No. _____

In The
Supreme Court of the United States

Amec Foster Wheeler plc,

Petitioner,

v.

Enterprise Products Operating LLC,

Respondent.

On Petition For A Writ Of Certiorari To The Texas Court Of Appeals, Fourteenth District

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

For a State to exercise specific jurisdiction over a foreign defendant, (1) the plaintiff's claims must "arise out of or relate to the defendant's contacts with the forum"; and (2) the defendant's contacts with the forum "must be the defendant's own choice," and must show that the defendant "deliberately reached out" or "purposefully avail[ed] itself of" the forum. *Ford Motor Co. v. Montana*, ___ U.S. ___, 141 S.Ct. 1017, 1024–1025 (2021).

Regarding the first requirement: the States are divided over whether they must conduct a claim-by-claim analysis to determine whether *each* claim arises from the defendant's purposeful contacts with the forum. And regarding the second requirement: courts appear divided over how an "agency" theory applies when attributing an individual's contacts with the forum to a corporate defendant for jurisdictional purposes.

Here, a Texas court has asserted specific jurisdiction over a British holding company in a suit for over $700,000,000 in damages. But the court refused to conduct a claim-by-claim analysis. And the court has based its jurisdiction on the "words and actions" of employees in Texas, but refused to determine whether those words and actions were authorized by the British holding company. The questions presented are:

1. Does due process require a state court to determine whether *each* claim arises from or relates to the defendant's purposeful contacts with the forum?

QUESTIONS PRESENTED—Continued

2. Does due process require a court to determine whether an agent's contacts with the forum were authorized by the defendant before attributing those contacts to the defendant for jurisdictional purposes?

PARTIES TO THE PROCEEDINGS

Petitioner Amec Foster Wheeler plc is a named defendant in the Texas trial court; was the appellant in the Texas court of appeals; and was the petitioner in the Texas Supreme Court. In 2017, Amec Foster Wheeler plc was converted to a private company under British law, and its name was changed to Amec Foster Wheeler Limited. But it has continued to go by "Amec Foster Wheeler plc" (or by shortened versions of that name) throughout the proceedings of this case.

Respondent Enterprise Products Operating LLC is the plaintiff in the Texas trial court; was the appellee in the Texas court of appeals; and was the respondent in the Texas Supreme Court.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner Amec Foster Wheeler plc (a/k/a Amec Foster Wheeler Limited) is a British holding company that is wholly owned by a wholly-owned subsidiary of John Wood Group PLC—another British holding company. Petitioner also acquired Foster Wheeler AG in 2014. Before that acquisition, Foster Wheeler AG was a publicly-traded holding company.

RELATED PROCEEDINGS

The ongoing case in the 151st Judicial District Court of Harris County, Texas, No. 2016-59155, is currently stayed pending appeal, which includes this petition for a writ of certiorari. The appeal to the Texas Court of Appeals for the Fourteenth District (Houston) was Case No. 14-18-00133-CV. The petition to the Texas Supreme Court was Case No. 20-0617.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Amec Foster Wheeler plc respectfully petitions for a writ of certiorari to review the judgment of the Texas Court of Appeals, 14th District.

OPINIONS BELOW

The opinion of the Texas Court of Appeals, 14th District, is published at ___ S.W.3d ___, 2020 WL 897376, and is reprinted at App. 1a–30a. The order of the 151st Judicial District Court, Harris County, Texas, is reprinted at App. 31a–32a.

JURISDICTION

The Texas Supreme Court denied a timely petition for review on June 18, 2021. App. 33a. No petition for rehearing was filed. On March 19, 2020, this Court entered an order that extended the time for filing a petition for a writ of certiorari in this case to November 15, 2021. This Court has jurisdiction under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISION

The Fourteenth Amendment provides, in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

INTRODUCTION

The Court has recently reiterated that, for a State to exercise specific jurisdiction over a foreign defendant, (1) the plaintiff's claims must "arise out of or relate to the defendant's contacts with the forum"; and (2) the defendant's contacts with the forum "must be the defendant's own choice," and must show that the defendant "deliberately reached out" or "purposefully avail[ed] itself of" the forum. *Ford Motor Co. v. Montana*, ___ U.S. ___, 141 S.Ct. 1017, 1024–1025 (2021).

Regarding the first requirement: the States are divided over whether a claim-by-claim analysis is necessary to establish specific jurisdiction for *each* of the plaintiff's claims. Regarding the second requirement: the Court has recognized that "[a]gency relationships . . . may be relevant to the existence of specific jurisdiction." *Daimler AG v. Bauman*, 571 U.S. 117, 135 n.13 (2014). But courts appear divided over how an "agency" theory applies in the jurisdictional context.

Here, according to the Houston Court of Appeals, (1) Texas can exercise specific jurisdiction for all of a plaintiff's claims, without determining whether any individual claim arises from or relates to a purposeful

contact with Texas by the defendant; and (2) the "words and actions" of a defendant's employees in Texas can be attributed to the defendant for jurisdictional purposes, without determining whether the employees had authority to perform any of those "words and actions" on the defendant's behalf.

This case presents a clean vehicle for the Court to answer two important constitutional and jurisdictional questions, on which courts are divided. This case therefore warrants review.

STATEMENT OF THE CASE

A. Enterprise enters a construction contract with Foster, in Texas.

Respondent Enterprise Products Operating LLC is a Texas company with its principal place of business in Texas.

Foster Wheeler USA Corporation is a Delaware corporation that also has its principal place of business in Texas.

In July 2013, Enterprise and Foster entered a cost-reimbursable contract for the engineering, procurement, and construction of a propane dehydrogenation facility in Mont Belvieu, Texas ("the PDH Project"). The primary purpose of a propane dehydrogenation facility is to convert propane into propylene, an ingredient in plastics and other products.

