25-5409

No.

ORIGINAL

IN THE

Supreme Court of the United States

STANISLAV ARBIT,

PETITIONER,

v.

SCHNEIDER ELECTRIC SE,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

STANISLAV ARBIT
Pro Se
440 North Barranca Avenue
Unit #7377
Covina, CA 91723
(480) 818-4418
supreme@securepower.online

QUESTIONS PRESENTED

1. The Court should grant review to resolve a circuit split on a vital jurisdictional question for the digital age: Does an entity that purposefully and continuously operates a website serving residents of a forum thereby "expressly aim" at the forum for purposes of specific personal jurisdiction?
2. Is the preponderance standard the proper standard of proof in pretrial personal jurisdiction hearings?

PARTIES TO THE PROCEEDING

Petitioner Stanislav Arbit was the plaintiff in the district court and the appellant in the court of appeals.

Respondent Schneider Electric SE was the defendant in the district court and the appellee in the court of appeals.

RELATED PROCEEDINGS

- *Stanislav Arbit v. Schneider Electric SE*, No. 2:23-CV-00533-SPL, United States District Court for the District of Arizona. Judgment entered on Nov. 27, 2023.
- *Stanislav Arbit v. Schneider Electric SE*, No. 24-35, United States Court of Appeals for the Ninth Circuit. Judgment entered on May 23, 2025.

Table of Contents

Table of Appendices

Table of Authorities

Cases:

Statutes

Miscellaneous

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the district court was not published and is reproduced at Pet. App. 4a.

The opinion of the court of appeals was not published and is reproduced at Pet. App. 1a.

JURISDICTION

The Ninth Circuit entered final judgment on May 23, 2025. Pet. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant statutory and regulatory provisions are reproduced in the Appendix at Pet. App. 38a.

INTRODUCTION

Granting this petition would allow the Supreme Court to address two important circuit splits using a single, ideal vehicle. The first split concerns how to analyze Internet websites for personal jurisdiction in intentional tort cases. The second split is about the standard of proof required in a pretrial personal jurisdiction hearing. While the second split is well-established, the first one emerged shortly before the Ninth Circuit filed its memorandum in this case.

This multibillion-dollar trademark infringement case is ripe for reversal. The Supreme Court's opinion, or denial of certiorari, will have far-reaching consequences

for the Internet, commerce, and national security. The Supreme Court should grant certiorari.

STATEMENT OF THE CASE

A. Legal Framework

1. "Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons. See Fed. Rule Civ. Proc. 4(k)(1)(A)." *Daimler AG* v. *Bauman,* 134 S.Ct. 746, 753 (2014). "An Arizona state court may exercise personal jurisdiction over a person, whether found within or outside Arizona, to the maximum extent permitted by the Arizona Constitution and the United States Constitution." Ariz. R. Civ. P. 4.2.

In Arizona, a corporation "is subject to the same duties, restrictions, penalties and liabilities now or later imposed on a domestic corporation of like character." AZ Rev Stat § 10-1505(B) (2024). "[A]ccepting an in-state benefit with jurisdictional strings attached...can carry with [it] profound consequences for personal jurisdiction. See *Insurance Corp. of Ireland*, 456 U.S. at 703-706, 102 S.Ct. 2099 (collecting cases)." *Mallory v. Norfolk Southern Ry. Co.*, 143 S.Ct. 2028, 2044 (2023).

"The Fourteenth Amendment's Due Process Clause limits a state court's power to exercise jurisdiction over a defendant." *Ford Motor Co.* v. *Mont Eighth Judicial Dist. Court*, 141 S.Ct. 1017, 1024 (2021). For personal jurisdiction in a state, when consent to jurisdiction has not been given, the canonical decision in this area remains *International Shoe Co.* v. *Washington,* 326 U.S. 310 (1945). "There, the Court held that a tribunal's authority depends on the defendant's having such "contacts" with the forum State that "the maintenance of the suit" is "reasonable" and "does not offend traditional notions of fair play and substantial justice." *Ford,* 141 S.Ct. at 1024.

International Shoe's progeny divided personal jurisdiction into specific jurisdiction and general jurisdiction—with the former garnering the majority of the Supreme Court's attention. General jurisdiction has been mostly limited to the principal place of business or state of incorporation. *Daimler AG*, 134 S.Ct. at 760.

In general jurisdiction, "claims need not relate to the forum State or the defendant's activity there; they may concern events and conduct anywhere in the world." *Ford*, 141 S.Ct. at 1024. While specific jurisdiction "covers defendants less intimately connected with a State, but only as to a narrower class of claims." *Id.*

In specific jurisdiction, "the defendant...must take "some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State." [*Citation.*] And the plaintiff's claims "must arise out of or relate to the defendant's contacts" with the forum. [*Citation*]." *Ford*, 141 S.Ct. at 1020.

Purposeful availment includes directing wrongdoing at a forum resident. *Calder v. Jones*, 465 US 783, 790 U.S. (1984). Directing activity into a state that inevitably injures the plaintiff is also purposeful availment. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984).

The Supreme Court "has stated that specific jurisdiction attaches in cases identical to this one—when a company cultivates a market for a product in the forum State and the" injury occurs there. *Ford,* 141 S.Ct. at 1021.

If the defendant has purposely availed itself of the privilege of conducting activities in the forum State, or has purposefully directed its conduct into the forum State, and the plaintiff's claim arises out of or relates to the defendant's forum conduct—then specific jurisdiction is analyzed for reasonableness.

