No. 20-510

IN THE
Supreme Court of the United States

IQVIA INC.,
Petitioner,

v.

FLORENCE MUSSAT, M.D. S.C., on behalf of itself and all others similarly situated,
Respondent.

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

REPLY BRIEF IN SUPPORT OF CERTIORARI

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INTRODUCTION

Respondent's brief in opposition does not weaken the case for certiorari. The Seventh Circuit's decision below strayed from this Court's teachings in *Bristol-Myers Squibb Co.* v. *Superior Court of California*, 137 S. Ct. 1773 (2017), and other cases by holding that a federal court can exercise personal jurisdiction over the federal-law claims of putative class members that the court would not have personal jurisdiction to hear if the claims were brought separately. Class actions, after all, are just a device for a court to hear aggregate claims. If a court could not hear the claims of absent class members when they were before the court as

party plaintiffs, then it cannot hear the same claims when they are before the court through a proposed class representative. This Court's review and correction is also necessary now. District courts are deeply divided on the question and further percolation is unlikely to resolve it. Any reasonable plaintiffs' lawyer will now file all nationwide class actions in the Seventh Circuit.

In response, Respondent marshals inapposite pre-*International Shoe* cases and repeats the Seventh Circuit's flawed analysis. Respondent also falls back on an argument that this Court has already rejected: That because courts have allowed an exercise of a personal jurisdiction in the past, that exercise must have been proper.

Ultimately, Respondent is forced to admit that the issue could be worthy of review—just later. But neither Respondent's phantom standing issues, nor the case's pre-class-certification posture, nor Justice Barrett's likely recusal is a reason to pass this case by. Instead, this case provides a clean vehicle to address a question whose answer is vitally important now to class-action plaintiffs and defendants alike. Letting the decision below stand will risk tremendous interim harm, for likely a year or more, to businesses, the federal system, and defendants' due-process rights, all while encouraging plaintiffs to forum shop and game fundamental due-process protections. *See* Wash. Legal Found. et al. ("WLF") Amicus Br. 14-16; DRI–The Voice of the Def. Bar ("DRI") Amicus Br. 3, 14-16.

This Court should resolve these issues now and grant the petition.

ARGUMENT

I. THE SEVENTH CIRCUIT'S DECISION CONFLICTS WITH *BRISTOL-MYERS* AND THE PRINCIPLES UNDERLYING IT.

IQVIA explained how the Seventh Circuit's decision strayed from *Bristol-Myers*'s command to focus on a court's power over the claims asserted, rather than the parties asserting them. *See* Pet. 8-14. Respondent, however, doubles down on the Seventh Circuit's errors. Respondent is just as wrong as the court of appeals was.

1. A court can exercise specific jurisdiction only if the plaintiff's "cause of action * * * arise[s] out of or relate[s] to" the defendant's "activities in the forum State." *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 414 (1984). Only when there is that kind of "affiliation between the forum and the underlying controversy" is the defendant "subject to the State's regulation." *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915, 919 (2011) (internal quotation marks and alteration omitted).

Like the Seventh Circuit below, Respondent contends that a district court only need have personal jurisdiction over the parties, and because absent class members are not "parties," whether the district court has personal jurisdiction over them is irrelevant. *See* Br. in Opp. 13. But *Bristol-Myers* made clear that the link required is a "connection between the forum and the specific *claims* at issue." 137 S. Ct. at 1781 (emphasis added); *see* Pet. 8, 10. That makes sense. After all, the putative class member's *claims* are what will be adjudicated by the class action. *See* Pet. 10-11. Even Respondent's nineteenth century caselaw agrees: "The legal and equitable rights and liabilities

of" absent class members are still "before the court," even if the absent class members are not. *Smith* v. *Swormstedt*, 57 U.S. (16 How.) 288, 303 (1853).

Respondent contends that while claims may be critical to a *mass* action, they are not for a *class* action. *See* Br. in Opp. 15-16. But Respondent's principal case in support, *Lightfoot* v. *Cendant Mortgage Corp.*, 137 S. Ct. 553 (2017), is neither a personal-jurisdiction nor a class-action case. Its passing reference to a court having "personal jurisdiction over the parties before it," cannot have decided the question here. *Id.* at 562. And Respondent's interpretation of *Lightfoot* makes no sense in light of *Bristol-Myers*. *Bristol-Myers* held that a court can have personal jurisdiction over a defendant on some claims and not others. 137 S. Ct. at 1781. The specific-jurisdiction inquiry is whether the court has personal jurisdiction over the defendant *on the claims asserted*, not whether the court has personal jurisdiction over the defendant writ large. *See id.*; *see also Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797, 811 (1985).

