No. 20-510

In the Supreme Court of the United States

IQVIA, INC.,
Petitioner,

v.

FLORENCE MUSSAT, M.D., S.C.,
Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether due process prohibits a federal court that has personal jurisdiction over named plaintiffs' federal-law claims in a class action from exercising jurisdiction over the class unless it conducts a separate, individual-by-individual jurisdictional analysis as to every absent class member.

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INTRODUCTION

It has long been the case that, when many people have a "common interest" in a dispute, courts may proceed even though a "number of those interested in the litigation" are not personally "within the jurisdiction" of the court. *Hansberry v. Lee*, 311 U.S. 32, 41 (1940). So long as a representative's claims are properly before the court, the court may (once certain prerequisites are met) decide the claims of those it represents "the same as if all were before the court." *Smith v. Swormstedt*, 57 U.S. 288, 303 (1853). For more than a century, an unbroken line of cases has recognized "the propriety and fitness" of a rule that the "rights and liabilities of all" may be resolved "by representation" in one centralized proceeding. *Id.*

The Seventh Circuit applied these longstanding and uncontroversial principles to an unremarkable context: a class action in federal court alleging federal consumer-protection claims. And, in line with this consensus, it held that where a federal district court concededly has personal jurisdiction over the named plaintiff's claims against the defendant, it need not undertake a separate, individualized jurisdictional inquiry as to each and every unnamed class member.

In doing so, the decision below broke no new ground. Indeed, petitioner IQVIA, Inc. admits that *no* appellate court has *ever* held to the contrary—or even acknowledged the possibility of a different rule. Instead, IQVIA urges this Court (at 25) to grant review to resolve what it characterizes as a "deep division in the district courts" following this Court's decision in *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017). But the district courts are not actually divided. Outside of the Northern District of Illinois, nearly all

district-court decisions since *Bristol-Myers* agree with the decision below. And even the minority of those that don't are vanishing. The Seventh Circuit's holding has abrogated the contrary Illinois decisions. The handful that remain are likely to meet the same fate once the Sixth and Ninth Circuits resolve the question in currently pending appeals.

So all that IQVIA has left as reason to grant review is the alleged conflict between the decision below and *Bristol-Myers*. But *Bristol-Myers* involved a coordinated mass action in California state court—it "neither reached nor resolved" how federal courts should analyze personal jurisdiction "in a Rule 23 class action." Pet. App. 10a. Moreover, this Court expressly described its holding in *Bristol-Myers* as a "straightforward application . . . of settled principles of personal jurisdiction." 137 S. Ct. at 1783. And, again, those "settled principles" have never been understood to bar a federal court's otherwise proper exercise of jurisdiction over class claims because the class happens to include out-of-state absent class members.

Finally, even if the question presented warranted review (and it does not), this case is a particularly weak vehicle. IQVIA continues to contest whether the named plaintiff has Article III standing to bring her claims. This appeal also arises in an interlocutory posture before any class has even been certified. And, because Justice Barrett was a member of the Seventh Circuit panel below, the full Court will be unable to weigh in on the personal-jurisdiction question even if it grants review. This Court should, therefore, deny the petition, allowing the question to percolate further in the lower courts.

STATEMENT

1. Respondent Florence Mussat is an Illinois physician doing business through an Illinois professional services corporation. Pet. App. 2a. Mussat received unsolicited advertising faxes—also known as "junk faxes"—from petitioner IQVIA, Inc., a Delaware corporation headquartered in Pennsylvania. Pet. App. 2a. Because these unsolicited faxes violated the Telephone Consumer Protection Act, 42 U.S.C. § 227, Mussat filed a federal class action in the Northern District of Illinois on behalf of all consumers who had received such junk faxes from IQVIA in the last four years. Pet. App. 2a.

2. IQVIA moved to strike portions of Mussat's class definition shortly after another district court purported to apply this Court's reasoning in *Bristol-Myers* to a federal class action. Pet. App. 15a, 17a; *see Practice Mgmt. Support Servs., Inc. v. Cirque Du Soleil, Inc.*, 301 F. Supp. 3d 840, 860–62 (N.D. Ill. 2018). In its motion, the company presented a similar argument, contending that the district court lacked personal jurisdiction over the non-Illinois members of the proposed nationwide class. Pet. App. 2a.

