Nos. 19-368 & 19-369

IN THE

Supreme Court of the United States

FORD MOTOR COMPANY,
Petitioner,
v.
MONTANA EIGHTH JUDICIAL DISTRICT COURT, *et al.*,
Respondents.

FORD MOTOR COMPANY,
Petitioner,
v.
ADAM BANDEMER,
Respondent.

On Writs of Certiorari to the Supreme Courts of Montana and Minnesota

BRIEF OF *AMICI CURIAE* CIVIL PROCEDURE PROFESSORS IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*

Amici curiae are law professors with expertise in civil procedure, complex litigation, conflict of laws, and transnational litigation. *Amici* have an interest in the proper interpretation of the constitutional restrictions on personal jurisdiction and their effect on civil adjudication. *Amici* believe that this Court's well-established principles confirm that Minnesota and Montana courts may permissibly exercise jurisdiction in these cases.[1]

SUMMARY OF ARGUMENT

Petitioner Ford Motor Company argues that specific personal jurisdiction "[r]equir[es] that the defendant's contacts with the forum State have *caused* the plaintiff's claims." Pet. Br. 24 (emphasis added). This has never been the law, nor should it be. While *general* jurisdiction may be amenable to narrowly defined categories, *specific* jurisdiction is not. Ever since this Court's pathmarking decision in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), specific jurisdiction has been a far more flexible inquiry into the relationship among the forum, the defendant, and the dispute. This is as it should be. Due process does not require that specific jurisdiction rest on a strict causal link between the defendant's forum-state contacts and the plaintiff's claims, and inventing such a

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[1] Petitioner has submitted a letter granting blanket consent to *amicus curiae* briefs, and Respondent has provided written consent for this brief. No party or counsel for a party authored this brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of this brief. The law schools employing *amici* provide financial support for activities related to faculty members' research and scholarship, which helped defray the costs in preparing this brief. Otherwise, no person or entity has made a monetary contribution intended to fund the preparation or submission of this brief.

requirement provides no new benefits, whether in terms of fairness or federalism. It would, however, generate needless inefficiencies, jeopardize states' well-accepted regulatory interests, and possibly result in claims that cannot be brought in *any* U.S. state.

This Court should decline to adopt Petitioner's proposal for three reasons.

First, this Court has never relied on a causation requirement to endorse—or reject—a state's exercise of personal jurisdiction over a defendant. In fact, doing so now would be inconsistent with this Court's most relevant precedent, *Bristol-Myers Squibb v. Superior Court of California*, 137 S.Ct. 1773 (2017), which supports finding specific jurisdiction to adjudicate these claims by forum-state residents arising out of an occurrence in the forum state.

Second, changing course now by adopting a causation requirement would lead to disruptive and inefficient results in both simple and complex litigation. A causal test would break up single disputes, like that arising out of Adam Bandemer's car accident, across multiple state courts. It would make it harder for defendants to implead additional parties, for example, if Bandemer had sued the other driver, and he, in turn, wanted to bring in Ford as a third-party defendant. And it could result in no state having jurisdiction over foreign defendants like Honda that extensively market and sell products nationwide, even if the claim arises from an in-state injury.

A causation rule would also misallocate jurisdiction across the states. It would prevent states with core regulatory interests—over injuries to state residents occurring within the state and over products sold widely in the state's market—from adjudicating those

claims while forcing such litigation into state courts that have professed little interest in them. Both Delaware and Michigan courts, for example, have dismissed similar cases for *forum non conveniens*, and both have expressed concern about such general jurisdiction cases clogging their dockets.

These problems would follow from any causation rule, but they would be needlessly compounded if the Court adopted Petitioner's preferred proximate-cause rule. Indeed, it is not clear that under Petitioner's proximate-cause rule, the plaintiffs could have brought their lawsuits in their home jurisdictions *even if* the cars involved had been purchased within the state.

This Court need not take these risks in order to promote fairness and federalism values. Petitioner has not even argued that Minnesota or Montana is an unfair place to litigate. To the extent that Petitioner's concern is being haled into an inconvenient or unpredictable forum, those concerns are already addressed by this Court's requirements that the defendant make purposeful contacts with the forum and that any exercise of personal jurisdiction be reasonable.

Third and finally, Petitioner's call for a supposedly bright-line rule is inconsistent with this Court's tried and true path of developing the law of specific jurisdiction cautiously on a case-by-case basis. While bright lines might make sense for subject-matter jurisdiction or general jurisdiction, they are a bad fit for the constitutional law of specific jurisdiction. And the supposedly bright-line rule proposed here is even worse, as it undermines the very values of fairness and federalism it purports to protect. Introducing a causation requirement into the specific jurisdiction analysis would not just flout a century of constitutional law—it would draw lines in all the wrong places.

ARGUMENT

I. RECOGNIZING JURISDICTION IN THESE CASES IS CONSISTENT WITH THIS COURT'S PERSONAL JURISDICTION DECISIONS.

This Court's prior decisions support a finding of personal jurisdiction here. In *Bristol-Myers Squibb Co. v. Superior Court of California*, the Court applied the "settled principle[]" that specific personal jurisdiction requires "an affiliation between the forum and the underlying controversy." 137 S.Ct. 1773, 1781 (2017). That connection was missing in *Bristol-Myers*. There, plaintiffs were not forum-state residents and were not injured in the forum state. Here, however, plaintiffs are forum-state residents, the accident that gave rise to the lawsuit occurred in the forum state, and the plaintiffs suffered injuries in the forum state.

Prior decisions have never suggested the strict causation requirement Petitioner seeks here. Indeed, the Court declined an invitation by the same counsel to adopt a causation test just three terms ago in *Bristol-Myers*—and for good reason. Such a requirement would be inconsistent with this Court's longstanding approach to personal jurisdiction.

