No. 19-

IN THE
Supreme Court of the United States

FORD MOTOR COMPANY,
Petitioner,

v.

MONTANA EIGHTH JUDICIAL DISTRICT COURT, *et al*.,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Due Process Clause permits a state court to exercise specific personal jurisdiction over a non-resident defendant only when the plaintiff's claims "arise out of or relate to" the defendant's forum activities. *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 472 (1985) (internal quotation marks omitted).

The question presented is:

Whether the "arise out of or relate to" requirement is met when none of the defendant's forum contacts caused the plaintiff's claims, such that the plaintiff's claims would be the same even if the defendant had no forum contacts.

PARTIES TO THE PROCEEDING

Ford Motor Company, petitioner on review, was the petitioner below and a defendant in the trial court.

The Montana Eighth Judicial District Court and the Honorable Elizabeth Best, respondents on review, were the nominal respondents below.

Charles S. Lucero, personal representative of the Estate of Markkaya Jean Gullett, respondent on review, was the real party in interest below and the plaintiff in the trial court.

RULE 29.6 DISCLOSURE STATEMENT

Ford Motor Company has no parent corporation and no publicly held company owns 10% or more of Ford Motor Company's stock.

RELATED PROCEEDINGS

Montana Supreme Court:

Lucero v. *Ford Motor Company*, No. DA 18-0629 (Mont. July 2, 2019) (reported at 444 P.3d 389) (affirming, on interlocutory appeal, the denial of Ford's motion to change venue)

Ford Motor Company v. *Lucero*, No. OP 19-0099 (Mont. May 21, 2019) (reported at 443 P.3d 407) (granting a writ of supervisory control and affirming the denial of Ford's motion to dismiss for lack of personal jurisdiction)

Montana Eighth Judicial District Court:

Lucero v. *Ford Motor Company*, No. ADV-18-0247(b) (Mont. Dist. Ct. Oct. 10, 2018) (district court proceeding)

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PETITION FOR A WRIT OF CERTIORARI

Ford Motor Company respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Montana in this case.

OPINIONS BELOW

The Montana Supreme Court's opinion is reported at 443 P.3d 407. Pet. App. 1a–22a. The Montana Eighth Judicial District Court's opinion is not reported. Pet. App. 23a–36a.

JURISDICTION

The Supreme Court of Montana entered judgment on May 21, 2019. On July 25, 2019, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including September 18, 2019. This Court's jurisdiction rests on 28 U.S.C.

§ 1257(a). *See Fisher* v. *District Court of Sixteenth Judicial Dist. of Mont.*, 424 U.S. 382, 385 n.7 (1976) (per curiam) ("The writ of supervisory control issued by the Montana Supreme Court is a final judgment within our jurisdiction.").

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1, provides:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law.

Montana Rule of Civil Procedure 4(b)(1)(B) provides:

> All persons found within the state of Montana are subject to the jurisdiction of Montana courts. Additionally, any person is subject to the jurisdiction of Montana courts as to any claim for relief arising from the doing personally, or through an employee or agent, of * * * the commission of any act resulting in accrual within Montana of a tort action.

INTRODUCTION

In the decision below, the Montana Supreme Court allowed the Montana courts to exercise specific personal jurisdiction over Ford even though Ford's contacts with Montana did not give rise to Respondent Charles Lucero's claims. Even though Lucero's lawsuit would be exactly the same if Ford did no business in Montana, the Montana Supreme Court found that his claims still "arose out of or related to" Ford's Montana contacts. In doing so, the Montana

Supreme Court allowed the *plaintiff's* contacts with the forum to drive its analysis. And in doing so, it joined a growing number of state high courts that have taken the same approach. This Court should grant review to put a stop to this capacious view of specific personal jurisdiction.

As this Court has made clear, the Due Process Clause requires both that the defendant "have purposefully availed itself of the privilege of conducting activities within the forum State" *and* that the plaintiff's claim " 'arise out of or relate to' the defendant's forum conduct." *Bristol-Myers Squibb Co.* v. *Superior Court of Cal.*, 137 S. Ct. 1773, 1785–86 (2017) (internal quotation marks, brackets, and citation omitted). This requirement polices the line between specific and general personal jurisdiction. And it has divided the federal and state courts so deeply that the Court has twice granted certiorari to decide how closely a defendant's forum contacts must be connected to a plaintiff's claim for the arise-out-of-or-relate-to requirement to be met, only to leave the issue unresolved. *See Carnival Cruise Lines, Inc.* v. *Shute*, 499 U.S. 585, 589 (1991); *see also Bristol-Myers Squibb*, 137 S. Ct. at 1779.

The Court should not leave the question unanswered any longer. This Court has explained that for the required connection to exist, "the defendant's *suit-related conduct* must create a substantial connection with the forum State." *Walden* v. *Fiore*, 571 U.S. 277, 284 (2014) (emphasis added). Most courts have taken the Court at its word. They require a plaintiff's claim to have at least *some* causal connection to some act the defendant took in, or aimed at, the forum. But the decision below took a different

path. Even though the Montana Supreme Court recognized that Ford's "*out-of-state conduct* * * * led to the plaintiff's in-state use of the product and resulting claim," it nonetheless held that the required connection was present. Pet. App. 14a (emphasis added). The court did so out of apparent disagreement with this Court's personal-jurisdiction jurisprudence, stating that requiring a causal connection "would unduly restrict courts of this state from exercising specific personal jurisdiction." *Id.* at 16a. But a defendant's important due-process protections cannot be measured by a court's policy preferences.

This Court should grant the writ, rule that specific jurisdiction requires a causal connection between the defendant's forum contacts and a plaintiff's claims, and reverse the decision below.

STATEMENT

1. Petitioner Ford Motor Company is a global automaker headquartered in Dearborn, Michigan and incorporated in Delaware. Pet. App. 24a. Ford designs, manufactures, and markets a full line of cars, trucks, and SUVs. The Ford Explorer, an SUV, is one such vehicle.