The district court granted IQVIA's motion. It did so based on its view that "*Bristol-Myers* holds that due process requires the defendant be subject to specific jurisdiction not only as to the named plaintiff's claims, but also as to the absent class members' claims." Pet. App. 25a. The court recognized that its reasoning would "bar[] nationwide class actions in fora where the defendant is not subject to general jurisdiction." Pet. App. 27a–28a.

3. After granting Mussat's Rule 23(f) petition for interlocutory appeal, the Seventh Circuit reversed. The opinion by Chief Judge Wood—joined by then-Judge Barrett and Judge Kanne—rejected IQVIA's argument

that, in federal court, "each unnamed member of the class must separately establish specific personal jurisdiction over a defendant." Pet. App. 10a.

"Before the Supreme Court's decision in *Bristol-Myers*," the court explained, "there was a general consensus that due process principles did not prohibit a plaintiff from seeking to represent a nationwide class in federal court, even if the federal court did not have general jurisdiction over the defendant." Pet. App. 6a. "Decades of case law" had held that the specific-jurisdiction inquiry in such class actions was "assessed only with respect to the named plaintiffs," not the absent class members. Pet. App. 6a–7a.

The Seventh Circuit held that this consensus remained intact after *Bristol-Myers* as well. That case involved a "coordinated mass action" in California state court, a state-law procedure that "permits consolidation of individual cases, brought by individual plaintiffs." Pet. App. 7a–8a. It "neither reached nor resolved" how specific jurisdiction should be analyzed "in a Rule 23 class action." Pet. App. 10a. And this Court had described its holding that the state courts did not have personal jurisdiction over the non-California plaintiffs' out-of-state claims as "a 'straightforward application . . . of settled principles of personal jurisdiction.'" Pet. App. 8a (quoting 137 S. Ct. at 1783). Yet accepting IQVIA's theory would, the Seventh Circuit observed, disrupt those "settled principles" by working "a major change in the law of personal jurisdiction and class actions." Pet. App. 14a.

Relying on this Court's precedents, the Seventh Circuit further explained that "absent class members are not full parties to the case for many purposes," including subject-matter jurisdiction and venue. Pet. App. 10a

(citing, *e.g.*, *Devlin v. Scardelletti*, 536 U.S. 1, 9–10 (2002); *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 566–67 (2005)). And the court could identify "no reason why personal jurisdiction should be treated any differently from subject-matter jurisdiction and venue: the named representatives must be able to demonstrate either general or specific personal jurisdiction, but the unnamed class members are not required to do so." Pet. App. 11a. The Seventh Circuit also rejected IQVIA's argument that Rule 4(k) constitutes "an independent limitation on a federal court's exercise of personal jurisdiction." Pet. App. 12a. That rule, the court explained, "addresses *how* and *where* to serve process; it does not specify on *whom* process must be served." Pet. App. 12a. As to that question, all that is required is that "the court has personal jurisdiction over the defendant with respect to the class representative's claim." Pet. App. 12a.

The Seventh Circuit denied IQVIA's petition for rehearing and rehearing *en banc*, with no judge requesting a vote. Pet. App. 31a.

REASONS FOR DENYING THE WRIT

I. There is no split on the question presented that warrants this Court's review.

Although IQVIA asserts (at 24) that "the lower courts sharply disagree on the proper interpretation of *Bristol-Myers* and need guidance now," the Seventh Circuit is the *only* federal court of appeal to have decided the question presented. Federal district courts have increasingly and overwhelmingly sided with the decision below. And the Sixth and Ninth Circuits are currently considering this very issue. At this time, there is simply no reason for this Court to weigh in.

A. IQVIA's first mention of the purported conflict in the lower courts does not come until two-thirds of the way through its petition. Pet. 24. That's because there is no meaningful division of authority on the question presented. Indeed, IQVIA concedes (as it must) that, apart from the Seventh Circuit here, *no* federal court of appeal has yet confronted the question whether *Bristol-Myers* requires absent class members to individually establish personal jurisdiction. *See id.* 24–27. The absence of a circuit split is reason enough to conclude that this Court's review is unwarranted—or, at the very least, premature.