The factors relevant to such an analysis include "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's

interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies." *Bristol-Myers Squibb v. Superior Ct. of CA*, 137 S.Ct. 1773, 1786 (2017).

2. Contracts can be "enforced by or against nonparties to the contract through...alter ego[s]". *Arthur Andersen LLP v. Carlisle,* 129 S.Ct. 1896, 1902 (2009). Ultimately, the alter ego rationale is "if the shareholders themselves disregard the separation of the corporate enterprise, the law will also disregard it so far as necessary to protect individual and corporate creditors." Ballantine, Corporations § 123 at 294 (1946)." *Castleberry v. Branscum*, 721 S.W.2d 270, 272 (Tex. 1986).

Some other alter ego factors to consider include: commingling of funds and other assets, shared liabilities, identical ownership, use of the same offices and employees, using one as a mere shell or conduit for the affairs of the other, inadequate capitalization, disregard of corporate formalities, lack of segregation of corporate records, and identical directors and officers. *Sonora Diamond Corp. v. Superior Court*, 99 Cal. Rptr. 2d 824, 836 (Cal. App., 5th Dist. 2000).

A corporation acts through its agents. *Daimler* 134 S.Ct. at 773 n.13. The agency test is less rigid than the alter ego doctrine. *Id.* at 759. When one sells goods through third-party distributors or agents, it establishes a basis for specific personal jurisdiction. *Asahi Metal Indus. Co. v. Superior Court of Cal., Solano Cty.*, 480 U.S. 102, 112 (1987).

3. Websites accessible in a forum constitute "express targeting" for jurisdictional analysis. *Briskin v. Shopify, Inc.*, 135 F.4th 739, 756 (9th Cir. 2025).

4. Fed. R. Civ. P. 12(b) allows a defendant to file a motion asserting defenses such as lack of personal jurisdiction, insufficient service of process, and improper venue. These defenses must be raised either by a pre-answer motion under Rule 12(b) or included in the defendant's responsive pleading, whichever comes first.

For pretrial jurisdictional analysis, written materials only need to meet a prima facie standard. If, however, the court is confronted with credibility issues or disputed questions of fact, these can be decided on a preponderance of the evidence standard at an evidentiary hearing. *Data Disc, Inc. v. Systems Technology Associates*, 557 F.2d 1280, 1285 (9th Cir. 1977).

5. The Lanham Act, 15 U.S.C. §§ 1051 et seq., created a national system of trademark registration. The Lanham Act allows for injunctive relief and the recovery of defendant's profits, damages sustained by the plaintiff, and costs of the action.

B. Factual Background

1. The plaintiff alleges that he is the owner of the federally registered trademark, "SecurePower." Pet. App. 5a. The plaintiff is an engineer who, from 2010 to 2016, was employed by Schneider Electric's (SE) primary partner, headquartered in Arizona, as a sales engineer. The plaintiff sold power, cooling, and software products for data centers. Pet. App. 32a.

In early 2020, the plaintiff started a company and purchased the domain name securepower.io. Initially, SecurePower only sold SE manufactured products in the United States in the mission-critical infrastructure market.

While living and working in Arizona, the plaintiff alleges that he was harmed as a result of acts that were related to SE's substantial, continuous, and systematic contacts with Arizona. Pet. App. 33a.

2. The defendant is incorporated in France and has only one office, also located there. Pet. App. 8a. Just two people work for the defendant, which serves as a holding company for various subsidiaries. *Id.* These two employees direct, control, and coordinate all activity from their French office. *Id.* The defendant conducts no business except through its subsidiaries. *Id.*

The defendant has a website—www.se.com—that can be accessed in Arizona. Pet. App. 15a. The defendant also submitted evidence showing its U.S.-based subsidiary has a contractual relationship in Arizona for a showroom. Pet. App. 25a.

The defendant submitted evidence showing that its U.S. subsidiary, and not the parent company, is registered to do business in Arizona. Pet. App. 26a.

C. Procedural History

The plaintiff filed a complaint in the District of Arizona alleging, among other things, trademark infringement against SE, commonly known as Schneider Electric.

In March 2023, the same month the complaint was filed, the plaintiff gave actual notice of legal action to U.S.-based executives of SE's subsidiary. Jennifer Budoff, Associate General Counsel for Schneider Electric's NAM Legal Department, provided a mailing address for the summons service waiver. Pet. App. 20a. After the waiver, mailed first by the plaintiff, and then by the U.S. Marshals Service (USMS), was not returned, USMS personally served SE's U.S.-based subsidiary at the address Ms. Budoff provided. Service was executed on July 7, 2023.

In July 2023, the defendant contacted the plaintiff to request an extension, but the plaintiff denied it. On July 24, 2023, just four days before an answer was due, the defendant filed a motion to extend time to file an answer, which was granted.

On August 15, 2023, the defendant filed a Fed. R. Civ. P. 12(b) motion asserting lack of jurisdiction, improper service, and improper venue. The defendant attached the declaration of Carole Boelitz in support of the motion. Pet. App. 35a–37a.

The plaintiff timely responded to oppose defendant's motion and included the declaration of Stanislav Arbit. Pet. App. 31a–34a.

On October 11, 2023, following the defendant's reply, the judge ordered an evidentiary hearing to resolve the issue of personal jurisdiction. The hearing was scheduled for November 2, 2023, giving the parties two weeks to submit exhibits, proposed findings of fact and law, and a joint prehearing statement.

The pro se plaintiff requested five subpoenas, and all five were granted. Three of the five witnesses for whom subpoenas were issued were served. All three served witnesses attended the hearing. The plaintiff subpoenaed local employees of one of the defendant's subsidiaries and the primary partner that operates the showroom in Arizona.

