

No. _____

In The
Supreme Court of the United States

MARC GRANO, AS PERSONAL REPRESENTATIVE
OF THE WRONGFUL DEATH ESTATE OF JOSE BARRON,
BEVERLY BARRON, KELLY BARRON, AND JOSHUA BARRON,
Petitioners,

v.

EL PASO HEALTHCARE SYSTEM, LTD.,
D/B/A LAS PALMAS MEDICAL CENTER,
Respondent.

On Petition for Writ of Certiorari
to the Supreme Court for the
State of New Mexico

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether specific personal jurisdiction in a forum state over a nonresident hospital and healthcare system is permissible where: (1) the hospital system operates a brick-and-mortar referral clinic in the forum, (2) the brick-and-mortar clinic refers patients to the hospital system's state of residence, (3) the defendant hospital lies two miles from the forum state, (4) the hospital system provides regular medical care to residents of the forum, (5) the hospital system elicits business through advertisements to, referrals of, and transfer agreements from residents of the forum, (6) the decedent patient was a resident of the forum, and (7) the patient died in the forum state, where he resided?

LIST OF PARTIES

1. Marc Grano, as Personal Representative of the Wrongful Death Estate of Jose Barron, Petitioner
2. Beverly Barron, Petitioner
3. Kelly Barron, Petitioner
4. Joshua Barron, Petitioner
5. El Paso Healthcare System, Ltd., d/b/a Las Palmas Medical Center, Respondent

RELATED PROCEEDINGS

1. *Grano v. HCA Healthcare, Inc.*, No. D-412-CV-2018-00650 (N.M. 4th Jud. Dist. Ct. June 4, 2020) (granting motion to dismiss)
2. *Grano v. HCA Healthcare, Inc.*, No. A-1-CA-39669 (N.M. Ct. App. April 12, 2023) (affirming motion to dismiss)
3. *Grano v. HCA Healthcare, Inc.*, No. S-1-SC-39914 (N.M. June 28, 2023) (denying discretionary review)

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OPINIONS BELOW

The citation to the New Mexico Court of Appeals Opinion below is *Grano v. HCA Healthcare, Inc.*, No. A-1-CA-39669 (N.M. Ct. App. April 12, 2023). The citation to the New Mexico District Court Order below is *Grano v. HCA Healthcare, Inc.*, No. D-412-CV-2018-00650 (N.M. 4th Jud. Dist. Ct. June 4, 2020), *aff'd*, No. A-1-CA-39669 (N.M. Ct. App. April 12, 2023).

JURISDICTION

The Fourth Judicial District Court of New Mexico had original jurisdiction pursuant to N.M. Const. art. VI, § 13. The New Mexico Court of Appeals had jurisdiction pursuant to N.M. Const. art. VI, § 29 and N.M. Stat. Ann. § 34-5-8(A)(1) (1983). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

The opinion of the New Mexico Court of Appeal was filed on April 12, 2023. The New Mexico Supreme Court denied discretionary review on June 28, 2023. No petitions for rehearing were filed. This petition is timely filed in that it was made within 90 days of the denial for discretionary review by the court of last resort in the state.

RELEVANT CONSTITUTIONAL PROVISIONS

U.S. Const. amend. XIV, § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof,

are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This is a familiar story, that is so very old, yet so new. *See Mallory v. Norfolk Southern Ry.*, ___ U.S. ___, 143 S. Ct. 2028, 2045 (2023) (“Not every case poses a new question. This case poses a very old question indeed—one this Court resolved more than a century ago in *Pennsylvania Fire*.”). Jurisdiction is a principle that contrasts interstate federalism with a state’s “manifest interest” in providing its citizens with a forum for redress of harm done by outsiders. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985). This is a contrast not to be taken lightly. Yet, this Court has spent two years repeating to the states below that personal jurisdiction is not a technical game. *See Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, ___ U.S. ___, 141 S. Ct. 1017, 1032 (2021) (the defendant’s contacts with the state were “close enough” to support specific jurisdiction). Nonetheless, that is the issue faced in this appeal. At the New Mexico Court of Appeals below, this issue of closeness and of reasonableness, unlike in *Montana Eighth*, went without consideration, instead applying a hyper-technical causation that this Court has explicitly sought to reject two years ago. *Id.*, at

1028 (the “essential foundation” of specific jurisdiction is a relationship amongst the defendant, the forum, and the litigation).