But that is not all. The question presented by IQVIA's petition is not whether *Bristol-Myers* imposed *new* requirements on federal courts' exercise of jurisdiction in class actions—it's whether *due process* requires a federal court to separately evaluate its personal jurisdiction over the absent class members even where it indisputably has jurisdiction over the named plaintiff's claims. As IQVIA recognizes (at 8), this Court in *Bristol-Myers* expressly applied its "settled principles regarding specific jurisdiction." 137 S. Ct. at 1781. And if those "settled principles" barred federal courts from exercising personal jurisdiction over out-of-state absent class members in nationwide or multistate class actions, one would expect to find a decision saying so somewhere in the pages of the Federal Reporter. Yet IQVIA does not cite a single appellate case adopting this holding—or even acknowledging the possibility that personal jurisdiction might be lacking in this context.

There is no such case. For decades, courts have been in agreement that, in a case like this one—a class action in federal court—absent class members are irrelevant for

purposes of establishing personal jurisdiction. As the Seventh Circuit explained, "[b]efore the Supreme Court's decision in *Bristol-Myers*, there was a general consensus that due process principles did not prohibit a plaintiff from seeking to represent a nationwide class in federal court, even if the federal court did not have general jurisdiction over the defendant." Pet. App. 6a. Nor is there "any pre-*Bristol-Myers* decision holding that, in a class action where the defendant is not subject to general jurisdiction, specific jurisdiction must be established not only as to the named plaintiff(s), but also as to the absent class members." *Al Haj v. Pfizer Inc.*, 338 F. Supp. 3d 815, 818 (N.D. Ill. 2018). In other words, it's not just that the Seventh Circuit is the only appellate court to have considered the specific question presented—no circuit court has *ever* suggested that the Constitution requires an "absent-class-member-by-absent-class-member jurisdictional inquiry." *Id.* at 818–19.

B. Given the absence of a circuit split, IQVIA instead tries to claim that the "the deep division in the district courts" in the wake of *Bristol-Meyers* presents a cert-worthy conflict. Pet. 25. But, to the extent this so-called division even exists, it is not just lopsided but also disappearing. For both of these reasons, it does not warrant review.

First, IQVIA dramatically overstates the purported conflict. "Most courts have found that *Bristol-Myers Squibb* has no impact on class action practice," and that, therefore, the pre-existing consensus that federal courts need not individually inquire into absent class members' contacts with the forum state still applies. 2 William B. Rubenstein, Newberg on Class Actions § 6:26 (5th ed. 2020 update). In fact, one quantitative analysis found that, "[o]f

the sixty-four rulings to reach the question of [*Bristol-Meyers*'] application to out-of-state unnamed class members, fifty have held that the exercise of jurisdiction is permissible—a nearly four-to-one ratio in favor of exercising jurisdiction." Daniel Wilf-Townsend, *Did* Bristol-Myers Squibb *Kill the Nationwide Class Action?*, 129 Yale L.J. Forum 205, 208 (2019). The vast majority of district courts to have reached the question presented, in other words, have sided with the decision below.

Second, and more importantly, even this limited division is dissipating as the arguments on both sides are ventilated. Nearly all of the federal decisions that have applied *Bristol-Meyers* to require absent class members to demonstrate personal jurisdiction have "come from the Northern District of Illinois and build off each other." *Sotomayor v. Bank of Am., N.A.*, 377 F. Supp. 3d 1034, 1037 n.2 (C.D. Cal. 2019). In fact, the universe is narrower still: the bulk of these decisions have been authored by "two judges in the Northern District of Illinois." *Munsell v. Colgate-Palmolive Co.*, 463 F. Supp. 3d 43, 55 (D. Mass. 2020); *see, e.g.*, *Knotts v. Nissan N. Am., Inc.*, 346 F. Supp. 3d 1310, 1332 (D. Minn. 2018) (noting that, "[o]utside of Illinois, district courts have largely declined to extend [*Bristol-Myers*] to the class action context"); *Suarez v. Cal. Nat. Living, Inc.*, 2019 WL 1046662, at *6 n.4 (S.D.N.Y. Mar. 5, 2019) (observing that "[m]ost district courts have concluded *Bristol-Myers* does not apply to federal-court class actions, while a minority (principally in the Northern District of Illinois) have reached the opposition conclusion").

