No. 19-368

In the Supreme Court of the United States

FORD MOTOR COMPANY,
Petitioner,

v.

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

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

RESPONDENT'S BRIEF IN OPPOSITION

DEEPAK GUPTA
Counsel of Record
GREGORY A. BECK
GUPTA WESSLER PLLC
1900 L Street, NW, Suite 312
Washington, DC 20036
(202) 888-1741
deepak@guptawessler.com

Counsel for Respondent Charles Lucero, personal representative of the Estate of Markkaya Jean Gullett

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QUESTION PRESENTED

Should the due-process standard for establishing personal jurisdiction incorporate a but-for or proximate causation requirement derived from tort law, such that Ford Motor Company cannot be held to answer in a forum for injuries caused by a product that it advertises and sells in that forum unless the *particular individual product* that caused the injury can be traced to Ford's direct contacts with the forum state?

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INTRODUCTION

The Montana Supreme Court's decision below is a straightforward application of *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298 (1980), which holds that a forum may assert "personal jurisdiction over a corporation that delivers its products into the stream of commerce" as long as the sales arise from the corporation's efforts "to serve, directly or indirectly, the market for its product in other states." Ford urges this Court to engraft a new element onto that test by importing a but-for or proximate causation requirement derived from tort law. On this view, even when Ford targets a state for sale of allegedly defective cars, and even when one of those cars injures a consumer in the state, Ford could not be sued in that state's courts unless it took direct action in that state to design, manufacture, or originally sell the *particular car* that caused the injury there.

Ford argues at a high level of generality that the lower courts disagree about the standard for specific personal jurisdiction. But every state high court to have confronted Ford's theory has—like the court below—rejected it. And no federal court of appeals has yet even considered the question. Ford cannot identify a single appellate decision that has rejected personal jurisdiction on facts remotely similar to those in this case, much less a clear split that would require this Court's intervention.

If Ford does manage to persuade any state or federal appellate court to adopt its theory in the future, this Court will have the opportunity to resolve any resulting split at that time. But the few federal district courts that have thus far agreed with Ford do not present the sort of conflict that warrants this Court's intervention. This Court should therefore deny the petition.

STATEMENT

The question in this case is whether Ford Motor Company is subject to personal jurisdiction in Montana for injuries caused by its Explorer SUV in the state. Ford sells the Explorer in all fifty states through its national network of dealerships. App. 24a. In Montana, the company owns or licenses thirty-six dealerships, which sell, service, and repair Explorers for Montana residents. App. 12a. The company also pervasively advertises the Explorer in Montana as a safe and stable passenger-carrying vehicle. App. 11a; *see* Compl. ¶ 14.

1. In 2015, Markkaya Jean Gullett, a Montana resident, was driving an Explorer on a Montana interstate when one of its tires failed. App. 3a. The car lost stability and rolled into a ditch, where it came to rest upside down. *Id.* Gullett died at the scene. *Id.* She is survived by her husband and two children, all of whom are citizens of Montana. *See* Compl. ¶ 5.

Gullett's personal representative sued Ford in Montana state district court on behalf of Gullett and her heirs. App. 3a. As the complaint explained, the Explorer has a long history of rollovers resulting from the SUV's design. Compl. ¶ 3; *see* Howard Latin & Bobby Kasolas, *Bad Designs, Lethal Profits: The Duty to Protect Other Motorists Against SUV Collision Risks*, 82 B.U. L. Rev. 1161, 1196–98 (2002). The complaint asserted claims for defective design, failure to warn, and negligence. App. 3a.

2. Ford responded by moving to dismiss for lack of personal jurisdiction on the ground that it had not designed, manufactured, or sold the Explorer at issue in Montana. *Id.* The particular Explorer that Gullett was driving, it turns out, was not one of the many that Ford had sold in the state. *Id.* at 3a, 24a. The SUV was originally

sold at a Ford dealership in Washington. *Id.* Gullett's mother later bought it in Montana and registered it in the state. *Id.*

Under settled personal-jurisdiction principles, that coincidence should not have mattered. For decades, courts have understood that when a company places a defective product into the stream of commerce with the purpose of serving a particular forum, the company is subject to personal jurisdiction in the forum for the resulting injuries there. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298 (1980). In recent years, however, Ford has mounted a litigation campaign aimed at urging courts around the country to import a tort-based causation standard into the traditional due-process analysis. *See, e.g.*, *Gaillet v. Ford Motor Co.*, 2017 WL 1684639, at *4 (E.D. Mich. 2017). The company has argued, with limited success, that specific personal jurisdiction requires a defendant's direct contacts with the forum to have been either a but-for or proximate cause of the plaintiff's injuries. *See id.* On Ford's view, a state can never exercise specific jurisdiction over it in a product-liability case unless the defective product was designed, manufactured, or first sold in that state.

