No. 24-1190

In the
Supreme Court of the United States

SYNGENTA CROP PROTECTION, LLC and SYNGENTA AG
Petitioners,

v.

DOUGLAS NEMETH, *et al.*, CHEVRON U.S.A. INC., and FMC CORPORATION,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rule

Other Authorities

REPLY BRIEF

Mallory v. Norfolk Southern Railway Co., 600 U.S. 122 (2023), acknowledged, but did not answer, both Questions Presented here. *Mallory* left the question whether registration-based general personal jurisdiction violates the Commerce Clause "for consideration on remand." *Id.* at 127 n.3. And *Mallory* did not resolve the scope of due process limits on consent-by-registration for out-of-state defendants without "substantial operations in a State." *Id.* at 150 (Alito, J. concurring). Justice Alito's concurrence observed that *Mallory*'s narrow holding was "not the end of the story for registration-based jurisdiction." *Id.* at 154. Far from being settled, the questions *Mallory* raised but left unanswered "created a jurisprudential void, leaving countless stakeholders in the lurch." PCCJR Amicus at 7. In Pennsylvania alone, hundreds of thousands of registered businesses may be subject to general personal jurisdiction on *any* and all causes of action—even, as here, in so-called "foreign-cubed" lawsuits by out-of-state plaintiffs, raising out-of-state causes of action, for out-of-state alleged injuries.

Mallory's narrow reasoning continues to sow confusion and invite opportunism. Justice Barrett's dissent observed a nationwide "invitation" to states "to manipulate registration." 600 U.S. at 180. In the two years since *Mallory*, at least two states proposed legislation to accept that invitation, with Illinois enacting such a law. Most states are one judicial decision away from interpreting their statutes to have the same effect. Many states apply constitutional avoidance principles to construe their registration statutes. *E.g.* BIO14 n.6. After *Mallory*, under

Respondents' arguments, those states might reasonably question whether there is anything to avoid.

Yet, according to Respondents, the questions presented "are simply not open questions." BIO19. In their telling, the story for registration-based jurisdiction ended "more than one hundred years ago" when "*Pennsylvania Fire resolved the constitutionality* of statutes like Section 5301." BIO3 (emphasis added). Respondents do not even acknowledge the federalism and fairness concerns involved when a state court asserts jurisdiction over another state's citizens, much less causes of action with no connection to the state. According to Respondents, *Mallory*'s fractured opinions were much ado about nothing. And to sow confusion, Respondents wrongly deny that the challenged orders are sufficiently "final" or that Petitioners' arguments are fully preserved.

In reality, this case is the necessary sequel to *Mallory*, and the Court should take it up now. This case presents Pennsylvania's clear statute, but has none of the drawbacks that prevented *Mallory* from providing additional guidance. This case presents Commerce Clause and Due Process challenges, which were preserved and litigated with the benefit of this Court's *Mallory* decision, thus allowing this Court to consider the full federalism concerns at issue. Unlike Norfolk Southern Railroad, Petitioners lack substantial operations in Pennsylvania—which Respondents' opposition *does not dispute*. At bottom, Respondents' opposition merely underscores the need for review.

I. Respondents' Procedural Arguments Lack Merit.

A. Respondents first argue there is no "final order from which Syngenta may appeal," BIO10, notwithstanding precedent cited in the petition. Pet.5. As the petition observed, this Court has jurisdiction under 28 U.S.C. §1257(a), as confirmed by precedent including *Clark v. Jeter*, 486 U.S. 456, 459 (1988) and *Calder v. Jones*, 465 U.S. 783, 788 n.8 (1984). Pet.5.

Section 1257(a) confers certiorari jurisdiction to review "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had," where a federal question is presented. Precedent *rejects* the "mechanical" view—which Respondents assume—that the statute "preclude[s] review where anything further remains to be determined by a State court, no matter how dissociated from the only federal issue that has finally been adjudicated by the highest court of the State." *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 477 (1975). Rather, there are "at least four categories of … cases in which th[is] Court has treated *the decision on the federal issue* as a final judgment for the purposes of 28 U.S.C. §1257 and has taken jurisdiction *without awaiting the completion of the additional proceedings* anticipated in the lower state courts." *Id.* (emphasis added).

This case comfortably fits the fourth *Cox* category, as exemplified in *Calder v. Jones*. *Calder* exercised jurisdiction in a similar posture, concluding that a contemplated "trial on the merits" of state claims was no obstacle to certiorari review of the federal personal jurisdiction question presented. 465 U.S. at 788 n.8 (citing *Cox*). *Calder* is no outlier. It cited "several past

cases presenting jurisdictional issues in this posture" where this Court likewise exercised certiorari jurisdiction. *Id.* This case is no different.