Enterprise eventually became dissatisfied with Foster's performance on the PDH Project and called for a stand-down in October 2014. Foster soon resumed work on the project—but eventually Enterprise terminated the contract with Foster.

Notably, because it was a cost-reimbursable contract, the contract between Enterprise and Foster did not guarantee a maximum price for the PDH Project. Instead, the contract referred to an initial figure of $884,000,000 as a basis for projecting periodic payments to Foster through December 2015. But by the time Enterprise terminated the contract, Enterprise had paid Foster over $1,000,000,000 for Foster's work on the project.

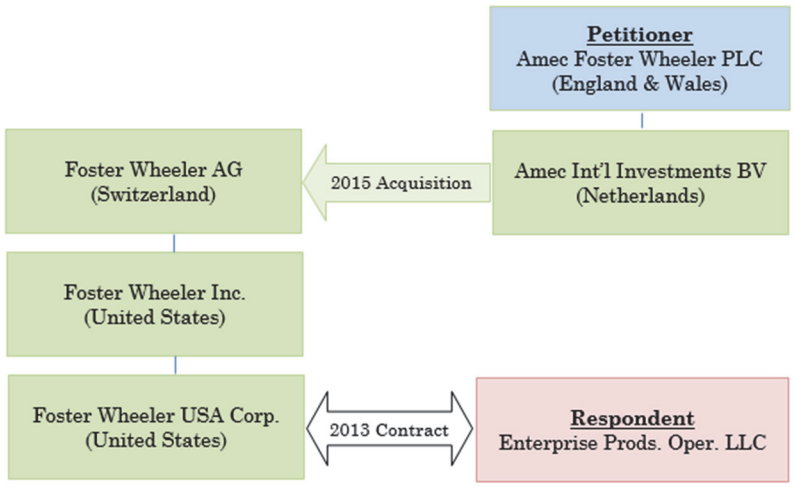
B. Amec (a British holding company) indirectly acquires Foster.

Petitioner is a British holding company formerly known as Amec plc. Amec is incorporated under the laws of England and Wales, with its principal place of business in England.

In November 2014, one of Amec's subsidiaries, Amec International Investments BV (a Dutch holding company), acquired control of a company called Foster Wheeler AG (a Swiss holding company), which owned an American company called Foster Wheeler Inc., which in turn owned Foster—the Texas-based company that had contracted with Enterprise for the PDH Project.

Amec International (the Dutch company) completed its acquisition of Foster Wheeler AG (the Swiss company) in January 2015. And after the acquisition was complete, Amec (the British holding company and petitioner in this case) changed its name from Amec plc to Amec Foster Wheeler plc.[1]

The following chart illustrates the relationship between Amec and the two parties to the Texas contract, Enterprise and Foster. As the chart shows, Amec did not become Foster's "parent" company after the 2015 acquisition, but instead became Foster's "great-grandparent" holding company:



[1] In the state courts, petitioner has been referred to as "Amec Foster Wheeler plc," "AFWPLC," "PLC," and "Foster Wheeler PLC." And in 2017, petitioner was converted to a private company under British law and its name was changed to Amec Foster Wheeler Limited. Here, petitioner will refer to itself simply as "Amec."

C. Amec's day-to-day business is to oversee its many subsidiaries, including Foster.

Following the 2015 acquisition described above, and as of 2016, Amec held a controlling interest in 439 subsidiaries worldwide. Notably, Amec does not hold engineering licenses and does not provide engineering or project-management services. Amec is only a holding company, and its business consists only of overseeing its many subsidiaries.

To oversee its many subsidiaries, Amec had instituted a "matrix" structure,[2] and had organized its subsidiaries into three regional business groups—including a group for the Americas, which included Foster. Each regional group had a group president who oversaw the operations of the subsidiaries within that region. And there was another group president over a fourth business unit that was focused on worldwide strategy and business development.

During the period relevant to this case, the group president for the Americas was Simon Naylor and the group president for strategy and business development was Jeff Reilly. Both Naylor and Reilly resided in Texas, and each worked from Foster's offices in Houston. Notably, Amec did not maintain a corporate office in Texas; did not own or lease real property in Texas; did not have any officers or directors who resided in Texas; and did not maintain a registered agent for service of process in Texas. Neither Naylor nor Reilly—

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[2] *Cf.* L.C. Stuckenbruck, "The Matrix Organization," Project Management Quarterly, 10:3, 21–33 (1979).

nor any of the group presidents—was an officer or director of Amec. In fact, Amec asserts that, in its matrix structure, neither Naylor nor Reilly—nor any of the group presidents—was even an employee of Amec; instead, Naylor and Reilly were employees of Amec E&C Services, Inc.—another one of Amec's subsidiaries.

Amec had given authority to the group presidents through an official document entitled "Delegated Authorities of the Group Presidents," which authorized the group presidents—including Naylor and Reilly—to "manage [Amec's] day-to-day business operations" within each president's "respective geographical region." As noted, Amec's day-to-day business operations consisted only of overseeing its numerous subsidiaries. Amec's day-to-day business operations did *not* include providing engineering or project-management services, or entering contracts to provide such services.

Importantly, the document that delegated authority to the group presidents also imposed limitations on that authority. For example, the document authorized the group presidents, including Naylor and Reilly, to approve or enter certain contracts—but it expressly *withheld* authority to approve or enter any contract worth over $350,000,000.

D. Enterprise sues Foster—and Amec—for breaching the construction contract.

After Amec indirectly acquired Foster Wheeler AG (the Swiss company)—and thereby indirectly acquired Foster (the Texas-based company that had contracted

with Enterprise)—Enterprise invited Naylor and Reilly to meet with Enterprise's executives, in Texas, so that Enterprise could express its frustration with Foster's handling of the PDH Project.