Ford raised that argument here, contending that because it had not designed, manufactured, or sold the particular individual Explorer at issue in Montana, the claims in the complaint did not "arise out of" Ford's Montana contacts. App. 12a.

3. The district court rejected the argument, and, after granting Ford's petition for a writ of supervisory control, the Montana Supreme Court affirmed. App. 22a.

The Montana Supreme Court recognized that due process prohibits Montana courts from exercising

personal jurisdiction over a nonresident defendant like Ford unless the defendant has "minimum contacts with Montana such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" App. 8a (quoting *Walden v. Fiore*, 571 U.S. 277, 283 (2014)). The Court also recognized the distinction between general personal jurisdiction (which it described as "all-purpose") and specific personal jurisdiction (which it described as "case-linked"). App. 5a; *see Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1779–80 (2017) (using those same terms). "General personal jurisdiction," the Court wrote, "is premised upon the defendant's relationship to the forum state, while specific personal jurisdiction is premised upon the defendant's relationship to both the forum state and the particular cause of action." App. 5a.

Here, the Court noted, Ford "is undisputedly not subject to general personal jurisdiction in Montana." *Id.* (citing *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1559 (2017)). The only question was therefore "whether Montana may exercise specific personal jurisdiction over Ford" based on the claims in the complaint. *Id.* And that question, in turn, depended on whether Ford "purposefully availed itself of the privilege of conducting activities in Montana," the "plaintiff's claim arises out of or relates to [Ford's] forum-related activities," and "the exercise of personal jurisdiction is reasonable." App. 8a.

The requirement of purposeful availment is satisfied, the Court held, if the defendant "takes voluntary action designed to have an effect in the forum" and the defendant's contacts with the forum are not "random, fortuitous, attenuated, or due to the unilateral activity of a third party." App. 9a. The Court noted *World-Wide Volks-*

wagen's holding that the test is satisfied if a defendant "delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." App. 9a (quoting *World-Wide Volkswagen*, 444 U.S. at 298). That "stream-of-commerce" test, it recognized, requires more than "the mere likelihood that a product will find its way into the forum State." *Id.* (quoting *World-Wide Volkswagen*, 444 U.S. at 297). Rather, it requires "that the defendant's conduct and connection with the forum State are such that [it] should reasonably anticipate being haled into court there." *Id.* at 9a–10a.

The Court also recognized that a plurality of this Court in *Asahi Metal Industry Co. v. Superior Court* concluded that "placing a product into the stream of commerce, without more, does not demonstrate purposeful availment." App. 10a (citing *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 112 (1987) (plurality opinion)). Under the *Asahi* plurality's "stream of commerce plus" theory, "the defendant must also engage in some additional conduct establishing its intent or purpose to serve the forum state's market." *Id.* at 11a. Such additional conduct could include, for example, "'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.'" *Id.* (quoting *Asahi*, 480 U.S. at 112).

"Applying the more stringent 'stream of commerce plus' theory," the Court concluded that "Ford purposefully availed itself of the privilege of conducting activities in Montana." App. 11a. "Ford," it noted,

"delivers its vehicles and parts into the stream of commerce with the expectation that Montana consumers will purchase them." *Id.* Moreover, the Court held, "Ford engages in additional conduct establishing its intent to serve the market in Montana." *Id.* In particular, Ford is "registered to do business in Montana" and advertises in the state. App. 11a–12a. Ford also "has thirty-six dealerships in Montana," through which it "sells automobiles, specifically Ford Explorers—the kind of vehicle at issue in this case—and parts." App. 12a. And the company "provides automotive services in Montana, including certified repair, replacement, and recall services." *Id.* "Ford's conduct," in short, "clearly establishes channels that permit it to provide regular assistance and advice to customers in Montana" and demonstrates that "Ford serves the market in Montana and expects consumers to drive its automobiles" in the state. *Id.* The Court concluded that "Ford's conduct satisfies the … stream of commerce plus theory," and accordingly found that the company had "purposefully availed itself of the privilege of conducting activities in Montana, thereby invoking Montana's laws." *Id.*