Respondents do not engage meaningfully with *Calder*. They cite *Cox* while ignoring its holding. Respondents' suggestion that the potential for an upcoming trial by one plaintiff is an obstacle to review is irreconcilable with *Cox* and *Calder*. BIO11. Respondents identify no further proceedings in state court bearing on the *federal* issues presented here.

Respondents suggest that "finality" requires "substantive written opinions for this Court to review." BIO11-12. That cannot be right. The question is whether the federal issue has been finally *decided*, not how much or how little explanation accompanies the decision. Consistent with §1257's text ("final *judgments or decrees*" (emphasis added)), this Court "reviews judgments, not statements in opinions," *California v. Rooney*, 483 U.S. 307, 311 (1987), including judgments accompanied by no opinion. *E.g.*, *Oil States Energy Servs., LLC v. Greene's Energy Grp. LLC*, 584 U.S. 325, 333 (2018). Were it otherwise, lower courts could evade review by writing terse opinions or no opinions. To be sure, the state court rulings here are terse, App-1-7,[*] but that only underscores the need for review. Despite extensive briefing, *e.g.*, App-11-86 (excerpts), the courts below declined to engage, apparently accepting Respondents' invitation to treat *Mallory* as broadly holding consent-by-registration "constitutional."

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[*] "App." refers to the Appendix to the petition.

Only this Court can answer the questions it reserved in *Mallory*. It should do so now. Waiting invites further confusion and opportunism, Pet.29-33, while increasing plaintiffs' improper leverage to coerce settlements in cases that should not have been brought in Pennsylvania. *See* §III, *infra*. Here, as in "several past cases presenting jurisdictional issues in this posture," *Calder*, 465 U.S. at 788 n.8, the federal questions presented are ripe for review, and "immediate rather than delayed review would be the best way to avoid … economic waste and delayed justice," *Cox*, 420 U.S. at 477-78.

B. In passing, Respondents contend the Commerce Clause challenge is unpreserved under state procedure. BIO12. That is wrong. Petitioners preserved the Commerce Clause challenge by arguing it explicitly to the trial court at the first opportunity, and by renewing it at *every* level of state court proceedings. *See* Pet.14-15; App-11-118 (excerpts of state court filings). Respondents grudgingly acknowledge as much. BIO4 ("Now, for the *fourth* time…"). That is textbook preservation. *Commonwealth v. Garcia*, 396 A.2d 406, 407 (Pa. Super. 1978) ("Appellant's arguments on appeal are preserved … by their having been raised below."). Pennsylvania procedure requires no more. *See Adelphia Cablevision Assocs. v. Univ. City Hous. Co.*, 755 A.2d 703, 709 (Pa. Super. 2000) (distinguishing *Franklin Township* case cited at BIO12); *Norris v. Wood*, 485 A.2d 817, 819 (Pa. Super. Ct. 1984). That is perhaps why, although Respondents made this same forfeiture argument below, *no* state court ever adopted it. Quite the opposite—the trial court invited briefing after this Court decided *Mallory*, and ordered

jurisdictional discovery. *E.g.* App-87-91. No order below suggests non-preservation, and rightfully so.

II. Both Questions Warrant This Court's Review.

A. *Mallory* Explicitly Reserved the Commerce Clause Question and Declined to "Speculate" on the Answer to the Due Process Question.

Next, Respondents argue there is no relevant "split" of authority. BIO13-18. Respondents overstate the cases they cite. *See infra* §§II.B-C. The presence or absence of a "split" is often a relevant consideration for certiorari, but not always, and neither Rule 10 nor §1257 requires it. It is especially strange to insist on a "split" here, where this Court specifically reserved both Questions Presented, and where the need for review arises in large part from where *Mallory* left things.

Personal jurisdiction is an exercise of the State's coercive power. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 918 (2011). Asserting *general* jurisdiction over an out-of-state defendant in an action with no substantial connection to the state is exceptionally coercive and raises constitutional questions that this Court has traditionally addressed under the Commerce and Due Process Clauses.

Neither *Mallory*, *Pennsylvania Fire*, nor any other decision of this Court holds that those constitutional concerns disappear completely when a state extracts an out-of-state defendant's "consent" as a condition of business registration. *See* Pet.28. *Mallory* holds only that *International Shoe*'s rubric concerns "non-

consenting corporations," and that treating such consent as valid is permissible when applied to a "large out-of-state corporation with substantial operations in a State." 600 U.S. at 150, 152 (Alito, J., concurring).