Here, the New Mexico Court of Appeals found that it offended the Fourteenth Amendment to the U.S. Constitution to hail a large, multistate hospital facility, two miles from the Texas-New Mexico border, treating New Mexican residents, and operating a brick-and-mortar clinic in New Mexico, into New Mexico. Much like this Court held in *Montana Eighth*, it is truly this conclusion that undermines the principles of the Fourteenth Amendment. *Id.*, at 1030. The operative concern set down by this Court, and unheard in the Court of Appeals, is whether this lawsuit in New Mexico should be unreasonable and surprising to an El Paso, Texas defendant. *Id.* This cannot be true. Therefore, it is the purpose of this Petition to reverse the New Mexico Court of Appeals and establish conclusively by this Court what the real limits of personal jurisdiction should be upheld in all states of the Union.

1. Summary of the facts of the case.

Mr. Joe Barron (Decedent, a New Mexico resident) bled to death after being negligently treated at Memorial Medical Center in Las Cruces, New Mexico and El Paso Healthcare System, Ltd. d/b/a Las Palmas Medical Center in El Paso, Texas (Respondent).

El Paso Healthcare System, which operates Las Palmas Medical, is registered in New Mexico to do

business under the New Mexico Uniform Revised Limited Partnership Act. El Paso Healthcare is a limited partnership formed under Texas law with its principal place of business in Tennessee. New Mexico residents are treated at El Paso Healthcare facilities in El Paso, Texas. El Paso Healthcare is registered to receive payment from New Mexico Medicaid. El Paso Healthcare also does business in New Mexico as Las Palmas Del Sol Bariatric referral clinic, physically located in Albuquerque, New Mexico. At the clinic, physicians evaluate potential candidates for weight-loss surgery, who are referred to El Paso Healthcare System in Texas if found to be suitable candidates. Other than through the bariatric referral clinic, El Paso Healthcare denies operating any hospitals, clinics, or other facilities in New Mexico. Nonetheless, El Paso Healthcare advertises services of its Albuquerque bariatric clinic to New Mexico residents, but denies having other direct advertisements to New Mexican residents.

On Oct. 25, 2017, Memorial Medical Center's provider Dr. Jonathan Owens biopsied a mass in Mr. Barron's, the Decedent's, throat in New Mexico. Days after, on Oct. 27, Mr. Barron started to bleed from the biopsy site. His nearby carotid artery bled heavily into Mr. Barron's airway after a procedure to cauterize the biopsy site. Memorial Medical providers in Las Cruces saved Mr. Barron after coding on the operating table for 14 minutes. The providers realized Mr. Barron needed to go to a different facility with a higher level of care for his internal carotid pseudoaneurysm, which could start bleeding out at any moment. A hospitalist at nearby Las Palmas Medical Center (El Paso Healthcare

System), which lies less than two miles from the New Mexico border, then sought out to care for Mr. Barron in Texas by telling Dr. Owens at Memorial Medical Center that Las Palmas could help Mr. Barron.

On Nov. 1, 2017, Memorial Medical transferred Mr. Barron under a preexisting transfer agreement with Las Palmas, between New Mexico and Texas. But despite Las Palmas' invitation to accept Mr. Barron into its care from New Mexico, Las Palmas failed to locate the carotid pseudoaneurysm and failed to repair it. Las Palmas then discharged Mr. Barron home, which it again knew to be New Mexico, on Nov. 6, 2017. Two days later, Mr. Barron bled to death in front of his wife, Ms. Beverly Barron (Petitioner), at their home in Arrey, New Mexico. This completed Las Palmas' tort and caused this wrongful-death action to accrue.

2. Procedural history in the New Mexico state courts below.

A. Civil lawsuit in the New Mexico Fourth Judicial District Court.

After Mr. Barron's death, Mr. Marc Grano was appointed as the personal representative of the Estate of Jose Barron (Petitioner) under the New Mexico Wrongful Death Act. Mr. Grano, as the personal representative, sued Las Palmas Medical Center (and affiliates) and Memorial Medical Center (PHC-Las Cruces, Inc.; Las Cruces Physician Practices, LLC; HSCGP, LLC). Mr. Barron's wife and two kids, Josh and Kelly Barron (Petitioners),

brought loss-of-consortium claims. Beverly, Josh, and Kelly Barron suffered their loss of consortium as residents of and living in New Mexico.