In 2015, Markkaya Jean Gullett, a Montana resident, was driving an Explorer along a Montana highway when the tread on one of her tires separated. *Id.* at 3a. Gullett lost control of the vehicle, and it rolled into a ditch. *Id.* She died at the scene. *Id.*

Respondent Charles Lucero, the personal representative of Gullett's estate, sued Ford in Montana

state district court on behalf of Gullett and her heirs.[1] *Id.* He asserted design-defect, failure-to-warn, and negligence claims. And he sought compensatory and punitive damages. *See id.*

Ford moved to dismiss the claims for lack of personal jurisdiction.[2] Ford, a Michigan-headquartered company incorporated under Delaware law, was not subject to general personal jurisdiction in Montana. *Id.* at 26a. There was also no link between Lucero's suit and anything Ford had done in Montana that would support specific personal jurisdiction over Ford on Lucero's claims. *See id.* at 3a, 31a. Ford assembled the Explorer in Kentucky and first sold it to a dealership in Washington State, which, in turn, sold it to an Oregon resident. *Id.* at 3a, 24a. The vehicle was later purchased and brought to Montana in 2007. *Id.* at 24a. Ford had nothing to do with the vehicle's presence in Montana, and Lucero alleged no contact between Ford and the vehicle in Montana.

2. The District Court denied Ford's motion. *Id.* at 34a. It found the required "connection between the forum and the specific claims at issue" was present because "Gullett was a resident of Montana, who was killed in Montana, as the result of an alleged design

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[1] Lucero named other defendants, who did not move to dismiss for lack of personal jurisdiction. *See* Pet. App. 23a–24a. They were not parties to the Montana Supreme Court proceedings and are not parties in this court.

[2] Ford also moved to change venue. The trial court denied that motion, and the Montana Supreme Court affirmed on Ford's interlocutory appeal as of right. *Lucero* v. *Ford Motor Co.*, 444 P.3d 389, 393 (Mont. 2019). The Montana Supreme Court's venue decision is not at issue in this petition.

defect caused by Ford." *Id.* at 32a (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1781).

3. The Montana Supreme Court allowed an interlocutory appeal, granting Ford's petition for a writ of supervisory control. *See id.* at 1a, 4a–5a. The court found that the personal-jurisdiction issue "[wa]s purely legal and of state-wide constitutional importance." *Id.* at 4a–5a. Not only were "Ford's due process rights * * * at issue," but the court's "decision w[ould] clarify when persons injured in Montana may appropriately file suit in Montana courts." *Id.* at 5a. The court "accordingly accept[ed] supervisory control." *Id.*

The Montana Supreme Court then affirmed. *See id.* The court recognized that this case implicates only specific jurisdiction, because "Ford is undisputedly not subject to general personal jurisdiction in Montana." *Id.* The sole question was "whether Montana may exercise specific personal jurisdiction over Ford regarding Lucero's design defect, failure to warn, and negligence claims." *Id.*

After finding the state long-arm statute satisfied, the Montana Supreme Court held that exercising specific personal jurisdiction over Ford on Lucero's claims was consistent with the Due Process Clause. *Id.* at 5a–21a. The court first found that Ford had availed itself of the privilege of doing business in Montana under a "stream of commerce plus" theory. *Id.* at 9a–12a. The Montana Supreme Court had previously held that a defendant must do more than place a product into the stream of commerce that foreseeably reaches Montana to have purposefully availed itself of Montana. *See Bunch* v. *Lancair Int'l, Inc.*, 202 P.3d 784, 792 (2009) ("[P]lacement of a

product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State." (internal quotation marks omitted)). The court found that Ford had done "more" in Montana because "Ford engages in additional conduct establishing its intent to serve the market in Montana," such as advertising and selling vehicles and parts. Pet. App. 11a–12a.

The Montana Supreme Court observed that whether Lucero's claims were sufficiently connected to Ford's Montana contacts—the only constitutional requirement Ford contested—presented "a challenging legal inquiry." *Id.* at 14a. It acknowledged that "[d]ue process requires a connection between a defendant's in-state actions and a plaintiff's claim: 'the suit must arise out of or relate to the defendant's contacts with the forum.' " *Id.* at 12a (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1780). But here, as in similar "products liability action[s]," it was Ford's "*out-of-state conduct*" of "placing the product into the stream of commerce" that "technically led to the plaintiff's in-state use of the product and resulting claim." *Id.* at 14a (emphasis added). The court recognized that "other jurisdictions" had found "no specific personal jurisdiction in similar factual scenarios because of a lack of connection between the plaintiffs' claims and the defendants' in-state contacts." *Id.* at 12a–13a.

The Montana Supreme Court nevertheless found that Lucero's claims did "arise out of or relate to" Ford's Montana conduct. *Id.* at 15a (internal quotation marks omitted). It held that if a "defendant purposefully avails itself of the * * * [forum] based on the stream of commerce plus theory," then "the

plaintiff's claims will *relate to* the defendant's forum-related activities as long as the connection between the defendant's in-state conduct and the plaintiff's claim is sufficient enough to not offend due process." *Id.* at 15a–16a (emphasis added). The court believed that due process, "[a]t its core * * * is concerned with fairness and reasonableness." *Id.* at 16a. It accordingly held that a "plaintiff's claims 'relate to' the defendant's forum-related activities if a nexus exists between the product [placed into the stream of commerce] and the defendant's in-state activity and if the defendant could have reasonably foreseen its product being used in Montana." *Id.* at 16a–17a.

The Montana Supreme Court "conclude[d] that Lucero's claims 'relate to' Ford's Montana activities" under that test. *Id.* at 17a. The required "nexus" was present because "Ford advertises, sells, and services vehicles in Montana." *Id.* And "Ford could have reasonably foreseen the Explorer—a product specifically built to travel—being used in Montana." *Id.*

The Montana Supreme Court disagreed with Ford that this Court's precedents prohibited the exercise of specific personal jurisdiction. It found *Bristol-Myers Squibb* "distinguishable" because the plaintiffs there "were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California," while "Gullett was injured while driving the Explorer in Montana." *Id.* at 18a (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1781). *Bristol-Myers Squibb* thus "d[id] not impact" the court's analysis. *Id.*

The Montana Supreme Court also believed *Walden* "present[ed] a much different factual scenario." Pet. App. 18a–19a. Ford had "demonstrat[ed] a willingness to sell to and serve Montana customers like Gullett, who was injured while driving an Explorer in Montana." *Id.* at 19a–20a. That made the case "[u]nlike * * * *Walden*, where the plaintiffs were the only connection between the defendant and the forum state." *Id.* at 19a.