The *Mallory* majority could not have been clearer about the two questions it was *not* resolving. The Commerce Clause question presented here was explicitly reserved "for consideration on remand." *Id.* at 127 n.3. And *Mallory*'s Due Process holding applied only to large corporations with substantial operations in the State. Justice Alito's decisive vote was explicitly limited to those terms, *id.* at 150 (Alito, J., concurring) and the majority declined to "*speculate* whether any other … set of facts would suffice to establish consent to suit." *Id.* at 135 (majority, emphasis added). Countless businesses like Syngenta are thus left to speculate about the Commerce Clause, and about the validity of consent by defendants without substantial operations in the state. *Mallory* thus frames the questions warranting this Court's review.

Those questions are especially urgent and important because *Mallory* removes one source of constitutional protection for out-of-state registrant defendants (Due Process under *International Shoe* and its progeny), without addressing whether other protections exist or apply.

According to Respondents, however, coerced "consent" removes all Due Process and Commerce Clause questions under a purported "consensus" that consent-by-registration statutes are broadly "constitutional." *E.g.*, BIO3, 6, 17, 19-20. In respondents' telling, *Mallory*'s fractured opinions,

reservations, and detailed discussion were much ado about nothing.

B. The Commerce Clause Question Warrants Review.

This Court has long acknowledged inherent constitutional limits on the ability of states to exercise jurisdiction over citizens of another state or causes of action to which the state has no substantial connection. *Pennoyer v. Neff*, 95 U.S. 714, 722-24 (1878); *Mallory*, 600 U.S. at 155 (Alito, J., concurring). Coercing consent to general personal jurisdiction as a condition of doing any business in a state raises obvious federalism concerns. Under the Articles of Confederation, states were free to levy tariffs and impose countless restrictions on out-of-state businesses. The Constitution, however, was designed to create a "national economic union" that could not be balkanized by erecting barriers to interstate commerce. *Supreme Court of N.H. v. Piper*, 470 U.S. 274, 280 (1985); *see Hughes v. Oklahoma*, 441 U.S. 322, 325-26 (1979). In the early Twentieth Century, the Court thus grounded federalism concerns over personal jurisdiction in the Commerce Clause, which it treated as imposing important constitutional limits. *See* John F. Preis, *The Dormant Commerce Clause as a Limit on Personal Jurisdiction*, 102 IOWA L. REV. 121, 132-33 (2016); Br. of U.S. as Amicus Curiae at 21-22, *Mallory*, 600 U.S. 122 (No. 21-1168) [*hereinafter* SG *Mallory* Br.]; *Davis v. Farmers Co-Operative Equity Co.*, 262 U.S. 312, 315 (1923); *Sioux Remedy Co. v. Cope*, 235 U.S. 197, 203-04 (1914). *Pennsylvania Fire* did not consider those decisions only because insurance was not considered "commerce" at the time.

SG *Mallory* Br. at 21-22 (citing *Paul v. Virginia*, 75 U.S. 168, 183 (1869), *overruled by United States v. S.E. Underwriters Ass'n*, 322 U.S. 533, 553 (1944)).

Contrary to Respondents' suggestion, those decisions were never overruled, nor limited to the defendants who only appoint an agent for service of process. BIO16-17. *Harris v. Am. Ry Express Co.*, 12 F.2d 487 (D.C. Cir. 1926), for example, turned on the defendant's significant presence in the jurisdiction—as in *Mallory* and unlike here. *Id.* at 488. *Louisville & N.R. Co. v. Chatters S. Ry. Co.*, 279 U.S. 320 (1929) allowed a suit to proceed in Louisiana because it *ar[ose] out of business within the state*." *Id.* at 326. *Louisville* did not hold that registration-based consent is broadly "constitutional," but that *Pennsylvania Fire* was dispositive "when coupled with [defendant's] other corporate activities within the state." *Id.*; *see Simon v. S. Ry. Co.*, 236 U.S. 115, 130 (1915) (The "statutory consent of a foreign corporation to be sued does not extend to causes of action arising in other States."). Those decisions apply similar federalism and fairness principles to those *International Shoe* later grounded in the Due Process Clause; they do not hold those principles vanish in the presence of so-called "consent."

The Commerce Clause's role in this Court's precedent shifted toward the background in the mid-Twentieth Century because of the rise of *International Shoe* and its progeny. *See* Preis, 102 IOWA L. REV. at 132-33. The Court continued to acknowledge that broad assertions of personal jurisdiction raised overlapping concerns under the Commerce Clause and Due Process Clause. *See, e.g.*, *Bendix Autolite Corp. v.*

Midwesco Enters., Inc., 486 U.S. 888, 893 (1988) ("Requiring a foreign corporation to appoint an agent for service in all cases and to defend itself with reference to all transactions, including those in which it did not have the minimum contacts necessary for supporting personal jurisdiction, is a significant burden."). For similar reasons, the Commerce Clause was in the background in *Mallory*. It was discussed in the Solicitor General's brief and at oral argument, but ultimately reserved for remand. 600 U.S. at 127 n.3.