Respondent also looks to the venue and diversity-jurisdiction statutes, which she contends make "party" status determinative. *See* Br. in Opp. 16. But Respondent has nothing to say about the closest civil-procedure analogies—the joinder rules in Federal Rules of Civil Procedure 18(a), 20, and 24—which all apply personal-jurisdiction limitations. *See* Pet. 13; *Shady Grove Orthopedic Assocs., P.A.* v. *Allstate Ins. Co.*, 559 U.S. 393, 408 (2010) (plurality op.) (class action is merely a "species" of "traditional joinder" and that also "leaves the parties' legal rights and duties intact"). And in any event, venue and complete-diversity are inapposite statutory constructs that do not

sound in the Constitution's due-process guarantees the way personal jurisdiction does. *See* Pet. 11.

Respondent barely defends the Seventh Circuit's Federal Rule of Civil Procedure 4(k) analysis. *See* Pet. App. 11a-13a. She does not contest that the Seventh Circuit was wrong to claim that Rule 4(k) requires plaintiffs to comply with state-court service-of-process rules. *See* Pet. 15-16. And she does not disagree that the Seventh Circuit was wrong to read Rule 4(k) in light of Rule 82, which refers only to *subject-matter* jurisdiction. *See* Pet. 17-18. She contends only that Rule 4(k) is not a "freestanding limitation on federal-court jurisdiction." Br. in Opp. 17. But whether "freestanding" or not—an adjective whose import is unclear—Rule 4(k) generally limits a federal court to exercising personal jurisdiction equivalent to a state court of general jurisdiction in the State where the district court sits. *See* Pet. 14-15. Respondent is therefore wrong to think that Rule 4(k) allows a nationwide class action in federal court that the Due Process Clause would forbid in state court.

Respondent also argues that Rule 23 erases any unfairness that might otherwise come from exercising personal jurisdiction over the defendant. *See* Br. in Opp. 17-18. But Rule 23 is not an adequate safeguard because it is not meant to be. Unlike personal jurisdiction, which protects defendants, Rule 23 is designed to "protect the rights of *absent class members*." *Ortiz* v. *Fibreboard Corp.*, 527 U.S. 815, 847 (1999) (emphasis added); *see* Pet. 12. Besides, Rule 23's requirements focus on the similarity between the class members' claims—something that *Bristol-Myers* said is *not* relevant to the personal-jurisdiction inquiry. *See* 137 S. Ct. at 1781.

2. Respondent's first-principles arguments fare no better. Respondent invokes cases predating *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), cases she contends show the pedigree of nationwide class actions. Br. in Opp. 1. But *Hansberry* v. *Lee*, 311 U.S. 32, 41 (1940), discussed the propriety of binding absent class members to a class judgment even though the absent class members were "not within the jurisdiction." And because *Lee*, like *Shutts* after it, "concerned the due process rights of *plaintiffs*, it has no bearing on the question presented here." *Bristol-Myers*, 137 S. Ct. at 1783. *Swormstedt* is even further afield. The question there was whether a class action could be maintained at all, not whether the court had personal jurisdiction over the defendant on the class claims. 57 U.S. (16 How.) at 303.

It would have made little doctrinal sense for these cases to pass upon the court's personal jurisdiction over the defendant on the absent class members' claims. Before *International Shoe*, a corporate defendant could generally only be sued where it was incorporated, *see Pennoyer* v. *Neff*, 95 U.S. 714, 720 (1877), so the personal-jurisdiction question would never arise. In modern terms, the court would have general personal jurisdiction over the defendant, granting it jurisdiction over all claims that might be asserted against the defendant, no matter where they arose. *Daimler AG* v. *Bauman*, 571 U.S. 117, 122 (2014).

Respondent falls back on her argument that personal jurisdiction has not "been understood" to bar an exercise of personal jurisdiction in other nationwide class-action cases. *See* Br. in Opp. 2, 6-7, 15-17. But "this Court is not bound" by prior, unquestioned exercises of jurisdiction. *United States* v. *L. A. Tucker*

Truck Lines, Inc., 344 U.S. 33, 38 (1952); *see* Pet. 18. And although Respondent contends (at 15) that *Shutts* shows that personal jurisdiction is irrelevant in nationwide class actions, this Court has rejected negative inferences from *Shutts* before. *Bristol-Myers* explained that the fact that the defendant in *Shutts* "did not assert that [the court] improperly exercised personal jurisdiction over it, and the Court did not address that issue" was of no precedential importance. *Bristol-Myers*, 137 S. Ct. at 1783.