These Illinois district-court decisions, of course, "have been effectively abrogated by" the decision below. 4 Charles Alan Wright, Arthur R. Miller & Adam N.

Steinman, Federal Practice and Procedure: Civil § 1067.2 n.23.90 (4th ed. 2020 update); *see also Lacy v. Comcast Cable Commc'ns*, LLC, 2020 WL 1469621, at *2 (W.D. Wash. Mar. 26, 2020) ("The Seventh Circuit's recent holding is especially noteworthy because most district courts that have applied *Bristol-Meyers* to class actions have been from the Northern District of Illinois.").[1] So that leaves only a handful of rulings—three or four, all but one of which are unpublished—on the other side of the decision below. *See* Wilf-Townsend, *supra*, 129 Yale L.J. Forum at 229 n.48 (observing that, "if you remove the Northern District of Illinois's cases, there are three total" federal cases applying *Bristol-Myers* to absent class members). Such a thin, shallow split comes nowhere close to justifying this Court's review.

Perhaps most critically, these decisions all *pre-date* the Seventh Circuit's opinion in this case. IQVIA has not identified a single federal decision—and we have found none—issued in the eight months since the decision below that has held that absent class members, as opposed to named plaintiffs, must demonstrate that the court has personal jurisdiction over them. By contrast, a number of district courts have expressly relied on the decision below

[1] The Northern District of Illinois has since recognized that the Seventh Circuit's decision here "definitively held that unnamed class members are not required to demonstrate either general or specific personal jurisdiction" and "dictates the denial" of any motions to dismiss on that ground. *Antonicic v. HSBC Bank USA, N.A.*, 2020 WL 1503201, at *1 (N.D. Ill. Mar. 27, 2020); *see also, e.g.*, *Bilek v. Fed. Ins. Co.*, 2020 WL 3960445, at *2 (N.D. Ill. July 13, 2020); *Bilek v. Nat'l Cong. of Employers, Inc.*, 2020 WL 5033534, at *2 (N.D. Ill. July 1, 2020); *Sharp v. Bank of Am., N.A.*, 2020 WL 1543544, at *8 (N.D. Ill. Mar. 31, 2020); *Leszanczuk v. Carrington Mortg. Servs., LLC*, 2020 WL 1445612, at *2 (N.D. Ill. Mar. 25, 2020).

to conclude that due process does not require such a showing. *See, e.g.*, *Munsell v. Colgate-Palmolive Co.*, 463 F. Supp. 3d 43, 55 (D. Mass. 2020); *Sousa v. 7-Eleven, Inc.*, 2020 WL 6399595, at *3 (S.D. Cal. Nov. 2, 2020); *Krogstad v. Nationwide Biweekly Admin., Inc.*, 2020 WL 4451035, at *4 (D. Nev. Aug. 3, 2020); *Donaldson v. Primary Residential Mortg., Inc.*, 2020 WL 3184089, at *27 (D. Md. June 12, 2020); *Progressive Health & Rehab Corp. v. Medcare Staffing, Inc.*, 2020 WL 3050185, at *3 (S.D. Ohio June 8, 2020); *Murphy v. Aaron's, Inc.*, 2020 WL 2079188, at *8, *11–12 (D. Colo. Apr. 30, 2020). That the lower courts are reaching consensus on their own accord—and that the decision below is aiding them in doing so—is strong evidence that this Court's intervention is unnecessary.

C. The petition should also be denied to allow for further percolation in the circuit courts. IQVIA's assertion (at 26) that the "courts of appeals [will] rarely have a chance to review" the question is provably wrong: Two circuits are *currently* considering whether *Bristol-Myers* altered the longstanding consensus that absent class members do not need to individually demonstrate jurisdiction over the defendant. Indeed, the Ninth Circuit is poised to decide the question in essentially the same factual context presented here—a Rule 23(f) appeal involving a nationwide TCPA class action. *See Moser v. Benefytt Techs., Inc.*, No. 19-56224 (9th Cir. filed Oct. 23, 2020). And an appeal in the Sixth Circuit raising this question is set for oral argument in just a few months. *See Lyngaas v. Curaden AG*, No. 20-1199 (6th Cir. filed Mar. 2, 2020). These pending appeals lay bare the error in IQVIA's claim (at 27) that further percolation will be "less likely" after the Seventh Circuit's decision.