Enterprise alleges that Naylor and Reilly met with Enterprise in Texas and represented that Amec—Foster's great-grandparent holding company—was "assuming" control of the PDH Project and "assuming" Foster's contractual obligations under the contract. And Enterprise further alleges that Amec exercised control over the PDH Project, through Naylor and Reilly, and negligently mismanaged the project through Naylor's and Reilly's subsequent actions in Texas.

Based on these allegations, Enterprise sued both Foster and Amec, alleging Amec is liable for negligent misrepresentation, for "string-along" fraud, for breaching the contract, and for "gross and professional negligence" in the mismanagement the PDH Project. And Enterprise seeks over $700,000,000 in damages.

E. The Texas trial court asserts specific jurisdiction over Amec, based on the acts of alleged agents in Texas.

Amec filed a special appearance, arguing Texas lacks personal jurisdiction over Amec because (a) Amec has no ongoing presence in Texas to support general jurisdiction, and (b) Amec had made no purposeful contacts with Texas to support specific jurisdiction. Amec argued that Naylor's and Reilly's contacts with Texas

could not be attributed to Amec for jurisdictional purposes because Naylor and Reilly were not Amec's employees; instead, they were employees of Amec E&C Services, Inc.—another one of Amec's subsidiaries. And Amec argued that, even if Naylor and Reilly could be construed as Amec's agents or employees, they had never been authorized to "assume" Foster's contractual obligations or to take control of the PDH Project on Amec's behalf. So any act or representation that they had made to that effect—in Texas—could not be attributed to Amec for jurisdictional purposes.

In response, Enterprise argued that Naylor and Reilly were Amec's employees or agents, and that this alone was enough to attribute their contacts with Texas to Amec. And Enterprise also argued that Foster was Amec's "alter ego"—so that the Texas court's general jurisdiction over Foster (a Texas-based company) could be extended to Amec (Foster's British great-grandparent holding company).

The trial court declined to exercise general jurisdiction over Amec. App. 32a ¶3. But the trial court entered preliminary/jurisdictional findings that Naylor and Reilly were both "employees, agents, and/or apparent agents" of Amec, and that Amec—through Naylor and Reilly—"[m]ade representations and/or promises . . . in Texas that gave rise to Enterprise's assumption and breach of contract claims," and "[p]erformed . . . acts and omissions in Texas, . . . which gave rise to Enterprise's gross and professional negligence and unjust enrichment claims," so that the trial court had specific jurisdiction over "each and every one of [Enterprise's]

claims" against Amec. App. 13a–15a, 31a. Then, somewhat confusingly, the trial court found that it also had "alter ego jurisdiction" over Amec, App. 32a ¶2, though the trial court had clearly declined to exercise general jurisdiction. App. 32a ¶3.

F. The Houston Court of Appeals affirms jurisdiction without conducting a claim-by-claim analysis, and without determining whether the alleged agents were authorized to act on Amec's behalf.

Amec appealed and argued (1) that there was insufficient evidence to support an "alter ego" finding; (2) that there was insufficient evidence to support the finding that Naylor and Reilly were employees or agents of Amec; and (3) that—even if Naylor and Reilly were employees or agents of Amec—there was *no evidence* that they were authorized to perform any act or to make any representation that Amec was "assuming" Foster's contractual obligations or taking control of the PDH Project. The document that delegated authority to Naylor and Reilly expressly *withheld* authority to enter any contract worth over $350,000,000—and it was undisputed that the cost-reimbursable contract between Foster and Enterprise indicated that Foster would be paid *at least* $884,000,000 for the PDH Project. Amec argued that any act or representation that had been made by Naylor or Reilly in Texas—that suggested Amec was "assuming" Foster's contractual obligations and taking control of the PDH Project—could not be attributed to Amec for jurisdictional purposes

because there was no evidence that Naylor or Reilly had authority to perform any such act or representation on Amec's behalf. Amec's Br. 26–66; Amec's Reply 11–29.

Amec also argued that—because Enterprise's claims are based on different alleged contacts with Texas, see App. 14a–15a—a claim-by-claim analysis was necessary to determine whether each of Enterprise's claims arises from or relates to a purposeful contact with Texas by Amec. For example, Enterprise's claims for negligent misrepresentation and "string-along" fraud, and for breach of contract, relate to representations that were allegedly made in Texas just after Amec indirectly acquired Foster—*i.e.*, representations that Amec was "assuming" Foster's contractual obligations. See App. 14a–15a ¶6(c), 6(e). In contrast, Enterprise's claims for "gross and professional negligence" relate to separate actions that were allegedly performed in Texas—when Naylor and Reilly allegedly mismanaged the PDH Project after allegedly taking control of it on Amec's behalf. See App. 14a ¶6(d). Amec argued that a claim-by-claim (or contact-by-contact) analysis was necessary to determine whether Amec had any purposeful contacts with Texas that could support specific jurisdiction for *each* claim. Amec's Br. 26–49; Amec's Reply 11–29.

In affirming the trial court's exercise of specific jurisdiction, however, the Houston Court of Appeals refused to conduct a claim-by-claim analysis and failed to distinguish between—or even to identify—any of Amec's alleged contacts with Texas. App. 15a–24a.

Instead of determining whether any of the alleged contacts constituted the sort of "purposeful" contact that could support specific jurisdiction, the Houston Court focused almost entirely on determining whether there was sufficient evidence to support a finding that Naylor and Reilly were "employees" of Amec. App. 15a–22a. And after establishing that Naylor and Reilly were "employees" of Amec, the Houston Court simply listed all of Enterprise's claims in a single paragraph and noted vaguely that all of Enterprise's claims arise from or relate to "the words and actions of Naylor and Reilly in Texas." App. 23a.