A. Existing Case Law Supports Specific Jurisdiction In These Cases.

This Court's only case to squarely address the meaning of "arises out of or relates to" in the specific personal jurisdiction analysis, *Bristol-Myers*, supports finding jurisdiction here.

As this Court clarified in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011), and *Daimler AG v. Bauman*, 571 U.S. 117 (2014), a state

court's exercise of personal jurisdiction may be general or specific. While general jurisdiction is "all-purpose," specific jurisdiction is "case-linked." *Goodyear*, 564 U.S. at 919.[2]

Specific jurisdiction has three requirements: First, the defendant must "purposefully avail itself of the privilege of conducting activities within the forum State." *Goodyear*, 564 U.S. at 924 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). Second, the plaintiff's claim must "arise[] out of or relate[] to the defendant's contacts with the forum." *Id.* at 923–24; *see also Bristol-Myers*, 137 S.Ct. at 1780. And, third, the exercise of jurisdiction cannot be unreasonable under the circumstances. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477–78 (1985). Petitioner does not dispute that it has purposefully availed itself of both Montana and Minnesota or argue that those states' exercise of jurisdiction would be unreasonable. Pet. Br. 6, 17. Thus only the second of these requirements—which, for simplicity, we call the "nexus" requirement—is at issue in these cases.

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[2] In *Goodyear*, there was no specific jurisdiction over the defendant for two reasons. First, "the episode-in-suit, the bus accident, occurred in France," and second, "the tire alleged to have caused the accident was manufactured and sold abroad." *Goodyear*, 564 U.S. at 919. The first fact distinguishes *Goodyear* from these cases and undermines the Solicitor General's reliance on *Goodyear* (U.S. Br. 11). Indeed, this Court in *Daimler* hypothesized that cases like these *would* be appropriate for specific jurisdiction. *See* 571 U.S. at 127, n.5 ("[I]f a California plaintiff, injured in a California accident involving a Daimler-manufactured vehicle, sued Daimler in California court alleging that the vehicle was defectively designed, that court's adjudicatory authority would be premised on specific jurisdiction.").

In assessing the nexus requirement, it is helpful to begin by identifying the precedents that matter. Cases predating *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), are of little help, and the Solicitor General's cherry-picking of a single case is (at best) misleading. *See* U.S. Br. at 10–11.[3] Cases between *International Shoe* and *Goodyear* are less helpful than one might think. Many cases that might have addressed the nexus requirement were handled during that period as unremarkable exercises of general

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[3] The Solicitor General asserts that *Old Wayne Mutual Life Ass'n v. McDonough*, 204 U.S. 8 (1907), tells us something about cases where the defendant had other in-state sales, U.S. Br. at 19, but the only discussion of in-state business in *Old Wayne* was hypothetical, and the holding assumed that *no* relevant business was transacted in the forum state. 204 U.S. at 19–23. Furthermore, any implication that *Old Wayne* ruled out jurisdiction for claims arising from out-of-state sales is belied by another case cited by *International Shoe* in the same paragraph. *See Int'l Shoe*, 326 U.S. at 317. In *Pennsylvania Lumbermen's Mutual Fire Insurance Co. v. Meyer*, 197 U.S. 407 (1905), this Court held that New York had jurisdiction over an out-of-state insurance company regarding a policy executed out of state in part because the claim related to a fire that occurred in New York, and in part because other policies held by other New York residents accounted for a third of the out-of-state company's business. *Id.* at 414–19. So if this Court wanted to follow cases cited in *International Shoe*, then *Pennsylvania Lumbermen's* is as good a precedent as any other.

But the better course would be to hew to modern jurisprudence reflecting *International Shoe*'s analytical paradigm. Indeed, almost 70 years ago, this Court expressly cautioned against relying on *Old Wayne* to assess personal jurisdiction. *See Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 443–44 (1952) (suggesting that *Old Wayne* is best understood as a "notice" case); *id.* at 444 (observing that *Old Wayne* was based on a conception of the Due Process Clause that "has been modified by the rationale adopted in later decisions and particularly in *International Shoe* . . . .").

(doing business) jurisdiction.[4] Cases that did address specific jurisdiction—including those on which Petitioner relies heavily—turned on the insufficiency of defendants' purposeful contacts with the forum, rather than on the nexus between those contacts and the litigation.[5]

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[4] For example, in *World-Wide Volkswagen Corp. v. Woodson*, while this Court held that the New York-based dealer and distributor had not purposefully availed themselves of Oklahoma, no one doubted that the German manufacturer and national importer were subject to Oklahoma's jurisdiction, even though the specific car at issue had been purchased in New York. 444 U.S. 286, 297 (1980); *see also J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 907 (2011) (Ginsburg, J., dissenting) ("[A]n objection [in *World-Wide Volkswagen*] to jurisdiction by the manufacturer or national distributor would have been unavailing"). Moreover, many cases assumed the existence of general jurisdiction under a "doing business" theory without considering whether specific jurisdiction was available. *See, e.g.*, *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 317 & n.23 (1981) (noting that personal jurisdiction was "unquestioned" where defendant was "at all times present and doing business in" the forum state); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 799–801, 806 (1985) (considering defendant's challenge to jurisdiction over out-of-state plaintiff class members while assuming jurisdiction over out-of-state defendant with substantial operations in forum state); *Ferens v. John Deere Co.*, 494 U.S. 516, 519–20 (1990) (noting parties' agreement that defendant "was a corporate resident" of the forum state); *see also Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415–16 & n.10 (1984) (considering only whether defendant's contacts with Texas gave rise to general jurisdiction).

