No. 23-232

IN THE

Supreme Court of the United States

BASF METALS LIMITED AND
ICBC STANDARD BANK PLC,

Petitioners,

v.

KPFF INVESTMENT, INC., ET AL.,

Respondents.

ON A PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF OF AMICUS CURIAE NEW ENGLAND LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

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BATEMAN & SLADE, INC. STONEHAM, MASSACHUSETTS

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INTEREST OF AMICUS CURIAE

Amicus curiae New England Legal Foundation (NELF) is a nonprofit, public interest law firm, incorporated in Massachusetts in 1977 and headquartered in Boston.[1] NELF's membership consists of corporations, law firms, individuals, and others who believe in its mission of promoting inclusive economic growth in New England, protecting the free enterprise system, and defending economic rights. NELF's members and supporters include a cross-section of large and small businesses and other organizations from all parts of the Commonwealth, New England, and the United States.

NELF is committed to upholding the liberty interest of the nonresident business defendant in not being subject to the binding judgments of a forum with which it has not established a meaningful relationship of its own. In this case, NELF opposes a theory of so-called "conspiracy jurisdiction" because it contravenes that liberty interest, by subjecting a foreign defendant to personal jurisdiction based on someone else's forum contacts, but without even requiring the plaintiff to show that the defendant purposefully availed itself of the forum through that third party.

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[1] Pursuant to Supreme Court Rule 37.6, NELF states that no counsel for a party authored NELF's amicus brief, in whole or in part, and that no person or entity, other than amicus, made a monetary contribution to the preparation or submission of the brief.

For these and other reasons discussed below, NELF believes that its brief will assist the Court in deciding whether to grant certiorari in this case, to decide whether the Second Circuit's test for establishing "conspiracy jurisdiction" over a foreign defendant violates the Due Process Clause of the Fifth Amendment.

SUMMARY OF ARGUMENT

The Court should grant certiorari and decide that the Second Circuit's test for "civil conspiracy jurisdiction" violates due process. That test imposes specific personal jurisdiction on a nonresident defendant that has *no* or insufficient case-related contacts of its own in the forum, by automatically attributing to the defendant an alleged co-conspirator's forum acts undertaken to advance the alleged conspiracy. The test offends due process because it takes the extraordinary step of imputing a third party's forum contacts to the defendant, but without even requiring the plaintiff to show that the defendant purposefully availed itself of the forum *through* that third party, by directing or controlling its forum conduct. The test wrongfully imposes personal jurisdiction based *solely* on the parties' alleged conspiratorial relationship.

The Second Circuit bases its test on the mistaken assumption that the expansive and *plaintiff-centered* standard of vicarious liability among co-conspirators can establish "vicarious" personal jurisdiction among them too. However, this Court recognized, in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), that due process

draws a bright line between imputing liability and imputing jurisdictional contacts among associated parties. Accordingly, due process prohibits a court from attributing a third party's forum contacts to a nonresident defendant, unless the defendant was, at least, a primary participant in the enterprise and acted purposefully in directing the third party's forum activities.

This case arrives in an unusual posture because the Second Circuit has all but *asked* this Court to take the case and strike down its test under the Due Process Clause. In the opinion below, the court has discussed at length its test's constitutional failings. However, the court has stated that its hands are tied by its own entrenched precedent, unless this Court decides otherwise.

In particular, the Second Circuit has essentially conceded that its test abandons the core purposeful availment requirement, because the test is not limited by traditional agency principles. Therefore, the test does not require the foreign defendant to direct, control, or even supervise an alleged co-conspirator's forum conduct.

The court has also discussed, in detail, prominent scholarly criticism of "conspiracy jurisdiction" for its misapplication of the plaintiff-centered standard of vicarious liability to the defendant-centered standard for establishing personal jurisdiction under the Due Process Clause. In so doing, the court appears to have endorsed this body of legal criticism.

After all, the purpose of civil conspiracy law is to protect the plaintiff's interests, by attributing freely the acts of one co-conspiring "agent" to another, to increase the number of implicated parties and the recoverable damages for the plaintiff. This expansive standard of vicarious conspiratorial liability *en masse* is diametrically opposed to the individualized due process inquiry, which carefully determines whether each foreign defendant has purposefully established minimum contacts with the forum.