At the hearing, both parties submitted exhibits, and the judge accepted all of them. The defendant called Carole Boelitz and the plaintiff, Stanislav Arbit. The plaintiff called his three witnesses. On November 27, 2023, the judge filed a ruling in favor of the defendant and dismissed the case without prejudice for lack of personal jurisdiction.

The plaintiff filed a timely appeal to the Ninth Circuit and filed his Opening Brief and Excerpts of Record on March 13, 2024—the day they were due. The defendant's answer was due on April 12, 2024.

On March 28, 2024, the defendant filed a "Motion for Summary Affirmation and for a Stay of the Briefing Schedule" and Excerpts of the Record. The Clerk of the

Court, Molly C. Dwyer, docketed the motion as a "Summary Disposition" and classified the excerpts of record as an exhibit.

The plaintiff filed a timely response to the Motion for Summary Affirmation on April 8, 2024. In it, he pointed out that the district court judge "does not elect to revoke in forma pauperis status on appeal," argued that the appeal is substantial, and asserted that the briefing schedule should not be delayed.

On April 12, 2024, the court clerk, Ms. Dwyer, granted a stay of the briefing schedule on the day SE's brief was due.

The plaintiff filed a motion for default on April 16, 2024, citing the defendant's failure to file a brief by April 12, 2024, and the impermissibility of a stay for summary affirmation motions.

On April 19, 2024, the plaintiff filed a motion to reconsider the order granting a stay in the briefing schedule. The plaintiff contended that Circuit Rule 27-11 does not list summary affirmance as a motion that stays the schedule, asserting that the Clerk of the Court erred in granting the stay order. The plaintiff additionally explained that pursuant to Local Rule 27-10(b)(1), if the clerk declines to revoke an order she granted, the matter must be referred to the appellate commissioner. SE filed a response a few days later.

On April 30, 2024, the plaintiff filed his reply to the motion for reconsideration of the order granting a stay in the briefing schedule. In the reply, The plaintiff explained in detail why the local rules do not support a stay in the briefing schedule. The plaintiff also explained why the defendant's request for sanctions is without merit and procedurally deficient.

On May 23, 2024, a three-judge panel denied the motions for reconsideration, default, and summary affirmance. The panel gave SE 30 days to file a brief.

Exactly one year later, on May 23, 2025, after being fully briefed, the Ninth Circuit affirmed the district court's decision without oral arguments (Pet. App. 1a).

REASONS TO GRANT CERTIORARI

I. The Court should grant review to resolve a circuit split on a vital jurisdictional question for the digital age: Does an entity that purposefully and continuously operates a website serving residents of a forum thereby "expressly aim" at the forum for purposes of specific personal jurisdiction?

Earlier this year, after an en banc hearing, the Ninth Circuit applied traditional specific jurisdiction analysis to an intentional online tort. The court distinguished itself from other circuits and its own precedent by declaring that "differential targeting," also known as "forum-specific focus," is not a requirement for the "express aiming" prong of the *Calder* effects test.

More specifically, the court found that the *Calder* effects test was satisfied when the defendant intentionally transferred a file, known as a "cookie," to a computer in the forum, thereby causing the alleged harm there. This test was used to analyze the purposeful direction (as opposed to purposeful availment or a combination of the two) prong of the traditional minimum contacts test.

The court was not persuaded by the fact that the defendant generally targets all 50 states for commercial gain without a bias toward any specific market. The court observed that requiring differential targeting is contrary to Supreme Court precedent because it would allow companies to escape specific personal jurisdiction when targeting a national market. The court reasoned "that when a company serves 'directly or indirectly, the market for its product' in many states, 'it is not

unreasonable to subject it to suit in one of those States,' if its product causes harm there" *Briskin*, 135 F.4th 739 at 758.

The *Briskin* opinion echoed *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), holding that placing a product in the stream of commerce with the expectation that it will reach consumers is a sufficient basis for a state to exercise personal jurisdiction.

The Ninth Circuit judges acknowledged that the defendants knew the plaintiff's geographical location from his Internet Protocol (IP) address. After a connection was established between the defendants' servers and the plaintiff's device, the defendants knowingly uploaded a "cookie" to the plaintiff's electronic device, which they knew was located in California.

The file transfer occurred automatically, or what the Ninth Circuit referred to as an "automated tort[]," and "[is] for minimum-contacts purposes Defendants' conduct in [the forum]." *Briskin*, 135 F.4th 739 at 765.

In a footnote, the majority noted:

> This case does not require us to "go further and disavow" *Cybersell*'s requirement of "something more," as Judge Collins suggests. [*Citation*] Nor has any party invited us to do so. The principle of requiring "something more" to demonstrate "express aiming" has been carefully developed by our court over almost three decades, applying it to new and evolving forms of technology, which continue to change.

Briskin, 135 F. 4th 739 at 777 n.16.

The "something more" requirement appears to align with other circuits' standards for "virtual contacts" in personal jurisdiction cases. However, the majority opinion in *Briskin* fails to recognize that their methodology for this "something more" element applies to all website elements, not just cookies.

According to Judge Collins's opinion in *Briskin*, the "something more" phrase engenders confusion and establishes an unwarranted safe harbor for web-based

publishers—a protection not extended to traditional media. Concurrently, the *Briskin* opinion inadvertently brings all entities publishing on the Internet under Ninth Circuit jurisdiction, provided the complaint articulates the requisite technical specifications, the published content is accessible in the forum, and the injury occurred in the forum.

