141 S. Ct. at 1024-1025 (internal quotation marks omitted).

The court of appeals articulated and applied those settled principles in this case. It recognized that, to support "claim-specific" jurisdiction, "a plaintiff must link the defendant's *suit-related* conduct to the forum"; "[m]ere market exploitation will not suffice." Pet. App. 20a; see *id.* at 5a (noting that "the plaintiff's claim 'must arise out of or relate to' those purposeful contacts" (quoting *Ford*, 141 S. Ct. at 1025)). In a libel case, that inquiry focuses on connections between the defendant's purposeful forum contacts and the allegedly libelous story—such as sending physical copies of the story to readers in the forum state; or reporting, writing, or editing the story within the state; or reporting on events that took place within the state; or using sources from within the state. See *Calder* v. *Jones*, 465 U.S. 783, 788-789 (1984); *Keeton* v. *Hustler Mag., Inc.*, 465 U.S. 770, 772 (1984); see also Pet. App. 7a.

2. The problem here, the court of appeals explained, is that petitioner's personal jurisdiction allegations concern only respondent's business in Texas generally, and do not attempt to establish any link between the allegedly libelous article and respondent's purposeful activities in Texas. For specific personal jurisdiction, "[t]he only relevant activities of the defendant are those that relate to the plaintiff's suit," but that "crucial link" is "missing here." Pet. App. 21a. The article at issue had "no ties to Texas": It did not "recount conduct that occurred in Texas" or rely on any sources from Texas, and it was not written or published in Texas. *Id.* at 2a, 7a.[3] The author of

[3] Although petitioner is a resident of Texas, that is not a connection that respondent purposefully forged to Texas—and only *respondent's* purposeful contacts are relevant to the specific jurisdiction analysis. *Ford*, 141 S. Ct. at 1025; see *Walden*, 571 U.S.

the article, who is based in New York, did not investigate or write the article in Texas, and he did not even know that petitioner lives in Texas. C.A. App. 264.

Further, petitioner "pleaded no facts showing that HuffPost aimed the alleged libel or its website at Texas." Pet. App. 23a. He did not allege that respondent specifically marketed the article to people in Texas, or even that the content of the article made it likely that Texas residents (as opposed to residents of other states) would want to view the article. In fact, petitioner "repeatedly" conceded in the courts below "that the Article does not specifically target Texas." Pet. C.A. Reply Br. 5; see, *e.g.*, Pet. C.A. Br. 26.

Instead, petitioner relied solely on facts that do not connect Texas to the alleged libelous statements. He noted that people in Texas could view the website and the article. Pet. App. 10a; see Pet. 3. But that conduct by people other than respondent does not link the article to Texas, and it does not distinguish Texas from any other state from which a person could view the article. "The place from which a person visits HuffPost's site is entirely beyond HuffPost's control," and petitioner never alleged that "HuffPost reached beyond the site to attract Texans to it or to the story about [him]." Pet. App. 13a. Petitioner had to "show that HuffPost's story targeted Texas in some way," and he simply did not do that. *Id.* at 10a.

Petitioner also relies (Pet. 6) on the fact that respondent offered an ad-free experience and merchandise to all visitors, including Texans. But that also is insufficient to support specific personal jurisdiction, because petitioner's claim does not arise out of or re-

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at 284-285, 290 ("[M]ere injury to a forum resident is not a sufficient connection to the forum.").

late to those sales. Pet. App. 14a. Petitioner "complains about a written article, not articles of clothing"; the ad-free experience and merchandise "have nothing to do with [his] libel claim." *Id.* at 11a. Indeed, petitioner "never pleaded" that these products and services even were available on the same webpage as the article. *Id.* at 8a.

Finally, petitioner alleges (Pet. 5) that respondent displayed ads from Texas advertisers and collected data from users in Texas in order to target advertising to them. Those contacts likewise are not linked to his libel claim. The claim "arises from the story"; "[i]t does not stem from or relate to HuffPost's ads or the citizenship of those placing them." Pet. App. 12a. Further, petitioner does not allege that respondent used the subject-matter of the article to target any advertisement. Petitioner also does not allege that respondent encouraged any Texan to view the article or that the website's ads were in any way connected to the article. *Id.* at 13a. In fact, the advertisements directed viewers *away* from the website (toward the advertisers' websites), not *to* articles on the website. *Id.* at 14a.[4]

The bottom line, the court explained, is that "[t]he harm of libel is the reputational injury that results from the defendant's purposefully sharing that libel with others," and it "does not turn on whether the defendant's unrelated activities make or lose money." Pet. App. 13a.