Having established that Ford's contacts with Montana constituted purposeful availment, the Court next held that the plaintiff's claims "arise out of or relate to" those contacts. *Id.* In doing so, the Court rejected Ford's argument that, "because it did not design or manufacture the Explorer at issue in Montana and because Ford first sold the Explorer outside of Montana," the claims "do not arise out of or relate to any of Ford's Montana activities." *Id.* The Court acknowledged that a few federal district courts have adopted Ford's position. App. 12a–13a & 13a n.3. But it concluded that, although Ford's "forum-related activities did not *directly* result in the plaintiff's use of the

product" in Montana, "due process does not require a direct connection." *Id.* at 14a–15a. Rather, "it only requires that the plaintiff's claims 'arise out of' or 'relate to' the defendant's forum-related activities." *Id.* at 15a. Where a defendant has "purposefully availed itself of the privilege of conducting activities in Montana under the stream of commerce plus theory," the Court held, "the 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." App. 16a–17a.

Here, the Court held, a "nexus exists between Gullett's use of the Explorer and Ford's in-state activity." *Id.* at 17a. Ford, the Court observed, "advertises, sells, and services vehicles in Montana," and "makes it convenient for Montana residents to drive Ford vehicles by offering maintenance, repair, and recall services in Montana." *Id.* "Gullett's use of the Explorer in Montana," the Court wrote, "is tied to" those activities, which demonstrate "a willingness to sell to and serve Montana customers like Gullett." *Id.* at 17a, 19a. Moreover, "Ford could have reasonably foreseen the Explorer—a product specifically built to travel—being used in Montana." *Id.* at 17a. "Focusing on the relationship between the defendant (Ford), the forum (Montana), and the litigation ([the] design defect, failure to warn, and negligence claims arising from a vehicle accident that occurred in Montana)," the Court concluded that the claims "relate to Ford's in-state activities." *Id.* at 20a.

Finally, the Court held that exercising jurisdiction over Ford in Montana would be reasonable. App. 21a. The Court noted that "Ford's purposeful interjections into

Montana are extensive" and that the company had not argued that it would be "burdened by defending in Montana." *Id.* Montana, the Court wrote, "has a strong interest in adjudicating the dispute" given that "the accident involved a Montana resident and occurred on Montana roadways," and Ford did not identify any conflicting interests held by its home states. *Id.* Moreover, "the controversy may be efficiently resolved in Montana, as it was the place of the accident," and "Montana's court system is important to [the plaintiff's] interest in convenient and effective relief." *Id.*

Accordingly, the Court held that jurisdiction over Ford in Montana is consistent with the company's due process rights. App. 21a–22a.

REASONS FOR DENYING THE WRIT

I. No federal court of appeals or state high court has accepted Ford's argument for importing a rigid tort-based causation standard into due process.

A. For decades, state and federal courts have recognized that a "forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." *World-Wide Volkswagen*, 444 U.S. at 297–98. As long as "the sale of a product … arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other states, it is not unreasonable to subject it to suit in one of those states if its allegedly defective merchandise has there been the source of injury to its owner or to others." *Id.*

Over the past few years, however, Ford has pioneered a theory that would upend that settled understanding by adding a new requirement to the stream-of-commerce test. *See*, *e.g.*, *Gaillet v. Ford Motor Co.*, 2017 WL 1684639, at *4 (E.D. Mich. 2017). Borrowing concepts of causation from tort law, the company argues that it cannot be held to account in a forum for injuries caused by a product that it advertises, sells, and repairs there unless the injuries were *caused by* its direct forum contacts. Under that theory, the company argues, it is subject to personal jurisdiction in Montana only if the particular Ford Explorer that caused the injury in this case can be traced to actions it directly took in the state.