This petition follows.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW DEEPENS AN ENTRENCHED SPLIT AMONG FEDERAL COURTS OF APPEALS AND STATE COURTS OF LAST RESORT.

There is a deep conflict among federal and state courts over what connection due process requires between a plaintiff's claims and a non-resident defendant's forum contacts for a court to exercise specific personal jurisdiction. Most courts have held that a plaintiff's suit does not arise out of or relate to a defendant's forum-state contacts unless those contacts in some way caused the plaintiff's injury. By contrast, six courts—the highest courts of the District of Columbia, Minnesota, Montana, Texas, and West Virginia, as well as the U.S. Court of Appeals for the Federal Circuit—allow the exercise of specific personal jurisdiction when the plaintiff would have suffered the same injuries, and thus had the same claims, even if the defendant had never made contact with the forum. And this split persists despite this Court's recent personal-jurisdiction

precedents. This Court should grant certiorari to resolve the question once and for all.

A. Courts continue to interpret the arise-out-of-or-relate-to requirement differently.

1. The confusion among federal courts of appeals and state courts of last resort as to this requirement began following its introduction and has only deepened since. The Court first stated in *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408 (1984) that specific jurisdiction requires that a plaintiff's "cause of action" "arise out of or relate to the foreign corporation's activities in the forum State." *Id.* at 414. But the Court did not address "what sort of tie between a cause of action and a defendant's contacts with a forum is necessary," or even whether these two phrases "describe different connections." *Id.* at 415 n.10.

In the over three-and-a-half decades since *Helicopteros*, this Court has reiterated this requirement but not yet answered these key questions. *See J. McIntyre Mach., Ltd.* v. *Nicastro*, 564 U.S. 873, 881 (2011) (plurality op.); *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 473 n.15 (1985); *see also Bristol-Myers Squibb*, 137 S. Ct. at 1788 n.3 (Sotomayor, J., dissenting). And it is not for lack of opportunity. The Court has twice granted certiorari to determine the required connection between a plaintiff's claims and a defendant's forum contacts, but in both cases ruled without reaching the question. *See Carnival Cruise Lines*, 499 U.S. at 589; *Bristol-Myers Squibb*, 137 S. Ct. at 1779.

"[G]iven little guidance as to how much of a nexus is required," *Michelin N. Am., Inc.* v. *De Santiago*, ___ S.W.3d ___, No. 08-17-00119-CV, 2018 WL

3654919, at *15 (Tex. Ct. App. 2018), courts have adopted four different approaches to the arise-out-of-or-relate-to requirement.

No Causal Connection Required. The highest courts of the District of Columbia, Minnesota, Montana, Texas, and West Virginia, and the Federal Circuit have held that the required connection exists so long as there is some general relationship between a defendant's forum contacts and a plaintiff's claims. In these courts, no causation is necessary. The requirement can be met even if the plaintiff's injury would have been identical in a world where the defendant did no business in the forum.

The Montana Supreme Court adopted the no-causation approach below. It acknowledged that "courts in other jurisdictions" would find "no specific personal jurisdiction in similar factual scenarios because of a lack of connection between the plaintiffs' claims and the defendants' in-state contacts." Pet. App. 12a–13a. But it nonetheless held a "plaintiff's claims 'relate to' the defendant's forum-related activities if a nexus exists between the product and the defendant's in-state activity and if the defendant could have reasonably foreseen its product being used in Montana." *Id.* at 16a–17a. Thus, although Ford had taken no action in Montana involving Gullett or her vehicle, the Montana Supreme Court found that Ford's Montana acts related to *other* vehicles provided the required nexus. *Id.* at 17a.

The Minnesota and Texas Supreme Courts, the District of Columbia Court of Appeals, the West Virginia Supreme Court of Appeals, and the Federal Circuit have adopted similar tests. Just a few months ago, the Minnesota Supreme Court held that

"the requirements of due process are met so long as [a defendant's forum] contacts *relate to* the claim"; it is not necessary that the defendant's forum contacts "*cause* the claim." *Bandemer* v. *Ford Motor Co.*, 931 N.W.2d 744, 753 (Minn. 2019). The Texas Supreme Court has likewise said that its "standard does not require proof that the plaintiff would have no claim 'but for' the contacts, or that the contacts were a 'proximate cause' of the liability." *TV Azteca, S.A.B. de C.V.* v. *Ruiz*, 490 S.W.3d 29, 52–53 (Tex. 2016). The West Virginia Supreme Court has echoed the decision below, asking only whether the exercise of specific personal jurisdiction is "constitutionally fair and reasonable" and holding that the answer can be yes even if the claim did not "ar[i]se out of or result[ ] from any forum-related activities on the part of" the defendant. *State ex rel. Ford Motor Co.* v. *McGraw*, 788 S.E.2d 319, 342–343 (W. Va. 2016). The Federal Circuit considers whether the defendant's conduct "relate[s] in some material way" to the plaintiff's suit, an "interpretation of the 'arise out of or related to' language" that it acknowledges "is far more permissive than either the 'proximate cause' or the 'but for' analyses." *Avocent Huntsville Corp.* v. *Aten Int'l Co.*, 552 F.3d 1324, 1336–37 (Fed. Cir. 2008). And the D.C. Court of Appeals has rejected "strict causation-based tests" in favor of a test requiring only "a 'discernible relationship' between [the plaintiff's] claim and the" defendant's conduct. *Shoppers Food Warehouse* v. *Moreno*, 746 A.2d 320, 333, 336 (D.C. 2000) (en banc) (citation omitted).