Bottom line: Even if this Court believes that the question presented might warrant its attention, it should wait for the Sixth and Ninth Circuits to grapple with the key arguments on both sides and to provide additional guidance before deciding whether to grant review.

II. This case is a poor vehicle for review.

Even if the petition established a cert-worthy split on the question presented (and it does not), the Court should deny review because this case suffers from at least three significant vehicle problems.

A. For starters, this case is an unsuitable vehicle because IQVIA continues to contest whether Mussat has Article III standing to bring her TCPA claims in the first place. In a recent filing, for example, the company urged the district court to revisit the "threshold jurisdictional issue" of standing, arguing that Mussat "suffered no concrete harm as a result of the faxes" here because they were sent by email rather than to a standalone fax machine. IQVIA Mot. to Maintain Stay of Discovery in No. 17-CV-08841 (N.D. Ill. Oct. 29, 2020), Doc. 129, at 9–10. That question, IQVIA observed, is "potentially case-dispositive." *Id.* at 15. At the very least, it argued, the district court should wait for the Federal Communications Commission to issue a final decision clarifying whether and how the TCPA applies to online fax services. *See id.*

This standing issue presents a serious obstacle to this Court's review. Article III standing "is an essential and unchanging part of the case-or-controversy requirement," *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992), and this Court would be "required to address the issue" if it granted certiorari, *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 230 (1990). Although Mussat disagrees with the merits of IQVIA's Article III objection, this Court may be

prevented from reaching the personal-jurisdiction question if it concludes that Mussat lacks standing. There is no reason for this Court to grant the petition only to have to dispose of this case on narrow, and potentially fact-intensive, standing grounds—particularly when neither the Seventh Circuit nor the district court has addressed standing at all. *See Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) ("[W]e are a court of review, not of first view."). All the more so when, as IQVIA argued in the district court, the injury-in-fact question may turn at least in part on the Federal Communication Commission's eventual, statute-specific guidance on the extent of harm, if any, that persons suffer when they receive online faxes of the type at issue here.

B. That is not the only problem. Because Justice Barrett was a member of the Seventh Circuit panel that issued the decision below, granting this case would necessitate her recusal. That, too, makes this case a poor vehicle. Where a Justice is recused, "[n]ot only is the Court deprived of the participation of one of its nine Members, but the even number of those remaining creates a risk of affirmance of a lower court decision by an equally divided court." *Microsoft Corp. v. United States*, 530 U.S. 1301, 1303 (2000) (statement of Rehnquist, C.J.). Thus, even if the Court believes that the question presented deserves review, it should wait for a vehicle that would permit the full complement of Justices to participate in the decisional process.

C. Finally, this case is a poor vehicle because no class has been certified. This interlocutory appeal arises from the district court's order granting IQVIA's Rule 12 motion to strike Mussat's class definition. Pet. App. 3a. Although the Seventh Circuit held that this order functionally

resolved the class-certification question for purposes of appellate jurisdiction under Rule 23(f), Pet. App. 5a, whether a class will ultimately be certified remains unknown. Indeed, at this pre-certification stage, IQVIA's "due-process rights" have not been impaired at all. Pet. 27. If the district court finds that the class does not satisfy Rule 23's requirements, for example, any decision this Court might issue on the personal-jurisdiction question would merely be "an opinion advising what the law would be upon a hypothetical state of facts." *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975). The same would be true if the district court eventually certifies a more limited class—such as an Illinois-only class—that avoids IQVIA's personal-jurisdiction objection altogether.

As this Court has held, "a nonnamed class member is [not] a party to the class-action litigation before the class is certified." *Smith v. Bayer*, 564 U.S. 299, 313 (2011). It is the act of class certification—not the filing of the complaint—that "reifies the unnamed class members and, critically, renders them subject to the court's power." *In re Checking Acct. Overdraft Litig.*, 780 F.3d 1031, 1037 (11th Cir. 2015); *see also Molock v. Whole Foods Mkt. Grp., Inc.*, 952 F.3d 293, 298 (D.C. Cir. 2020) ("Putative class members become parties to an action—and thus subject to dismissal—only after class certification."). For this reason, if this Court wishes to grant review, it should wait for a better, less speculative vehicle—that is, an appeal involving an *actual* class-certification decision. Only in such a case will this Court's resolution of the personal-jurisdiction question be outcome determinative.