[5] Petitioner repeatedly cites *Walden v. Fiore*, 134 S.Ct. 1115, 1124 (2014), but the Court found no specific jurisdiction there because the defendant lacked *any* purposeful contacts with the forum. *Id.* at 1124 (concluding that defendant "formed no jurisdictionally relevant contacts with" the forum state); *see also Rush v. Savchuk*, 444 U.S. 320, 332 (1980) ("[T]he defendant has no contacts with the forum."); *Kulko v. Superior Court of Cal.*, 436 U.S. 84, 94 & n.7 (1978); *Hanson*, 357 U.S. at 251, 253. In such cases,

Indeed, this Court's only case squarely addressing whether a claim "arose out of or related to" a defendant's undoubtedly purposeful contacts with a forum is *Bristol-Myers*.

In *Bristol-Myers*, there was no question that the defendant had purposefully availed itself of the forum state by marketing and selling its drug Plavix there. But the Court held that California did not have personal jurisdiction over the defendant with respect to nonresident plaintiffs' claims where "the nonresidents were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California." 137 S.Ct. at 1781. Petitioner seeks to draw a straight line from *Bristol-Myers* to these cases in urging the Court to require a strict causal connection between the defendant's purposeful availment of the forum and the claim. But *Bristol-Myers* did not take that approach and does not require it; to the contrary, the case supports finding specific jurisdiction here.

This Court in *Bristol-Myers* repeatedly emphasized that there was no jurisdiction with respect to the nonresidents' claims because there was no forum-state activity or occurrence. *Id.* at 1780 ("[T]here must be 'an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.'") (quoting *Goodyear*, 564 U.S. at 919); *id.* at 1781 (quoting the same language). Unlike *Bristol-Myers*, the central occurrences

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there was no need to consider how the defendant's non-existent contacts might be related to the cause of action.

giving rise to these suits against Ford—the car accidents—occurred in the forum states.[6]

In addition, this Court stressed in *Bristol-Myers* that the plaintiffs there were not residents of the forum state and were not injured in the forum state. *See id.* at 1781 (finding no jurisdiction because "the nonresidents were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California"); *id.* at 1782 ("The relevant plaintiffs are not California residents and do not claim to have suffered harm in that State."). These cases, by contrast, were brought by forum-state residents for injuries sustained in the forum state.

Indeed, this Court in *Bristol-Myers* repeatedly emphasized that there was *no* connection whatsoever between the forum state and the rejected claims. *See*, *e.g.*, *id.* at 1781 ("What is needed—and what is missing here—is a connection between the forum and the specific claims at issue."); *id.* at 1782 ("[T]he connection between the nonresidents' claims and the forum is even weaker [than in *Walden*]"). The opposite is true in these cases.

In short, plaintiffs from all over the country in *Bristol-Myers* brought their claims in California because they thought it would be the friendliest forum. They

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[6] Although Petitioner cherry picks language from *Walden v. Fiore* to argue against specific jurisdiction, this Court's discussion of *Walden* in *Bristol-Myers* supports jurisdiction here. *Bristol-Myers* used *Walden* to "illustrate [the] requirement" of "a connection between the forum and the specific claims at issue." 137 S.Ct. at 1781. This connection was lacking in *Walden* because all relevant occurrences were outside of the forum state. But here, the *key* occurrence in each case—the car accident—was in the forum state.

sought to tie their claims to a handful of "anchor plaintiffs" in California in order to (in the words of that defendant) apply "least common denominator rules" to injuries suffered nationwide. Tr. of Oral Arg., *Bristol-Myers*, 137 S.Ct. 1773 (No. 16-466). But that sort of forum shopping is manifestly not what is going on in these cases. The plaintiffs here are not asking Minnesota and Montana to sit in judgment on Ford's nationwide conduct or to regulate "activities or occurrences" across the nation. *Cf. Bristol-Myers*, 137 S.Ct. at 1780. Instead, they are suing at home for injuries suffered in car accidents that occurred in the forum states.

Contrary to Petitioner's assertions, *Bristol-Myers* supports specific jurisdiction in these cases.

B. Existing Case Law *Does Not* Support A Causation Requirement.

This Court's prior decisions also provide guidance through what they have *not* done: In seventy-five years of modern personal jurisdiction analysis, this Court has never stated a requirement that a defendant's in-state contacts must have *caused* the plaintiff's injuries.

Instead, this Court has repeated that a suit must "arise out of or relate to the defendant's contacts with the forum." *Bristol-Myers*, 137 S.Ct. at 1780 (quoting *Daimler*, 571 U.S. at 127) (internal quotation marks and alterations omitted). In *Bristol-Myers*, the Court described the test as requiring "'an *affiliation* between the forum and the underlying controversy,'" which could include "an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Id.* (quoting *Goodyear*, 564 U.S. at 919) (emphasis added). The Court repeated its earlier statement that "specific jurisdiction is confined to adjudication

of issues *deriving from, or connected with,* the very controversy that establishes jurisdiction." *Id.* (quoting *Goodyear*, 564 U.S. at 919) (emphasis added).

Although Petitioner's counsel pressed the exact same causation argument before this Court when it was representing the petitioner in *Bristol-Myers*, the Court declined to adopt it. *See id.* at 1788 n.3 (Sotomayor, J., dissenting) ("Bristol-Myers urges such a rule upon us, Brief for Petitioner 14–37, but its adoption would have consequences far beyond those that follow from today's factbound opinion."). Instead, by consistently phrasing the nexus standard in the disjunctive (arise out of *or* relate to *or* are connected with), this Court has implicitly rejected calls for bright-line rules such as "proximate cause."