3. Petitioner's position has virtually no limits. He argues that the owner of a website can be sued for *any*

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[4] Petitioner now asserts (Pet. 6) that respondent displayed location-based advertisements on the webpage that contained the article at issue. But he did not include that allegation in his complaint. Pet. App. 8a-9a; see C.A. App. 172.

claim involving the website in any way in *every* state where it engages in "substantial commercial activity." Pet. 10-12. In fact, as the court of appeals recognized, petitioner's view is not limited to claims involving the website; under his logic, respondent could be sued in Texas if one of its employees were involved in a car crash outside of Texas, simply because respondent does more than a minimal amount of business in Texas. Pet. App. 18a n.17. Further, petitioner readily admits that his view is not confined to Texas, but would extend to every state in which respondent earns substantial income from its website. Pet. 12; see Pet. C.A. Pet. for Reh'g 14 (petitioner's statement that under his view, respondent would be "liable in every state").

If petitioner's view were accepted, personal jurisdiction over internet-based companies "would have no limit; a plaintiff could sue everywhere." Pet. App. 11a (internal quotation marks omitted). That view would "collapse the distinction between specific and general jurisdiction" and would run roughshod over the fairness- and federalism-based rationales underlying the due process limits on personal jurisdiction. *Id.* at 15a-19a.

Petitioner is wrong to assert (Pet. 8) that rejecting his argument means that respondent could only be sued in its home states under a general jurisdiction theory. Respondent would be subject to specific personal jurisdiction in the places where respondent had sufficient purposeful suit-related contacts. A court would consider factors such as whether respondent sent physical copies of the article to readers within the state or otherwise sought to draw readers from the state to the article; whether the article reported on events that occurred in or drew on sources in the state; and whether respondent authored or edited the article

from within the state. See, *e.g.*, *Calder*, 465 U.S. at 788-789; *Keeton*, 465 U.S. at 772. The court then would assess whether the totality of those contacts was sufficient to support the exercise of specific jurisdiction. See *Burger King*, 471 U.S. at 475-477.

Here, petitioner did not bring this case in a state where any of those things happened. He chose to bring his case in Texas, a state where respondent had *no* purposeful suit-related contacts. As a result, the courts below concluded that respondent is not subject to specific personal jurisdiction in Texas, and they did not have any occasion to address where respondent could be subject to specific personal jurisdiction.

B. The Decision Below Is Consistent With *Ford* And *Keeton*

Petitioner contends (Pet. 9-12) that the court of appeals' decision is inconsistent with two of this Court's decisions. He is mistaken.

1. First, petitioner argues (Pet. 8, 10-12) that the Fifth Circuit misapplied *Ford* by construing the "arise out of or relate to" requirement too narrowly. In his view, respondent's display of location-based advertisements and sales of ad-free experiences and merchandise to Texas residents are sufficiently "related" to the allegedly libelous article because they funded respondent's business, which includes producing news articles. *Id.* at 8. The dissenting judge on the panel took the same view. See Pet. App. 36a-37a (Haynes, J., dissenting).

This Court consistently has rejected the argument that simply doing business in a state is enough to establish specific personal jurisdiction over a defendant for a claim unrelated to that business. In *Bristol-Myers*, for example, the Court rejected the argument that plaintiffs need not link their claims to the defendant's

forum contacts "if the defendant has extensive forum contacts that are unrelated to those claims." 137 S. Ct. at 1781. The Court stated that its decisions "provide no support for" that "loose and spurious form of general jurisdiction." *Ibid.*; see, *e.g.*, *Goodyear*, 564 U.S. at 927-929. The only reason a court in a state where the defendant is not at home may hear a claim is because there is a sufficient link between that particular claim and the state. Pet. App. 17a-19a; see, *e.g.*, *Ford*, 141 S. Ct. at 1028 (The "essential foundation of specific jurisdiction" is the "strong relationship among the defendant, the forum, and the litigation." (internal quotation marks omitted)).