4. Finally, permitting personal jurisdiction over the claims of absent class members is contrary to the due-process principles at the core of personal jurisdiction. IQVIA explained how the due process limits on personal jurisdiction are designed to protect the liberty of *defendants*. *See* Pet. 19. An "assertion of jurisdiction" subjects "defendants to the State's coercive power." *Goodyear*, 564 U.S. at 918. And from IQVIA's perspective, a nationwide mass action and a nationwide class action expose it to a state court's coercive power to the same degree. *See* Pet. 20-21. IQVIA's due-process protections in both scenarios should be the same, as well.

Respondent argues that before certification those burdens are not yet fully burdensome. *See* Br. in Opp. 13. But the prospect of having to answer to a nationwide class action with potentially massive liability is a significant burden even if the class has not yet been certified. *See* Pet. 20-21.

Even if the burden were minimal, "the Due Process Clause, acting as an instrument of interstate federalism," nonetheless sometimes "divest[s] the State of its power to render a valid judgment." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 294

(1980). And personal-jurisdiction limitations preventing courts from exercising personal jurisdiction over a defendant not only protect defendants, but protect *States* by preventing other adjudicators from "reach[ing] out beyond the limits" imposed by our federal system. *Id.* at 292; *see* Pet. 23-24; WLF Amicus Br. 18.

These federalism concerns are still salient when federal claims are heard in federal court. State courts are equally competent to hear and decide almost all federal causes of action, *see Haywood* v. *Drown*, 556 U.S. 729, 735-736 (2009), and so a federal court in Illinois that arrogates to itself the power to decide absent class members' claims from around the country prevents those States' courts from judging IQVIA's conduct for themselves. And even at the federal level, Rule 4(k) imposes on federal courts the same personal-jurisdiction restrictions as state courts. *Walden* v. *Fiore*, 571 U.S. 277, 283 (2014). That makes the same policy concerns—including horizontal federalism—applicable in personal-jurisdiction cases arising from federal courts. There is simply no federal-court exceptionalism that can put this case beyond this Court's usual Fourteenth Amendment principles.

II. THE QUESTION PRESENTED HAS FRAGMENTED LOWER COURTS AND THIS CASE IS AN IDEAL VEHICLE TO RESOLVE THIS IMPORTANT QUESTION.

1. Even though IQVIA showed that federal district courts and state courts have divided on the question presented, *see* Pet. 24-26, Respondent downplays the division. First, she argues that the courts applying *Bristol-Myers* to class actions were clustered in the Seventh Circuit. Br. in Opp. 8. But the petition

pointed to courts across the country that have applied *Bristol-Myers* to class actions in federal court. *See* Pet. 25 (citing cases from Southern District of California and District of Arizona); *see also In re Dicamba Herbicides Litig.*, 359 F. Supp. 3d 711, 722-724 (E.D. Mo. 2019). The division is not limited to the Northern District of Illinois.

Against this, Respondent contends that more district courts agree with her than IQVIA. *See* Br. in Opp. 7. But the point is the disagreement's existence, not how many courts are on each side. If anything, that a number of courts have adopted a view that contravenes *Bristol-Myers* is *more*, not less, reason to correct their misapprehension now, lest it continue to spread.

Respondent next argues that percolation may be soon at hand because the Ninth and Sixth Circuits are considering similar cases. *See* Br. in Opp. 2, 10. But Respondent's optimism may well be unwarranted. In the Ninth Circuit case, the district court held that the defendant had waived its *Bristol-Myers* defense by raising it for the first time at class certification. *See Moser* v. *Health Ins. Innovations, Inc.*, No. 17-cv-1127-WQH-KSC, 2019 WL 3719889, at *4-5 (S.D. Cal. Aug. 7, 2019). That raises the possibility the Ninth Circuit may reverse the district court's waiver finding and remand for additional proceedings, as the Fifth Circuit did in the same procedural posture, further delaying this Court's opportunity for review. *See Cruson* v. *Jackson Nat'l Life Ins. Co.*, 954 F.3d 240, 249 & n.7 (5th Cir. 2020). And if the Ninth Circuit affirmed the waiver finding, the case would be an even worse vehicle for resolving the personal-jurisdiction question presented. In the Sixth Circuit case, meanwhile, the

personal-jurisdiction issue is the fourth of four issues presented on appeal, suggesting that the court of appeals may not reach it and that it may not be outcome determinative. *See* First Br. of Defendant-Appellee Curaden AG, *Lyngaas* v. *Curaden AG*, No. 20-1199 (6th Cir. June 19, 2020). Here, by contrast, the *only* issue is the propriety of striking the class allegations regarding the out-of-state absent class members. *See* Pet. App. 2a-3a.