The Second Circuit's detailed discussion of the legal criticism also indicates an awareness that its test fails the due process requirement that the foreign defendant must purposefully establish its *own* contacts with the forum to be amenable to suit there. Ordinarily, this requirement is satisfied only if the defendant has created those forum contacts by itself, and not by its association with a third party that happens to have forum contacts of its own. This direct purposeful availment requirement protects the defendant's liberty interest in not being subject to the binding judgments of a forum with which the defendant has not created a meaningful relationship of its own.

This Court has recognized a limited exception when the nonresident defendant has purposefully reached out to the forum *through* a third party, by directing or controlling that third party's forum activities. However, the Second Circuit has essentially conceded that its test far exceeds this narrow exception because it does not require the defendant to direct, control, or even supervise the

alleged co-conspirator's forum conduct. Absent proof that the defendant purposefully availed itself of the forum through the alleged co-conspirator, due process should require that third party's jurisdictional contacts to remain its own.

The Second Circuit's test is not only unconstitutional. It is also entirely unnecessary. The *International Shoe* purposeful availment test is perfectly capable of determining whether or not personal jurisdiction can lie against a nonresident defendant based on its relationship with a third party. That test remains essentially the same in each case, regardless of the circumstances in which it is applied. As applied here, the nonresident defendant must purposefully avail itself of the forum through a third party, by directing or controlling their forum activities.

Nor would it make sense to "cure" the Second Circuit's test by adding a purposeful availment requirement. That would merely transform a deficient theory into an application of the unitary *International Shoe* test to the issue of attributing a third party's forum contacts to the foreign defendant. A separate category of "civil conspiracy jurisdiction" is therefore both unnecessary and confusing. Its recognition would only distract courts from enforcing the essential purposeful availment requirement under the Due Process Clause.

ARGUMENT

I. THIS COURT SHOULD GRANT CERTIORARI AND DECIDE THAT THE SECOND CIRCUIT'S TEST FOR "CIVIL CONSPIRACY JURSIDICTION" VIOLATES THE DUE PROCESS CLAUSE.

A. The Lower Court's Test Subjects A Nonresident Defendant To Specific Personal Jurisdiction Based On Someone Else's Forum Contacts, But Without Even Requiring The Plaintiff To Show That The Defendant Purposefully Availed Itself Of The Forum *Through* That Third Party, By Directing Or Controlling Their Forum Conduct.

This Court should grant certiorari and decide that the Second Circuit's test for "civil conspiracy jurisdiction" violates the Due Process Clause.[2] That test imposes specific (case-linked) personal jurisdiction[3] on a nonresident defendant that has *no*

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[2] U.S. Const. amend. V ("No person shall be . . . deprived of life, liberty, or property, without due process of law.").

[3] *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) ("Specific jurisdiction . . . depends on an affiliation between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum . . . and is therefore subject to the [forum's] . . . regulation. . . . [S]pecific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.") (cleaned up).

or insufficient case-related contacts of its own in the forum, by automatically attributing to the defendant the acts that an alleged co-conspirator undertook in the forum to advance the alleged conspiracy. *See* Appendix (App.) 42-43.[4]

The court's test violates due process because it takes the extraordinary step of imputing someone else's forum contacts to the nonresident defendant, but without even requiring the plaintiff to allege or show that the defendant "t[ook] some act" *through* that third party "by which it purposefully avail[ed] itself of the privilege of conducting activities within the forum State." *Ford Motor Co. v. Montana Eighth Judicial Dist. Court*, 141 S. Ct. 1017, 1024 (2021). The test abandons this core purposeful availment requirement, and with it due process's "protect[ion of] a [defendant's] liberty interest in not being subject to the binding judgments of a forum with which [it] has established no meaningful contacts, ties, or relations." *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 471-72 (1985) (cleaned up).