Petitioner asserts (Pet. 11-12) that *Ford* loosened the necessary connection between the defendant's forum contacts and the cause of action. Although the *Ford* Court rejected the view that a plaintiff must establish a strict causal connection between the defendant's contacts and the cause of action, it did not say that "anything goes." 141 S. Ct. at 1026. Instead, the Court expressly reaffirmed that "the phrase 'relate to' incorporates real limits, as it must to adequately protect defendants foreign to a forum." *Ibid.* The Court found sufficient links between Ford's business activities in the forum states and plaintiffs' products liability claims because in the forum states, Ford extensively "advertised, sold, and serviced" the same car models that the plaintiffs purchased and that allegedly caused their injuries. *Id.* at 1028.

This case is nothing like *Ford*. Petitioner has not alleged any links between the article and Texas. Instead, he relies solely on respondent's unrelated business activities in Texas. His view, if accepted, would stretch "relate to" beyond any reasonable limit and effectively would eliminate specific personal jurisdiction. In *Ford*, for example, petitioner's view would

have allowed Ford to be sued for any claim in any state where Ford does business. That is not the law.

2. Second, petitioner contends (Pet. 9-11) that the court of appeals' decision is inconsistent with *Keeton* v. *Hustler Magazine, Inc.*, *supra*. In *Keeton*, the Court held that a district court in New Hampshire could exercise personal jurisdiction over Hustler for a libel claim based on the magazine's "regular circulation" of "some 10 to 15,000 copies" into the state each month as "'part of its general business' in New Hampshire." 465 U.S. at 772-773, 779-780.

Although he did not even mention *Keeton* in his briefs to the panel, petitioner now contends that this case is controlled by *Keeton* because respondent's website displays targeted advertising to Texas viewers and therefore "'circulates' in Texas." Pet. 9-10. The dissenting judges took an even broader view; for them it was enough that respondent's website is "freely available" in Texas. Pet. App. 49a-51a (Elrod, J., dissenting from denial of rehearing); see *id.* at 32a (Haynes, J., dissenting).

But this case and *Keeton* are very different. The "substantial physical circulation of print media" in *Keeton* supported personal jurisdiction because it was "an affirmative act" by Hustler that showed its "specific intent to target that state." Pet. App. 22a. By deliberately sending tens of thousands of copies of the libelous articles into the state, Hustler purposefully caused harm in New Hampshire. See *Keeton*, 465 U.S. at 774, 776. As this Court later recognized, the "physical entry" into the forum state was the key fact in *Keeton*. *Walden*, 571 U.S. at 285.

This case, by contrast, does not involve the physical delivery of a print publication into the forum state. Texas readers could choose to view the article, but

that is not *respondent*'s purposeful contact with Texas. See *Walden*, 571 U.S. at 284-285. Respondent's website was accessible worldwide, and its posting of the article on that site did not in any way purposefully target Texas.

Petitioner did not allege any other targeting of Texas. He "pleaded no facts showing that HuffPost aimed the alleged libel or its website at Texas." Pet. App. 23a. And he conceded that he had not pleaded that respondent purposefully caused harm in Texas. See Pet. C.A. Reply Br. 5. His only claimed link is that "HuffPost's website and the alleged libel are visible in Texas," but "mere accessibility cannot demonstrate purposeful availment." Pet. App. 23a. So the different allegations in *Keeton* and in this case explain the different results.

Instead, as the court of appeals recognized, this case is more like *Calder* v. *Jones*, *supra,* a libel case the Court decided the same day as *Keeton*. See Pet. App. 6a-10a. Because the defendants in *Calder* did not physically distribute the alleged libel within California, they could not be subject to personal jurisdiction in that state on the ground relied on in *Keeton*. See Pet. App. 22a-23a; see also *Calder*, 465 U.S. at 789. *Keeton* is inapplicable here for the same reason.

The *Calder* Court held that California nonetheless could exercise specific personal jurisdiction over the defendants in the case because California was the "focal point" of the alleged libel. 465 U.S. at 789. The allegedly libelous statements in *Calder* concerned "the California activities of a California resident" and were "drawn from California sources," so the "brunt of the harm * * * was suffered in California." *Id.* at 787-789.

The allegations here stand in stark contrast to those that established specific personal jurisdiction in *Calder*. Here, the article was not focused on Texas; it never even mentioned Texas. Pet. App. 7a. It did not involve Texas activities, it was not drawn from Texas sources, respondent took no actions to direct the alleged libel into Texas, and petitioner does not claim that he was harmed in Texas. *Ibid.*

II. THE QUESTION PRESENTED DOES NOT WARRANT FURTHER REVIEW

A. There Is No Disagreement Among The Courts Of Appeals On The Question Presented

Petitioner contends (Pet. 14-17) that the courts of appeals disagree about where companies may be sued for libel based on online statements. He is mistaken.