But-For Causal Connection Required. Another set of courts, including the Fourth, Ninth, and Eleventh Circuits and the highest courts of Arizona, Massachusetts, and Washington, has held that the required

connection exists only if the defendant's forum-state conduct is a but-for cause of the plaintiff's injury. These courts hold that a plaintiff cannot establish personal jurisdiction over a defendant unless he "show[s] that he would not have suffered an injury 'but for' [the defendant's] forum-related conduct." *Menken* v. *Emm*, 503 F.3d 1050, 1058 (9th Cir. 2007); *see also Waite* v. *All Acquisition Corp.*, 901 F.3d 1307, 1314 (11th Cir. 2018) ("[A] tort 'arise[s] out of or relate[s] to' the defendant's activity in a state only if the activity is a 'but-for' cause of the tort." (citation omitted)); *Consulting Eng'rs Corp.* v. *Geometric Ltd.*, 561 F.3d 273, 278–279 (4th Cir. 2009) (holding that specific jurisdiction "requires that the defendant's contacts with the forum state form the basis of the suit"); *Williams* v. *Lakeview Co.*, 13 P.3d 280, 284–285 (Ariz. 2000) (en banc) (requiring "a causal nexus between the defendant's * * * activities and the plaintiff's claims"); *Tatro* v. *Manor Care, Inc.*, 625 N.E.2d 549, 553 (Mass. 1994) (adopting "a 'but for' test"); *Shute* v. *Carnival Cruise Lines*, 783 P.2d 78, 81–82 (Wash. 1989) (en banc) ("We adopt the 'but for' test * * * .").

Courts that take this approach have explained that "[t]he 'but for' test is consistent with the basic function of the 'arising out of' requirement—it preserves the essential distinction between general and specific jurisdiction." *Shute* v. *Carnival Cruise Lines*, 897 F.2d 377, 385 (9th Cir. 1990), *rev'd on other grounds*, 499 U.S. 585 (1991). Courts applying the but-for test ask a question the decision below avoided entirely: whether "[i]n the absence of" the defendant's forum contacts, the plaintiff's "injury would not have occurred." *Id.* at 386; *cf.* Pet. App. 16a (asking instead whether it was "fair and reasonable to ask an out-of-

state defendant to defend a specific lawsuit in Montana").

Stronger Causal Connection Required. Another set of courts holds that the arise-out-of-or-relate-to requirement demands something more than but-for causation, although they have not settled on a single formulation.

The First and Sixth Circuits have said that a plaintiff's injuries must be "proximately caused" by the defendant's forum-state contacts. The First Circuit has explained that "[a] 'but for' requirement * * * has in itself no limiting principle; it literally embraces every event that hindsight can logically identify in the causative chain." *Harlow* v. *Children's Hosp.*, 432 F.3d 50, 61 (1st Cir. 2005) (quoting *Nowak* v. *Tak How Invs., Ltd.*, 94 F.3d 708, 715 (1st Cir. 1996)). As a result, "due process demands something like a 'proximate cause' nexus," which "correlates to foreseeability, a significant component of the jurisdictional inquiry." *Id.* (citations omitted). The Sixth Circuit agrees that "more than mere but-for causation is required to support a finding of personal jurisdiction," particularly given that "the Supreme Court has emphasized that only consequences that *proximately* result from a party's contacts with a forum state will give rise to jurisdiction." *Beydoun* v. *Wataniya Rests. Holding, Q.S.C.*, 768 F.3d 499, 507–508 (6th Cir. 2014) (citing *Burger King Corp.*, 471 U.S. at 474).

The Third and Seventh Circuits, and the Nevada, New Hampshire, Oklahoma, and Oregon high courts have reached a similar conclusion, although they have refrained from using the term "proximate cause." These courts agree that specific personal

jurisdiction "requires a closer and more direct causal connection than that provided by the but-for test." *O'Connor* v. *Sandy Lane Hotel Co.*, 496 F.3d 312, 323 (3d Cir. 2007); *see, e.g.*, *uBID, Inc.* v. *GoDaddy Grp., Inc.*, 623 F.3d 421, 430 (7th Cir. 2010) (explaining that "[b]ut-for causation would be 'vastly overinclusive,' haling defendants into court in the forum state even if they gained nothing from those contacts").[3]

But they have declined to adopt a "mechanical" formula for describing their causation standard; rather, each has said that it conducts a "fact-sensitive" inquiry to determine whether the assertion of jurisdiction is "intimate enough to keep * * * personal jurisdiction reasonably foreseeable." *O'Connor*, 496 F.3d at 323; *see uBID*, 623 F.3d at 430 (same); *Montgomery* v. *Airbus Helicopters, Inc*., 414 P.3d 824, 834 (Okla. 2018) (holding that although "the harm * * * occurred in this State" that "alone, without * * * further direct and specific conduct with this State directly related to the incident giving rise to the injuries, is insufficient for asserting specific personal jurisdiction"); *Petition of Reddam*, 180 A.3d 683, 691 (N.H. 2018) (describing the requirement as "a flexible, relaxed standard" under which "the defendant's in-state conduct must form an important, or at least material, element of proof in the plaintiff's case" (internal quotation marks omitted));

[3] The Eleventh Circuit recently stated that it applies a but-for standard. *See supra* p. 13. Earlier decisions, however, "utilized a fact-sensitive analysis consonant with the principle that foreseeability constitutes a necessary ingredient of the relatedness inquiry." *Oldfield* v. *Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1223 (11th Cir. 2009).

Tricarichi v. *Cooperative Rabobank, U.A.*, 440 P.3d 645, 652 (Nev. 2019) ("[T]he claims must have a specific and direct relationship or be intimately related to the forum contacts." (internal quotation marks omitted)); *Robinson* v. *Harley-Davidson Motor Co.*, 316 P.3d 287, 300 (Or. 2013) (en banc) ("[T]he activity may not be only a but-for cause of the litigation; rather, the nature and quality of the activity must also be such that the litigation is reasonably foreseeable by the defendant."). In all of these courts, specific jurisdiction still remains inappropriate if "the plaintiff would not have been injured" in the absence of "contacts between the defendant and the forum state." *Nowak*, 94 F.3d at 712.