Instead, the Second Circuit subjects a foreign defendant to personal jurisdiction based *solely* on its alleged conspiratorial relationship with a third party that has forum contacts of its own. Due process forbids the imposition of personal jurisdiction on such a vague and conclusory basis. "To be sure, a

[4] In particular, the Second Circuit's test requires that "(1) a conspiracy existed; (2) the defendant participated in the conspiracy; and (3) a co-conspirator's overt acts in furtherance of the conspiracy had sufficient contacts with a state to subject that co-conspirator to jurisdiction in that state." App. 42-43 (cleaned up).

defendant's contacts with the forum State may be intertwined with his transactions or interactions with . . . other parties. But a defendant's relationship with a . . . third party, *standing alone*, is an insufficient basis for jurisdiction." *Walden v. Fiore*, 571 U.S. 277, 286 (2014) (emphasis added).

The Second Circuit bases its theory of "conspiracy jurisdiction" on the mistaken assumption that the expansive and *plaintiff-centered* standard of vicarious liability among co-conspirators can establish "vicarious" personal jurisdiction among them too. *See* App. 47. However, due process draws a bright line between imputing liability and imputing jurisdictional contacts among associated parties:

> [A]lthough the commission of some single or occasional acts of the corporate agent in a state *sufficient to impose an obligation or liability* on the corporation has *not been thought to confer upon the state authority to enforce it*, . . . other such acts, because of their nature and quality and the circumstances of their commission, may be deemed sufficient to render the corporation liable to suit [in the forum State].

International Shoe Co. v. Washington, 326 U.S. 310, 318 (1945) (emphasis added).

In sharp contrast to the Second Circuit's overreaching test, due process prohibits a court from attributing a third party's jurisdictional contacts to a

nonresident defendant, unless the defendant was "at least . . . a *primary participant* in the enterprise and has acted purposefully in *directing those activities*." *Burger King*, 471 U.S. at 479 n.22 (cleaned up) (emphasis added). *See also Daimler AG v. Bauman*, 571 U.S. 117, 135 n.13 (2014) ("Agency relationships . . . may be relevant to the existence of *specific* jurisdiction. . . . [A] corporation can purposefully avail itself of a forum *by directing its agents* or distributors to take action there.") (emphasis added and supplied by Court).

In short, "the most basic features of an agency relationship are missing here. . . . 'An essential element of agency is the principal's *right to control* the agent's actions.'" *Hollingsworth v. Perry*, 570 U.S. 693, 713 (2013) (quoting 1 *Restatement (Third) of Agency* § 1.01, Comment *f* (2005) (emphasis added)).

B. The Second Circuit Has Essentially Conceded That Its Test Violates Due Process But That It Must Nonetheless Uphold Its Own Precedent, Unless This Court Instructs It To Do Otherwise.

This case arrives in an unusual posture because the Second Circuit has all but *asked* this Court to take the case and strike down its test under the Due Process Clause. *See* App. 46-49. In the opinion below, the court has discussed in detail its test's constitutional failings. *See id.* However, the court has stated that its hands are tied by its own entrenched precedent, "unless and until it is

overruled by the [Second Circuit] *en banc* or by the Supreme Court." App. 49 (cleaned up).[5]

i. The court has acknowledged that its test is not limited by traditional agency principles.

In particular, the Second Circuit has conceded that "there may be grounds for th[e petitioners'] objections," App. 46, that its test violates due process. The court goes on to state, with noticeable regret, that its test is not limited by traditional agency principles. App. 47. Consequently, a foreign defendant is subject to personal jurisdiction even if it does not direct, control, or supervise an alleged co-conspirator's forum conduct:

> [T]he argument that our exercise of conspiracy jurisdiction should be limited

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[5] An overruling en banc would be extremely unlikely. *See* Fed. R. App. P. 35 ("An en banc hearing or rehearing is not favored and ordinarily will not be ordered . . . ."). *See also Green v. Santa Fe Indus., Inc.*, 533 F.2d 1309, 1310 (2d Cir. 1976) (denying rehearing en banc "not because we believe these cases are insignificant, but because they are of such extraordinary importance that *we are confident the Supreme Court will accept these matters under its certiorari jurisdiction*[.] . . . Even under the best of circumstances, an en banc proceeding is often an unwieldly and cumbersome device generating little more than delay, costs, and continued uncertainty that can ill be afforded at a time of burgeoning calendars. *A case in which Supreme Court resolution is inevitable* should not be permitted to tarry in this Court for further intermediate action[.] . . . Moreover, the applications for certiorari that we expect inexorably to follow our action will not reach the Supreme Court devoid of the views of the judges of this Court.") (emphasis added).

