No. 25-909

IN THE

Supreme Court of the United States

META PLATFORMS, INC. and INSTAGRAM, LLC,

Petitioners,

v.

STATE OF VERMONT,

Respondent.

On Petition for a Writ of Certiorari
to the Vermont Supreme Court

REPLY BRIEF FOR PETITIONERS

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CORPORATE DISCLOSURE STATEMENT

The Rule 29.6 Statement in the petition remains accurate.

Pursuant to the Court's March 16, 2026 Rules revision, the stock ticker symbol for Petitioner Meta Platforms, Inc. f/k/a Facebook, Inc. is META. Petitioner Instagram, LLC, is a subsidiary of Petitioner Meta Platforms, Inc. f/k/a Facebook, Inc. and does not have a ticker symbol.

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INTRODUCTION

This Court has not addressed the proper personal jurisdiction analysis for Internet-based, "virtual" contacts, despite acknowledging more than a decade ago that they may raise "very different questions" from traditional forum contacts. *Walden v. Fiore*, 571 U.S. 277, 290 n.9 (2014). The result has been widespread confusion, and the decision below deepens an existing split over whether the test for personal jurisdiction based on "virtual" contacts tracks this Court's traditional principles or, instead, casts those foundational principles aside in favor of quasi-general jurisdiction. Rather than assess Meta's specific, claim-related activities directed at the forum—as this Court's precedent requires—the Vermont Supreme Court focused instead on Meta's undifferentiated "business model" to hold that Vermont courts could exercise personal jurisdiction.

The State dismisses the split as attributable to "different facts." But the material facts are the same: federal courts of appeals have refused to permit a plaintiff to establish personal jurisdiction based on the defendant's "business model," even when the defendant had the same business model as Meta—or one that involved more substantial forum contacts. The disagreement, at bottom, is not about the specifics of any defendant's business model; it is about whether personal jurisdiction should be analyzed through that lens at all.

If allowed to stand, the decision below threatens a fundamental transformation in the law of personal jurisdiction for the Internet-based companies that define the modern economy. If courts may exercise jurisdiction based on a defendant's web-based "business

model," specific jurisdiction becomes indistinguishable from general jurisdiction. That result undermines predictability, interstate federalism, and due process—exposing businesses and individuals alike to regulatory and adjudicatory authority in virtually every state. This Court's intervention is needed to make clear that jurisdiction lies only where the defendant's forum-directed, claim-specific conduct justifies it—even when the defendant's contacts are virtual.

ARGUMENT

I. The Decision Below Deepens a Well-Entrenched Split.

The Vermont Supreme Court deepened a division among federal and state courts over whether allegations about a defendant's nationwide business model suffice for the exercise of specific personal jurisdiction. The State attempts to dismiss that entrenched split as the result of applying settled law to "different sets of facts." BIO 8. It also accuses Meta of mischaracterizing the decision below. BIO i. The State is wrong on both points.

A. On the State's telling, lower courts have uniformly applied the "traditional test for personal jurisdiction." BIO 8. Not so. Beyond citing *International Shoe Co. v. Washington*, 326 U.S. 310 (1945)—a case that did not, and could not, address "virtual" contacts, *see Walden*, 571 U.S. at 290 n.9; *see also Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 366 n.4 (2021)—very little about the lower courts' approaches is "[c]onsistent[]" or "predictable," BIO 8.

Indeed, while the State denies any split, lower courts have candidly acknowledged that "courts

around the country have struggled to determine how to apply personal-jurisdiction principles to a defendant's Internet website or activities." *TV Azteca v. Ruiz*, 490 S.W.3d 29, 44 n.8 (Tex. 2016); *see also* Pet. 15. The result is a deep (and deepening) split among state supreme courts and federal courts of appeals over whether a plaintiff may bypass more traditional inquiries and establish personal jurisdiction by relying on the defendant's undifferentiated, national or global "business model." *See* Pet. 2-3 (describing split); *see also Meta Platforms, Inc. v. Eighth Jud. Dist. Ct.*, 2026 WL 1129147, at *2 (Nev. Apr. 24, 2026) (exercising personal jurisdiction over Meta based on Meta's "business model").

Courts have adopted conflicting doctrinal approaches to assessing virtual contacts—from Internet-specific tests like *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997), to an "express aiming" inquiry derived from *Calder v. Jones*, 465 U.S. 783 (1984), to a "market exploitation" framework based on *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984). *See* Pet. 14-15. The State does not even address *Zippo* or *Calder*, despite arguing below that the trial court should adopt the *Zippo* test. Pet.App.45a-46a. And the State's contention that the Vermont Supreme Court correctly relied on *Keeton* is a merits argument—not a basis to deny the petition.