Ford has managed to persuade just a few federal district courts to accept its novel view of the law. In unpublished decisions, those courts have held that state forums lacked specific personal jurisdiction over Ford for claims based on cars the company originally designed, manufactured, and sold in other states. *See Gaillet*, 2017 WL 1684639, at *4; *Sullivan v. Ford Motor Co.*, 2016 WL 6520174, at *3 (N.D. Cal. 2016); *Erwin v. Ford Motor Co.*, 2016 WL 7655398, at *7 (M.D. Fla. 2016). It was those cases that the Montana Supreme Court referred to when it wrote that Ford's theory had been adopted by "courts in other jurisdictions." App. 12a–13a & 13a n.3.[1]

But no federal court of appeals has yet had the opportunity to even consider Ford's theory. And the only

[1] Ford also cites the Southern District of Mississippi's decision in *Pitts v. Ford Motor Co.*, 127 F. Supp. 3d 676, 686 (S.D. Miss. 2015), as having adopted its position. Pet. 28 n.7. But *Pitts* found that the plaintiffs' claims did not "relate to" Mississippi because—unlike here—the plaintiffs did not show that Ford had "directed its sales" of the car in question to Mississippi. *Pitts*, 127 F. Supp. 3d at 686.

state high courts to have addressed it have squarely rejected it. Where Ford has advanced the same argument, the supreme courts of both Minnesota and West Virginia, like the Montana Supreme Court below, have held that due process imposes no causation requirement. *See Bandemer* v. *Ford Motor Co.*, 931 N.W.2d 744, 753 (Minn. 2019), *petition for cert. filed*, No. 19-369 (U.S. Sept. 18, 2019); *State ex rel. Ford Motor Co.* v. *McGraw*, 788 S.E.2d 319, 342–343 (W. Va. 2016). Although the claims in those cases were based on defective cars originally designed, manufactured, and sold outside of the forum, the courts nevertheless held that Ford's advertising, sale, and service of cars there established purposeful targeting of the state. *See Bandemer*, 931 N.W.2d at 753; *McGraw*, 788 S.E.2d at 342–343. As West Virginia's high court held, the "focus in a stream of commerce … analysis is not the discrete individual sale, but, rather, the development of a market for products in a forum." 788 S.E.2d at 343. Ford's reliance on the "place of sale as a *per se* rule to defeat specific jurisdiction" "utterly ignores the 'targeting' of a forum for the purpose of developing a market" and is "so rigid and formalistic as to undermine the precedent of [*World-Wide Volkswagen*] and its progeny." *Id.*[2]

[2] Most of the district courts that have considered Ford's theory have also rejected it, finding personal jurisdiction over Ford for claims involving cars originally designed, manufactured, and sold outside of the forum based on the company's purposeful targeting of the state. *See Erwin v. Ford Motor Co.,* 309 F. Supp. 3d 229, 233 (D. Del. 2018); *Thomas v. Ford Motor Co.*, 289 F. Supp. 3d 941, 947–48 (E.D. Wis. 2017); *Griffin v. Ford Motor Co.,* 2017 WL 3841890, at *2–4 (W.D. Tex. 2017); *Antonin v. Ford Motor Co.*, 2017 WL 3633287, at *6 (M.D. Pa. 2017); *Rhodehouse v. Ford Motor Co.,* 2016 WL 7104238, at *3 (E.D. Cal. 2016); *Tarver v. Ford Motor Co.*, 2016 WL 7077045, at *5 (W.D. Okla. 2016).

Ford does point to four appellate decisions in other contexts that it claims have reached a result contrary to the decision below under "materially indistinguishable" facts. Pet. 18; *see D'Jamoos v. Pilatus Aircraft Ltd.*, 566 F.3d 94, 99 & n.4 (3d Cir. 2009); *Kuenzle v. HTM Sport-Und Freizeitgeräte AG*, 102 F.3d 453, 455 (10th Cir. 1996); *Montgomery v. Airbus Helicopters, Inc.*, 414 P.3d 824, 834 (Okla. 2018); *Hinrichs v. General Motors of Canada, Ltd.*, 222 So. 3d 1114 (Ala. 2016) (plurality opinion). But although those decisions rejected the plaintiffs' invocation of the stream-of-commerce theory under the particular facts at issue in those cases, none of them adopted the causation requirement that Ford claims due process requires. Indeed, the Tenth Circuit in *Kuenzle* expressly declined to consider such a requirement, noting that "the parties ha[d] not briefed or argued the issue." 102 F.3d at 457 & n.4.