Moreover, the Houston Court not only refused to conduct a claim-by-claim analysis, but also explicitly refused to determine whether Amec had authorized Naylor or Reilly to perform any of the alleged "words and actions" that the Houston Court was attributing to Amec for jurisdictional purposes. Instead of determining whether Naylor or Reilly "had actual or apparent authority" to perform any of those alleged "words and actions" on Amec's behalf, the Houston Court simply concluded that—because Naylor and Reilly were Amec's employees—all of their "words and actions" were "attributable" to Amec. App. 24a.[3]

Amec timely petitioned the Texas Supreme Court for review, arguing that the Houston Court's opinion contradicted Texas Supreme Court precedent by failing to conduct a claim-by-claim analysis and by failing

[3] The Houston Court also declined to address the "alter ego" issue, having found specific jurisdiction. App. 24a.

to determine whether Amec had authorized Naylor's or Reilly's "words and actions" before attributing them to Amec for jurisdictional purposes. But after considering Amec's petition for nine months, the Texas Supreme Court denied review without comment. App. 33a.

REASONS TO GRANT THE PETITION

State courts are divided over whether a claim-by-claim analysis is necessary for specific jurisdiction. And courts appear divided over how an "agency" theory should be applied when determining whether an individual's contacts with the forum can be attributed to the defendant for jurisdictional purposes.

This Court has never directly addressed these two issues. The Court's precedent indicates (1) that the Due Process Clause requires a state court to conduct a claim-by-claim analysis to determine whether it has specific jurisdiction for *each* of a plaintiff's claims; and (2) that the Due Process Clause requires a court to determine whether an agent's contacts with the forum were authorized by the defendant before attributing those contacts to the defendant for jurisdictional purposes. But the Houston Court's opinion conflicts with both of these propositions.

This case presents a clean vehicle for the Court (i) to resolve the two questions presented and thus clarify two important constitutional requirements; (ii) to thereby resolve divisions among the courts; and, in the

process, (iii) to strengthen the legal distinction between "general" and "specific" jurisdiction.

For these reasons, expounded upon below, the Court should grant the petition.

1. The Court should clarify whether the Due Process Clause requires a state court to establish specific jurisdiction for *each* of a plaintiff's claims.

The States are divided over whether a claim-by-claim analysis is necessary for specific jurisdiction. Here, the Houston Court embraced the minority view and refused to conduct a claim-by-claim analysis.

For the reasons provided below, this Court should grant review and clarify whether the Due Process Clause requires a claim-by-claim analysis for specific jurisdiction.

1.1 This Court's precedent indicates that a claim-by-claim analysis is necessary because specific jurisdiction is consent-based and claim-specific.

The Court has held that a State's specific jurisdiction over a foreign defendant is "case-linked"—meaning "the suit must arise out of or relate to the defendant's contacts with the forum." *Bristol-Myers Squibb Co. v. California*, ___ U.S. ___, 137 S.Ct. 1773, 1780 (2017) (cleaned up). And the Court has gone further, indicating specific jurisdiction is *claim*-specific—being "confined to adjudication of issues deriving from,

or connected with, the very controversy that establishes jurisdiction." *Goodyear Dunlop Tires Oper. v. Brown*, 564 U.S. 915, 919 (2011); see *Bristol-Myers*, 137 S.Ct. at 1781 ("What is needed—and what is missing here—is a connection between the forum and *the specific claims* at issue." (emphasis added)); see also *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472–473 (1985) (stating specific jurisdiction exists only if the "alleged injuries" arise from the defendant's purposeful contacts).

This is consistent with the notion that specific jurisdiction is essentially consent-based jurisdiction. Originally, a State's personal jurisdiction over a defendant was based on the defendant's "presence in, or consent to, the sovereign's jurisdiction." *Ford Motor Co. v. Montana*, ___ U.S. ___, 141 S.Ct. 1017, 1036 (2021) (Gorsuch, J., joined by Thomas, J., concurring in the judgment) (citing cases). And the concepts of "presence" and "consent" continue to provide essential theoretical bases for a State's exercise of personal jurisdiction over a corporate defendant. See *id.* at 1039 ("Perhaps it was, is, and in the end always will be about trying to assess fairly a corporate defendant's presence or consent."). Through this lens, the modern distinction between "general" and "specific" jurisdiction may be understood as a distinction between presence-based and consent-based jurisdiction. Compare, *e.g.*, *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014) (stating general jurisdiction exists when the defendant is "at home"—*i.e.*, present—in the forum), with *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 881

(2011) (plurality op.) (stating specific jurisdiction exists when the defendant "submits"—*i.e.*, consents—to the forum's jurisdiction through its purposeful contacts with the forum); see also *International Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945) (noting the Court's past reliance on "the legal fiction that [a foreign defendant] has given its consent to service and suit . . . through the [in-state] acts of its authorized agents").

Defendants "who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts." *J. McIntyre*, 564 U.S. at 881. So—when a defendant lacks a sufficient in-state presence to justify the exercise of general jurisdiction—a state court must determine whether the defendant has effectively consented to the State's jurisdiction through the defendant's purposeful contacts with the State. See *ibid.* And because a defendant's purposeful contacts with the State are a "limited form of submission," *ibid.*, the State's jurisdiction over that defendant is "specific" to only those claims that arise from or relate to the defendant's purposeful contacts with the State. See *Goodyear*, 564 U.S. at 919.