Unspecified Causal Connection Required. The Second, Eighth, and Tenth Circuits, and the Supreme Court of Alabama, recognize that the due process requires at least *some* causal connection between a plaintiff's claims and a defendant's forum contacts. But they have not settled on a precise test. The Eighth Circuit requires some causal connection but has "not restricted the relationship between a defendant's contacts and the cause of action to a proximate cause standard." *Myers* v. *Casino Queen, Inc.*, 689 F.3d 904, 912–913 (8th Cir. 2012). It has instead "emphasized the need to consider the totality of the circumstances" in a manner "consistent with * * * a flexible approach when construing the 'relate to' aspect of the Supreme Court's standard." *Id.* (internal quotation marks omitted); *see also Hinrichs* v. *General Motors of Canada, Ltd.*, 222 So. 3d 1114, 1140 (Ala. 2016) (per curiam) (holding that this Court's precedents establish "the requirement that the claim against the defendant have a suit-related nexus with the forum state before specific jurisdic-

tion can attach"). The Tenth Circuit has declined to "pick sides" between the "but-for and proximate causation tests." *Dudnikov* v. *Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1079 (10th Cir. 2008) (Gorsuch, J.). And the Second Circuit has, after first setting out the but-for and proximate-causation approaches, stated that its standard "depends on the relationship among the defendant, the forum, and the litigation." *SPV Osus Ltd.* v. *UBS AG*, 882 F.3d 333, 344 (2d Cir. 2018) (internal quotation marks omitted).[4]

2. This four-headed split persists—and indeed has deepened—even after this Court's most recent personal-jurisdiction decision in *Bristol-Myers Squibb*. *Bristol-Myers Squibb* did not explain "exactly how a defendant's activities must be tied to the forum for a court to properly exercise specific personal jurisdiction over a defendant." *SPV Osus*, 882 F.3d at 344; *see also Waite*, 901 F.3d at 1315 (explaining that *Bristol-Myers Squibb* "imposed no explicit but-for causation requirement" but "neither did [it] reject such a requirement, nor is [the] opinion inconsistent with one"); *Triple Up Ltd.* v. *Youku Tudou Inc.*, 235 F. Supp. 3d 15, 26 (D.D.C. 2017) ("The Supreme Court has yet to pass on this issue.").

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[4] The Fifth Circuit has not formally addressed the causation question, but it has in practice required a causal connection between a plaintiff's claims and a defendant's forum contacts. *See Carmona* v. *Leo Ship Mgmt., Inc.*, 924 F.3d 190, 198 (5th Cir. 2019); *Prejean* v. *Sonatrach, Inc.*, 652 F.2d 1260, 1269–70 (5th Cir. 1981); *see also Tamburo* v. *Dworkin*, 601 F.3d 693, 708 (7th Cir. 2010) (describing the Fifth Circuit as applying a but-for test).

Absent guidance from this Court, the split will continue to persist. On the one side, the Montana Supreme Court in the decision below and the Minnesota Supreme Court have adopted a no-causation standard just this year. *See supra* p. 12. On the other, courts have adhered to their causal approaches following *Bristol-Myers Squibb*. *See, e.g.*, *Exxon Mobil Corp.* v. *Attorney Gen.*, 94 N.E.3d 786, 797 (Mass. 2018) (applying *Tatro*); *Estate of Thompson ex rel. Thompson* v. *Phillips*, 741 F. App'x 94, 98–99 (3d Cir. 2018) (applying *O'Connor*); *Waite*, 901 F.3d at 1315 (continuing "to apply the but-for causation requirement from" its previous cases); *Morrill* v. *Scott Fin. Corp.*, 873 F.3d 1136, 1151 (9th Cir. 2017) (applying *Menken*). The split remains intractable and requires this Court's intervention to resolve.

B. These different approaches lead to different results in identical product-liability cases.

This split has led courts to reach different outcomes in cases materially indistinguishable from this one: a product-liability suit in which a plaintiff seeks to recover for an injury from a product that the defendant did not design, manufacture, or sell within the forum. Under the decision below, a defendant will be subject to personal jurisdiction in any forum in which it advertises or sells the allegedly defective product, or a similar one, even if nothing the defendant did in the forum involved the particular product that allegedly injured the plaintiff. *See* Pet. App. 16a–17a. But all other causal-standard courts to address the issue have held that specific personal jurisdiction is lacking on these facts. *See, e.g.*, *D'Jamoos ex rel. Estate of Weingeroff* v. *Pilatus*

Aircraft Ltd., 566 F.3d 94, 106 (3d Cir. 2009); *Kuenzle* v. *HTM Sport-Und Freizeitgeräte AG*, 102 F.3d 453, 455 (10th Cir. 1996); *see also Airbus Helicopters*, 414 P.3d at 833–834; *Hinrichs*, 222 So. 3d at 1157.

As this shows, Lucero's claims would have been dismissed by any court that requires some causal link to satisfy the arising-out-of requirement. Even the Montana Supreme Court agreed. *See* Pet. App. 12a–13a ("[C]ourts in other jurisdictions find[] no specific personal jurisdiction in similar factual scenarios because of a lack of connection between the plaintiffs' claims and the defendants' in-state contacts."). This reality underscores the need for this Court's review: It is the disagreement over the standard—not different facts—that is leading to different outcomes in the lower courts.

The split is especially problematic because the relevant federal circuits in several no-causation States apply a different test for the arise-out-of-or-relate-to requirement. The Montana Supreme Court below adopted a no-causal-connection standard, but "the Ninth Circuit follows the 'but for' test." *Menken*, 503 F.3d at 1058 (citation omitted). In fact, the Ninth Circuit has repeatedly rejected specific jurisdiction based on a defendant's in-state marketing and sales activities that are not a cause of the plaintiff's injuries. *See, e.g.*, *Morris ex rel. Oregon Cascade Corp.* v. *Harley*, 720 F. App'x 326, 329 (9th Cir. 2017) ("The Morrises have failed to show their * * * claim would not have arisen but for these U.S. activities."); *Glencore Grain Rotterdam B.V.* v. *Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1123–24 (9th Cir. 2002) ("The contracts giving rise to this dispute were

