

No. 19A

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IN THE  
**Supreme Court of the United States**

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FORD MOTOR COMPANY,

*Applicant,*

v.

MONTANA EIGHTH JUDICIAL DISTRICT COURT, *et al.*,

*Respondents.*

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**APPLICATION FOR AN EXTENSION OF TIME TO FILE A  
PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF MONTANA**

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July 24, 2019

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## **RULE 29.6 STATEMENT**

Ford Motor Company has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

## APPLICATION

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), applicant Ford Motor Company respectfully requests a 30-day extension of time, to and including September 18, 2019, within which to file a petition for a writ of certiorari to review the decision of the Supreme Court of Montana in this case.

1. The Supreme Court of Montana issued its decision on May 21, 2019. *See Ford Motor Co. v. Montana Eighth Judicial Dist. Ct.*, No. OP 19-0099 (Appendix A). Unless extended, the time to file a petition for certiorari will expire on August 19, 2019. This application is being filed more than ten days before the petition is currently due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1257(a).

2. The decision below deepens two distinct splits in the state and federal courts regarding one aspect of this Court’s personal jurisdiction jurisprudence—the requirement that a plaintiff’s claims must “arise out of or relate to” a defendant’s forum contacts. First, there is a split in product-defect cases as to whether specific jurisdiction is proper when the product was not designed, manufactured, or first sold in the forum State. Second, there is a split on the general question of whether the arise-out-of prong of specific jurisdiction requires that the defendant’s forum contacts be a cause of the plaintiff’s claims.

3. The plaintiff in the underlying litigation, Charles Lucero, is the personal representative of the estate of Markkaya Jean Gullett. Gullett was driving on the interstate in Montana when a tire mounted on the Ford Explorer she was driving separated. The vehicle lost stability, rolled into a ditch, and came to rest upside down. Gullett died at the scene. Plaintiff subsequently filed suit against Ford in Montana state court, raising strict-liability design defect, failure to warn, and negligence claims. Ford moved to dismiss for lack of personal jurisdiction, contending that there was no specific jurisdiction because the Explorer was not designed, assembled, or first sold in Montana. Rather, the vehicle was assembled in Kentucky, transported to Oregon, and sold for the first time to a dealer in Washington State. The vehicle was resold and registered in Montana over 10 years later. Ford's Montana contacts therefore had no relationship to Lucero's particular claims. The trial court denied the motion and Ford sought an interlocutory appeal—known in Montana as a “writ of supervisory control”—to the Montana Supreme Court.

4. The Montana Supreme Court accepted interlocutory review and affirmed the trial court's order. On the arise-out-of prong, the Montana Supreme Court held that due process does not require a direct connection between a plaintiff's claims and a defendant's forum contacts. Instead, it concluded based on this Court's decisions in *World Wide Volkswagen v. Woodson*, 444 U.S. 286 (1980) and *Goodyear Dunlop Tire Operations, S.A. v. Brown*, 564 U.S. 915 (2011) that “when the defendant purposefully avails itself of the privilege of conducting activities in a specific forum by placing a product into the stream of commerce, the plaintiff's

claims will relate to the defendant's forum-related activities as long as the connection between the defendant's in-state conduct and the plaintiff's claim is sufficient enough not to offend due process." App. 13a.

5. The Montana Supreme Court stated that due process is ultimately about fairness and that car companies can foresee vehicles crossing state lines. Rejecting Ford's arguments, the court stated that "[w]here a company first designed, manufactured, or sold a vehicle is immaterial to the personal jurisdiction inquiry, and focusing on those limited factors would unduly restrict courts of this state from exercising specific personal jurisdiction." *Id.* at 14a. Instead, a plaintiff's claims are "related to" a defendant's forum contacts for due-process purposes if "a nexus exists between the product and the defendant's in-state activity and if the defendant could have reasonably foreseen its product being used in Montana." *Id.*

6. Finally, the court distinguished *Bristol-Myers Squibb v. Superior Court*, 137 S. Ct. 1773 (2017), and *Walden v. Fiore*, 571 U.S. 277 (2014). It believed *Bristol-Myers* was distinguishable because specific jurisdiction over the claims of the plaintiffs who suffered injury in the forum in that case were undisputed. And it believed that *Walden* was inapposite because Ford's general business activities in Montana mean that Plaintiff's ties to Montana were not the only connection between the forum and the litigation.

7. This case deepens a longstanding split in product-liability cases as to the propriety of specific jurisdiction when the defendant does not originally design, manufacture, or sell the product in the forum State. There is also a broader disa-

greement as to the proper test for whether a plaintiff's claim "arises out of or relates to" a defendant's forum contacts. These splits have continued even after this Court's recent decisions in *Walden* and *Bristol-Myers*. This Court's review is accordingly needed to set a uniform, national standard and to provide clarity and further guidance to the lower courts.

8. Ford has retained Sean Marotta of Hogan Lovells US LLP as counsel to file a petition for writ of certiorari. In the time since the Montana Supreme Court's decision, counsel has been engaged in extensive trial and post-trial proceedings for Ford in an unrelated matter, *Creutzberger v. Ford Motor Co.*, No. MID-L-836-10 AS (N.J. Super. Ct.), and took a long-standing, pre-planned family vacation. Over the next several weeks, counsel is also occupied with briefing deadlines for a variety of matters, including opposing a motion for leave to appeal to the New York Court of Appeals in *Aybar v. Aybar*, Index No. 706909/15 (N.Y.). And those at Ford responsible for reviewing counsel's papers have longstanding summer vacations planned between now and the original August due date for the petition. Ford requests this extension of time to permit counsel to research the relevant legal and factual issues and to prepare a petition that fully addresses the important questions raised by the proceedings below.

9. For these reasons, Ford respectfully requests that an order be entered extending the time to file a petition for certiorari to and including September 18, 2019.

Respectfully submitted,

A handwritten signature in black ink that reads "Sean Marotta". The signature is written in a cursive style and is positioned above a horizontal line.

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