> by agency principles is no longer available. . . . [W]e have squarely rejected that limitation on conspiracy jurisdiction. . . . [Accordingly,] our caselaw does not require a relationship of control, direction, or supervision to establish conspiracy jurisdiction.

App. 47 (cleaned up). Put differently, the court has essentially conceded that its test does not require the defendant to purposefully avail itself of the forum *through* the alleged co-conspirator.

ii. The court has apparently embraced the body of legal scholarship rejecting "conspiracy jurisdiction" because it abandons the purposeful availment requirement, by conflating the separate issues of vicarious liability and personal jurisdiction.

What's more, the Second Circuit has thoroughly "acknowledged the debate," App. 49, among legal scholars who oppose a theory of "conspiracy jurisdiction," essentially because it fails to require the foreign defendant to purposefully avail itself of the forum through a third party. *See* App. 47-49. As the court aptly restates the argument, such a theory misapplies the elastic, plaintiff-centered standard of vicarious liability among co-conspirators to the rigorous, defendant-centered standard for establishing personal jurisdiction under

the Due Process Clause.[6]

Consistent with this body of legal criticism, the Second Circuit has suggested that it erred when it adopted a test that conflates the separate issues of liability and personal jurisdiction among co-conspirators. "In doing so, . . . we followed the suggestion that, because 'for most purposes the acts of one conspirator within the scope of the conspiracy are attributed to the others,' *there is no reason 'personal jurisdiction should be an exception*.'" App. 47 (quoting *Stauffacher v. Bennett*, 969 F.2d 455, 459 (7th Cir. 1992) (emphasis added)).

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[6] *See* App. 47-48 (crediting arguments of petitioners and "[o]ther critics of conspiracy jurisdiction [who] have similarly argued that the 'purposes of the law of civil conspiracy and the law of in personam jurisdiction' are 'opposed.'") (quoting Stuart M. Riback, Note, *The Long Arm And Multiple Defendants: The Conspiracy Theory Of In Personam Jurisdiction*, 84 Colum. L. Rev. 506, 530 (1984)); App. 48 ("'A conspiracy claim serves merely to expand liability for the underlying wrong to persons who are *not directly involved* in the wrongful actions,' . . . and is 'a *mechanism to aid the plaintiff*[.]'") (quoting, in sequence, 15A C.J.S. *Conspiracy* § 18 (2022); and Riback, *The Conspiracy Theory*, 84 Colum. L. Rev. at 530) (emphasis added)); App. 48 ("'While a solicitude for the plaintiff's interests is central to the determination of conspiratorial liability, it is not so in the determination of jurisdiction, in which the defendant is the primary concern.'") (quoting Riback, *The Conspiracy Theory*, 84 Colum. L. Rev. at 530); App. 48 (quoting Ann Althouse, *The Use of Conspiracy Theory to Establish In Personam Jurisdiction: A Due Process Analysis*, 52 Fordham L. Rev. 234, 241 (1983), for "criticizing courts for 'fail[ing] to differentiate between the standards governing liability and those governing jurisdiction.'").

Contrary to its own precedent, and consistent with this legal criticism, the Second Circuit has suggested that there is *every* reason to treat personal jurisdiction differently from liability in a conspiracy claim:

> *On the one hand*, "[a] conspiracy claim serves merely to expand liability for the underlying wrong to persons *who are not directly involved* in the wrongful actions," . . . and is "a mechanism to aid the plaintiff[.]" . . . The due process limitations on in personam jurisdiction, *on the other hand*, are meant to "give[ ] a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit."

App. 48 (quoting, in sequence, 15A C.J.S. *Conspiracy* § 18 (2022); Stuart M. Riback, Note, *The Long Arm And Multiple Defendants: The Conspiracy Theory Of In Personam Jurisdiction*, 84 Colum. L. Rev. 506, 530 (1984); and *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 297 (1980) (emphasis added)). *See also* App. 48 ("'While a solicitude for the plaintiff's interests is central to the determination of conspiratorial liability, it is not so in the determination of jurisdiction, in which the defendant is the primary concern.'") (quoting Riback, *The Conspiracy Theory*, 84 Colum. L. Rev. at 530).