negotiated abroad, involved foreign companies, and required performance (*i.e.*, delivery of rice) in India. * * * [The] claim does not arise out of conduct directed at or related to California. Thus, due process forbids the exercise of specific jurisdiction."). Applying the Ninth Circuit's causal test, a federal district court in Montana would have dismissed Lucero's claims because they would be exactly the same if Ford had no contact with Montana at all. *See, e.g.*, *Germain* v. *American Int'l Grp., Inc.*, No. CV 07-133-M-JCL, 2008 WL 11347704, at *8 (D. Mont. July 31, 2008) ("Even assuming [the defendant] purposely directed certain activities at Montana, [the plaintiff] has not [shown] that his claims arise out of or result from those forum-related activities."). The same conflict exists between Minnesota federal and state courts. *Compare Bandemer*, 931 N.W.2d at 753 (not requiring forum contacts "that *cause* the claim"), *with Myers*, 689 F.3d at 912–913 (adopting an approach consistent with courts that "emphasize the importance of proximate causation, but * * * allow a slight loosening of that standard when circumstances dictate" (internal quotation marks omitted)).[5]

These different approaches give plaintiffs every reason to bring suit in the courthouse they believe will be more receptive to their claims. That is particularly easy to do in products-liability suits like this one; a plaintiff's attorney will usually have no

[5] The same appears to be true for Texas state and federal courts. *Compare TV Azteca*, 490 S.W.3d at 52–53 (no causal connection required), *with Prejean*, 652 F.2d at 1270 ("[T]hese activities have not been shown to have the slightest causal relationship with the decedent's wrongful death.").

trouble finding an in-forum defendant who has had some contact with the product and whose joinder will destroy complete diversity. *See* Pet App. 23a (naming "Tires Plus, Inc., a Montana corporation" as a defendant).

The potential for "[f]orum shopping" is "a substantial reason for granting certiorari." *Yee* v. *City of Escondido*, 503 U.S. 519, 538 (1992). The Court should do so here.

II. THE DECISION BELOW IS WRONG.

The Montana Supreme Court sided with a growing number of courts that allow the exercise of specific personal jurisdiction—that is, "case-linked" personal jurisdiction, *Bristol-Myers Squibb*, 137 S. Ct. at 1780, 1785—even where the defendant's forum contacts have no link to the plaintiff's case. This Court has never endorsed that result, and the decision below demonstrates that courts are straying further from this Court's precedents. The Court's review is urgently needed.

1. A state court's exercise of specific personal jurisdiction does not comply with the Due Process Clause unless "the defendant's *suit-related conduct* * * * create[s] a substantial connection with the forum State." *Walden*, 571 U.S. at 284 (emphasis added). The Court has adhered to this requirement from the beginning. *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), found specific jurisdiction proper where there was a causal connection: "The obligation which [was] sued upon arose out of th[e] [defendant's] very activities" in the State. *Id.* at 320. *McGee* v. *International Life Insurance Co.*, 355 U.S. 220 (1957) did the same: "[T]he suit was based on a contract which had substantial connection with that

State." *Id.* at 223; *accord Burger King Corp.*, 471 U.S. at 479 ("[T]his franchise dispute grew directly out of a contract which had a substantial connection with that State." (internal quotation marks and emphasis omitted)). And so did the other decisions in which this Court has approved of specific personal jurisdiction. *See, e.g.*, *Calder* v. *Jones*, 465 U.S. 783, 790 (1984) ("[P]etitioners are primary participants in an alleged wrongdoing intentionally directed at a California resident * * * ."); *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 776 (1984) (referring to "in-state libel"). And the Court has hewed to this view when disapproving of the exercise of specific personal jurisdiction, as well. *See, e.g.*, *Bristol-Myers Squibb*, 137 S. Ct. at 1781 ("[W]hat is missing * * * is a connection between the forum and *the specific claims at issue*." (emphasis added)); *BNSF Ry. Co.* v. *Tyrrell*, 137 S. Ct. 1549, 1559 (2017) ("[I]n-state business * * * does not suffice to permit the assertion of general jurisdiction over claims * * * that are unrelated to any activity occurring in Montana."); *Walden*, 571 U.S. at 291 ("Petitioner's relevant conduct occurred entirely in Georgia * * * .").

A contrary approach—like the Montana Supreme Court's below—"elide[s] the essential difference between case-specific and all-purpose (general) jurisdiction." *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915, 927 (2011). General personal jurisdiction permits courts to hear "causes of action arising from dealings entirely distinct from [a defendant's in-forum] activities," where the defendant is "at home." *Daimler AG* v. *Bauman*, 571 U.S. 117, 127 (2014) (internal quotation marks omitted). "Specific jurisdiction," by contrast, "depends on an * * * activity or an occurrence that takes

place in the forum State and is therefore subject to the State's regulation" and "is confined to adjudication of issues deriving from, or connected with, *the very controversy that establishes jurisdiction*." *Goodyear*, 564 U.S. at 919 (emphasis added and internal quotation marks omitted). Without some causal connection between a plaintiff's claims and the defendant's forum contacts, a defendant may be haled into court based not on the "activity g[iving] rise to the episode-in-suit," *id.* at 923, but based on "a defendant's unconnected activities in the [forum]." *Bristol-Myers Squibb*, 137 S. Ct. at 1781. That is exactly the kind of "loose and spurious form of general jurisdiction" that this Court has rejected. *Id.*

2. The decision below flouts these rules. It allows a court to exercise specific personal jurisdiction based on a defendant's *general* contacts with a forum, unconnected to the plaintiff's suit. The Montana Supreme Court held that so long as "Ford advertises, sells, and services vehicles in Montana," it may be sued in Montana on any claim that involves a Ford vehicle, even if—as here—Ford took no action in Montana involving the subject vehicle. Pet. App. 17a. Yet the Court has rejected that logic before, holding in *Bristol-Myers Squibb* that "the mere fact that *other* plaintiffs were prescribed, obtained, and ingested" the allegedly defective drug in the forum State—and allegedly sustained the same injuries the nonresidents did—"does not allow the State to assert specific jurisdiction over the nonresidents' claims." 137 S. Ct. at 1781. The Court should reject that logic again here. That *other* Montanans bought Ford vehicles in Montana and might be permitted to bring *other* product-defect claims against Ford in Montana does not mean that *these* claims can be brought

against Ford in Montana. That is the essence of specific jurisdiction, and what distinguishes it from notions of general jurisdiction.