Thus, because a State's specific jurisdiction over a foreign defendant is consent-based and claim-specific, a claim-by-claim analysis is necessary to determine whether *each* of the plaintiff's claims arises from or relates to the defendant's purposeful contacts with the State. As the Fifth Circuit put it: "Permitting the legitimate exercise of specific jurisdiction over one claim to justify the exercise of specific jurisdiction over a different claim that does not arise out of or relate to the

defendant's forum contacts would violate the Due Process Clause." *Seiferth v. Helicopteros Atuneros, Inc.*, 472 F.3d 266, 274–275 & nn.5–6 (5th Cir. 2006). "Thus, if a plaintiff's claims relate to different forum contacts of the defendant, specific jurisdiction must be established for each claim." *Ibid.* (citing *Phillips Exeter Acad. v. Howard Phillips Fund, Inc.*, 196 F.3d 284, 289 (1st Cir. 1999); *Remick v. Manfredy*, 238 F.3d 248, 255–256 (3d Cir. 2001); *Morris v. Barkbuster, Inc.*, 923 F.2d 1277, 1281–1282 (8th Cir. 1991); *Data Disc, Inc. v. Sys. Tech. Assocs. Inc.*, 557 F.2d 1280, 1289 n.8 (9th Cir. 1977); 5B Wright & Miller, FEDERAL PRACTICE AND PROCEDURE: CIVIL 3d § 1351, at 299 n.30 (2004)).

This Court's precedent clearly supports the Fifth Circuit's holding in *Seiferth*, *supra*—but the Court has never expressly stated or held that a claim-by-claim analysis is necessary for specific jurisdiction. This case presents an opportunity to do so.

1.2 The States are divided over whether a claim-by-claim analysis is necessary.

Following federal precedent, most States have agreed that a claim-by-claim analysis is necessary for specific jurisdiction—*i.e.*, that specific jurisdiction must be established for each claim. See, *e.g.*, *Moncrief Oil Int'l Inc. v. OAO Gazprom*, 414 S.W.3d 142, 150–151 (Tex. 2013) (citing *Seiferth*, *supra*); *Seward v. Richards*, ___ A.3d ___, 2021 WL 4075940, at *3–4 (N.H. Sept. 8, 2021); *DeLeon v. BNSF Railway Co.*, 426 P.3d 1, 5 (Mont. 2018); *Telford v. Smith Cnty.*, 314 P.3d 179, 184

(Idaho 2013); *Firouzabadi v. Dist. Ct.*, 885 P.2d 616, 621 (Nev. 1994); *Fantis Foods v. Standard Importing Co.*, 402 N.E.2d 122 (N.Y. 1980); see also *State ex rel. LG Chem, Ltd. v. McLaughlin*, 599 S.W.3d 899, 903 (Mo. 2020) (indicating each "cause of action" must arise from defendant's purposeful contacts); *Nimmer v. Giga Entm't Media, Inc.*, 905 N.W.2d 523, 532–533 (Neb. 2018) (same); *Capital Promotions v. King*, 756 N.W.2d 828, 835 (Iowa 2008) (same); *Bond v. Messerman*, 895 A.2d 990, 1000–1001 (Md. 2006) (same); *Fenn v. Mleads Enterprises, Inc.*, 137 P.3d 706, 710 n.8 (Utah 2006) (same).[4]

But some States have explicitly rejected the need for a claim-by-claim analysis. See *Hammons v. Ethicon, Inc.*, 240 A.3d 537, 557–560 (Pa. 2020); *U.S. Sprint Commun. Co. Ltd. P'ship v. Mr. K's Foods, Inc.*, 624 N.E.2d 1048, 1052–1053 (Ohio 1994). And—although the Texas Supreme Court has held that a claim-by-claim analysis is necessary, see *Moncrief Oil*, 414 S.W.3d at 150–151—the Houston Court of Appeals has rejected the need for a claim-by-claim analysis, holding specific jurisdiction for one claim is tantamount to general jurisdiction for all claims:

> A single basis for personal jurisdiction is sufficient to confer jurisdiction over a defendant.

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[4] Some federal circuit courts have likewise agreed that a claim-by-claim analysis is necessary. See, *e.g.*, *Seiferth*, 472 F.3d at 274–275; *Vallone v. CJS Sols. Grp.*, 9 F.4th 861, 865 (8th Cir. 2021); *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015); *Hanly v. Powell Goldstein*, 290 F. App'x 435 (2d Cir. 2008); *Marten v. Godwin*, 499 F.3d 290, 296 (3d Cir. 2007).

> The court need not address general jurisdiction if it finds that a defendant is subject to specific jurisdiction. If the court finds specific jurisdiction over a defendant based on one cause of action, the court need not address jurisdiction as to any other causes of action.

Hoagland v. Butcher, 396 S.W.3d 182, 194 n.14 (Tex. App.—Houston 2013) (citing *Citrin Holdings v. Minnis*, 305 S.W.3d 269, 279 (Tex. App.—Houston 2009)).[5] Moreover, notwithstanding its holding in *Moncrief Oil*, the Texas Supreme Court has never overruled or explicitly disapproved the Houston Court's conflicting position on whether a claim-by-claim analysis is necessary. The Texas Supreme Court could have done so in this case, but instead denied review. App. 33a.

Because the States are divided over whether a claim-by-claim analysis is necessary, the Court should grant this petition to clarify that the Due Process Clause requires a claim-by-claim analysis for specific jurisdiction.

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[5] Some federal circuit courts have similarly indicated that a claim-by-claim analysis might not be necessary. See, *e.g.*, *United States v. Botefuhr*, 309 F.3d 1263, 1272 (10th Cir. 2002) (referring to "pendent" jurisdiction as a basis for avoiding a claim-by-claim analysis and exercising personal jurisdiction over all claims); *Hargrave v. Oki Nursery, Inc.*, 646 F.2d 716, 721 (2d Cir. 1980) ("The district court, having acquired personal jurisdiction over defendant, has power to determine all of the claims asserted in the complaint.").

1.3 The Houston Court's opinion demonstrates that, without a claim-by-claim analysis, the distinction between general jurisdiction and specific jurisdiction is blurred.

Without a claim-by-claim analysis for specific jurisdiction, the distinction between general jurisdiction and specific jurisdiction becomes less clear. See, *e.g.*, *Hoagland*, *supra* (equating specific jurisdiction for one claim with general jurisdiction for all claims); *cf. Ford*, 141 S.Ct. at 1034, 1036 (Gorsuch, J., joined by Thomas, J., concurring in the judgment) (noting distinction between general and specific jurisdiction has become "battered" and "the old *International Shoe* dichotomy [is] looking increasingly uncertain"). Here, by refusing to conduct a claim-by-claim analysis, the Houston Court has effectively asserted general jurisdiction over Amec for all of Enterprise's claims, while ostensibly calling it "specific jurisdiction."