1. As an initial matter, none of the cases in petitioner's claimed circuit split involves a libel claim. That is significant, because the specific personal jurisdiction inquiry necessarily is claim-specific, requiring an assessment of the connection between the defendant's forum contacts and the plaintiff's particular claim. Here, petitioner cites three decisions, from the Fourth, Seventh, and Ninth Circuits. Pet. 14-17. Two decisions involve copyright infringement, and the other involves a consumer-protection claim arising out of trademark infringement. None of the decisions mentions libel. They therefore do not provide any guidance on what purposeful forum connections are sufficient to support personal jurisdiction over a *libel* claim.

When the courts of appeals actually have addressed specific personal jurisdiction over internet libel claims, they have taken a consistent approach. They have applied this Court's teachings, including

that a plaintiff must not only show that the defendant has purposefully made forum contacts, but also that the lawsuit arises out of or relates to those contacts.[5] And they have agreed that "posting allegedly defamatory comments or information on an internet site does not, without more, subject the poster to personal jurisdiction wherever the posting could be read." *Blessing* v. *Chandrasekhar*, 988 F.3d 889, 905 n.15 (6th Cir. 2021) (quoting *Shrader*, 633 F.3d at 1241).[6] Instead, they have considered whether the allegedly libelous material is focused on the forum state and whether the defendant deliberately targeted the forum state so that readers there would read the material. *See, e.g.*, *Tamburo*, 601 F.3d at 707; *Young*, 315 F.3d at 263. That is the precise approach followed by the court of appeals here. See Pet. 6a-10a.

Petitioner has not shown that the courts of appeals' approach is unworkable; he does not even cite these cases.

2. None of the three decisions petitioner cites conflicts with the decision below. The fact that the courts in those cases found sufficient contacts for specific personal jurisdiction, while the court here did not, simply reflects the different claims and different facts in the cases, rather than any different legal rules.

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[5] See, *e.g.*, *Shrader* v. *Biddinger*, 633 F.3d 1235, 1240 (10th Cir. 2011); *Johnson* v. *Arden*, 614 F.3d 785, 795 (8th Cir. 2010); *Tamburo* v. *Dworkin*, 601 F.3d 693, 702 (7th Cir. 2010), cert. denied, 562 U.S. 1029 (2010); *Revell* v. *Lidov*, 317 F.3d 467, 470 (5th Cir. 2002).

[6] See, *e.g.*, *Fatouros* v. *Lambrakis*, 627 Fed. Appx. 84, 88 (3d Cir. 2015), cert. denied, 137 S. Ct. 79 (2016); *Johnson*, 614 F.3d at 797; *Tamburo*, 601 F.3d at 708; *Best Van Lines, Inc.* v. *Walker*, 490 F.3d 239, 250 (2d Cir. 2007); *Young* v. *New Haven Advoc.*, 315 F.3d 256, 262-264 (4th Cir. 2002), cert. denied, 538 U.S. 1035 (2003).

a. In *uBID, Inc.* v. *GoDaddy Group, Inc.*, 623 F.3d 421 (7th Cir. 2010) (cited in Pet. 16), the plaintiff claimed that the defendant, a company that registered internet domain names, facilitated trademark infringement by registering domain names for its customers that were "confusingly similar" to the plaintiff's trademarks. *Id.* at 424-425. The Seventh Circuit upheld the exercise of specific personal jurisdiction in Illinois, even though the defendant was based in Arizona. *Id.* at 427. The court of appeals determined that the defendant had deliberately exploited the Illinois market with its marketing campaigns, including by airing advertisements on Illinois television channels and by "plac[ing] physical ads in particular Illinois venues." *Id.* at 428. The plaintiff's claim and the contacts were "inseparable," the court explained, because defendant's advertising drove users to the website, and each visit to the website facilitated trademark infringement. *Id.* at 431-432.