3. The justifications the Montana Supreme Court offered for its result cannot be squared with this Court's precedents.

First, the Montana Supreme Court relied on *World-Wide Volkswagen*'s statement that when " 'the sale of a product * * * *arises from* [a manufacturer's] efforts * * * to serve * * * the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its [product] *has there been the source of injury*.' " Pet. App. 15a (quoting *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297–298 (1980)). *World-Wide Volkswagen* dealt with the distinct requirement that a defendant "purposefully avail[] itself of the privilege of conducting activities within the forum." 444 U.S. at 297 (internal quotation marks omitted); *id.* at 295 (Defendants "avail themselves of none of the privileges and benefits of Oklahoma law."). And the Montana Supreme Court elsewhere indicated that it fully understood *World-Wide Volkswagen*'s scope. It invoked the case—correctly—to find that Ford had availed itself of the privilege of doing business in Montana. *See* Pet. App. 9a. *World-Wide Volkswagen* did not address the arising-out-of-requirement, and it cannot support the Montana Supreme Court's interpretation of the requirement below.

Second, the Montana Supreme Court brushed aside *Bristol-Myers Squibb* and *Walden* by distinguishing their facts and ignoring their teachings. The court believed that *Bristol-Myers Squibb* was distinguishable because Gullett, unlike the non-resident plain-

tiffs in *Bristol-Myers Squibb*, was injured in the forum. Pet. App. 18a. *Bristol-Myers Squibb* identified *Walden* as "illustrat[ing]" the requirement that there be a connection between the defendant's in-state actions and the plaintiff's claims. 137 S. Ct. at 1781. The Court explained that there was no specific jurisdiction over the defendant in *Walden* even though the plaintiffs "suffered foreseeable harm" in the forum because the defendant's "relevant conduct occurred entirely" out-of-State. *Id.* at 1781–82 (emphasis omitted) (quoting *Walden*, 571 U.S. at 289, 291).

Bristol-Myers Squibb then explained that the non-resident plaintiffs' claims in *Bristol-Myers Squibb* were "even weaker" because they were "not California residents and do not claim to have suffered harm in that State." *Id.* at 1782. The Court's statement that the *Bristol-Myers Squibb* plaintiffs had an "even weaker" claim to having satisfied the connection requirement than the *Walden* plaintiffs does not change the Court's holding that the *Walden* plaintiffs' claims *also* did not have a sufficient connection to make specific jurisdiction proper. *See id.* at 1781–82. Here, as in *Walden*, all of Ford's "relevant conduct occurred entirely" outside of Montana. 571 U.S. at 291; *see also* Pet. App. 14a (conceding that Ford's "out-of-state conduct—placing the product into the stream of commerce—technically led to [Gullett's] in-state use of the product and resulting claim").

At bottom, the Montana Supreme Court's decision appears to rest on its apparent disagreement with this Court's personal-jurisdiction holdings, thinking that following them "would unduly restrict courts of this state from exercising specific personal jurisdic-

tion." Pet. App. 16a. The court viewed due process, "[a]t its core," as "concerned with fairness and reasonableness." *Id.* And it thought it fair enough to subject a company to suit "in a state where the product caused injury as long as the company" did enough *similar* business. *Id.*

But that fairness-focused view is wrong twice over. For one, the Due Process Clause's limitations on a State's exercise of personal jurisdiction "are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States." *Bristol-Myers Squibb*, 137 S. Ct. at 1780 (quoting *Hanson* v. *Denckla*, 357 U.S. 235, 251 (1958)). There are therefore cases, like this one, where "[e]ven if the defendant would suffer minimal or no inconvenience[,] * * * the Due Process Clause, acting as an instrument of interstate federalism, may * * * act to divest the State of its power to render a valid judgment." *Id.* at 1780–81 (quoting *World-Wide Volkswagen*, 444 U.S. at 294).

For another, the fairness *to Montana* of the Due Process Clause limiting its courts' exercise of jurisdiction misplaces the focus. "Due process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties." *Walden*, 571 U.S. at 284. The Montana Supreme Court's focus on fairness ignored these key principles.

4. The problems with the Montana Supreme Court's decision go beyond doctrine. When it comes to jurisdictional principles like personal jurisdiction, "courts benefit from straightforward rules under which they can readily assure themselves of their

power to hear a case." *Hertz Corp.* v. *Friend*, 559 U.S. 77, 94 (2010). By contrast, "[c]omplex jurisdictional tests complicate a case, eating up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims." *Id.* A causal test has the redeeming quality of being "simple to apply." *Id.* at 95. Courts and counsel routinely apply causation requirements in other contexts, and can readily transfer them to this one. A non-causal standard, by contrast, is formless, asking whether a defendant's undifferentiated sets of contacts with the forum satisfy some judge's notion of "fairness and reasonableness." Pet. App. 16a. And if a trial judge's notion of fairness and reasonableness differs from an appellate panel's, a case will be forced to start over in some other State after final judgment. That is to no one's benefit.

III. THIS CASE IS AN IDEAL VEHICLE TO FINALLY RESOLVE THE CAUSATION QUESTION.

The proper construction of the arise-out-of-or-relate-to requirement is unquestionably important, as the Court has twice recognized in granting certiorari to resolve it. *See supra* p. 3. Moreover, the two most-recent state high courts to address the requirement concluded that this requirement can be met even where the defendant's forum contacts had no effect on a plaintiff's claims. *See* Pet. App. 16a–17a; *Bandemer*, 931 N.W.2d at 753.[6] This case offers

[6] Ford is simultaneously filing a substantively similar petition for certiorari seeking review of the Minnesota Supreme Court's decision in *Bandemer*. *See* Petition for Writ of Certiorari, *Ford Motor Co.* v. *Bandemer*, No. 19-__ (filed Sept. 18, 2019).

this Court the ideal vehicle to bring uniformity to courts' approaches.