Further, denying review will likely prevent further percolation. Plaintiffs' lawyers from here on out will likely opt to file suit in the Seventh Circuit—and the Seventh Circuit alone—to take advantage of its new plaintiff-friendly rule. *See* Pet. 27-28. And because only one-in-four Rule 23(f) petitions are granted, the Court should take up this issue now rather than wait for another court of appeals merits decision that may never come. *See id.* at 26; DRI Amicus Br. 4-6.

2. The Seventh Circuit's decision will usher in a host of bad consequences for not only defendants, but for personal-jurisdiction doctrine generally. The Seventh Circuit's rule will allow plaintiffs to manufacture jurisdiction in a favorable forum by riding the coattails of one properly brought claim—fears that *amici* explain are regularly realized. *See* Product Liability Advisory Council, Inc. Amicus Br. 12-13; WLF Amicus Br. 15-16; Pet. 28. The Seventh Circuit's rule will also encourage plaintiffs to file in federal court to take advantage of its holding and encourage the kind of vertical forum-shopping that Rule 4(k) was designed to eliminate. *See* Pet. 28. And the Seventh Circuit's rule permitting absent class member claims with no connection to a State to be brought in its federal courts

will collapse the distinction between general and specific jurisdiction. *See id.* at 31.

Respondent contends that there is no reason that identical lawsuits presenting the same claims should be brought in different federal courts. *See* Br. in Opp. 18. But IQVIA's rule does not require multiplicative suits; nationwide class actions can still be brought anywhere the defendant is subject to general jurisdiction or anywhere that the defendant took an action relevant to all of the claims. *See* Pet. 13; *see also Bristol-Myers*, 137 S. Ct. at 1783-84. All IQVIA's rule forbids is the kind of opportunistic forum shopping that the Court *already* forbade in *Bristol-Myers*.

3. Finally, Respondent quibbles with the case's suitability for review. She argues, for instance, that the Court should pass on this case because IQVIA has questioned her standing. *See* Br. in Opp. 2, 11-12. But IQVIA has never moved to dismiss on standing grounds, and it raised the harm to Respondent only in arguing that a district-court stay of discovery should be maintained. *See* D. Ct. Dkt. 129, at 9-10. In any event, personal jurisdiction, like standing, "is an essential element of the jurisdiction of a * * * court, without which the court is powerless to proceed to an adjudication." *Ruhrgas AG* v. *Marathon Oil Co.*, 526 U.S. 574, 584 (1999) (internal quotation marks and alterations omitted). Because no rule "dictate[s] a sequencing of" threshold issues, this Court may decide personal jurisdiction questions "without deciding whether the parties present a case or controversy." *Id.* at 584-585.

Respondent next suggests that the fact that the question arises on an appeal of a motion to strike the class definition is a reason to deny the petition. Br. in

Opp. 13. But the fact that this case arises pre-class-certification makes it a *better* vehicle. The personal-jurisdiction question is the only one before the Court, and it is unmuddied by the factual disputes and other Rule 23 issues that may arise following full-dress class-certification briefing. That is why commentators agree that raising the personal-jurisdiction issue through a motion to strike as IQVIA did is a procedurally proper path. *See* Pet. 31-32. As Respondent herself agrees, this Court prefers to resolve threshold, potentially dispositive issues in isolation. *See* Br. in Opp. 12.

Finally, Justice Barrett's participation in the decision below is no reason to deny review. *Cf.* Br. in Opp. 12. This Court has reviewed cases—even controversial cases—where a justice has had to recuse because the justice sat on the court of appeals panel. *See, e.g., Hamdan* v. *Rumsfeld*, 548 U.S. 557 (2006). Besides, this Court's recent personal-jurisdiction cases have been unanimous or nearly so. *See, e.g.*, *Goodyear*, 564 U.S. at 917 (unanimous); *Walden*, 571 U.S. at 278 (unanimous); *Bristol-Myers*, 137 S. Ct. at 1777 (8-1). There is no reason to think this case will be any different.

CONCLUSION

For the foregoing reasons and those in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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