After all, the purpose of civil conspiracy law is to protect the plaintiff's interests, by treating all co-conspirators as if they were acting as a single entity. That way, a court can attribute freely the acts of one co-conspiring "agent" to another, to increase the number of implicated parties and the recoverable damages for the plaintiff. "[T]he purpose of a civil conspiracy *is* to impute liability. A civil conspiracy is said to exist for only two purposes: to implicate others and to increase the measure of damages." 15A C.J.S. *Conspiracy* § 1 (2023) (emphasis added).

Moreover, the requirements for imposing joint and several liability on all named co-conspirators are hardly demanding. *See* App. 46-48. Indeed, the plaintiff need only show that two or more parties agreed to violate the law, and that at least one party committed acts to further the conspiracy. *See* 15A C.J.S. *Conspiracy* § 4 (2023). In fact, "[a] person may participate in a conspiracy *without knowing the identities* of all of the other coconspirators[.]" *United States v. Capo*, 791 F.2d 1054, 1066 (2d Cir. 1986) (emphasis added), *rev'd on reh'g on other grounds*, 817 F.2d 947 (2d Cir. 1987). Consequently, a defendant is vicariously liable for a co-conspirator's acts in furtherance of the conspiracy, even if the defendant did not know the identity of that co-conspirator, let alone play any role in directing or controlling the co-conspirator's commission of those acts.

As the lower court's opinion suggests, this plaintiff-centered standard of imposing vicarious conspiratorial liability *en masse* is diametrically opposed to the individualized due process inquiry,

which carefully determines whether each foreign defendant has purposefully established minimum contacts with the forum. "The requirements of *International Shoe*, however, must be met as to each defendant over whom a state [or federal] court exercises jurisdiction." *Rush v. Savchuk*, 444 U.S. 320, 332 (1980). *See also* App. 46-48. While a nonresident defendant may be held liable for a co-conspirator's forum acts in furtherance of the conspiracy, due process protects that defendant from being sued in the forum for those acts, unless the defendant has, at minimum, directed or controlled the commission of those acts. *See Daimler AG*, 571 U.S. at 135 n.13; *Burger King*, 471 U.S. at 479 n.22; *International Shoe*, 326 U.S. at 318.

iii. The court's opinion indicates an awareness that its test fails to require the nonresident defendant to establish its own case-related contacts with the forum.

The Second Circuit's detailed discussion of conspiracy jurisdiction's legal critics also indicates an awareness that its test abandons the due process requirement that each foreign defendant must purposefully establish its *own* case-related contacts with the forum to be amenable to suit there. "[T]he relationship [between the defendant and the forum] must arise out of contacts that the defendant *himself* creates with the forum." *Walden*, 571 U.S. at 284 (cleaned up) (emphasis supplied by Court).

Ordinarily, the purposeful availment requirement is satisfied only if the defendant has created those forum contacts by itself, and not by its association with a third party that happens to have forum contacts of its own. "[O]ur 'minimum contacts' analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." *Walden*, 571 U.S. at 285.

Preservation of this individualized and direct purposeful availment requirement is essential to "protect[] a [defendant's] liberty interest in not being subject to the binding judgments of a forum with which [it] has established no meaningful contacts, ties, or relations." *Burger King*, 471 U.S. at 471-72 (cleaned up). Only by purposefully establishing its own substantial ties with the forum can the defendant reasonably anticipate and assume the reciprocal obligation of answering to claims, in the forum, that arise out of or relate to those ties. *See Ford Motor Co.*, 141 S. Ct. at 1024-25 (discussing same).

This Court has recognized a limited exception only when the nonresident defendant has purposefully reached out to the forum *through* a third party, by directing or controlling that third party's forum activities. *See Burger King*, 471 U.S. at 479 n.22 ("[W]hen commercial activities are carried on in behalf of an out-of-state party[,] those activities may sometimes be ascribed to the party, . . . at least where he is a primary participant in the enterprise and has acted purposefully in directing those activities . . . ."). *See also Daimler*, 571 U.S. at 135 n.13 ("Agency relationships, we have recognized,

may be relevant to the existence of *specific* jurisdiction. . . . [A] corporation can purposefully avail itself of a forum by directing its agents or distributors to take action there.") (emphasis supplied by Court). Under these narrow circumstances, the defendant may be deemed to assume the third party's jurisdictional contacts, as would a principal for the directed conduct of its agent.