At least five Justices in *Mallory* acknowledge that basing general jurisdiction on consent-by-registration is contrary to a constitutional federalism principle. Four dissenting Justices located that principle in the Due Process Clause. Justice Alito opined, without contradiction, that the Commerce Clause was a more appropriate home. And although the plurality rejected Norfolk's Due-Process-based appeals to federalism based on the scope of Norfolk's business in Pennsylvania, *id.* at 144, they joined Justice Alito in reserving the Commerce Clause question or remand. *Id.* at 127 n.3. By limiting *International Shoe* while leaving the Commerce Clause question undecided, *Mallory* invites lower courts and plaintiffs to ignore historical concerns and treat mandatory consent-by-registration as conclusive. Tellingly, Respondents offer no principled basis for that result. They identify no legitimate interest served by one state asserting general jurisdiction over another state's citizens as a condition for doing a modicum of business. Far from there being a broad "constitutional" consensus, that has never been the norm—until *Mallory*'s fractured decision invited it.

C. The Due Process Question Warrants Review.

With respect to Due Process, Respondents mainly invoke *Pennsylvania Fire* and reject *Mallory*'s narrow reading of it. Respondents ignore the *Mallory* majority's reasoning, the *Marks* rule, and Justice Alito's concurrence.

Regardless of *Pennsylvania Fire*'s intended scope in 1917, even the *Mallory* majority was unwilling to give it such broad scope in 2025 after a century of intervening precedent. The lead opinion noted Norfolk "boast[ed] of its presence" in Pennsylvania, undermining the notion it was inherently "unfair" to be subject to suit in Pennsylvania. 600 U.S. at 141. Justice Alito explained his decisive fifth vote as turning on Norfolk's extensive operations in Pennsylvania, adding that those extensive operations were a reason not to "overrule *Pennsylvania Fire in this case*." 600 U.S. at 153 (emphasis added).

But this case provides a vehicle to overrule *Pennsylvania Fire*, if necessary—a point to which Respondents have no answer. *See* Pet.28-29; ALF Amicus at 14-20; SG *Mallory* Br. at 18-19 (explaining *Pennsylvania Fire* rested on two premises that subsequent decisions reject: (a) that states had the power to exclude corporations altogether, and (b) that power necessarily includes the lesser power to condition business in the state on consent to personal jurisdiction). At a minimum, the Court should not extend *Pennsylvania Fire* to defendants, like Syngenta, *without* substantial operations in the state.

III. Leaving These Important Questions Undecided Invites Untoward Consequences.

Respondents have tellingly little to say in response to Petitioner's showing of the need for this Court's immediate review. BIO18-22. There is no benefit to be gained from delay.

Justice Barrett observed that *Mallory* invited states to follow Pennsylvania's lead and use consent to manipulate jurisdiction. 600 U.S. at 180. Sure enough, in less than two years, Illinois and New York proposed statutes resembling Pennsylvania's. CropLife Amicus at 3-4. Illinois' bill passed and was signed into law just last week on August 15, taking effect immediately. Ill. Pub. Act. 104-0352. New York's proposal passed the legislature "six months after the *Mallory* decision," before the governor vetoed it. BIO22.

Respondents dismiss the current state of affairs as concerning "at most four" states. BIO20. But even one is enough to upend litigation across the country. Pet.30; *see* CropLife Amicus at 11; Preis, 102 IOWA L. REV. at 151 (discussing one forum's nationwide effect on patent litigation). Four is worse, and "more statutes may be on the way"—even local ordinances. Stephen E. Sachs, *Dormant Commerce and Corporate Jurisdiction*, 2023 SUP. CT. REV. 214, 219.

Respondents are wrong to dismiss the relevance of states whose registration statutes do not expressly spell out the consequences of registration. BIO14; *see* Pet.18, 30. As with long-arm statutes, states often construe registration statutes according to federal constitutional limits. Pet.30. As Respondents acknowledge, that is what happened in Delaware's

rulings in *Sternberg* and *Genuine Parts*. BIO14; *see* Pet.18. Under respondents' view of the law, consent-by-registration is broadly "constitutional," so there is no impediment to Delaware reinstating its 1988 decision, nor any reason to suppose that other states are not also one judicial decision away from adopting an implied-consent-due-to-registration approach.

Finally, Respondents' arguments against review are self-contradictory. On one telling, Respondents assert review is too late, because both Questions Presented were resolved "roughly a century ago," BIO17, and *Mallory* "merely reaffirmed *Pennsylvania Fire*." BIO3. On the other, Respondents urge this Court not to grant review "*so soon* after *Mallory*." BIO18. It is neither too late nor too soon—it is exactly the right time.

CONCLUSION

The Court should grant certiorari.

Respectfully submitted,

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