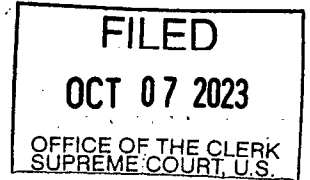


23-5757

No.



**In the Supreme Court
of the United States**

MARIGDALIA RAMIREZ-FORT

Petitioner,

v.

MEDICAL UNIVERSITY OF SOUTH CAROLINA,
ET. ALS.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

MARIGDALIA RAMIREZ-FORT

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QUESTIONS PRESENTED

1. What objective factors should courts rely upon in order to determine when personal jurisdiction is proper in cases where claims may lack strict causal relationship to a defendant's contacts with a forum?
2. Under what conditions does a State's interests in guaranteeing the protection, wellbeing and fair treatment of its citizens and residents create minimum contacts sufficient to assert personal jurisdiction over an action where a non-resident defendant, with meaningful contacts within the forum recruits its domiciliary to study and work out of state and then subjects her to violations of her civil, contractual, statutory and constitutional rights?

TABLE OF CONTENTS

Questions Presented	i
Table of Authorities.....	iii,iv
List of Additional Parties.....	v
Opinions Below.....	1
Jurisdiction.....	1
Constitutional and Statutory Provisions	
Involved.....	1-3
Statement	3-7
Reasons for Granting the Petition.....	7-9
Conclusion	9
Appendix A - Court of appeals judgment	1a
Appendix B - District court opinion	2a

TABLE OF AUTHORITIES

Cases

<i>A Corp. v. All Am. Plumbing, Inc.</i> , 812 F.3d 54, 59 (1st Cir. 2016).....	5
<i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462 (S.Ct. 1985).....	4
<i>Calder v. Jones</i> , 104 S.Ct.1482 (1984).....	4
<i>Copia Commc'ns, LLC v. AMResorts, L.P.</i> , 812 F.3d 1, 4 (1st Cir. 2016).....	5
<i>Ford Motor Co. v. Mont. Eight Jud. Dist.</i> <i>Ct.</i> , 141 S.Ct. 1017 (2021).....	4,5,7,8
<i>Helicopteros Nacionales de Colombia,S.A. v. Hall</i> , 104 S. Ct. 1868 (1984).....	6
<i>Int'l Shoe Co. v. Washington</i> , 326 U.S. 310 (S.Ct. 1945)	3,6
<i>Keeton v. Hustler Magazine, Inc.</i> , 104 S.Ct. 1473 (S.Ct. 1984).....	3,4
<i>Miller Yatch Sales v. Smith</i> , 384 F.3d 93 (3 rd Cir. 2004).....	4
<i>Revell v. Lidov</i> , 317 F.3d 467, 473 (5 th Cir. 2002).....	4
<i>Walden v. Fiore</i> , 135 S.Ct. 1115 (2014).....	6

<i>World-Wide Volkswagen Corp. v. Woodson</i> , 100 S.Ct. 559 (1980)	8,9
---	-----

Constitution and Statutes

U.S. Constitution, Amendment V.....	21
U.S. Constitution, Amendment XIV	21
28 U.S.C § 1332.....	20
28 U.S.C § 1332(a)(1).....	6, 23
32A L.P.R.A. App. III, Rule 4.7.....	1

LIST OF ADDITIONAL DEFENDANTS

1. David T. Marshall;
2. Rockne Hymel;
3. Jenniffer L. Harper;
4. Shauna M. McVorrان;
5. Diana M. Mullis.

PETITION FOR A WRIT OF CERTIORARI

Marigdalia Ramirez-Fort respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS BELOW

The First Circuit Court of Appeals entered judgment where it affirmed the district court's opinion and order without entering a separate opinion in appeal no. 20-1563 (App. A). The district court's opinion and order granting respondents' motion to dismiss on April 20, 2020 (App. B) is reported at 456 F. Supp. 3d 361.

JURISDICTION

The judgment of the First Circuit Court of Appeals was entered on July 12, 2023. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

**CONSTITUTIONAL AND STATUTORY
PROVISION INVOLVED**

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or

property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV:

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.