Petitioner's allegations here are very different. He alleges that respondent displayed third-party advertisements to people in Texas who already had come to respondent's website. Pet. App. 14a. He does not allege that respondent displayed advertisements in Texas to promote the article that allegedly libeled him. *Id.* at 13a. This case is thus the opposite of *uBID*, because there, the plaintiff alleged that the defendant's advertising on television stations in Illinois and in physical venues in Illinois drew Illinois residents to the defendant's website, and therefore directly contributed to the injury that was the basis of its infringement claim. 623 F.3d at 431-432.

b. Petitioner also cites (Pet. 16-17) the Ninth Circuit's decision in *Mavrix Photo, Inc.* v. *Brand Technologies, Inc.*, 647 F.3d 1218 (9th Cir. 2011), cert. denied,

565 U.S. 1157 (2012). There, the Ohio-based defendant operated a celebrity-gossip website. *Id.* at 1222. The plaintiff sued in California, alleging that the defendant posted the plaintiff's copyrighted photographs of celebrities on the website. *Id.* at 1222-1223.

In upholding the exercise of specific personal jurisdiction, the Ninth Circuit considered only whether the defendant had sufficient purposeful contacts with California—the defendant did not dispute that the plaintiff's claim arose out of or related to its California contacts. *Mavrix*, 647 F.3d at 1228. The court of appeals found the defendant's contacts were sufficient because the website targeted California: It had "a specific focus on the California-centered celebrity and entertainment industries." *Id.* at 1230. Given that "subject matter," the court concluded that the defendant "anticipated, desired, and achieved a substantial California viewer base," which was "an integral component" of the defendant's "business model." *Ibid.*

Here, the article is not focused on Texas. It describes a meeting that took place in the District of Columbia; the subject of the meeting had no connection to Texas; and the article does not even mention Texas. See C.A. App. 261-263. Further, petitioner has not alleged any facts suggesting that the website "appeals to" a Texas audience in "particular." *Mavrix*, 647 F.3d at 1231. Besides, the *Mavrix* court did not analyze the "arise out of or relate to" requirement, because it was not contested in that case, *id.* at 1228, and so the Ninth Circuit could not have adopted a conflicting legal rule on that point.

According to petitioner (Pet. 16), *Mavrix* stands for the proposition that a website that displays location-based advertisements is subject to specific personal jurisdiction in any state in which that advertising is

viewable. But the Ninth Circuit has expressly rejected that reading of *Mavrix*, explaining that "geo-located advertisements" do not by themselves "constitute[] express aiming" of any particular forum and thus do not by themselves support specific personal jurisdiction. *AMA Multimedia, LLC* v. *Wanat*, 970 F.3d 1201, 1211 (9th Cir. 2020), cert. denied, 142 S. Ct. 76 (2021). There is accordingly no reason to believe that the Ninth Circuit would have decided this case differently from the Fifth Circuit.

c. *UMG Recordings, Inc.* v. *Kurbanov*, 963 F.3d 344, 347 (4th Cir. 2020), cert. denied, 141 S. Ct. 1057 (2021) (cited in Pet. 15), also involved a copyright-infringement claim. The defendant operated websites that offered "stream-ripping" services that enabled users to extract and download audio tracks from videos on other websites. *Id.* at 348. The plaintiffs brought suit in Virginia, even though the defendant was based in Russia. *Id.* at 349.

The court of appeals determined both that the defendant had substantial purposeful forum contacts and that the plaintiff's cause of action had a close relationship to those contacts. In terms of forum contacts, the court noted the websites' high volume of Virginia users (nearly 1.5 million visits in one year); the websites' displaying of location-based advertisements; the defendant's registration of an agent with the U.S. Copyright Office, so that the websites would qualify for certain safe-harbor defenses to copyright-infringement claims; the defendant's use of U.S.-based advertising brokers and domain registers; and the websites' use of U.S.-based servers, including servers in Virginia. See *UMG*, 963 F.3d at 349, 353-354. The court observed that those contacts "might not be *individually* sufficient to confer specific personal jurisdiction," but concluded that the totality of the contacts showed

significant connections to Virginia. *Id.* at 354. The court then determined that the plaintiffs' claims arose out of or related to those contacts because the purpose of the defendant's websites was to provide stream-ripping services. See *id.* at 354-355. That is, everything that the defendant did in Virginia to fund and operate the websites directly facilitated the alleged copyright infringement. See *ibid.*

Here, respondent's alleged contacts with Texas are nowhere near as extensive, and the contacts are not in any way linked to petitioner's cause of action. Petitioner did not allege that a large number of Texans read the article at issue, that respondent registered an agent in Texas specifically for libel-related matters, that respondent uses Texas-based advertising brokers or domain registers, or that the website is hosted on Texas-based servers. And the link between the contacts and the allegedly libelous article again is missing: Petitioner's claim is that one particular article on the website libeled him, not that respondent's entire business model is to libel him.