Las Palmas Medical Center moved to dismiss the Petitioners' action for want of due process that specific personal jurisdiction was not appropriate. At proceedings below, the New Mexico District Court dismissed claims against Las Palmas Medical Center for lack of personal jurisdiction. The district court found, in relevant part, as follows:

1. The Court lacks personal jurisdiction over El Paso Healthcare System, Ltd. d/b/a Las Palmas Medical Center because it was not doing business in New Mexico, was not incorporated in New Mexico, only accepted patients from New Mexico at the patient's discretion, and accepting payment from a New Mexico resident is not sufficient to establish jurisdiction over this entity.

...

3. The argument that El Paso Healthcare System, Ltd. and HCA Health Services of Tennessee, Inc. were registered as foreign entities relates to bariatric referrals for El Paso Healthcare System, Ltd.'s bariatric facility in New Mexico but that is insufficient to establish continuous contacts or that they availed themselves of the privilege of conducting activities within New Mexico, and it was not alleged that the patient received treatment at the bariatric clinic.

4. The argument relating to posting job positions in New Mexico is insufficient to establish that El Paso Healthcare System, Ltd. d/b/a Las Palmas Medical Center, HCA Healthcare, Inc., C/HCA, Inc., and HCA Health Services of Tennessee, Inc. were conducting business in New Mexico.

See Appx., at A16–A17; *Grano v. HCA Healthcare, Inc.*, No. D-412-CV-2018-00650 (N.M. 4th Jud. Dist. Ct. June 4, 2020).

B. Appeal of order to dismiss to the New Mexico Court of Appeals.

The Petitioners timely appealed. On appeal to the New Mexico Court of Appeals, the Petitioners challenged the District Court’s dismissal of the Defendant-Respondent for want of personal jurisdiction. The Respondent is a hospital system that principally operates in El Paso, Texas, but does operate a permanent business in New Mexico, further directing New Mexico residents into Texas. Accordingly, the Petitioners appealed for review, in pertinent part, that:

Given Ford Motor Co. v. Mont. Eighth Judicial Dist. Court, may the District Court exercise specific personal jurisdiction over El Paso Healthcare System, Ltd., which operates a bariatric referral clinic in New Mexico, when the bariatric clinic did not cause plaintiffs’ medical malpractice claims but did engage in medicine and cultivated a market for medical services in New Mexico?

In their Brief in Chief, the Petitioners argued that:

In 2021, *Montana Eighth* expanded how [the principles of minimum contacts] apply, and how far due process reaches. To apply this law then to EPHS, it requires a deeper investigation of that new precedent.

The Petitioners argued that *Montana Eighth* provided a more expansive relationship approach than what had been applied in New Mexico, explaining “it is the [U.S. Supreme] Court’s development of *Montana Eighth*’s relationship approach that now guides the analysis here.” This relationship approach is one that allows personal jurisdiction where there is an “affiliation between the forum and the controversy.”

The New Mexico Court of Appeals nonetheless affirmed the District Court’s ruling. *See Appx.*, at A14; *Grano v. HCA Healthcare, Inc.*, No. A-1-CA-39669 (N.M. Ct. App. April 12, 2023).

REASONS FOR GRANTING THE WRIT

1. **This Court must conclusively establish whether it violates fundamental fairness to herald a multi-facility hospital, with brick-and-mortar business in the forum, two miles into the forum state.**
 - A. **New Mexico equates personal jurisdiction under state law with the federal due process standard, thus interpreted federal law in this appeal.**

The New Mexico Supreme Court has long confirmed that “appropriate legislation” may require that a foreign resident can be subject to personal jurisdiction in the state. *Melfi v. Goodman*, 1962-NMSC-020, ¶ 3, 69 N.M. 488, 368 P.2d 582. In New Mexico, that legislation is the Long-Arm Statute. *See* N.M. Stat. Ann., § 38-1-16 (1971). In pertinent part, the long-arm statute provides:

A. Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts enumerated in this subsection thereby submits himself or his personal representative to the jurisdiction of the courts of this state as to any cause of action arising from:

(1) the transaction of any business within this state;

...

(3) the commission of a tortious act within this state[.]

Id. The New Mexico courts had established a three-part test to determine whether the Long-Arm Statute allows personal jurisdiction over a defendant. That test is:

- (1) [T]he defendant's act must be one of the five enumerated in the long-arm statute;
- (2) the plaintiff's cause of action must arise from the act; and
- (3) minimum contacts sufficient to satisfy due process must be established by the defendant's act.