Enterprise has alleged claims against Amec for negligent misrepresentation, for "string-along" fraud, and for breach of contract, based on Naylor's and Reilly's alleged representations that Amec was "assuming" Foster's contractual obligations. And Enterprise has separately alleged other claims against Amec, including claims for "gross and professional negligence," based on Naylor's and Reilly's subsequent actions in Texas. Thus, Enterprise has alleged different claims arising from different contacts with Texas. See App. 14a–15a. And Enterprise seeks over

$700,000,000 in damages, based on its various claims against Amec.

If it had conducted a proper claim-by-claim analysis, the Houston Court would have examined whether Naylor's or Reilly's early representations in Texas—allegedly representing that Amec was "assuming" Foster's contractual obligations—constituted the sort of purposeful contacts with Texas *by Amec* that could support the exercise of specific jurisdiction over Amec for any claims arising out of those representations. See Part 2, *infra*. And the Houston Court would have separately examined whether Naylor's or Reilly's subsequent actions in Texas—allegedly mismanaging the PDH Project—constituted the sort of purposeful contacts with Texas *by Amec* that could support the exercise of specific jurisdiction over Amec for any claims arising out of those actions. In short, if it had conducted a proper claim-by-claim analysis, the Houston Court might have determined that—based on the contacts of Naylor and Reilly—Texas has specific jurisdiction over Amec for some claims but not for others. See Part 2, *infra*; see also *Daimler*, 571 U.S. at 135 ("[T]he fact that one may be an agent for one purpose does not make him or her an agent for every purpose.").

Such a claim-by-claim analysis is crucial not only to (1) determining the number of claims and the scope of the litigation that Amec may or may not have to face in a Texas court, but also to (2) determining the amount of damages that Enterprise may pursue, and the size of the financial risk that the Texas litigation may or may not pose to Amec.

But the Houston Court refused to conduct a claim-by-claim analysis. Instead, the Houston Court focused only on whether there was sufficient evidence to support a finding that Naylor and Reilly were Amec's "employees." App. 15a–22a. And after determining there was sufficient evidence to find that Naylor and Reilly were Amec's "employees"—and having emphasized repeatedly that Naylor and Reilly each "resid[ed]" in Texas and "maintained his office in Houston," *ibid.*—the Houston Court simply listed all of Enterprise's claims in a single paragraph, noted that all of them arise from "the words and actions of Naylor and Reilly in Texas," and concluded that Naylor's and Reilly's "words and actions . . . in Texas" could be attributed to Amec based on Naylor's and Reilly's mere status as "employees." App. 23a–24a.[6]

In short: by refusing to conduct a claim-by-claim analysis, the Houston Court effectively asserted *general* jurisdiction over Amec, based on the mere presence of two employees in Texas, while ostensibly calling it "specific jurisdiction." In other words, the lack

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[6] Regarding "traditional notions of fair play," the Houston Court said that Amec faces little burden in having to defend itself in Texas, and noted that traditional notions of fairness are "rare[ly]" offended "when the nonresident defendant purposefully has established minimum contacts with the forum state." App. 26a–27a. But the Houston Court failed to demonstrate that Amec had made any purposeful contact with Texas. And this Court has held: "However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that State that are a prerequisite to its exercise of power over him." *Hanson v. Denckla*, 357 U.S. 235, 251 (1958).

of a claim-by-claim analysis blurred the distinction between general and specific jurisdiction.

This case therefore presents an opportunity for the Court to strengthen the distinction between general and specific jurisdiction, in part by clarifying that—because it is essentially consent-based, see Part 1.1, *supra*—specific jurisdiction requires a claim-by-claim analysis to determine whether the defendant has, through its purposeful contacts with the State, effectively consented to the State's jurisdiction for those claims that arise from or relate to its purposeful contacts with the State.

For these reasons, the Court should grant review, provide this important clarification, and remand so that the Houston Court can conduct a proper claim-by-claim analysis.

2. The Court should clarify whether the Due Process Clause requires a court to determine whether an alleged agent's "contacts" were authorized by the foreign defendant before attributing those contacts to the defendant for jurisdictional purposes.

The Court has recognized that "[a]gency relationships . . . may be relevant to the existence of specific jurisdiction." *Daimler*, 571 U.S. at 135. And courts generally agree that an "agency" theory may enable a court to attribute an individual's contacts with the forum to a corporate defendant for jurisdictional purposes. But courts appear divided over how to apply an

agency theory in the jurisdictional context. And here—though Amec raised the issue, see Amec's Br. 27–42 & Amec's Reply 11–18—the Houston Court explicitly refused to determine whether Naylor or Reilly were authorized to perform any of the "words and actions" that the Houston Court attributed to Amec for jurisdictional purposes.

For the reasons provided below, this Court should grant review and clarify whether the Due Process Clause requires a court to determine whether an agent's contacts with the forum were authorized by the foreign defendant before attributing those contacts to the defendant for jurisdictional purposes.

2.1 The Court's precedent indicates that an agent's contacts with the forum cannot be attributed to a foreign corporation unless the corporation authorized those contacts.

It is well established that "a corporation can only act . . . through agents." *St. Clair v. Cox*, 106 U.S. 350, 356 (1882). And long before the Court modernized personal jurisdiction in *International Shoe*—when personal jurisdiction was still based primarily on physical service of process—the Court recognized that a State could exercise jurisdiction over a foreign corporation only by "[s]erving process on its agents . . . for *matters within the sphere of their agency*." *Ibid.* (emphasis added); see also *Commercial Mut. Acc. Co. v. Davis*, 213 U.S. 245, 255 (1909) (recognizing personal jurisdiction

may be established by service on an agent who was authorized to perform relevant actions in the State).