Thus, petitioner has not shown any meaningful differences in the legal rules applied by the Fifth Circuit, as opposed to the Fourth, Seventh, or Ninth Circuits, or that the latter courts would have upheld the exercise of specific personal jurisdiction in this case.

3. The dissenting judges below cited additional decisions that, in their view, analyzed *Keeton* differently from the panel majority. See Pet. App. 34a-35a & 34a n.3 (Haynes, J., dissenting); *id.* at 53a (Elrod, J., dissenting from denial of rehearing). Petitioner does not cite those decisions, and they also do not show a circuit split on the question presented. Only one of the decisions involved a libel claim, and the court decided the case on state-law grounds and declined to address whether the defendant "might have

satisfied the minimum contacts requirement under * * * the analysis in *Keeton*." *Best Van Lines,* 490 F.3d at 254 n.14. The other decisions all involved different claims and included allegations that the defendant sold goods or services in the forum that caused the plaintiff's claimed injury or otherwise expressly aimed the tortious conduct at the forum.[7] Petitioner does not make any similar allegations here, see Pet. App. 11a, so none of those decisions establishes a conflict with the decision below.

B. There Is No Need For Immediate Review Of The Question Presented, Particularly In This Case

1. Petitioner has not shown that the question presented is an important one that arises often. He asserts generally that the Court should address the personal jurisdiction rules applicable to internet-based media organizations, Pet. 2, 13-14, but he does not show that there is any reason to address libel claims in particular. Indeed, none of the cases he cites for his alleged circuit split even involves libel.

Petitioner also does not attempt to show that cases involving specific personal jurisdiction over internet libel claims arise with great frequency, or that the

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[7] See *Ayla, LLC* v. *Alya Skin Pty. Ltd.*, 11 F.4th 972, 978 (9th Cir. 2021) (name of good sold in forum alleged to infringe plaintiff's trademark); *Plixer Int'l, Inc.* v. *Scrutinizer GmbH*, 905 F.3d 1, 5 (1st Cir. 2018) (name of service sold in forum alleged to infringe plaintiff's trademark); *Old Republic Ins.* v. *Continental Motors, Inc.*, 877 F.3d 895, 915 (10th Cir. 2017) (services sold in forum state alleged to be defective); *Licciardello* v. *Lovelady*, 544 F.3d 1280, 1287-1288 (11th Cir. 2008) (defendant "expressly aimed" its trademark infringement at the forum). The panel dissent also cited *Steinbuch* v. *Cutler*, 518 F.3d 580 (8th Cir. 2008), cert. denied, 555 U.S. 939 (2008), but that decision involves general personal jurisdiction. See *id.* at 589.

courts of appeals are misapplying this Court's precedents in those cases. To the contrary, the courts of appeals have been applying those precedents to internet libel cases for two decades, without any significant differences in approach. See pp. 17-18, *supra*.

Further, petitioner is wrong to assert (Pet. 14, 17) that the court below adopted special rules for internet-based companies. The court applied "longstanding, uncontroversial limits on personal jurisdiction," recognizing that petitioner had to link respondents' "*suit-related* conduct to the forum." Pet. App. 19a-20a. And the court made clear that it was treating respondent just like bricks-and-mortar companies by providing a series of analogies that showed how petitioner's rule would apply (and would be contrary to this Court's precedents) in the bricks-and-mortar world. *Id.* at 12a (print advertisement analogy); *id.* at 14a-15a (store analogy); *id.* at 16a (hospital analogy); *id.* at 18a n.17 (car crash analogy).

In fact, it is petitioner who would single out internet-based companies for different treatment. Petitioner frames his argument in terms of "market exploitation," asserting that because respondent displayed advertising based in part on data collected from visitors to the website, including visitors from Texas, and sold merchandise and subscriptions to those visitors, it should be subject to jurisdiction with respect to any claim that touches on the website. Pet. 9, 13-14, 17. But that is just another way of saying that doing business in a state should subject a company operating a website to specific jurisdiction on any claim, even those that do not arise out of or relate to the defendant's purposeful contacts. This Court consistently has rejected that approach in the physical world, see, *e.g.*, *Bristol-Myers*, 137 S. Ct. at 1781, and there is no reason to adopt a different,

and broader, specific jurisdiction rule for websites. No court has adopted that rule, and doing so would dramatically expand specific personal jurisdiction for internet-based companies.