FDIC v. Hiatt, 1994-NMSC-044, ¶ 7, 117 N.M. 461, 872 P.2d 879 (quoting *State Farm Mut. Ins. Co. v. Conyers*, 1989-NMSC-071, ¶ 1, 109 N.M. 243, 784 P.2d 986).

However, this test has been reduced into one with the federal standards of due process. *FDIC* acknowledged that “the first and third step of this test have been ‘repeatedly equated’ with the due process standard of ‘minimum contacts.’” *Id.* (quoting *Kathrein v. Parkview Meadows, Inc.*, 1984-NMSC-117, ¶ 7, 102 N.M. 75, 691 P.2d 462). It is also not necessary to “determine whether [the defendant] transacted business within New Mexico in any technical sense,” *id.*, nor apply a technical standard for “commission of a tortious act,” *Tarango v. Pastrana*, 1980-NMCA-110, ¶ 9, 94 N.M. 727, 616 P.2d 440. Instead, the New Mexico Supreme Court has interpreted the statute to extend personal jurisdiction as far as constitutionally permissible under the Fourteenth Amendment to the U.S. Constitution. *FDIC*, 1994-NMSC-044, ¶ 7 (citing *United Nuclear Corp. v. General Atomic Co.*, 1977-

NMSC-079, ¶ 2, 91 N.M. 41, 570 P.2d 305); *Tarango*, 1980-NMCA-110, ¶ 9 (citing *Telephonic v. Rosenblum*, 1975-NMSC-067, ¶ 4, 88 N.M. 532, 543 P.2d 825). When the limit is constitutional permissibility, the test collapses into only “a single search for the outer limits of what due process permits.” *FDIC*, 1994-NMSC-044, ¶ 7 (citing *Forsythe v. Overmyer*, 576 F.2d 779, 782 (9th Cir. 1978)).

Because New Mexico extends the long-arm statute to the maximum extent allowed by due process, the status of these principles, proclaimed by this Court, expands or contracts identically to the extent that New Mexico courts will do so. Accordingly, the decision of the New Mexico Court of Appeals necessarily relied on an interpretation of federal constitutional law. As argued at the New Mexico courts below and discussed herein, the case in this Court of *Montana Eighth* in 2021 reiterated how these principles apply, and how far due process reaches. To apply this law then to the Respondent, it required the Court of Appeals to conduct a deeper investigation of that precedent.

B. Federal due process permits specific personal jurisdiction when contacts relate to a cause of action and fundamental fairness is not violated.

As discussed under New Mexico’s law, a state’s power to exercise personal jurisdiction is limited by the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. *Mont. Eighth*,

141 S. Ct. at 1024. As a federal doctrine, the rules of due process limits are laid down by this Court. To this end, the seminal case for the ‘minimum contacts’ standard to meet due process is *International Shoe Co. v. Washington*. *Id.* In *International Shoe*, a defendant corporation was incorporated in Delaware, had its principal place of business in Missouri, and manufactured and distributed merchandise in several states, but none of which were Washington. 326 U.S. 310, 313 (1945). The corporation’s contacts with Washington were limited to 13 salesmen who worked on commission to transmit orders to the corporation in Missouri, but could not themselves enter into contracts for sales. *Id.*, at 314. An order made to Missouri would then be fulfilled in other states, and invoiced where shipped. *Id.* However, these salesmen, who resided in Washington for periods of years, would also sometimes arrange permanent display rooms, and a substantial volume of merchandise was ultimately shipped to Washington purchasers. *Id.*, at 314-15.

This Court in 1945 held the defendant corporation could, in fact, be subject to personal jurisdiction in Washington. This Court identified the standard that:

[D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”

Id., at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). The Court then reasoned that the activities carried out by the defendant “were neither irregular nor casual,” but “systematic and continuous throughout the years in question” to justify personal jurisdiction. *Id.*, at 320. This Court further explained that:

[T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, *so far as those obligations arise out of or are connected with the activities within the state*, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, *hardly be said to be undue*.

Id., at 319 (emphasis added); *Mont. Eighth*, 141 S. Ct. at 1025. Therefore, the defendant had “rendered itself amenable to suit upon obligations arising out of the activities of its salesmen in Washington[.]” *International Shoe*, 326 U.S. at 321.