However, the Second Circuit has essentially conceded that its test far exceeds this narrow exception because it is not limited by traditional agency principles and, therefore, does not require the defendant to direct, control, or supervise the co-conspirator's forum conduct. App. 47. Absent proof that the defendant purposefully availed itself of the forum through that co-conspirator, due process should require the co-conspirator's jurisdictional contacts to remain its own. Therefore, the Second Circuit's conspiracy jurisdiction test violates due process.

II. A SEPARATE "CONSPIRACY JURISDICTION" TEST IS ENTIRELY UNNECESSARY BECAUSE THE *INTERNATIONAL SHOE* PURPOSEFUL AVAILMENT TEST IS PERFECTLY CAPABLE OF DETERMINING, IN EACH CASE, WHETHER PERSONAL JURISDICTION CAN LIE AGAINST A NONRESIDENT DEFENDANT BASED ON A THIRD PARTY'S FORUM CONTACTS.

The Second Circuit's test is not only unconstitutional. It is also entirely unnecessary. The enduring *International Shoe* purposeful availment test is perfectly capable of determining whether or not personal jurisdiction can lie against a nonresident defendant based on its relationship with a third party, conspiratorial or otherwise. That test remains essentially the same in each case, regardless of its particular circumstances. In every case, the nonresident defendant "must take some act by which it purposefully avails itself of the privilege of conducting activities within the forum State." *Ford Motor Co.*, 141 S. Ct. at 1024 (cleaned up).

As applied here, that test would require the defendant to purposefully avail itself of the forum by deliberately directing or controlling a third party's conduct there. Indeed, when this Court has discussed the possibility of attributing the jurisdictional contacts of a third party to the nonresident defendant, the Court has given every indication that such a determination would fit squarely within the traditional analytical framework

of *International Shoe* and its progeny. *See Daimler AG*, 571 U.S. at 135 n.13 (quoting and citing *International Shoe*); *Burger King*, 471 U.S. at 479 n.22 (quoting *International Shoe*).

For the same reason, it would make no sense to "cure" the Second Circuit's test by adding a purposeful availment requirement. Such a move would merely transform that deficient test into an application of the unitary *International Shoe* test to the issue of attributing a third party's forum contacts to the foreign defendant. "[A]doption of the [purposeful availment] test would . . . cause the traditional minimum contacts approach to *swallow the conspiracy theory in whole.* The reason why, of course, is that requiring a showing of purposeful availment remedies the constitutional flaw." *Brown v. Kerkhoff*, 504 F. Supp. 2d 464, 518 n.36 (S.D. Iowa 2007) (emphasis added).

In short, a separate theory of "civil conspiracy jurisdiction" is both unnecessary and confusing. Its recognition would only distract courts from enforcing the essential purposeful availment requirement under the Due Process Clause:

> Admittedly, once the more rigorous purposeful availment requirement is applied to the three traditional elements of conspiracy jurisdiction[, i.e., the existence of a conspiracy; the defendant's participation in the conspiracy; and a co-conspirator's forum acts in furtherance of the conspiracy that satisfy *International Shoe*,] it

> becomes *quite difficult to articulate the purpose of conspiracy jurisdiction--or indeed, the point of continuing to complicate cases with the additional analytical framework of civil conspiracy*.

Youming Jin v. Ministry of State Sec., 335 F. Supp. 2d 72, 80 n.5 (D.D.C. 2004) (emphasis added).

Whenever a plaintiff asks a court to assert personal jurisdiction over a nonresident defendant based on someone else's forum contacts, the plaintiff should always have to show, under *International Shoe* and its progeny, that the defendant purposefully availed itself of the forum, by directing or controlling the third party's forum conduct. The Second Circuit's test is therefore both unconstitutional and unnecessary.

CONCLUSION

For the reasons stated above, NELF respectfully requests that this Court grant the Petition for Certiorari.

Respectfully submitted,

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