III. The decision below was correct.

For the reasons given above, this Court should deny review because the petition does not satisfy the Court's

traditional criteria for certiorari, not to mention that it is an exceptionally poor vehicle for resolving the question presented. But review is also unwarranted because the Seventh Circuit got it right on the merits.

As an initial matter, IQVIA is simply wrong when it claims the Seventh Circuit "ignored *Bristol-Myers*' teachings." Pet. 3. *Bristol-Myers* did not involve a class action in federal court at all—it involved a coordinated mass action in which a group of 678 individual plaintiffs (86 of whom were from California, and 592 of whom were from other states) filed separate complaints in California state court. *See Bristol-Myers*, 137 S. Ct. at 1778. The California Supreme Court held that the out-of-state plaintiffs could bring their state-law claims in California court based on that state's unique "sliding scale approach to specific jurisdiction," which allowed the required "connection between the forum contacts and the claim" to be reduced depending on how "wide ranging the defendant's forum contacts" were. *Id.* In reversing, this Court emphasized that, under "settled principles regarding specific jurisdiction," there "must be an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State." *Id.* at 1781. California's "sliding scale approach" contravened this settled framework by relaxing "the strength of the requisite connection between the forum and the specific claims at issue." *Id.*

Thus, contrary to IQVIA's insinuations (at 8), this Court's holding in *Bristol-Meyers* does not "dictate[] the outcome here." As the company acknowledges, *Bristol-Myers* by its own reckoning was a narrow decision—no more than a "straightforward application . . . of settled principles of personal jurisdiction." 137 S. Ct. at 1783; *see*

Pet. 8, 17. Nothing about *Bristol-Myers* suggests that the decades-old consensus that only named plaintiffs, not absent class members, need establish specific jurisdiction over the defendant has been upended. Pet. App. 9a, 13a–14a. Indeed, this Court itself "has regularly entertained cases involving nationwide classes where the plaintiff relied on specific, rather than general, personal jurisdiction in the trial court, without any comment about the supposed jurisdictional problem IQVIA raises." Pet. App. 6a–7a (citing, *e.g.*, *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985)). Consequently, the Seventh Circuit accurately held that "*Bristol-Myers* neither reached nor resolved the question whether, in a Rule 23 class action, each unnamed member of the class must separately establish specific personal jurisdiction over a defendant." Pet. App. 10a.

As to that question, IQVIA takes issue with the Seventh Circuit's (correct) determination that absent class members are not "parties" for purposes of personal jurisdiction. Pet. App. 10a–11a. In the company's view, the decision below's focus on party status "was a category error" and "irrelevant"; all that matters are "the putative class members' *claims*," not whether they are parties. Pet. 10–11. But it is IQVIA that is mistaken. Distilled to its core, personal jurisdiction requires that a court have "power over *the parties before it* . . . before it can resolve a case." *Lightfoot v. Cendant Mortg. Corp.*, 137 S. Ct. 553, 562 (2017) (emphasis added). In a coordinated mass action like *Bristol-Myers*, there is no dispute that "all of the plaintiffs are named parties to the case." Pet. App. 10a. Thus, in such a case, the dispositive question is, as IQVIA suggests, whether the court has the power to adjudicate those parties' claims.

When facing a Rule 23 class action like this one, however, the court must decide the antecedent question whether the absent class members are *parties* before it at all. If they are not, the question whether the court has personal jurisdiction over them is immaterial. *See Leroy v. Great W. United Corp.*, 443 U.S. 173, 180 (1979) (explaining that "[t]he question of personal jurisdiction . . . goes to the court's power to exercise control over the parties"). The decision below correctly recognized that *Bristol-Myers* has nothing to say about this antecedent question of class-action doctrine. Pet. App. 7a. Instead, reviewing this Court's precedents, the Seventh Circuit found that "absent class members are not full parties to the case for many purposes," including for subject-matter jurisdiction and venue. Pet. App. 10a–11a. And it could find "no reason why personal jurisdiction should be treated any differently"; after all, "the named representatives must be able to demonstrate either general or specific personal jurisdiction, but the unnamed class members are not required to do so." Pet. App. 11a. This is consistent with this Court's longstanding view that, when many people have a "common interest" in a dispute, courts may proceed even though a "number of those interested in the litigation" are not personally "within the jurisdiction" of the court. *Hansberry*, 311 U.S. at 41.