The test has since been developed; minimum contacts has been clarified that a defendant “must take ‘some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State.’” *Mont. Eighth*, 141 S. Ct. at 1025 (quoting *Hanson v. Denckla*, 357 U. S. 235, 253 (1958)). To explain:

This “purposeful availment” requirement ensures that a defendant will not be haled

into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts, or of the "unilateral activity of another party or a third person." Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant himself that create a "substantial connection" with the forum

Burger King, 471 U.S. at 475; *see also Hanson*, 357 U. S. at 245–46 (“The alleged defect is the absence of those ‘affiliating circumstances’ without which the courts of a State may not enter a judgment imposing obligations on persons[.]”). However, whether the “affiliating circumstances” are present “is not susceptible of mechanical application[.]” *Kulko v. Superior Court of Cal.*, 436 U.S. 84, 92-93 (1978). In *Kulko*, California attempted to exert personal jurisdiction over a man who had been to California twice: once for three days—when he happened to get married—and a second for 24 hours, 13 years prior. *Id.* This Court held that, in assessing these circumstances, “[t]he greys are dominant and even among them the shades are innumerable. *Id.* (quoting *Estin v. Estin*, 334 U.S. 541, 545 (1948)). Still, the Court reasoned that, under these stark facts:

To hold such temporary visits to a State a basis for the assertion of in personam jurisdiction over unrelated actions arising in the future would make a mockery of the limitations on state jurisdiction imposed by the Fourteenth Amendment.

Id. This is nonetheless an *outer* extreme of what improper purposeful avilment can appear as.

Ford Motor Co. v. Montana Eighth Judicial District Court reiterated what has been long known about the *reasonable* scope of hailing out-of-state defendants. In the unanimous opinion, this Court “reiterat[ed the] Court’s longstanding approach” to personal jurisdiction. 141 S. Ct. at 1027 n.3. For specific personal jurisdiction, a defendant must have minimum contacts, to purposefully avail itself of the privileges of the forum state. *Id.*, at 1024 (citing *International Shoe*, 326 U.S. 310); see also *id.* at 1032 (Alito, J. concurring). However, this Court parsed that only one of two analyses were required: (1) causation, that the suit “arise out of” the defendant’s contacts, or (2) relationship, that the suit only “relate to” those contacts. *Id.*, at 1026. These are separate standards; only one must be met to exercise specific personal jurisdiction. *See id.*, at 1026-27. But it is the Court’s relationship approach that guides the analysis here.

This Court explained that it has only ever required “a ‘connection’ between a plaintiff’s suit and a defendant’s activities.” *Id.* (quoting *Bristol-Myers*, 137 S. Ct. at 1781-82). Instead of causation, affiliation between the forum and the controversy—principally an activity or occurrence—, or a strong relationship amongst the defendant, the forum, and the suit, will justify specific personal jurisdiction. *Id.*, at 1021, 1031. In contrast, cases where a connection was not found, such as *Bristol-Myers*, came about because the plaintiffs in that case “[were] not California residents and [did] not claim

to have suffered harm in that State.” *Id.*, at 1031-32 (internal citations omitted). But, this Court expressed the relationship approach “has real limits,” explaining “[it has] long treated isolated or sporadic transactions differently from continuous ones.” *Id.*, at 1026, 1028 n.4 (differentiating Ford’s activities from a “retired guy in a small town in Maine” selling carved decoys online).

In *Montana Eighth*, two appeals were taken from denials of motions to dismiss for personal jurisdiction, from Montana and Minnesota. *Id.*, at 1022. The cases were consolidated from products liability actions against Ford Motor Co. *Id.* In each case, product defects in Ford vehicles—tread separating from a tire and the failure of airbags to deploy—caused serious injury, including death. *Id.* Ford argued that a causal link between the injuries and Ford’s particular business activities was required for specific personal jurisdiction. *Id.*, at 1023. In particular, Ford argued that the only causal links existed where the vehicles were designed (Michigan), manufactured (Kentucky and Canada), or originally sold by Ford (Washington and North Dakota). *Id.* None of these locations were Montana or Minnesota, where the injuries occurred.