Nor can a causation requirement be inferred from this Court's references to "predictability." *Cf.* Pet. Br. 14, 17, 26–30. To the contrary, this Court has already expressly incorporated predictability into the minimum-contacts inquiry. Specific jurisdiction requires that "the defendant's *conduct and connection* with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (emphasis added); *accord Calder v. Jones*, 465 U.S. 783, 790 (1984); *Burger King*, 471 U.S. at 474. This Court has required that the defendant "purposefully avails" itself of the forum state, *Burger King*, 471 U.S. at 475 (quoting *Hanson*, 357 U.S. at 253); *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 877 (2011) (plurality); *id.* at 888–91 (Breyer, J., concurring), and has declined to find jurisdiction based on "random, fortuitous, or attenuated contacts," *Walden v. Fiore*, 134 S.Ct. 1115, 1123 (2014), or the "unilateral activity of another party or a third person," *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 417 (1984); *accord Walden*, 134 S.Ct. at 1123; *Burger*

King, 471 U.S. at 475. This requirement of *purposeful* contacts with a forum that also *relate* to the cause of action—even without a strict causation requirement—ensures a defendant will have "clear notice that it is subject to suit there" and allow it "to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State." *World-Wide Volkswagen*, 444 U.S. at 297.

These cases exemplify the predictability of the existing law of specific jurisdiction. Ford cannot have been surprised by where it was sued in these cases. Quite unlike the local dealer and distributor in *World-Wide Volkswagen*, Ford's conduct and connection with Minnesota and Montana "are such that [it] should reasonably anticipate being haled into court there" for causes of action based on car accidents that occur in the forum state. 444 U.S. at 297. Respondents are not trying to sue Ford in Minnesota and Montana for accidents that occurred in France, *cf. Goodyear*, 564 U.S. at 919, or human-rights violations in Argentina, *cf. Daimler*, 571 U.S. at 120–21. It was entirely predictable that plaintiffs who are injured in car accidents in Minnesota and Montana involving defective Ford cars would sue Ford in Minnesota and Montana—states in which Ford sold hundreds of thousands of cars in the years leading up to these accidents. *See* JA 100 (Ford sold approximately 200,000 cars in Minnesota between 2013 and 2015); *see also* JA 102 (Ford has 84 franchised dealers in Minnesota); *Ford Motor Co. v. Mont. Eighth Judicial Dist.*, 443 P.3d 407, 414 (2019) (Ford has 36 franchised dealers in Montana). If Ford wishes to reduce its exposure to car-accident suits in Montana and Minnesota, it could stop purposefully availing itself of those markets by ceasing to sell cars in those states. *See World-Wide Volkswagen*,

444 U.S. at 297 ("[A] corporation . . . can act to alleviate the risk of burdensome litigation by . . . severing its connection with the state."). Ford has not chosen that route.

In sum, a causation test is at odds with seventy-five years of modern personal jurisdiction law. Settled principles support finding specific jurisdiction here.

II. PETITIONER'S PROPOSED CAUSATION RULE WOULD BE UNNECESSARILY DISRUPTIVE IN BOTH SIMPLE AND COMPLEX LITIGATION.

Petitioner's proposed causation rule—particularly its suggestion of a "proximate cause" requirement—would unsettle accepted practice in both simple and complex cases. It would inefficiently split up cases while undermining traditional state regulatory interests, all while doing nothing to further the values of fairness and federalism that have driven this Court's specific jurisdiction jurisprudence.

A. The Court Should Reject Petitioner's Proximate-Cause Requirement.

Petitioner suggests that a causation test—in particular a proximate-cause requirement—ensures "predictability" and "is administrable." Pet. Br. 14. Neither is true. Any first-year law student can attest to the difficulty of defining "proximate cause." *See, e.g.*, Palsgraf v. Long Island R. Co., 162 N.E. 99, 103 (N.Y. 1928) (Andrews, J., dissenting) ("'[P]roximate' [means] that, because of convenience, of public policy, of a rough sense of justice, the law arbitrarily declines to trace a series of events beyond a certain point. That is not logic. It is practical politics."). As courts have noted in many contexts, "the principle of proximate cause is hardly a rigorous analytic tool." *Blue Shield of*

Va. v. McCready, 457 U.S. 465, 477 n.13 (1982); *see also id.* at 478 (calling proximate cause "elusive"); *McBride v. CSX Transp., Inc.*, 598 F.3d 388, 393 n.3 (7th Cir. 2010), *aff'd*, 564 U.S. 685 (2011) ("The term 'proximate cause' does not easily lend itself to definition."); W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 41 at 263 (5th ed. 1984) ("There is perhaps nothing in the entire field of law which has called forth more disagreement, or upon which the opinions are in such a welter of confusion [as defining 'proximate cause']. Nor, despite the manifold attempts which have been made to clarify the subject, is there yet any general agreement as to the best approach." (footnote omitted)).

Petitioner has offered little guidance as to how this tort-law concept might be translated into the trans-substantive law of personal jurisdiction. Is there daylight between the proximate cause of a claim and the proximate cause of an injury? Would a ruling on causation for jurisdictional purposes settle the merits question of causation? Importing a proximate-cause requirement into the constitutional law of personal jurisdiction would encourage artful pleading, needlessly complicate jurisdictional determinations, and draw judges into factfinding that is more appropriate for juries.

A proximate-cause requirement would also significantly narrow the current scope of personal jurisdiction. Under existing precedent, there is no doubt that Ford would be subject to personal jurisdiction for the harms alleged in these cases if the Ford vehicles had initially been purchased in Minnesota or Montana. But Petitioner does not explain whether or how even an *in-state sale* would satisfy a proximate-cause requirement. That is, would the in-state sale of a car be the "proximate

cause" of a crash resulting from a design or manufacturing defect? Or would a plaintiff like Bandemer have to sue in Michigan (where the model was designed, Pet. Br. 8) or Canada (where the car was assembled, *id.*), *even if* the particular Crown Victoria in which he was riding had been purchased initially in Minnesota?