2. Review also is unwarranted because petitioner and the dissenting judges below place considerable reliance on the Court's recent decision in *Ford*, and the lower courts have not had sufficient opportunity to apply that decision in the internet context.

One of the primary disagreements between the judges in the majority and the dissenting judges below was about how to apply *Ford* to this case. Compare Pet. App. 20a-21a (majority opinion), with *id.* at 35a-36a (Haynes, J., dissenting), and *id.* at 51a (Elrod, J., dissenting from denial of rehearing). The dissenting judges took the view that *Ford* significantly loosened the "relate to" requirement, such that "the state in which an injury occurred can exercise specific personal jurisdiction over a defendant if the defendant deliberately engaged in commercial activities in that state." *Id.* at 26a (Haynes, J., dissenting). The majority, in contrast, explained that *Ford* did not adopt that broad rule and that basing specific personal jurisdiction on a company's general business activity would be "a bridge too far." *Id.* at 20a-21a (majority opinion).

Because *Ford* was decided very recently, the other courts of appeals have not had the opportunity to apply it in the context of a libel claim against an internet-based business. None of the three decisions petitioner cites from other circuits addressed *Ford*. Thus, the Court should give the courts of appeals the opportunity to interpret and apply *Ford* in this context in the first instance.

3. Finally, this case would be an exceedingly poor vehicle for further review because petitioner did not

attempt to plead *any* link between respondent's business activities in Texas and his cause of action. In fact, he conceded below "that the Article does not specifically target Texas." Pet. C.A. Reply Br. 5.

As the court of appeals repeatedly explained, the complaint's allegations all concern respondent's general business activities in Texas. Petitioner did not allege that respondent targeted Texas in any way; his allegations address the ways in which respondent "treats Texans like everyone else." Pet. App. 14a. And he did not allege any links between the article and the advertisements and sales, except to say generally that they create revenue that funds the website. *Id.* at 13a.

In fact, in the courts below, petitioner took the position that he was not required to link respondent's Texas contacts to his libel claim. He relied solely on the fact that the website is visible in Texas and that it is "interactive" because it offers ad-free experiences and merchandise and displays advertisements to Texans, just as it does to individuals in every other state and around the world. See Pet. C.A. Br. 18-22. Petitioner admitted that he did not plead any allegations that respondent specifically targeted Texas, because he did not think he needed those allegations.[8] That is what the court of appeals meant when it stated that

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[8] Petitioner made this clear in his reply brief on appeal, when he stated: "Johnson has repeatedly ceded the argument that the Article does not specifically target Texas and thus, the *Calder*-originated 'effects test' does not apply." Pet. C.A. Reply Br. 5; see *id.* at 7 ("[A]s Johnson has stated ad nause[a]m, he does not rely on the 'effects test.'"). Instead, his argument was that the presence of the "Website" and "its commercial interactivity with Texas" is enough to subject respondent to specific personal jurisdiction. *Id.* at 5.

petitioner "put all his eggs into the interactivity basket" rather than attempting to "show that HuffPost's story targeted Texas in some way." Pet. App. 10a.

Now, in the petition, petitioner tries to link respondent's business activities to the article. He contends, for example, that advertisements targeting Texans were displayed on the same webpage as the article. Pet. 6. But petitioner "never pleaded" that. Pet. App. 8a. He "pleaded no facts showing that HuffPost aimed the alleged libel or its website at Texas." *Id.* at 23a.

If the Court wished to address what suit-related contacts would be sufficient to support specific personal jurisdiction over an internet-based company for a libel claim, it should grant review in a case where the plaintiff actually alleged some suit-related contacts. That would allow the Court to provide guidance on what types of contacts matter most—whether it is the subject matter of the article; where the article was investigated, written, or published; whether the defendant took some action to entice people in the forum to read the article; whether the defendant sent physical copies of the article into the forum; or something else. See, *e.g.*, *Calder*, 465 U.S. at 788-789; *Keeton*, 465 U.S. at 772-773. This case does not give the Court the opportunity to explore those questions fully due to petitioner's utter failure to plead facts linking the article to respondent's purposeful contacts with Texas. For that reason as well, further review is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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