Nor can "different facts" explain the division of authority. BIO 8. The plaintiff in the Fifth Circuit's *Johnson v. TheHuffingtonPost.com, Inc.* attempted to establish personal jurisdiction over a website operator by alleging the same "business model" at issue here—selling advertising to companies in the forum, and then using data collected about website visitors to

serve them tailored, forum-centric advertising. These allegations were insufficient to establish personal jurisdiction in the Fifth Circuit because how "HuffPost generates revenue … is beside the point." 21 F.4th 314, 320-21 (5th Cir. 2021).

And if the Third Circuit embraced the "business model" approach, then *Hasson v. FullStory, Inc.* would have presented an even stronger basis for jurisdiction than the decision below. There, Papa Johns operated brick-and-mortar pizza stores in the forum—yet personal jurisdiction was still lacking because the plaintiff's website-based privacy claims were unrelated to those forum contacts. 114 F.4th 181, 190 (3d Cir. 2024).[1]

The State protests that "Meta does not explain how the Fifth and Tenth Circuits' consideration of the defendants' business models squares with its thesis that consideration of business models is improper." BIO 12. Meta's point is straightforward: Courts should not *exercise* personal jurisdiction based on a defendant's business model because business-model allegations unrelated to the plaintiff's claim "d[o] [not] matter." *TheHuffingtonPost.com*, 21 F.4th at 320; *see XMission, L.C. v. Fluent LLC*, 955 F.3d 833, 838 (10th Cir. 2020) (noting lack of "specific evidence of any other activity of [defendant] connected to Utah").

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[1] The Third Circuit's limited remand, for the district court to decide in the first instance whether a software developer had sufficient forum contacts via sales of the challenged software to other clients, does not suggest the Third Circuit would permit personal jurisdiction based on an undifferentiated business model rather than specific, claim-related contacts. 114 F.4th at 197.

XMission, L.C. v. PureHealth Research makes the same point. *See* 105 F.4th 1300, 1311 (10th Cir. 2024) (distinguishing insufficient "business model" allegations and finding jurisdiction where defendant "sent newsletter emails to its former customers in Utah knowing they live in Utah"); *see* BIO 12. As for *Khashoggi v. NSO Group Technologies Ltd.*, it is no surprise that the Fourth Circuit found no personal jurisdiction where the defendant merely licensed its software to third parties and any availment of the forum was at those parties' direction. 138 F.4th 152, 162 (4th Cir. 2025); *see* BIO 13. That result does not suggest any retreat from the Fourth Circuit's "business model" approach.

The State's attempts to distinguish cases dismissing deception claims are equally unavailing. Because the Vermont Supreme Court grounded personal jurisdiction on Meta's "business model," it never addressed the deception claim separately. Had it done so, it could not have found jurisdiction; after all, the State does not argue that Meta made any allegedly deceptive statement in Vermont or directed any such statement to Vermont. Pet.App.21a. In the Fifth or Sixth Circuits, this claim would have been dismissed. *See* Pet. 21 (discussing *Blessing v. Chandrasekhar*, 988 F.3d 889 (6th Cir. 2021), and *Clemens v. McNamee*, 615 F.3d 374 (5th Cir. 2010)).

The State tried to minimize this clear split by arguing that, in light of *Keeton*, these cases are limited to situations where the "defendant has no relevant connection to a state except for an allegedly tortious communication involving" a forum resident. BIO 13-14. But neither circuit limited its reasoning to such circumstances. And the State overlooks that *Keeton*

turned on the magazine publisher's shipment of thousands of allegedly libelous magazines *into the forum*. 465 U.S. at 772; *see also TheHuffingtonPost.com*, 21 F.4th at 325 (distinguishing *Keeton*). *Keeton* did not hold that alleged misstatements said anywhere can be actionable everywhere.

B. The State also seeks to avoid review by accusing Meta of "mischaracteriz[ing]" the decision below. BIO i, 15. But it is the State, not Meta, that distorts the decision. The Vermont Supreme Court plainly grounded its exercise of personal jurisdiction on Meta's "business model"—and did so at the State's urging.