B. The Court Should Reject Any Causation Requirement.

Anticipating that this Court will again reject its pleas for a proximate-cause test, Petitioner's fallback position is to argue for an unspecified causation standard. This Court should not be lulled into a false sense of security—*any* causation requirement (proximate or otherwise) would increase inefficiencies and risk unfairness for both plaintiffs and defendants without furthering the rational allocation of jurisdiction among the states. It thus fails both "functions" of the Due Process Clause's limit on state jurisdiction: fairness and federalism. *See Bristol-Myers*, 137 S.Ct. at 1780–81; *World-Wide Volkswagen*, 444 U.S. at 291–92.

1. Any Causation Requirement Would Be Disruptive And Inefficient.

Any causation requirement would divest state courts of jurisdiction over cases implicating the state's core regulatory interests. Imagine that Gullett's case were brought not by the driver of the car, but by a pedestrian—a Montana resident with no out-of-state contacts—who was struck by the car because of a mechanical failure. Montana undoubtedly has an interest in protecting its citizens from defective cars driven on its roads by affording them a forum in which to sue. Yet despite Ford's extensive marketing and sales of identical defective cars in Montana,

a causation standard could preclude the Montana pedestrian from suing Ford in her home state's courts because of the bad luck of being struck by a used car rather than a new one. Not only does this undermine Montana's interests, but it runs counter to the century-long trend in state product-liability law to allow plaintiffs injured by defective products to recover from the manufacturer whether or not they had any connection to the original purchase and sale of the product. *See, e.g.*, 63 Am. Jur. 2d Products Liability §§ 407–08 (Feb. 2020 update). Thus, Petitioner's proposed rule would, in effect, reintroduce the outmoded privity requirement to product-liability law, only through the constitutional law of Due Process instead of state common-law or statutory development. *See* Alexandra D. Lahav, *The New Privity*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3413349.

A causation rule may create additional practical difficulties for such an innocent bystander, who is unlikely to know before suing that the car was second-hand, much less where it was originally sold or where its component parts were manufactured. Under Petitioner's rule, the pedestrian will require discovery to determine where exactly the car maker can be sued—if it can be determined at all.

The problems with a causation requirement multiply when joinder rules are taken into account. In this very case, Bandemer has also sued the car's owner and driver, who are Minnesota residents. No other state would have personal jurisdiction over these individual defendants regarding this accident. If a causation rule were adopted as Ford proposes, Bandemer's suit—along with many others—would be split up, requiring

separate suits in separate states regarding the *same* accident.[7]

For the same reason, defendants will find it more difficult to implead third-party defendants for contribution. Impleader—like joinder—helps avoid inconsistent judgments, duplicative efforts, and unnecessary delay. *See* Wright & Miller, 6 Fed. Prac. & Proc. Civ. § 1442 (3d ed.). It ensures both fairness to defendants and judicial economy, values that would be needlessly undermined by Petitioner's causation rule. Recall that Bandemer was a passenger in a car that rear-ended a county snowplow. Pet. Br. 8. If Bandemer had sued the snowplow driver or the county itself, neither defendant would be able to implead Ford under Petitioner's rule even if they believed a product defect contributed to Bandemer's injury.[8]

Further complications arise if the defendant is a foreign corporation. If Bandemer had been a passenger in a used Honda, for example, there might be *no* U.S. court in which he could sue for a product defect that possibly affects thousands of identical vehicles in his state. No state has general jurisdiction over a foreign corporation. The car might have been

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[7] *Bristol-Myers* involved the aggregation of many plaintiffs' claims regarding their individual injuries. A causation rule here would break up a *single* plaintiff's claims involving a *single* occurrence into multiple suits in multiple states.

[8] To be sure, all of the potential parties to a dispute cannot always be joined in a single lawsuit, even if a single suit would be the most efficient. *See Rush*, 444 U.S. at 332. But Petitioner's rule would transform *Rush* from a sensible due-process principle into a cleaver that would slice and dice countless run-of-the-mill lawsuits even where, as here, defendants do not contest the fairness of being haled into the forum where the injury occurred.

designed and manufactured in another country. And it might have been sold initially in Ontario, just over the border from Minnesota.[9]

A causation requirement also would add uncertainty to jurisdictional questions in cases beyond product liability, such as contract disputes, state antitrust laws, false-marketing claims, internet transactions, and family law. What "causes" a contract claim, for example? Did Rudzewicz's contacts in Florida "cause" Burger King's claims in *Burger King*—or was the breach of contract caused by his conduct in Michigan? For an antitrust claim, is the only state with jurisdiction the state where the price-setting took place? Or is the harm "caused" wherever the product is sold? Neither Petitioner nor the Solicitor General has grappled with the application of a causation rule to non-tort lawsuits.

Not only would Petitioner's causation requirement cause significant disruption and multiply litigation, it also is not necessary to protect federalism or fairness interests. Although it is barely mentioned in Petitioner's brief, the Due Process Clause already requires that the exercise of personal jurisdiction be reasonable, *even if* minimum contacts exist. *See*, *e.g.*, *Burger King*, 471 U.S. at 476. The reasonableness factors can account for cases of undue burden on defendants and attenuated state regulatory interests. In *Asahi Metal Industry Co. v. Superior Court of California*, for example, this Court found California's assertion of jurisdiction to be

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[9] According to the U.S. Department of Commerce, in 2019 some 53,652 used cars were imported into the United States, 21,184 of which came from Canada. *See* U.S. Imports of Used Passenger Vehicles, U.S. Department of Commerce Int'l Trade Admin., Office of Transp. & Machin. (2020), https://legacy.trade.gov/td/otm/assets/auto/Used_Passenger_Imports.pdf.