Both the Supreme Courts of Montana and Minnesota rejected Ford’s arguments that it was not subject to specific personal jurisdiction in their forums. The Court in Montana detailed “the varied ways Ford ‘purposefully’ seeks to ‘serve the market in Montana.’” *Id.* (quoting *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 2019 MT 115, ¶ 17, 395 Mont. 478, 443 P.3d 407, hereinafter “*Montana Eighth* (Montana)”). Ford

“advertises in the State; ‘has thirty-six dealerships’ there; ‘sells automobiles . . . and parts’ to Montana residents; and provides them with ‘certified repair, replacement, and recall services.’” *Id.* (quoting *Mont. Eighth* (Mont.), 2019 MT 115, ¶ 17). Because Ford also encouraged residents to drive Ford vehicles in Montana, when that driving causes an injury in Montana, there are enough ties to support specific personal jurisdiction. *Id.* (citing *Mont. Eighth* (Mont.), 2019 MT 115, ¶ 23). Agreeing, the Minnesota Court identified that “Ford’s ‘marketing and advertisements’ influenced state residents to ‘purchase and drive more Ford vehicles.’” *Id.*, at 1023-24 (quoting *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 754 (Minn. 2019)). That the particular defective vehicle was not designed, manufactured, or first sold in Minnesota “made no difference.” *Id.*

In evaluating these facts, this Court formed a unanimous, and scathing, rejection of Ford’s assertion that it lacked sufficient contacts with these forums. *Id.*, at 1026, 1029–31 (“But here, Ford has a veritable truckload of contacts with Montana and Minnesota[.]”); *id.*, at 1032–33 (Alito, J., concurring) (“Can anyone seriously argue that requiring Ford to litigate these cases in Minnesota and Montana would be fundamentally unfair?”); *id.*, at 1039 (Gorsuch, J., concurring) (“No one seriously questions that the company, seeking to do business, entered those jurisdictions through the front door.”). “When a company like Ford serves a market for a product in a State and that product causes injury in the State to one of its residents, the State’s courts may entertain the resulting suit.” *Id.*, at 1022. While hailing a defendant into an out-of-state forum is restricted by “real limits,” limits are not meant to be

an insurmountable barrier subject to technical application.

C. The New Mexico Court of Appeals failed to consider and is in contradiction of this Court's controlling precedent in *Montana Eighth*.

Pursuant to *Montana Eighth* and *International Shoe*, it was reasonable that El Paso Healthcare System may have to litigate in New Mexico. El Paso Healthcare System purposefully serves the New Mexico market, offering its medical services in El Paso to New Mexico residents. Not only are medical services offered by a brick-and-mortar clinic of the Respondent in the state, but that very clinic serves to direct residents into Texas—to exploit a New Mexico market for El Paso facilities. El Paso Healthcare System is aware that its market serves the New Mexico population and that it is intimately connected with cross-border relationships. Las Palmas Medical Center itself cooperates with nearby hospitals in New Mexico to provide medical services and has transfer agreements in place to move patients across the state line. Contrary to the New Mexico Court of Appeals' opinion, the Petitioners have never argued any *one* connection was the sole determination of minimum contacts. But it is the totality—these purposeful referrals to New Mexico residents from a New Mexico clinic, these purposeful affiliations with New Mexico hospitals, and these purposeful connections with medical care throughout eastern New Mexico itself—that demonstrate El Paso Healthcare System could expect to reasonably face suit in New Mexico.

In the inverse, El Paso Healthcare System is not like the actual or potential defendants this Court discussed in *Montana Eighth* where jurisdiction would be inappropriate. El Paso Healthcare System's activities are not like an individual selling hand-carved decoys online. They are also not like a man who visited a state for a couple days over a decade ago, as in *Kulko*. As discussed, specific personal jurisdiction is an issue of fairness. This Court's opinion in *Montana Eighth* obliterated unreasonable circumstances where a defendant could operate a dozen clinics in a state but, so long as the plaintiff sought care in a state next door, the defendant could not be expected to appear in the first forum without a causal connection. However, this Court has instead adopted a practical, fairer approach that applies to a business like El Paso Healthcare System here.