The plaintiff in *Briskin* identified a "cookie," yet the "express targeting" the Ninth Circuit attributed to it can, in fact, be applied to all websites—even those traditionally considered "passive" by courts across all circuits. Given this, any technology rooted in the Internet Protocol, or a comparable alternative, would fulfill the "expectation" attribute of the "stream of commerce" doctrine articulated in *World-Wide Volkswagen*. Consequently, the Ninth Circuit finds itself at odds with every other circuit.

Consider, for instance, a scenario where someone, curious about how the defendant, SE, manages over 400 subsidiaries and 38 billion euros in yearly revenue with only two employees in France, visits its website, www.se.com. This act of visiting the defendant's website is comparable to calling a pizzeria to order a baloney pizza for delivery.

Both requests start with your delivery address. Before any baloney is tossed on the pie, the restaurant—let's call it Greasy Macron's Pizzeria—knows where the requester is located and confirms they're in the delivery area. Likewise, visiting www.se.com begins with a TCP/IP handshake, indicating the requester's address and interest in data located at www.se.com. Greasy Macron's acknowledges the request for one extra-large baloney pizza to the requester's address, just as the French web server acknowledges the request for www.se.com from Phoenix, Arizona.

SE might choose not to associate the client's Internet Protocol address with a specific geography, and thus not check if that location is in its delivery area, simply because it serves a worldwide audience. But that's the defendant's prerogative. A website can choose not to deliver to a forum. For instance, Pornhub doesn't deliver to Texas because of this court's decision in *Free Speech Coalition, Inc. v. Paxton.* However, SE chose to deliver its content to Phoenix, Arizona in this case.

Greasy Macron's repeats the requester's address before dispatching a pizza for delivery. Similarly, before SE sends its data to Phoenix, the requester's Internet Protocol address (which is linked with Phoenix, Arizona) is repeated.

This protocol applies to all websites. It doesn't matter if the website is a "passive" HTML file displaying "Hello, world!" or an interactive site with JavaScript that lets someone order and pay for an extra-large baloney pizza online. All Internet packets have a header containing the source and destination address. These addresses are an essential ingredient, much like flour is essential for all menu items served at Greasy Macron's Pizzeria.

Every piece of Internet traffic—whether from a website, FTP server, time server, or email server—uses the destination address. Similarly, flour is an essential ingredient in everything Greasy Macron's serves, be it a pizza, cookie, calzone, salad with croutons, or pasta. http://bit.ly/459kTRc.

The defendant's decision to deliver to a particular forum constitutes an express act purposefully directed toward that forum. This action is analogous to an individual addressing a sealed envelope, affixing the requisite postage, and depositing it into a United States Postal Service collection box.

"Specific jurisdiction may lie over a foreign defendant that places a product into the "stream of commerce" while also "designing the product for the market in

the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State"" *Asahi Metal Industry Co.,* 480 U.S. at 112.

"And although physical presence in the forum is not a prerequisite to jurisdiction, [*citation*], physical entry into the State—either by the defendant in person or through an agent, goods, *mail*, or some other means—is certainly a relevant contact." *Walden* v. *Fiore*, 134 S.Ct. 1115, 1122 (2014) (emphasis added).

II. The court should grant review to resolve a circuit split regarding the proper standard of proof in pretrial jurisdiction hearings.

The First and Third Circuits are split from each other and all other circuits over the standard of proof required to assert personal jurisdiction. Most circuits either directly cite to *Data Disc, Inc. v. Systems Technology Associates*, 557 F.2d 1280 (9th Cir. 1977) and its progeny, or specify a similar framework for asserting personal jurisdiction.

1. In 1977, the Ninth Circuit considered a case where the defendant challenged the district court's jurisdiction with a 12(b)(2) motion. The parties submitted contradictory facts through affidavits. After oral arguments, the judge stated, "I think this Court lacks jurisdiction." The district judge did not state any facts in his order or oral ruling dismissing the case. *Data Disc, Inc.*, 557 F.2d at 1284.

In *Data Disc,* the 9th Circuit stated that written materials only needed to meet a prima facie standard. However, "If the pleadings and other submitted materials raise issues of credibility or disputed questions of fact with regard to

jurisdiction, the district court has the discretion to take evidence at a preliminary hearing in order to resolve the contested issues." *Data Disc, Inc.*, 557 F.2d at 1285. The opinion cited two federal practice texts but no cases for the option to hold an evidentiary hearing on personal jurisdiction.

The evidence in *Data Disc, Inc.* was limited to affidavits, and the opinion was decided on a prima facie standard—which the opinion explained is the only logical option when presented only with written materials. The court was not fully briefed on requiring a preponderance of the evidence for establishing jurisdiction in a plenary pretrial proceeding. Unfortunately, the opinion relegated the vast majority of its opinion on the standard of proof for personal jurisdiction to a footnote. *Data Disc, Inc.*, 557 F.2d at 1290 n.6.

The court in *Data Disc, Inc.* mistakenly relied on *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178 (1936), to support a heightened evidentiary standard for personal jurisdiction. The reliance on *McNutt* is misplaced because that case deals exclusively with *subject matter jurisdiction*. While *McNutt* discusses the plaintiff's burden of proof, its entire context is the amount-in-controversy requirement, not personal jurisdiction over the defendant. The central question in *McNutt* is: "whether the matter in controversy exceeds the sum or value of $3,000... so as to give the District Court jurisdiction." *Id.* at 179.