unreasonable in a case that ultimately involved two non-residents of California, in which California law was unlikely to apply, and where the burden on the defendant of litigating in California would be heavy. 480 U.S. 102, 116 (1987).[10]

Even when personal jurisdiction is appropriately exercised, fairness and federalism interests are further protected through other doctrines. *See Burger King*, 471 U.S. at 477 (noting that unfairness related to the plaintiff's choice of forum "usually may be accommodated through means short of finding jurisdiction unconstitutional"). *Forum non conveniens* permits courts to dismiss cases in especially inconvenient forums. *See, e.g.*, *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981). Constitutional limitations on choice of law prohibit states from applying their laws without a sufficient connection to the dispute. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821–22 (1985). And state choice of law rules (even when they vary) seek to identify the most appropriate law for a dispute and prevent forum shopping. *See Burger King*, 471 U.S. at 477 (noting that "the potential clash of the forum's law with the 'fundamental substantive social policies' of another State may be accommodated through application of the forum's choice-of-law rules.").

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[10] Contrary to the Solicitor General's suggestion, U.S. Br. 9–10, *Asahi* did not define the nexus element as requiring sale in the forum. Indeed, no Justice in *Asahi* thought the lack of jurisdiction there hinged on the nexus requirement. Justice O'Connor's opinion cited the lack of purposeful availment, and Justice Brennan's and Justice Stevens's faulted the unreasonableness of recognizing jurisdiction. *Asahi*, 480 U.S. at 112–13 (opinion of O'Connor, J.); *id.*, at 116–17 (Brennan, J., concurring in part and concurring in judgment); *id.* at 121–22 (Stevens, J., concurring in part and concurring in judgment).

In short, Petitioner's causation rule would sacrifice efficiency without any offsetting benefit in terms of fairness or federalism.

2. Any Causation Requirement Would Undermine Federalism By Misallocating Jurisdiction Among The States.

Petitioner argues that a causation rule would help "allocate[] jurisdiction among the States in our federal system." Pet. Br. 14. That may be so, in the same sense that drawing lots or dividing cases alphabetically could allocate jurisdiction. But there is nothing to suggest that Petitioner's rule leads to the correct allocation. A causation requirement would deprive states of jurisdiction over core regulatory interests while "allocating" cases to the courts of other states that may reasonably not wish to hear them.

States have a well-recognized interest in providing a forum for their citizens to seek redress, even when their injuries are caused by out-of-state corporations acting out of state. *See Alaska Packers Ass'n v. Indus. Accident Comm'n*, 294 U.S. 532, 542–43 (1935). A causation rule for jurisdiction will jeopardize the valid interests of states like Montana and Minnesota in providing forums for their residents who are harmed in their jurisdictions by products that are widely advertised, sold, and used in their states. Indeed, this Court in *World-Wide Volkswagen* explained, "if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others." 444 U.S. at 297.

If plaintiffs were unable to sue in the state of the occurrence and their domicile, they would be left to sue in states with far more attenuated interests in the litigation, if any at all. For instance, if Bandemer may not sue in Minnesota, his choices would presumably be North Dakota, where the car was initially sold some twenty-one years before the accident; Delaware, where Ford is incorporated; or Michigan, where Ford is based.[11] Allocating jurisdiction to these states to the exclusion of Minnesota makes no sense from a federalism perspective.

North Dakota, for its part, has virtually no interest in this case. It would most likely apply Minnesota law to the dispute, given Minnesota's significantly greater connection to both the parties and the occurrence. *See, e.g.*, *Issendorf v. Olson*, 194 N.W.2d 750, 751 (N.D. 1972) (adopting "significant contacts" test for choice-of-law rule). In fact, North Dakota has so little interest in regulating the point of sale for vehicles that it has, like many other states, immunized car dealers from product liability suits. *See, e.g.*, NDCC, 28-01.3-04; *see also* Brief for Minnesota, Texas, and Other States.

Similarly, Delaware, where Ford is subject to general jurisdiction, has little interest in this litigation. Precisely because Minnesota's interest in Bandemer's suit is so strong, a Delaware court might well dismiss the suit for *forum non conveniens*. Delaware *forum non coveniens* doctrine considers:

> (1) the relative ease of access to proof; (2) the availability of compulsory process for witnesses; (3) the possibility of the view of the premises;

[11] The other possibility—where the car was manufactured—would require Bandemer to sue Ford outside the United States. Pet. Br. 8 (noting car was assembled in Ontario, Canada).

> (4) whether the controversy is dependent upon the application of Delaware law. . .; (5) the pendency or nonpendency of a similar action or actions in another jurisdiction; and (6) all other practical problems that would make the trial of the case easy, expeditious and inexpensive.

Martinez v. E.I. DuPont De Nemours & Co., 86 A.3d 1102, 1104 (Del. 2014). The first five factors all point to the state where the accident occurred. *See id.* at 111 (emphasizing "the reality that plaintiffs who are not residents of Delaware, whose injuries did not take place in Delaware, and whose claims are not governed by Delaware law have a less substantial interest in having their claims adjudicated in Delaware" (footnotes omitted)); *see also Bell Helicopter Textron, Inc. v. Arteaga*, 113 A.3d 1045 (Del. 2015) (noting that the defendant's mere incorporation in Delaware is not enough to satisfy the "most significant relationship" test for applying Delaware law). And in regard to the sixth, catch-all factor, Delaware courts have reasoned that Delaware's interest in cases involving Delaware corporations is weaker when the claims involve out-of-state torts, as compared to commercial or corporate disputes.[12]

Indeed, since *Daimler*, the Delaware Supreme Court has clarified that cases against Delaware corporations can be dismissed *even if* there is no available alternative