The New Mexico Supreme Court recognized that *Montana Eighth* "may bear on questions of specific personal jurisdiction" in 2022. *Chavez v. Bridgestone Ams. Tire Operations, LLC (Chavez II)*, 2022-NMSC-006, ¶ 5, 503 P.3d 332. In *Chavez II*, the Court reviewed four consolidated appeals where fatal vehicle accidents in New Mexico were allegedly caused by defective products. *Id.* ¶ 7. These products were produced by four petitioning automobile and automobile component manufacturers, who had moved to dismiss at the district court, in part, for want of specific personal jurisdiction. *Id.* ¶¶ 2, 5. The specific products by these manufacturers were neither designed nor produced in New Mexico and were not directly sold in the state. *Id.* ¶ 8. Yet, identical or nearly identical products were actively

marketed by the manufacturers within New Mexico. *Id.* While the issue of specific personal jurisdiction had been preserved in each case, the Court of Appeals had not considered it below. *Id.* ¶ 5. Thus, though the Supreme Court recognized that *Montana Eighth* may bear on this factual pattern, the appeals were remanded to the Court of Appeals to consider specific personal jurisdiction. *Id.* No opinion in New Mexico until this appeal answered the application of *Montana Eighth*.

However, instead of acknowledging the unsettled scope of specific personal jurisdiction in New Mexico since *Montana Eighth*, the New Mexico Court of Appeals here relied on pre-2021 jurisprudence along with its and the New Mexico Supreme Court's opinions in *Chavez II* and *Chavez v. Bridgestone Ams. Tire Operations, LLC (Chavez III)*, 2023-NMCA-022, in its ruling. The Court of Appeals in *Chavez III* characterized the Supreme Court's holding in *Chavez II* as "reiterat[ing] the bedrock principles of personal jurisdiction," 2023-NMCA-022, ¶ 7, though specific personal jurisdiction was not addressed in the *Chavez II* opinion. While identifying that specific personal jurisdiction is a fact-bound inquiry, the Court of Appeals in neither *Chavez III* nor this appeal grappled with the "separate question" whether *Montana Eighth* expanded minimum contacts that relate to, connect with, or are affiliated with a defendant, from which specific personal jurisdiction can be exercised. *See Chavez II*, 2022-NMSC-006, ¶ 55.

Indeed, the Petitioners discussed multiple needs for the New Mexico Court of Appeals to reconsider its

own precedent in light of *Montana Eighth*. But quoting the 2015 case *Gallegos v. Frezza*, 2015-NMCA-101, the Court of Appeals stated that “the plaintiff’s claim must lie in the wake of the defendant’s commercial activities in New Mexico.” See Appx., at A11; *Grano*, A-1-CA-39669, mem. op. ¶ 9. However, this mechanical analysis is proscribed. As the Petitioners discussed, *Montana Eighth* permits a forum where the products at suit were neither designed, manufactured, nor sold, but when a defendant entices a state’s residents to further its business; only the relevant affiliation is required. In analyzing the “real limits” of specific personal jurisdiction, the New Mexico Court of Appeals did not harmonize the pertinent examples laid forth in *Montana Eighth* with the circumstances of this appeal—such as *Bristol-Myers Squibb Co. v. Superior Court*, 582 U.S. 255 (2017), where the plaintiffs were neither injured in nor residents of the forum, and the contrast identified between multistate corporations, like Ford and like the Respondent, and a retiree who carves wooden duck decoys in Maine.

In this appeal, we have a corporation, not a 2000-mile distant individual, while the Petitioners lived in New Mexico. It was necessary for the New Mexico Court of Appeal, post-*Montana Eighth*, to articulate a fact-specific balance where the Respondent, a multistate healthcare system owning multiple facilities on the state line, lies between the Ford Motor Company and a retiree in Maine. The scope was not whether the Respondent is as sizable as the entire Ford company; it was whether they are too small to be fairly hailed into New Mexico. But this went unresolved. In focusing on the minutia between ‘bariatric’ medical

services and medical services in general, the New Mexico Court of Appeals failed to consider and apply this Court's precedent, as in *Montana Eighth*, to the totality of the circumstances with the Respondent's connections to New Mexico when interpreting the Fourteenth Amendment to the U.S. Constitution. Accordingly, it was erroneous for the Court of Appeals to affirm dismissal. It is therefore necessary for this Court to intervene, to reverse the New Mexico Court of Appeals, and reassert the framework of specific personal jurisdiction after the decision in *Montana Eighth*.

CONCLUSION

For the foregoing reasons, the Petitioners ask the Court to issue a writ of certiorari to review the judgment of the New Mexico Court of Appeals and, after doing so, conclude that specific personal jurisdiction over the Respondent is permissible pursuant to U.S. Const. amend. XIV, § 1, to reverse the New Mexico Court of Appeals, and remand to the New Mexico District Court for proceedings consistent with this Court's opinion.

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