In a footnote following the *McNutt* reference—which the *Data Disc* court cited to support using the preponderance standard in a pretrial jurisdiction hearing—the opinion noted that when jurisdictional facts are intertwined with the merits of a case, a district court may hold a plenary pretrial proceeding to resolve its jurisdiction by also deciding the merits. The opinion cites three cases to support this procedure.

First, *Data Disc* cites *Land v. Dollar*, 330 U.S. 731 (1947). Simply put, *Land* stated that "the District Court has jurisdiction to determine its jurisdiction by proceeding to a decision on the merits." *Id.* at 739. *Land* also stated that "as a general rule the District Court would have authority to consider questions of jurisdiction on the basis of affidavits as well as the pleadings...." However, *Land* did not state that a plenary pretrial proceeding to review personal jurisdictional issues and the merits of the case on a preponderance standard is an allowable procedure, as *Data Disc* suggests. *Land* is not relevant to personal jurisdiction because the opinion was about *subject matter jurisdiction*.

The second case cited by *Data Disc* in support of a plenary pretrial proceeding to review the jurisdictional issues and the merits of a case is *Spector v. L Q Motors Inns, Inc.*, 517 F.2d 278 (5th Cir. 1975). But this case also fails to support *Data Disc*'s argument, because *Spector* was another case about *subject matter jurisdiction* and not personal jurisdiction. *Id.* at 282.

The third case cited in *Data Disc* in support of a plenary pretrial procedure to determine personal jurisdiction on a preponderance of evidence standard was *McBeath v. Inter-American Citizens for Decency Com.*, 374 F.2d 359 (5th Cir. 1967). However, this citation is also inapposite. *McBeath* argued for regular trial procedures and not pretrial hearings. ("[T]he case should be heard and determined on its merits through regular trial procedure.") *Id.* at 363.

In footnote 2, *Data Disc* continues by stating:

> However, it is preferable that this determination be made at trial, where a plaintiff may present his case in a coherent, orderly fashion and without the risk of prejudicing his case on the merits. [*Citations.*] Accordingly, where the jurisdictional facts are enmeshed with the merits, the district court may decide that the plaintiff should not be required in a Rule 12(d) preliminary proceeding to meet the higher burden of proof which is associated with the presentation of evidence at a hearing, but rather should be required only to establish a prima facie

> showing of jurisdictional facts with affidavits and perhaps discovery materials.

Data Disc, 557 F.2d at 1290 n.2.

2. In 1992, the First Circuit Court of Appeals introduced a third type of evidentiary standard that can be used to adjudicate a motion to dismiss, distinguishing itself from other circuits. In addition to the most common method, the prima facie standard, and the preponderance standard (which is used in evidentiary hearings when written evidence is contradictory or potential issues of credibility exist), the First Circuit introduced a "likelihood" standard.

The likelihood standard, an intermediate evidentiary standard, was established in *Boit v. Gar-Tec Products, Inc.*, 967 F.2d 671 (1st Cir. 1992). The *Boit* opinion also addressed the preponderance-of-evidence standard for personal jurisdiction. *Boit* cited cases with citations that trace back to the Ninth Circuit's opinion in *Data Disc* and the subject-matter jurisdiction case of *McNutt*, which *Data Disc* also relied on for its discussion of personal jurisdiction.

Similar to *Data Disc*, the *Boit* opinion cautioned against using evidentiary standards that exceed the prima facie standard at the motion-to-dismiss stage. Citing *Data Disc*, the *Boit* opinion suggested that proof of jurisdiction should be postponed until trial, arguing this would be a more efficient use of judicial resources.

> Concerns about troublesome implications of preponderance-of-the-evidence findings weigh heavily in favor of determining a motion to dismiss on the *prima facie* standard. [Citations.] (a district court may find sound reasons to rule under a *prima facie* standard instead of preponderance of the evidence); [*Citation.*] (advising courts to consider applying the *prima facie* standard when jurisdictional facts are intertwined with the merits).

Boit, 967 F.2d at 677.

By implementing an intermediate standard (also known as the likelihood standard), the *Boit* opinion sought to avoid imposing "on a defendant a significant expense and burden of trial on the merits in the foreign forum that is unfair in the circumstances..." This also helped avoid "the morass of unsettled questions of law regarding 'issue preclusion' and 'law of the case.'" *Boit*, 967 F.2d at 677. Moreover, the *Boit* opinion intended for this intermediate option to narrow the scope of the hearing. This prevents forcing "plaintiffs, at a pretrial hearing, 'mount proof which would, in effect, establish the validity of their claims and their right to the relief sought, [*citations*].'" *Boit*, 967 F.2d at 678.

A few years after the *Boit* case, the First Circuit revisited the intermediate standard in F*oster-Miller, Inc. v. Babcock & Wilcox Canada*, 46 F.3d 138 (1st Cir. 1995). In *Foster-Miller*, the court expressed its support for the "likelihood" standard but provided additional cautionary advice. The *Foster-Miller* opinion stressed that the intermediate standard should rarely be used for dismissal. It also expressed concern about how the "likelihood standard might be applied to adjudicate facts that are only marginally related to jurisdiction, or are very closely related to the merits of the plaintiff's substantive claims, thus prematurely extinguishing a plaintiff's ability to present its case in a full and fair manner." *Foster-Miller, Inc.*, 46 F.3d at 148.

Both *Foster-Miller* and *Boit* are fundamental to the First Circuit's three-tiered approach to personal jurisdiction. It is important to note, however, that neither case was decided under the preponderance of the evidence standard. In *Boit*, the court applied the prima facie standard, while *Foster-Miller* was about the district court's failure to provide adequate notice and an opportunity for the plaintiff to prepare for the intermediate standard.