Section 1332(a)(1), Title 28, U.S. Code states in relevant part:

Diversity of Citizenship

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—

(1) Citizens of different States;

Section 1331, Title 28, U.S. Code provides:

Federal Question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

32A L.P.R.A. App. III, Rule 4.7 states:

Service on a person not domiciled in Puerto Rico

(a) Whenever the person to be served is not domiciled in Puerto Rico, the General Court of Justice shall take jurisdiction over said person if the action or claim arises because said person: (1) Transacted business in Puerto Rico personally or through an agent; or (2) participated in tortious acts within Puerto Rico personally or through his agent; or (3) was involved in an automobile accident while driving a motor vehicle in Puerto Rico personally or through his agent; or (4) was involved in an accident in Puerto Rico while operating, personally or through his agent, a freight or passenger transportation business in Puerto Rico, between Puerto Rico and the United States or between Puerto Rico and a foreign country, or if, in the operation of said business, an accident occurs outside Puerto Rico and the contract had been executed in Puerto Rico; or (5) owns, uses or possesses, personally or through his agent, real property in Puerto Rico. (b) In said cases, service shall be made pursuant to Rule 4.5.

STATEMENT

For nearly eighty years after the landmark decision in *International Shoe Co.*, federal courts have required minimum contacts between a defendant and the forum where sued in order to satisfy the requirements of due process under the Fifth and Fourteenth Amendments to the Constitution. *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (S.Ct. 1945).

In *Keeton*, this Court explained that whether those minimum contacts suffice for a court to assert specific jurisdiction over a non-resident defendant

depends on the relationship between the defendant, the forum and the litigation. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775, 104 S.Ct. 1473 (S.Ct. 1984). Later, in *Burger King*, the Court admonished that the due process requirement of fair warning "is satisfied if the defendant has purposefully directed his activities at residents of the forum, and the litigation results from alleged injuries that arise out of or relate to those activities." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (S.Ct. 1985).

The rulings in *Keeton* and *Burger King* have been interpreted differently by several of the circuit courts. While the First Circuit relied on a standard requiring a showing of both an actual and proximate cause nexus between a plaintiff's claims and the in-forum activities of the defendants, other circuits have relied on a more flexible but-for causation analysis, or even on the 'effects test' announced by this Supreme Court in *Calder v. Jones*, 104 S.Ct.1482. See generally, *Revell v. Lidov*, 317 F.3d 467, 473 (5th Cir. 2002); *Miller Yatch Sales v. Smith*, 384 F.3d 93 (3rd Cir. 2004).

The recent *Ford* opinion resolved the broader causation related aspects of the above mentioned conflict among the circuits. The Court clarified that personal jurisdiction could be asserted in cases where the defendant's contacts with the forum did not cause the suit. *Ford Motor Co. v. Mont. Eight Jud. Dist. Ct.*, 141 S.Ct. 1017 (S.Ct. 2021). Nevertheless, important questions remain which require additional guidance from this Court.

This case involves the dismissal of a suit alleging multiple civil rights violations, contractual breach, defamation and other tortious conduct, as well as several additional causes of action. The suit was filed in the U.S. District Court for the District of Puerto Rico by a physician in-training, licensed to practice medicine and domiciled in Puerto Rico, who was recruited by a South Carolina educational institution to complete her final two years of residency in the field of radiation oncology. In dismissing her case, the district court found a lack of personal jurisdiction over the defendants holding that plaintiff-petitioner Ramirez-Fort had failed to establish sufficient causation between her claims and the in forum activities of the defendants as required in order to find specific jurisdiction -- a test since overruled, or at least expanded, by this Court's *Ford* decision. *Id.*

In taking that approach, the district court was following the First Circuit's direction in *Copia Commc'ns, LLC v. AMResorts, L.P.*, 812 F.3d 1, 4 (1st Cir. 2016); and *A Corp. v. All Am. Plumbing, Inc.*, 812 F.3d 54, 59 (1st Cir. 2016). There, the First Circuit Court reaffirmed its three part test to find specific jurisdiction focusing on relatedness, purposeful availment, and reasonableness. *Id.* Regarding the relatedness inquiry, the First Circuit has explained that a court must look at the relationship between a plaintiff's claims and the defendant's forum based activities honing in "on the relationship between the defendants and the forum" *Id.*

At the time when suit was filed, the defendant-respondents in this case had previously initiated substantial and continuous contacts within Puerto

Rico, which were not considered by the district court nor the First Circuit. Chief among those contacts were their recruitment efforts directed at medical students and physicians in-training in the forum; providing federally and state funded medical and psychiatric services in Puerto Rico; and agreements with other Puerto Rican educational institutions and agencies to provide medical education within the jurisdiction. By knowingly engaging in those contacts within Puerto Rico the defendant-respondents, and in particular the Medical University of South Carolina, had fair warning that it could be sued in that forum as required by due process. *Int'l Shoe*, at 310.