To establish personal jurisdiction, the State needed to show purposeful availment of Vermont and relatedness to its claims. Pet.App.24a-25a. The Vermont Supreme Court expressly relied on Meta's business model for both. On purposeful availment, the court held that "[a]s part of its business model, Meta purposefully avails itself of Vermont." Pet.App.13a; *accord* Pet.App.16a. And on relatedness, the court held that "there is a sufficient relationship between the State's claims and Meta's connections to Vermont" because "the State is challenging the very business model that Meta has directed at Vermont" and, "the State argues, that business model has led to the alleged injuries suffered by Vermonters." Pet.App.28a.

That reliance should come as no surprise—the State injected the "business model" theory into this case and pressed it at every stage. The complaint alleged that "Meta directed its business model at Vermont." Pet.App.91a (cleaned up). And the State argued below that "the State's claims *directly* stem from and relate to Meta's application of its targeted

advertising business model in Vermont." Vt. S. Ct. Br. 12. The State cannot now disavow the very theory it successfully pressed below.

The State points to the Vermont Supreme Court's discussion of Meta's Terms of Use and certain internal studies. BIO 15-16. But the decision below did not rely on those contacts. In the passage the State quotes, the court merely described Meta's business model—and immediately concluded: "In other words, the State is challenging the very business model that Meta has directed at Vermont." Pet.App.28a.

Even if the court had relied on those contacts, that reliance would only deepen the split of authority. Courts have rejected the argument that a website operator purposefully avails itself of a forum whenever a visitor accepts its terms of service. *See, e.g.*, *Old Republic Ins. Co. v. Cont'l Motors, Inc.*, 877 F.3d 895, 910 (10th Cir. 2017). And Meta's Terms of Use cannot establish jurisdiction here because the State's claims are unrelated to those agreements. *See, e.g.*, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985). The State does not allege that Instagram's Terms of Use were "unfair" or that its "design" breached those terms. The Terms of Use thus cannot satisfy the relatedness requirement. *See, e.g.*, *BP Chems. Ltd. v. Formosa Chem. & Fibre Corp.*, 229 F.3d 254, 262 (3d Cir. 2000).

So too with Meta's internal studies involving Vermont users. *See* BIO 15. The State ignores its allegation that Meta studied Vermont users as part of "a *national analysis* of 'teen' Instagram use," and asserted that Meta "tracked and assessed—*for each state*—a wide range of metrics regarding teen Instagram use." Pet.App.92a (emphases added). But aside

from allegedly identifying an interest in increasing teen engagement on Instagram nationwide, Pet.App.93a, the State did not connect that study to Vermont or to any of the "design features" it contends are "unfair." Other courts would have held that this national study could not satisfy either relatedness or purposeful direction because it did not relate to the State's "design" claims or "target" Vermont "in particular." *Fidrych v. Marriott Int'l, Inc.*, 952 F.3d 124, 143 (4th Cir. 2020); *TheHuffingtonPost.com*, 21 F.4th at 321-22 (same); *see also* Pet. 10-11 (personal jurisdiction cannot turn on website's accessibility).

In sum, the decision below deepens the split over how to analyze Internet-based contacts, and it does so by elevating an amorphous "business model" inquiry over the defendant's forum-directed, claim-specific conduct. This entrenched conflict warrants this Court's review.

II. The Decision Below Cannot be Reconciled with this Court's Precedent.

Under this Court's precedent, for Vermont courts to exercise personal jurisdiction over Meta in this case, "the suit must arise out of or relate to the defendant's contacts with the forum." *Bristol-Myers Squibb Co. v. Super. Ct.*, 582 U.S. 255, 262 (2017) (cleaned up). That means that, for the "unfairness" claim—which challenges how Meta has "designed" Instagram—the State needed to connect Meta's design of Instagram to Vermont. And for the deception claim, the State needed to connect the alleged misrepresentations to Vermont. The State did neither.

The State has little response to *Bristol-Myers Squibb*. If the "business model" approach were viable,

California courts could have exercised jurisdiction based on the defendant's offices, employees, and hundreds of millions of dollars of revenue in California. *Id.* at 258-59. The State protests that, in *Bristol-Myers Squibb*, "neither the plaintiffs nor the defendant resided in the forum state, nor did the plaintiffs claim to have been injured there." BIO 17. But that makes Meta's point, not the State's; those facts mattered precisely because this Court does not base its jurisdictional analysis on a defendant's business model. As the Court made clear, "a corporation's continuous activity … within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity." *Id.* at 264 (cleaned up).