A more recent citation for the standards of evidence for establishing personal jurisdiction in the First Circuit is *Vapotherm, Inc. v. Santiago*, 38 F.4th 252 (1st Cir. 2022). *Vapotherm* defines the standard of review for contested personal jurisdiction as requiring a preponderance of the evidence. The citation chain for this assertion is based on *Ealing Corp. v. Harrods Ltd.*, 790 F.2d 978, 979, 984 n.1 (1st Cir. 1986). The first footnote in *Ealing* states, "If jurisdiction were decided by an evidentiary hearing, plaintiff would have the burden of proving jurisdiction by a preponderance of the evidence. 2A J. Moore & J. Lucas, Moore's Federal Practice at ¶ 12.07[2.-2] (2d ed. 1985)." *Ealing Corp.*, 790 F.2d at 984 n.1.

Moore's Federal Practice is also cited as a secondary authority in *Data Disc* for prescribing an evidentiary hearing to resolve contested personal jurisdiction issues. However, *Data Disc* does not base its opinion for a preponderance of evidence requirement on *Moore's Federal Practice*; that was misappropriated from *McNutt*, 298 U.S. 178.

3. The Third Circuit includes the state of Delaware where two-thirds of Fortune 500 companies are incorporated. Twice as many business entities have incorporated in Delaware as there are Delaware citizens.

The Third Circuit's standard of proof for personal jurisdiction is less developed than that of other circuits. *Carteret Sav. Bank, F.A. v. Shushan,* 954 F.2d 141 (3d Cir. 1992) is a major opinion that explores the subject.

In *Carteret*, the Third Circuit stated, "the plaintiff bears the burden to prove, by a preponderance of the evidence, facts sufficient to establish personal jurisdiction." *Id.* at 146. The *Carteret Savings Bank, F.A.* court cited *Time Share Vacation Club v. Atlantic Resorts, Ltd.*, 735 F.2d 61 (3d Cir. 1984), in support.

Time Share Vacation Club refers to a preponderance requirement in the same manner—devoid of any additional parameters or mention of a prima facie standard, or any specific discovery and hearing requirements. The second citation and the nested citation are even less helpful regarding the type of showing required or which procedural framework should be employed when faced with a 12(b) challenge and conflicting facts.

In a footnote, *Carteret* provides additional guidance on the subject of personal jurisdiction. It states that all allegations made by the plaintiff are to be accepted as true, and any disputed facts should be construed in the plaintiff's favor. The note then suggests an approach based on the Second Circuit's *Marine Midland Bank, N.A. v. Miller* opinion and a District of New Jersey opinion, *LaRose v. Sponco Mfg., Inc.*, 712 F. Supp. 455, 458-59 (D.N.J. 1989), which also cites to *Marine Midland.* This approach suggests that if the court does not hold an evidentiary hearing on a motion to dismiss for lack of personal jurisdiction, the prima facie standard is the correct framework. *Marine Midland* and footnote 1 of *Carteret* imply that an evidentiary hearing is based on a preponderance of the evidence standard, or the issue can be pushed to trial, where it is also evaluated on the preponderance standard.

In *LaRose*, the opinion explains, also citing *Marine Midland Bank, N.A. v. Miller*, that the preponderance standard is only appropriate at trial or on motions for summary judgment. This creates a divergence because the Second Circuit implied that an evidentiary hearing for a Rule 12(b) motion could also employ the preponderance standard.

The footnote in *Carteret* creates a split from the body of the opinion itself. The main text of the opinion establishes a new precedent where only the preponderance

standard is prescribed, while the footnote introduces the possibility of a prima facie standard under certain circumstances.

III. The questions presented are important.

Access to justice isn't free. Intentional torts can strip victims of the economic means needed to pursue their claims. This can embolden a tortfeasor to act with impunity, since even a self-represented litigant proceeding in forma pauperis incurs costs (e.g., printing and serving documents when electronic filing isn't an option). Consequently, a tortfeasor might escalate their campaign, engaging in a war of attrition designed to deplete the victim's funds—not just for litigation, but for basic necessities like housing and food.

Personal jurisdiction, particularly specific jurisdiction, can be a difficult legal concept for many to navigate, creating a significant barrier to court access, especially for self-represented litigants. When an intentional tort occurs online, establishing specific jurisdiction can be challenging because websites are generally not confined to one state. In addition, general jurisdiction may force a litigant with limited resources to pursue their case in a foreign forum, possibly outside the United States. This is an impossible situation for a plaintiff who has been harmed by continuous and substantial torts. If the tortfeasor has government connections, traveling to a place like France to litigate would be too great a risk.

The substantial procedural barriers to a defendant's answer and limited discovery are not only unjust and arguably unconstitutional under the First and Tenth Amendments, but also pose a serious national security vulnerability.

IV. This case is an ideal vehicle for the questions presented.

This case offers an ideal opportunity to address the important questions presented. The plaintiff's extensive familiarity with the defendant's organization

means that further discovery is unlikely to yield new facts. Moreover, the district court's evidentiary hearing produced a comprehensive record before the case was dismissed for lack of personal jurisdiction, and both the district and appeals courts have already considered specific and general personal jurisdiction. Crucially, this case illustrates the typical behavior and corporate strategies of foreign multinationals operating in the United States.