When the Court modernized personal jurisdiction in *International Shoe*—by turning away from the tag-like focus on physical service of process and toward "traditional notions of fair play" and the concept of "minimum contacts"—the Court continued to recognize that the sufficiency of a foreign corporation's contacts with the forum must be determined by reference to "activities carried on in [the corporation's] behalf by *those who are authorized to act for it*." 326 U.S. at 316–319 (emphasis added). And *International Shoe* refers expressly to the "authorized acts" of "authorized agents" forming the basis for exercising personal jurisdiction over a foreign corporation. *Id.* at 318.

Later, the Court expressly rejected the notion that "[t]he unilateral activity of those who claim some relationship with a nonresident defendant [might] satisfy the requirement of contact with the forum State," and held instead that there must be "some act by which the defendant *purposefully* avails itself of the privilege of conducting activities within the forum State." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958) (emphasis added). *Hanson* did not involve the acts of an alleged agent—but its holding applies equally to the "unilateral activity" of an alleged agent. As the U.S. District Court for the District of Maryland put it: "[I]f an agent . . . acts unilaterally outside the scope of the [agency] relationship, jurisdiction may not be imputable [to the principal]." *Compass Marketing, Inc. v. Schering-Plough*

Corp., 438 F. Supp. 2d 592, 595 n.4 (D. Md. 2006) (citing *Hanson*, 357 U.S. at 253).

Put another way: "[T]he fact that one may be an agent for one purpose does not make him or her an agent for every purpose." *Daimler*, 571 U.S. at 135. And a foreign defendant cannot be said to have "intentional[ly] . . . aimed" activities at the forum State, see *Calder v. Jones*, 465 U.S. 783, 789 (1984), or to have "deliberately reached out" or "purposefully avail[ed] itself of" the forum State, see *Ford*, 141 S.Ct. at 1024–1025, if the defendant never authorized the alleged agent to do whatever the agent allegedly did in the forum State.

In sum: the Court has recognized that "[a]gency relationships . . . may be relevant to the existence of specific jurisdiction." *Daimler*, 571 U.S. at 135 n.13 (citing *International Shoe*, 326 U.S. 310). And the Court's precedent indicates that courts must determine whether an agent's alleged contacts with the forum were authorized by the foreign defendant before attributing those contacts to the defendant for jurisdictional purposes. But the Court has never directly said so—nor has it directly addressed how courts should apply an agency theory in the jurisdictional context.

This case presents an opportunity to address this important issue.

2.2 State and federal courts appear divided over how an "agency" theory should be applied when determining specific jurisdiction.

Based on this Court's precedent, the federal circuit courts have widely agreed that courts must determine whether an agent's contacts with the forum were authorized by the foreign defendant before those contacts can be attributed to the defendant for jurisdictional purposes. See, *e.g.*, *Jet Wine & Spirits, Inc. v. Bacardi & Co., Ltd.*, 298 F.3d 1, 9–10 (1st Cir. 2002); *Dickson Marine Inc. v. Panalpina, Inc.*, 179 F.3d 331, 338–339 (5th Cir. 1999); *Romak USA, Inc. v. Rich*, 384 F.3d 979, 985 (8th Cir. 2004); *Williams v. Yamaha Motor Co. Ltd.*, 851 F.3d 1015, 1024–1025 & n.5 (9th Cir. 2017); *Kuenzle v. HTM Sport-Und Freizeitgerate AG*, 102 F.3d 453, 458–459 (10th Cir. 1996); see also *Suarez Corp. v. CBS, Inc.*, 23 F.3d 408 (table), 1994 WL 142785, at *3–5 (6th Cir. 1994) (per curiam).

And when the issue of an alleged agent's authority has been raised, state courts have likewise agreed that the agent's authority to act on behalf of the defendant must be established before the agent's contacts with the forum can be attributed to the defendant. See, *e.g.*, *Searcy v. Parex Resources, Inc.*, 496 S.W.3d 58, 77–78 (Tex. 2016); *Corporate Flight Mgmt., Inc. v. Tal Aviation, S.A.*, No. M2018-01492-COA-R3-CV, 2019 WL 4052493, at *3–7 (Tenn. App. Aug. 28, 2019); *von Schonau-Riedweg v. Rothschild Bank AG*, 128 N.E.3d 96, 112–114 (Mass. App. 2019); *Viega GmbH v. Eighth Jud. Dist. Ct.*, 328 P.3d 1152, 1157–1161 (Nev. 2014);

Gonzalez v. Internacional De Elevadores, S.A., 891 A.2d 227, 238–240 (D.C. App. 2006); *Kotera v. Daioh Internat'l U.S.A. Corp.*, 40 P.3d 506, 520–521 (Or. App. 2002); *Lakeside Equip. Corp. v. Town of Chester*, 795 A.2d 1174, 1179–1182 (Vt. 2002).

But courts appear divided over how agency should be determined, or how an agency theory should be applied in the jurisdictional context. The Ninth Circuit, for example, once held that a subsidiary's contacts with California could be attributed to its foreign parent company for jurisdictional purposes through an agency theory that construed the subsidiary as an agent of the parent company merely because its activities were "important" to the parent. See *Daimler*, 571 U.S. at 134–136 & n.13 (rejecting this particular agency theory while still recognizing that agency "may be relevant"). And other circuits have held that an individual may be characterized as an "agent" for jurisdictional purposes if the defendant exercised "some control" over the individual, under "traditional" (*i.e.*, federal) agency law. *CutCo Indus., Inc. v. Naughton*, 806 F.2d 361, 366 (2d Cir. 1986) (citing mostly federal case law); see also *Dickson Marine*, 179 F.3d at 338–339 (same).