1. As this Court's decisions have cabined general personal jurisdiction to its proper role, the question of when specific personal jurisdiction can be exercised has come to the forefront. *See Daimler*, 571 U.S. at 128 ("[S]pecific jurisdiction will * * * form a considerably more significant part of the scene." (internal quotation marks omitted)). And the arise-out-of-or-relate-to requirement is what separates specific from general personal jurisdiction. *See Helicopteros*, 466 U.S. at 414 & n.8. Yet just at the moment it has become *more* important to understand specific personal jurisdiction—and thus to understand this requirement—the lower courts have diverged even further. The time has come for this Court to answer the questions it first posed in *Helicopteros* 35 years ago.

The arising-out-of-or-related-to question is particularly important in products-liability suits. The question frequently arises in cases involving companies, like Ford, that manufacture vehicles.[7] This same issue also arises in suits against companies that manufacturer helicopters and helicopter parts,[8]

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[7] *See, e.g.*, *Gaillet* v. *Ford Motor Co.*, No. 16-13789, 2017 WL 1684639, at *3–4 (E.D. Mich. May 3, 2017); *Pitts* v. *Ford Motor Co.*, 127 F. Supp. 3d 676, 685–686 (S.D. Miss. 2015); *see also Robinson*, 316 P.3d at 294 (motorcycles); *Moore* v. *Club Car, LLC*, No. 4:16-CV-00581-RBH, 2017 WL 930173, at *6 (D.S.C. Mar. 9, 2017) (golf carts).

[8] *See, e.g.*, *Helicopter Transp. Servs., LLC* v. *Sikorsky Aircraft Corp.*, 253 F. Supp. 3d 1115, 1131–32 (D. Or. 2017); *Marks* v. *Westwind Helicopters, Inc.*, No. 6:15-1735, 2016 WL 5724300, at

tires,[9] and other mobile products.[10] Because these products—particularly vehicles—are often moved or resold across state lines, the question of where a defendant can be sued on claims arising from the product's manufacture or design is important and recurring.

Under the decision below, defendants who make products like these—or any other movable product—will be subject to personal jurisdiction anywhere they do business, so long as their forum contacts relate to a plaintiff's claim in some unspecified way that a court deems to be consistent "with fairness and reasonableness." Pet. App. 16a. That result is unacceptable. Due-process limits are supposed to "give[] a degree of predictability" so that "potential defendants" can "structure their primary conduct with some minimum assurance as to where *that conduct* will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297 (emphasis added). Yet under the no-causation rule adopted in the decision below, Ford could not have altered its

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*8 (W.D. La. Jan. 20, 2016); *Airbus Helicopters*, 414 P.3d at 833–834.

[9] *See, e.g.*, *Marin* v. *Michelin N. Am., Inc.*, No. SA-16-CA-0497-FB, 2017 WL 5505323, at *8–11 (W.D. Tex. Sept. 26, 2017); *Denman Tire Corp.* v. *Compania Hulera Tornel, S.A. de C.V.*, No. DR-12-CV-027-AM/VRG, 2014 WL 12564118, at *10 (W.D. Tex. Mar. 31, 2014); *Rodriguez* v. *Fullerton Tires Corp.*, 937 F. Supp. 122, 128 (D.P.R. 1996), *aff'd*, 115 F.3d 81 (1st Cir. 1997).

[10] *See, e.g.*, *Whitley* v. *Linde Heavy Truck Div. Ltd.*, No. 16-10005-JGD, 2018 WL 2465360, at *5–6 (D. Mass. June 1, 2018) (forklifts); *Dierig* v. *Lees Leisure Indus., Ltd.*, No. 11-125-DLB-JGW, 2012 WL 669968, at *9, *14 (E.D. Ky. Feb. 28, 2012) (pull-tent trailer).

relevant conduct—its allegedly tortious acts related to the 1995 Ford Explorer—to avoid suit in Montana. Ford instead could only stop doing business, or at least some uncertain portion of its business, in Montana. So long as Ford conducts some automobile-related business in Montana, under the decision below, it will be subject to suit by any person injured in Montana by one of its vehicles. This result may be foreseeable, but it gives the defendant no control over where it will be subject to suit for a given set of conduct. And that control is what matters for due-process purposes. *See id.*

2. This case is an ideal vehicle for this Court to resolve this important, recurring question. As the Montana Supreme Court recognized, "[t]he issue presented is purely legal." Pet. App. 21a. Personal jurisdiction was decided at the motion-to-dismiss stage, meaning there are no disputed facts. *See Milky Whey, Inc.* v. *Dairy Partners, LLC*, 342 P.3d 13, 15 (Mont. 2015) (Montana Supreme Court "review[s] de novo a district court's decision on a motion to dismiss for lack of personal jurisdiction, construing the complaint 'in the light most favorable to the plaintiff'" (citation omitted)). Lucero does not dispute that the Explorer Gullet was driving was not manufactured, designed, or sold by Ford in Montana, and Ford does not dispute the existence of the various Montana contacts that Lucero alleged. The only contested issue is one of law.

The question of what connection due process requires between a plaintiff's claim and the defendant's forum contacts is also outcome-determinative here. All agree that Ford is not subject to general personal jurisdiction in Montana. *See* Pet. App. 5a. And Ford

did not dispute that it had purposefully availed itself of the privilege of doing business in Montana or that jurisdiction was constitutionally reasonable under the circumstances. *See id.* at 9a–12a. Not only that, but this case arises on typical, and straight-forward, facts—a single-vehicle, one-plaintiff, one-manufacturer-defendant tort suit. It thus involves none of the procedural quirks that could muddy review. *See, e.g.*, *Bristol-Myers Squibb*, 137 S. Ct. at 1777–78, 1783 (mass action); *Exxon Mobil Corp.*, 94 N.E.3d at 790, *cert. denied sub nom.*, *Exxon Mobil Corp.* v. *Healey*, 139 S. Ct. 794 (2019) (mem.) (civil investigative demand). By taking this case, this Court can resolve not just the causation question, but do so on the most-common facts that lower courts face. It should do so.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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