V. This case is ripe for reversing.

This case was dismissed for lack of personal jurisdiction, yet the facts and law firmly support both specific and general jurisdiction over the defendant. The defendant's direct contacts with the forum, coupled with the activities of its subsidiary (which lacks a separate legal personality from the defendant, its ultimate parent), and the widespread presence of its numerous sales agents within the forum, collectively form a "trinity of contacts." These contacts are directly tied to the alleged injuries the plaintiff suffered in the forum, thereby establishing the necessary jurisdictional link.

1. Specific personal jurisdiction requires three key elements: first, the defendant must purposefully avail itself of the forum; second, the injury must arise from or relate to the defendant's forum contacts; and third, the exercise of jurisdiction must be reasonable in the context of our federal system. *Ford*, 141 S.Ct. at 1024, 1025.

The defendant's websites are undeniably accessible within Arizona (Pet. App. 15a). Notably, these websites employ cookies in a manner analogous to those discussed in *Briskin*, 135 F.4th at 747, and the websites functionalities mirror *Briskin*'s cookie analysis. This pervasive online presence constitutes express targeting of the forum. Adding to this, the defendant's www.apc.com website

specifically includes forum-oriented content and explicitly caters to Arizona residents. Pet. App. 22a. Therefore, the defendant's websites, through their accessibility and targeted content, fully satisfy the purposeful availment prong essential for specific personal jurisdiction.

Specific jurisdiction mandates that, beyond purposeful availment or the direction of intentional torts at the forum, the injury must arise from or relate to the defendant's forum contacts. The plaintiff's declaration in opposition to the motion to dismiss expressly affirms this requirement. Pet. App. 33a.

The final prong of specific jurisdiction—reasonableness within our federal system—is also satisfied, as no argument was made about doing business in any other U.S. forum.

2. The contacts of the defendant's agents and alter ego subsidiary establish both specific and general jurisdiction.

"Before the Supreme Court's *Daimler* decision, [the Ninth Circuit] permitted a plaintiff to pierce the corporate veil for jurisdictional purposes and attribute a local entity's contacts to its out-of-state affiliate under one of two separate tests: the "agency" test and the "alter ego" test." *Ranza v. Nike, Inc., 793 F.3d 1059, 1071 (9th Cir. 2015).* In this case, the subsidiary in Arizona, Schneider Electric USA, Inc., is an alter ego and an agent of the defendant. Contracts can be "enforced by or against nonparties to the contract through...alter ego[s]". *Arthur Andersen LLP v. Carlisle,* 129 S.Ct. 1896, 1902 (2009).

In 2014, this Court stated that it "has not yet addressed whether a foreign corporation may be subjected to a court's general jurisdiction based on the contacts of its in-state subsidiary." *Daimler AG,* 134 S.Ct. at 759. Ultimately, the Court did

not "pass judgment on invocation of an agency theory in the context of general jurisdiction" in that opinion. *Id.*

In a footnote in *Daimler*, this Court clarified its agency relationship theory, elaborating on how previous decisions permit such a theory for specific jurisdiction. The Court particularly observed that distributors may function as sales agents within the purposeful availment analysis. Nevertheless, the Court refrained from asserting that agency relationships are attributable to general jurisdiction. *Daimler AG*, 134 S.Ct., n. 13.

However, the Court did not preclude the possibility of extending agency principles to general jurisdiction. *Daimler AG*, 134 S.Ct., at n. 13. Rather, the Court rejected the Ninth Circuit's definition of agency for general jurisdiction, which hinged on the agent's relative importance to the principal. As the Court explained, such an analysis would inevitably "stack the deck" in favor of jurisdiction. *Daimler AG*, 134 S.Ct. at 759.

In *Daimler*, this Court determined that the Ninth Circuit's agency test, based on importance, is less rigorous than the alter ego test. *Daimler* AG, 134 S.Ct. at 759. However, the Court offered no further explanation of the characteristics of agency theory, which prompted lower courts to abandon its application in jurisdictional analysis. *Ranza*, 793 F.3d at 1071.

To satisfy the alter ego doctrine, "the plaintiff must make out a prima facie case '(1) that there is such unity of interest and ownership that the separate personalities [of the two entities] no longer exist and (2) that failure to disregard [their separate identities] would result in fraud or injustice.'" *Doe v. Unocal Corp.*, 248 F.3d 915 (9th Cir. 2001) (citations omitted).

In contract cases, unlike tort cases, courts are typically less willing to disregard the corporate form. This is because a plaintiff in a contract case usually has the opportunity to investigate the corporation's financial strength while engaging in a business transaction with it. *Castleberry,* 721 S.W.2d at 279.

In this intentional tort case, the defendant argued it has no contacts with the state of Arizona and that its corporate structure insulates it from any contacts within the forum. Pet. App. 7a. However, the preponderance of evidence presented in the district court points to a single enterprise with only one personality—an enterprise that is both the beneficiary of the alleged trademark infringement and the receiver of all revenue. For the purpose of this tort, the corporate veil between the subsidiary and the parent company must be pierced to achieve an equitable result. *Mesler v. Bragg Management Co.*, 39 Cal.3d 290, 301 (1985).

After the defendant filed its 12(b) motion and Carole Boelitz's declaration, the plaintiff filed a declaration alongside his opposition response. In it, he stated, among other things, that he sold products for the defendant both as an employee of the primary partner in the forum, LDP Associates, Inc., and through his own business, SecurePower®. Mr. Arbit unequivocally stated that the defendant specifically targeted the State of Arizona under its various brands and aliases, but that it is, in fact, one global company. He explicitly stated that the defendant has, for many years, sustained substantial, continuous, and systematic operations in Arizona. Mr. Arbit also contended that his injuries in the forum were related to the defendant's contacts there. He reiterated his alter ego argument on appeal in the Ninth Circuit.