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[12] *See Schmidt v. Wash. Newspaper Publ'g Co.*, 2019 WL 4785560, at *8 (Del. Super. Ct. Sept. 30, 2019), *amended on reconsideration*, 2019 WL 7000039 (Del. Super. Ct. Dec. 20, 2019); *Hall v. Maritek Corp.*, 170 A.3d 149, 160 (Del. Super. Ct. 2017), *aff'd*, 182 A.3d 113 (Del. 2018); *see also id.* ("Delaware incorporation does not preclude dismissal on *forum non conveniens* grounds.").

forum that could hear the case. *Aranda v. Philip Morris USA Inc.*, 183 A.3d 1245, 1254–55 (Del. 2018); *see also id.* at 1253 ("Delaware has no real connection to the dispute except for the defendants' place of incorporation. It is not unfair to suggest that, rather than *requiring* cases to proceed in Delaware in the absence of an alternative forum, the Superior Court should consider, on a case-by-case basis, whether the court's resources should be deployed to resolve cases with little connection to Delaware.").[13] In short, as specific jurisdiction is constricted, plaintiffs will increasingly turn to states, such as Delaware, with general jurisdiction over corporate defendants. But it is not at all clear that those states want—or can afford—the increase in caseload.[14]

Then there is Michigan, Ford's principal place of business. Like Delaware, Michigan might very well

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[13] Delaware is not alone in this regard; New York similarly allows *forum non conveniens* dismissals in the absence of an alternative forum. *See Islamic Republic of Iran v. Pahlavi*, 467 N.E.2d 245, 249–50 (1984).

[14] *See, e.g.*, *Aranda* 183 A.3d at 1253 (worrying about increase in general jurisdiction cases that "are complex and strain judicial resources"); *Martinez v. E.I. DuPont De Nemours & Co.*, 82 A.3d 1, 38 (Del. Super. Ct. 2012), *aff'd*, 86 A.3d 1102 (Del. 2014), (noting "the burden that is placed upon the limited resources of the Superior Court when it is required to adjudicate asbestos cases involving plaintiffs from all fifty states with little or no connection to this forum" and acknowledging "the fact that the citizens of Delaware have to shoulder the expense and strain on its judges and juries by the onslaught of additional foreign cases that have no other connection to Delaware than the mere residency of their parent corporation"); *Radeljak v. Daimlerchrysler Corp.*, 719 N.W.2d 40, 45–46 (Mich. 2006) (per curiam) ("If every automotive design defect case against Michigan-based automobile manufacturers must be heard in Wayne County . . ., there will certainly be increased congestion in an already congested local court system.").

dismiss the case on *forum non conveniens* grounds.[15] If Michigan does exercise jurisdiction, it is possible that Michigan might attempt to vindicate Minnesota's interest by applying Minnesota law—but history suggests otherwise. Michigan's choice-of-law rule is *lex fori*, meaning there is a strong presumption in favor of applying Michigan law. *Sutherland v. Kensington Truck Serv., Ltd.*, 562 N.W.2d 466, 471 (Mich. 1997); *see also Gaillet v. Ford Motor Co.*, No. 16-13789, 2017 WL 1684639, at *6 (E.D. Mich. 2017) (applying Michigan's law barring punitive damages because of its "substantial interest in applying [its law] because Defendant is one of its corporate domiciliaries"). Perhaps unsurprisingly, Michigan's products-liability law is remarkably defendant-friendly.[16]

It is therefore readily apparent why Ford would prefer a rule in cases such as these that would force

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[15] Petitioner has repeatedly convinced Michigan courts to dismiss suits for *forum non conveniens* when plaintiffs' injuries occurred in other states. *See, e.g.*, *Cyr v. Ford Motor Co.*, 2019 WL 7206100, at *4 (Mich. Ct. App. Dec. 26, 2019) (per curiam) (granting Ford's motion to dismiss); *Hernandez v. Ford Motor Co.*, 760 N.W.2d 751, 754–58, 763 (Mich. Ct. App. 2008) (per curiam) (remanding with instructions to dismiss despite doubts as to Mexico's jurisdiction over Ford); *Catchings v. Ford Motor Co.*, 1996 WL 33349434, at *1 (Mich. Ct. App. Oct. 11, 1996) (per curiam) (granting Ford's motion to dismiss where injury occurred in Louisiana); *McLarty v. Kubota Tractor, Ltd.*, 433 N.W.2d 344, 346 (1988) (affirming dismissal on Ford's motion where Illinois resident was injured in Illinois by equip-ment originally purchased in Virginia). It does not matter, for purposes of Michigan's *forum non conveniens* analysis, that the defendant (Ford) is based in Michigan. *See, e.g.*, *Radeljak*, 719 N.W.2d at 43.

[16] Michigan, for instance, has not adopted a strict-liability rule for products cases. *Prentis v. Yale Mfg. Co.*, 365 N.W.2d 176, 181 n.5 (Mich. 1984). It also strictly caps compensatory damages and bans punitive damages. Mich. Comp. Laws Ann. § 600.2946a.

more cases to be filed in Ford's home state of Michigan. Ford is seeking to shift cases away from states with regulatory interests to one with a deregulatory interest. *See Kelly v. Ford Motor Co.*, 933 F. Supp. 465, 471 (E.D. Pa. 1996) ("By insulating companies such as Ford, who conduct extensive business within its borders, Michigan hopes to promote corporate migration into its economy." (citations omitted)). The result is the one this Court rejected in *Bristol-Myers*: There, the Court was concerned that California was asserting its law on a nationwide basis on behalf of non-resident plaintiffs. Here, if Petitioner's causation rule were adopted, Michigan would be asserting its law on a nationwide basis against non-resident plaintiffs.