Finally, it is IQVIA, not the Seventh Circuit, that "crucially misconstrue[s] the relationship between Federal Rule of Civil Procedure 4(k) and the Fourteenth Amendment's limits on personal jurisdiction." Pet. 14.[2]

[2] The petition also accuses (at 14) "[t]he Seventh Circuit [of] defend[ing] its decision on the ground that the Fifth Amendment's Due Process Clause applicable to the United States rather than the

Under Rule 4(k)(1)(A), "[s]erving a summons or filing a waiver of service establishes personal jurisdiction over a defendant . . . who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located." As the decision below explained, this rule "addresses *how* and *where* to serve process; it does not specify on *whom* process must be served." Pet. App. 12a. Nothing in Rule 4(k) suggests a freestanding limitation on federal-court jurisdiction writ large, as opposed to a mechanism for establishing personal jurisdiction via service of process. Indeed, Rule 4's geographic limitations have been in place for decades, but no case that we are aware of suggests that it renders class proceedings inappropriate because process has been served only on behalf of a named plaintiff.

In the end, IQVIA complains that the decision below will undermine the two principles at the heart of this Court's personal-jurisdiction jurisprudence—fairness to defendants and federalism. *See* Pet. 19–24. But it fails to show why that is so.

As to fairness, this case illustrates the point: The named plaintiff is pressing a single claim that the defendant sent unsolicited faxes in violation of federal law. If the named plaintiff is able to eventually obtain certification of a class with respect to that claim, it would mean that the key elements of the claim, and the key defenses, are common to the class. In that scenario, the defendant would

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Fourteenth Amendment's Due Process Clause applicable to the States governed its personal-jurisdiction analysis." But the Seventh Circuit did no such thing. Although it observed that the Fifth Amendment's Due Process Clause is the constitutional provision applicable to federal courts, it noted that the district court's invocation of the "the Fourteenth Amendment made no difference here." Pet. App. 9a.

assert the same defenses against the same claim by the same named plaintiffs—regardless of whether the class were nationwide or limited to Illinois (as the district court's holding would require). It would make no sense, from the standpoint of due process and fairness, to insist on a slew of identical lawsuits presenting the same claim in different federal courts. Instead, it would spur "precisely the multiplicity of activity which Rule 23 was designed to avoid." *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 551 (1974). And even under its own rule, IQVIA would face "potentially significant liability" and "enormous pressure" to settle—just in a case brought in Pennsylvania or Delaware district courts, or in fifty identical state-specific suits in the federal courts. Pet. 30.

Nor would the company's position advance federalism. Although IQVIA says that it "offends federalism for a district court with jurisdiction coextensive with a state court in the district . . . to adjudicate the claims of out-of-state class members," it offers no reason why. Pet. 24. That's because there is none. The "decisive" federalism interest identified in *Bristol-Myers* concerned states' "sovereign power to try causes in their courts." 137 S. Ct. at 1780. But this case involves a *federal* court facing *federal* statutory claims, not a state court facing state-law claims. And, because federal courts are subject to the due-process restrictions of the Fifth Amendment, not the Fourteenth Amendment, the horizontal-federalism interests central to *Bristol-Myers*' holding are not implicated. *See, e.g.*, *Livnat v. Palestinian Auth.*, 851 F.3d 45, 55 (D.C. Cir. 2017); *Plixer Int'l, Inc. v. Scrutinizer GmbH*, 905 F.3d 1, 6 (1st Cir. 2018); *ISI Int'l, Inc. v. Borden Ladner Gervais LLP*, 256 F.3d 548, 551 (7th Cir. 2001). Thus, whatever federalism concerns limit a state's power to decide state-law claims of nonresidents, no similar concerns apply to a

federal court's exercise of its authority to decide federal claims.

CONCLUSION

This Court should deny IQVIA's petition for a writ of certiorari.

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