There isn't a single factor that triggers the application of the alter ego doctrine. Instead, courts must examine all the facts to determine if the alter ego should be applied. Some factors to consider include: commingling of funds and other

assets, shared liabilities, identical ownership, use of the same offices and employees, using one as a mere shell or conduit for the affairs of the other, inadequate capitalization, disregard of corporate formalities, lack of segregation of corporate records, and identical directors and officers. *Sonora Diamond Corp*, 99 Cal. Rptr. 2d at 837.

"Alter ego's rationale is: "if the shareholders themselves disregard the separation of the corporate enterprise, the law will also disregard it so far as necessary to protect individual and corporate creditors." Ballantine, *Corporations* § 123 at 294 (1946)." *Castleberry*, 721 S.W.2d at 272. In this case, the defendant explicitly states that it considers itself "[O]ne integrated company. We are the most local of global companies. Our multi-hub approach is a key element to offer improved resiliency, agility, and proximity to our customers and suppliers." Pet. App. 19a.

Other alter ego factors also support the conclusion that the defendant operates as a single, large enterprise. The defendant's website, www.se.com, shares the same address as the defendant's submitted exhibit, which shows its incorporation document for the purported holding company. *Compare* Pet. App. 17a *with* Pet. App. 24a.

Aamir Paul is presented as an executive for the defendant. Pet. App. 18a. Aamir Paul is also listed as a director and President of the subsidiary operating in Arizona. Pet. App. 26a. U.S.-based employees use the same domain, www.se.com, as the defendant. They also use the same logo and business name, and identify as a component of the global company ("NAM Legal Department, Schneider Electric, World's most sustainable company"), not as employees of Schneider Electric USA, Inc. Pet. App. 20a. When signing contracts in the forum, the defendant's so-called subsidiary signs on behalf of all affiliates. Pet. App. 25a.

The defendant's product-branded website, www.apc.com, uses all the defendant's branding and gives no indication that it does business as a subsidiary. Pet. App. 22a. The same is true for its recruiting efforts, where the Schneider Electric brand and the company's colloquial name, Schneider Electric, are used—again, with no indication that Schneider Electric USA, Inc. is involved. Pet. App. 23a.

The defendant failed to proffer sufficient evidence to establish a distinct corporate identity for Schneider Electric USA, Inc. The defendant neither testified nor submitted evidence—including a unique website, social media presence, or marketing materials—that would demonstrate any effort to differentiate the parent company from its subsidiaries.

Attributing the alter ego subsidiary's forum contacts (Pet. App. 10a, 21a, 23a, 25a, 26a, 27a–30a) and those of the 30 corporations acting as sales agents for the defendant (Pet. App. 22a), combined with the fact that the plaintiff's alleged harm was related to the defendant's forum contacts (Pet. App. 33a), provides another avenue to specific jurisdiction in this case.

3. Even if general jurisdiction is confined to the paradigm examples in *Daimler*, the evidence shows that SE's principal place of business is in Arizona. The two individuals in France only work with their subsidiaries. The defendant failed to provide any argument as to where it generated the 34 billion euros in 2022, leaving the plaintiff's evidence undisputed: Arizona is not just the principal place of business, but the only place of business.

As articulated in *International Shoe*, a defendant's forum activity through its agents can be "substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." Here, one of

those agents is also an alter ego subsidiary. This fact should strengthen the case for jurisdiction, not defeat it, even if the alter ego theory were not accepted.

4. The defendant's U.S.-based subsidiary is registered to do business in Arizona and has appointed an agent for service. Pet. App. 26a. Accordingly, "A foreign corporation with a valid grant of authority has the same but no greater rights and has the same but no greater privileges" and "is subject to the same duties, restrictions, penalties and liabilities now or later imposed on a domestic corporation of like character." AZ Rev Stat § 10-1505(B) (2024). "*Pennsylvania Fire* held that an out-of-state corporation that has consented to in-state suits in order to do business in the forum is susceptible to suit there." *Mallory* 143 S.Ct. at 2039.

"An Arizona state court may exercise personal jurisdiction over a person, whether found within or outside Arizona, to the maximum extent permitted by the Arizona Constitution and the United States Constitution." Ariz. R. Civ. P. 4.2

5. The defendant's three-pronged contact with the forum—through its website, a subsidiary, and independent sales agents—constitutes deliberate, continuous, and substantial targeting. These are not random, isolated, or fortuitous engagements. The defendant has not acted to avoid the forum; on the contrary, it has actively cultivated a market within it.

These facts demonstrate that the defendant is subject to personal jurisdiction in Arizona, even if some of the evidence presented by the defense, and accepted by the district court, was false (https://bit.ly/4mOmFxV).

Petitioner respectfully requests that this Court limit the pretrial personal jurisdictional analysis to a prima facie standard, in which controverted facts are weighed in the plaintiff's favor. Furthermore, Petitioner submits that Internet contacts should qualify as purposeful contact with a forum. As this Court held in

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477 (1985), the absence of physical contacts cannot, by itself, defeat personal jurisdiction.

While the matter before the court is a trademark dispute over the wordmark "SecurePower," the issues presented have significant implications for national security and the nation's capacity to wage war against its adversaries.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

STANISLAV ARBIT
Pro Se
440 North Barranca Avenue
Unit #7377
Covina, CA 91723
(480) 818-4418
supreme@securepower.online

AUGUST 2025