This is not just a story about Michigan. If the Court were to adopt a causation rule for specific jurisdiction, it would create perverse incentives for general jurisdiction states and spark a race to the bottom. If this Court constricts specific jurisdiction—particularly in states with the strongest interest in seeing injuries to their citizens remedied—more suits will have to be brought in the states where defendants choose to incorporate and locate their principal place of business. Some states, in turn, may adjust their choice-of-law rules and substantive law in order to shield their local businesses, resulting in a mirror image of the imperialism and overreaching that the Court rejected in *Bristol-Myers*.

III. THE COURT SHOULD CONTINUE TO DEVELOP SPECIFIC-JURISDICTION LAW GRADUALLY, IN KEEPING WITH ITS CONSTITUTIONAL IMPLICATIONS.

This Court has consciously developed the law of specific jurisdiction in a flexible and case-by-case manner, eschewing bright-line rules that might

appear to make sense in one context but turn out to wreak havoc in another. That course is the right one to follow here.

As *International Shoe* explained, the personal jurisdiction inquiry "cannot be simply mechanical or quantitative." 326 U.S. at 319. Since that decision in 1945, flexibility has been the hallmark of this Court's specific jurisdiction jurisprudence. This flexibility has allowed the courts to "clarify the contours of" personal jurisdiction through deliberate, case-by-case "judicial exposition" in "common-law fashion." *Nicastro*, 564 U.S. at 885 (plurality); *see also id.* at 891–92 (Breyer, J., concurring). That gradual approach to defining the outer bounds of states' power within our constitutional system is critical for avoiding unintended and potentially significant disruptions of state and federal adjudication. *Bristol-Myers* carried on that important tradition by applying "settled principles," 137 S.Ct. at 1781, rather than accepting that Petitioner's invitation to articulate a rigid new causation rule identical to the one proposed here.

Indeed, this Court relied on the flexibility of the specific-jurisdiction inquiry when it clarified in *Goodyear* and *Daimler* that general jurisdiction is limited to those forums where the defendant is essentially "at home." *See Daimler*, 571 U.S. at 132 n.9 ("'We do not need to justify broad exercises of [general] jurisdiction unless our interpretation of the scope of specific jurisdiction unreasonably limits state authority over nonresident defendants.'" (quoting Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610, 676 (1988)). Adopting Petitioner's strict causation requirement for specific jurisdiction on top of these more rigid rules of general jurisdiction would abandon the flexibility that has characterized the law of

personal jurisdiction since *International Shoe*. *See id.* at 132 ("[G]eneral and specific jurisdiction have followed markedly different trajectories post-*International Shoe*. Specific jurisdiction has been cut loose from *Pennoyer*'s sway, but we have declined to stretch general jurisdiction beyond limits traditionally recognized.").

Proceeding cautiously is all the more important when the Court is called upon to interpret the Constitution. A bright-line rule adopted too quickly could significantly curtail states' authority to hear cases they have been adjudicating since the time of *Pennoyer v. Neff*, 95 U.S. 714 (1877), leaving the states no practical recourse if they disagree. And a bright-line rule would disempower Congress from thoughtfully allocating jurisdiction between state and federal courts. *Cf.* Class Action Fairness Act of 2005 (CAFA), Pub. L. 109-2, 119 Stat. 4 (2005) (prescribing in significant detail which class actions are appropriately heard in federal rather than state courts).[17]

Petitioner and the Solicitor General quote *Hertz Corp. v. Friend*, 559 U.S. 77 (2010), for the proposition that bright-line rules are preferable for jurisdictional questions. Pet. Br. at 39–40 (quoting *Hertz*, 559 U.S. at 94); U.S. Br. at 21–22 (quoting *Hertz*, 559 U.S. at 94–96). *Hertz*, however, involved the subject matter

[17] Petitioner (Pet. Br. 16 n.1) and the United States (U.S. Br. 32–33) take comfort in noting that this case does not raise questions about the scope of specific personal jurisdiction under the Fifth Amendment. We agree that this Court has never defined a distinction, if any, between the Fifth and Fourteenth Amendments' Due Process Clauses, and it is not briefed in this case. Yet adopting Petitioner's causation rule without resolving it may have far-reaching and unanticipated repercussions for federal as well as state courts. This Pandora's box is another reason to tread cautiously here.

jurisdiction of the federal courts—a context where a bright line dividing federal and state authority is particularly important. More importantly, the Court in *Hertz* was interpreting a *statute* that Congress could amend if the Court's interpretation proved erroneous or ill-advised. Here, the Court is interpreting the Due Process Clause of the Fourteenth Amendment. Neither Congress nor state legislatures can step in if the Court's ruling turns out to be too rigid.[18]

This Court has never cited *Hertz* in the context of specific jurisdiction—with good reason. The only time this Court has cited *Hertz* in the context of personal (rather than subject-matter) jurisdiction, it was to highlight the predictability of common bases of *general* personal jurisdiction. *See Daimler*, 571 U.S. at 137. But *Daimler* itself emphasized that a different, more flexible type of analysis was required for *specific* personal jurisdiction. *See id.* at 127.

Since *International Shoe*, flexibility tempered by predictability and fairness has been the hallmark of this Court's specific jurisdiction precedents. Petitioner's purportedly bright-line causation rule would reverse that course with no accompanying benefits. Rather, upending seventy-five years of careful doctrinal development by requiring a finding of proximate cause as a *jurisdictional* prerequisite would spark a wildfire of new litigation.

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[18] Indeed, even in the context of federal subject matter jurisdiction, the Court has been careful not to read constitutional limitations too rigidly. It has instead saved bright-line rules, like the one in *Hertz*, for interpretations of statutory limits on federal jurisdiction. *Compare Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824), *and State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523 (1967), *with Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149 (1908), *and Strawbridge v. Curtis*, 7 U.S. (Cranch) 267 (1806).

CONCLUSION

This Court should affirm the decisions below.

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