Meanwhile, the state courts all seem to apply their own state law to determine "agency" for jurisdictional purposes. *E.g.*, *von Schonau-Riedweg*, 128 N.E.3d at 112–114; *Kotera*, 40 P.3d at 520–521. And some of the federal circuit courts have likewise applied the relevant state law that governs agency. *E.g.*, *Romak USA*, 384 F.3d at 985 (applying Missouri law); *Suarez Corp.*,

23 F.3d 408 (table), 1994 WL 142785, at *3–5 (applying Washington law). Notably, this approach is consistent with this Court's recognition that "[f]ederal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons." *Daimler*, 571 U.S. at 125.

Because the Court has recognized that agency "may be relevant to the existence of specific jurisdiction," *id.* at 135 n.13, but has not yet addressed how agency should be determined—or how an agency theory should be applied when establishing specific jurisdiction—the Court should grant this petition to address this important issue.

2.3 The Houston Court split from all other courts when it refused to determine whether Naylor's or Reilly's contacts with Texas were authorized by Amec before attributing those contacts to Amec for jurisdictional purposes.

The Houston Court itself has previously held that an agent's contacts with Texas cannot be attributed to the defendant for jurisdictional purposes if the agent was not authorized to perform the relevant acts on the defendant's behalf. *E.g.*, *Huynh v. Nguyen*, 180 S.W.3d 608, 622–623 (Tex. App.—Houston 2005). Yet here, the Houston Court attributed Naylor's and Reilly's "words and actions . . . in Texas" to Amec, while expressly refusing to determine whether Naylor or Reilly had "actual or apparent authority" to perform any of

those "words and actions" on Amec's behalf. App. 23a–24a. In doing so, the Houston Court disregarded its own precedent, see *Huynh*, *supra*—as well as Texas Supreme Court precedent, see *Searcy*, 496 S.W.3d at 77–78[7]—and split from the prior holdings of numerous other state and federal courts, see Part 2.2, *supra*.

The Houston Court's refusal to determine whether Naylor and Reilly were authorized to act on Amec's behalf is magnified by the fact that the record shows clearly that Naylor and Reilly were *not* authorized to "assume," on Amec's behalf—or to represent that Amec was "assuming"—Foster's contractual obligations. The document that delegated authority to the group presidents explicitly *withheld* authority to enter any contract worth over $350,000,000. And it is undisputed that, here, the cost-reimbursable contract for the PDH Project indicated that Foster would be paid *at least* $884,000,000 for its work. Consequently, the record shows clearly that neither Naylor nor Reilly had authority to "assume" the contract on Amec's behalf—and any representation that Naylor or Reilly might have made in Texas, to that effect, cannot be attributed to Amec for jurisdictional purposes.

Put another way: because Naylor and Reilly lacked authority to "assume" the contract on Amec's

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[7] It is unclear why the Texas Supreme Court did not grant review. Perhaps the Texas justices perceived the agency issue as raising fact questions (*i.e.*, sufficiency-of-evidence questions) that were not appropriate for its review. *Cf. Golden Eagle Archery, Inc. v. Jackson*, 116 S.W.3d 757, 761 (Tex. 2003). But this is not so. See Part 3, *infra*.

behalf, Amec had no reason to ever anticipate being haled into a Texas court to defend itself against any claims arising from or related to such representations. *Cf. World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 296–297 (1980) (holding foreseeability is relevant to the "due process analysis" when the defendant's "conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there").

In sum: if the Houston Court had conducted a proper claim-by-claim analysis, see Part 1, *supra*, and had properly considered whether the various alleged "words and actions" of Naylor and Reilly had been authorized by Amec, the Houston Court might have determined that it had specific jurisdiction over Amec for some claims but not for others. Because the Houston Court's refusal to address the authority issue conflicts with its own prior holdings and with the prior holdings of other courts, this Court should grant review and clarify whether a court must determine whether an agent's contacts with the forum were authorized by the foreign defendant before attributing those contacts to the defendant for jurisdictional purposes.

3. This case presents a clean vehicle for resolving the two questions presented.

This case is a clean vehicle for resolving the two questions presented because there are no fact issues relevant to resolving the two questions presented.

The Houston Court has asserted judicial power over a British holding company—and is forcing that British holding company to defend itself in a Texas court against claims seeking over $700,000,000 in damages—without demonstrating that the British holding company ever had a single purposeful contact with Texas. See App. 1a–30a. The Houston Court refused to conduct a claim-by-claim (or contact-by-contact) analysis, and refused to determine whether any of Naylor's or Reilly's relevant contacts with Texas were authorized by Amec. App. 23a–24a. This raises two important questions—and courts are divided on both questions. See Parts 1 & 2, *supra*.

Regarding Question 1: whether the Due Process Clause requires a state court to conduct a claim-by-claim analysis for specific jurisdiction is a purely legal question. See Part 1, *supra*.

Regarding Question 2: although fact issues may be relevant in determining whether an alleged agent had authority to act on behalf of a foreign defendant, the preliminary question of *whether this determination must be made before a court can attribute the alleged agent's acts to the defendant for jurisdictional purposes* is a purely legal question. See Part 2, *supra*. In other words, although Question 2 may implicate underlying fact issues, this Court does not have to address or resolve any underlying fact issues in answering Question 2. The Court can hold that the Due Process Clause requires a court to determine whether an agent had authority to act on behalf of the defendant before attributing the agent's acts to the defendant for

jurisdictional purposes—and then remand this case to the Houston Court to address any underlying fact issues that may need to be addressed in making this determination.

Because both of the questions presented are purely legal questions, and because they are both important, unresolved constitutional questions—and because resolving them will also resolve divisions among the courts—review is warranted.

CONCLUSION

For the foregoing reasons, the Court should grant this petition for a writ of certiorari.

Respectfully submitted,

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