This is not the case where a plaintiff attempts "to satisfy the defendant-focused minimum contacts inquiry by demonstrating contacts between him/her and the forum". *Walden v. Fiore*, 135 S.Ct. 1115, 571 U.S. 277 (S. Ct. 2014) (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417, 104 S. Ct. 1868). Nevertheless, the district court ruled that -- because it found an insufficient nexus between the claims of plaintiff-petitioner Ramirez-Fort and the in forum activities of the defendants -- the relatedness prong of the specific jurisdiction inquiry was not satisfied. The district court should have considered all of the above specified contacts as part of its minimum contacts analysis. Emphasis should have been given to the relatedness between the recruitment efforts which the defendant-respondents directed at Puerto Rico medical students and physicians in-training and the specific recruitment of Ramirez-Fort.

Ultimately, based on a causation-only approach, the district court dismissed the cause of action while

pointing out that it did so without reaching the questions of purposeful availment or reasonableness in its minimum contacts analysis. See, App. B. The First Circuit affirmed without entering an opinion. See, App. A. Had the district court, or the First Circuit, considered the contacts between the defendant-respondents and Puerto Rico with a broader lens than mere strict causation between those contacts and the plaintiff-petitioner's claims, her suit would have been heard on the merits.

REASONS FOR GRANTING THE PETITION

Review by this Court of the adjudications above is appropriate and necessary in light of its ruling in *Ford*, where this Court announced that "a causation only approach to specific jurisdiction only served to limit the class of claims upon which courts may exercise personal jurisdiction". See, *Ford Motor Co. v. Mont. Eight Judicial Dist. Court*, 141 S.Ct. 1017 (S.Ct. 2021).

This case affords the Court the opportunity to provide additional guidance as to the types of claims where it deems appropriate the exercising of specific jurisdiction without a finding of causation between such claims and the defendant's contacts with any given forum. For instance, what objective factors should lower courts rely on to determine when personal jurisdiction is proper in cases where claims may lack strict causal relationship to a defendant's in forum contacts, but yet are sufficiently related to those contacts as to satisfy due process concerns?

Proper adjudication of the above question presented is a matter of great practical importance. The issue of determining specific jurisdiction is a frequently recurring one, and lower courts require additional clarification to ensure consistent and unconflicted jurisdictional adjudications nationwide. Without doing so, circuit courts are likely to once again fall into conflict post *Ford* as they struggle to resolve the issue on their own.

This case also presents for consideration important interstate federalism concerns. What weight, if any at all, ought to be given by courts to a forum's legitimate interests in the protection of its citizens and domiciliaries at the time of determining whether to exercise personal jurisdiction over an out of state defendant? Should economic factors, such as the resources of the parties, be a consideration in determining a convenient forum and under what circumstances are due process concerns satisfied in doing so?

In *World-Wide Volkswagen Corp.*, the Court found that: "The burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including: a) the forum state's interest in adjudicating the dispute; b) the plaintiff's interest in obtaining convenient and effective relief, at least when that interest is not adequately protected by the plaintiff's power to choose the forum; c) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and d) the shared interest of the several states in furthering fundamental substantive social policies." *World-Wide Volkswagen*

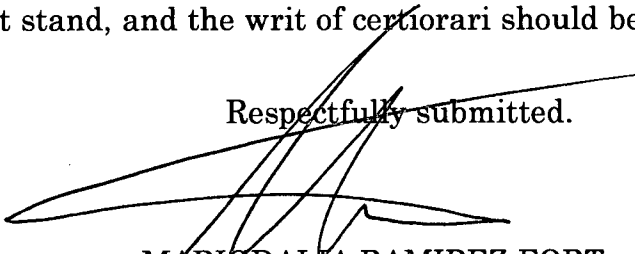
Corp. v. Woodson, 100 S.Ct. 559, 444 U.S. 286 (S.Ct. 1980).

Even though the World-Wide Volkswagen test continues to be in effect¹, quite often, as in this case, lower courts fail to include its considerations as part of their jurisdictional inquiries. Granting certiorari in this matter provides the mechanism for the Court to establish a more cohesive test which includes said principles in jurisdictional adjudications by the lower courts.

CONCLUSION

Based on the arguments included in this petition, the judgment of the First Circuit Court of Appeals should not stand, and the writ of certiorari should be granted.

Respectfully submitted.



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¹ See, *FORD*, 209 L. Ed. 2d 233-241