Nor does the State defend the Vermont Supreme Court's misapplication of *Keeton* and *Ford Motor*. *See* Pet. 24-25. The State has no response to the fact that this Court and others have limited *Keeton* to situations in which defendants sent an actionable, physical product into the forum. *See* Pet. 24; *see also Walden*, 571 U.S. at 287 (limiting *Keeton*). Nor does it explain how the Vermont Supreme Court's relatedness analysis squares with *Ford Motor*'s direction that relatedness imposes "real limits" on which forum contacts are relevant to jurisdiction. *See* Pet. 25 (quoting *Ford Motor*, 592 U.S. at 362). Far from identifying any "real limits" to the Vermont Supreme Court's approach, the State does not deny that it would mean Meta (and similar Internet-based companies) would effectively be subject to nationwide general jurisdiction. *See* BIO 18-19. At bottom, neither the Vermont Supreme Court nor the State can point to claim-specific contacts between Meta and Vermont to justify the

exercise of jurisdiction. These differences are fatal to the lower court's judgment and merit review.

III. This Case Is an Excellent Vehicle to Resolve This Important Issue.

This case presents a pure question of law on a threshold jurisdictional issue that would dispose of this entire case. The question is exceptionally important. If a state court may exercise specific jurisdiction based on a defendant's "business model," businesses big and small face something akin to general jurisdiction across the country—undermining predictability, interstate federalism, and the Nation's economy. NetChoice Amicus Br. 10-13; *see also* Pet. 26-29.

Contrary to the State's assertion (at 19), the petition is not a "poor vehicle" simply because the plaintiff is a state. The State never argued below that the personal jurisdiction inquiry differs when a state is the plaintiff. The Vermont Supreme Court did not base its decision on that ground. Whether the plaintiff's identity affects the personal jurisdiction analysis is not fairly included in the question presented. And the State cites no authority for the proposition that personal jurisdiction limitations—which exist to protect a *defendant's* due process rights—may be relaxed for a government enforcer.

The State asserts that Meta has "carefully avoid[ed] arguing that the Due Process Clause prohibits the State from applying its consumer protection laws to Meta." BIO 20. But Meta has not addressed that question—and this Court need not reach it—because it goes to the merits, which the Vermont Supreme Court did not decide. This Court can and

should address only the antecedent jurisdictional question: Whether Vermont courts may hear this case at all.[2]

If anything, that this case comes to the Court through a state enforcement action makes this issue more, not less, important. If states can assert jurisdiction over companies big and small based on their "business model," *see* Pet. 26-27, state attorneys general (and state courts) will suddenly gain unprecedented adjudicatory and regulatory power over key sectors of the national economy.[3]

The State is also wrong that this case is a poor vehicle because Meta "does not propose an alternative forum." BIO 21. This Court has never required that. And as the State acknowledges, it could bring this suit in California—as nearly thirty other states have done. BIO 22 n.2; *see also* Pet. iv.

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[2] The State's suggestion that the personal-jurisdiction issue is intertwined with the reach of Vermont's consumer-protection statute is incorrect. A state's enforcement authority "is entirely different from its authority to exercise jurisdiction over an out-of-state defendant." *Bristol-Myers Squibb*, 582 U.S. at 267 (citing *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 808-12 (1985)). And the Court has "rejected the argument that if a State's law can properly be applied to a dispute, its courts necessarily have jurisdiction over the parties to that dispute." *Shaffer v. Heitner*, 433 U.S. 186, 215 (1977).

[3] The State's reliance (at 22) on *Ohio v. Wyandotte Chemicals Corp.*, 401 U.S. 493, 500 (1971), and *Franchise Tax Bd. of California v. Hyatt*, 587 U.S. 230, 241 (2019), is misplaced. The cited language from *Ohio* concerned the policy rationales for (and limits on) this Court's original jurisdiction. *See* 401 U.S. at 497-98, 505. And *Hyatt*'s sovereign-immunity holding is inapplicable where, as here, the State is the plaintiff. *See, e.g.*, *United States v. Peters*, 9 U.S. (5 Cranch) 115, 139 (1809) (Marshall, C.J.) ("The right of a state to assert, as plaintiff, any interest it may have in a subject, … is not affected by [the Eleventh] amendment.").

Nor would Meta's position allow a defendant that "engages in similar wrongdoing in enough different states" to escape suit. BIO 18. In several virtually identical cases, Meta has not challenged personal jurisdiction because the complaint plausibly alleged that Meta employees in the forum worked on the challenged product features. Meta challenges jurisdiction only where—as here—the plaintiff alleges no connection between the forum and suit-related conduct, and instead invokes a theory that would subject Meta to jurisdiction everywhere for virtually any claim.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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