Nor are the facts of those cases "materially indistinguishable" from the facts here. Two of the four involved claims of specific jurisdiction based on aircraft crashes in the forum states. *See D'Jamoos*, 566 F.3d at 99 & n.4; *Montgomery*, 414 P.3d at 834. The Third Circuit in *D'Jamoos*, for example, rejected jurisdiction in Pennsylvania over claims arising from a plane crash there. *See D'Jamoos*, 566 F.3d at 103–04. The defendant manufacturer, the court wrote, had never sold its airplanes to Pennsylvania citizens and had not "advertised or marketed its products in" the state. *Id.* at 99. Absent some attempt by the defendant to "deliberate[ly] reach[] into the forum state to target its citizens," it held, the "series of fortuitous circumstances" leading the plane to crash in Pennsylvania was not enough to support jurisdiction there. *Id.* at 104, 106. That conclusion is not contrary to the decision below. Under similar circumstances, the

Montana Supreme Court has also held that personal jurisdiction in Montana was lacking. *See Bunch v. Lancair Int'l, Inc.*, 202 P.3d 784, 795 (Mont. 2009).

Likewise, the Oklahoma Supreme Court in *Montgomery* rejected personal jurisdiction based on a helicopter crash in the forum, where the defendants "did not aim the products at Oklahoma markets" or "solicit business" from the state's citizens. 414 P.3d at 834. The plaintiffs' "unilateral choice to fly the helicopter into Oklahoma," it held, could not alone "serve as a basis for subjecting [the defendants] to suit in" the state. *Id.*

The remaining decisions similarly dealt with claims of personal jurisdiction in states that the defendants had never intentionally targeted for sale of their products. The Tenth Circuit's decision in *Kuenzle* rejected personal jurisdiction in Wyoming for claims based on a defective ski binding that the plaintiff had purchased in Switzerland and unilaterally brought into the United States, where the defendant had "conduct[ed] no business in Wyoming" and sold its products in the United States only through an independent distributor. 102 F.3d at 455. And the Alabama Supreme Court's plurality opinion in *Hinrichs* found personal jurisdiction lacking where the defendant had never "served the markets of Alabama directly or through distributorships, dealerships, or sales agents." 222 So. 3d at 1118.[3]

Unlike the defendants in those cases, Ford cannot deny here that it has intentionally availed itself of the

[3] *Hinrichs*, in any case, is a non-precedential plurality opinion of four justices. A fifth justice concurred in the result reached by the plurality but did not agree with its rationale. *See Hinrichs*, 222 So. 3d at 1142 (Bolin, J., concurring).

forum state's market. As the Montana Supreme Court observed, Ford extensively advertises, sells, services, and repairs Explorers in Montana. App. 11a–12a. Those are precisely the sorts of contacts that *World-Wide Volkswagen* and *Asahi Metal Industry Co.* concluded were relevant for finding "an intent or purpose to serve the market in the forum State" sufficient to support personal jurisdiction. *See Asahi*, 480 U.S. at 112 (pointing to activities including "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"); *see also J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 881–82 (2011) (plurality opinion). Such facts are absent from the cases on which Ford relies. Indeed, the Oklahoma Supreme Court in *Montgomery* distinguished the defendant there from one like Ford, noting that "the emergency helicopter industry is not a traditional industry with a traditional manufacturer selling products to masses of consumers." 414 P.3d at 834.

If Ford does manage to persuade a federal or state court of appeals to adopt its theory under facts similar to those here, this Court will have the opportunity to resolve any resulting split. But for now, the handful of unpublished and non-binding lower-court decisions on Ford's side do not present an important conflict that warrants this Court's intervention. *See* S. Ct. R. 10.

B. Perhaps recognizing the lack of a direct split, Ford turns for its causation test to cases in wide-ranging contexts—from admiralty claims to online copyright disputes. *See Shute v. Carnival Cruise Lines*, 897 F.2d 377, 380 (9th Cir. 1990), *rev'd on other grounds*, 499 U.S. 585 (1991); *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d

1063, 1068 (10th Cir. 2008). In those cases, Ford argues, courts have held that personal jurisdiction requires that the defendant's in-state activities were either the but-for or proximate cause of the plaintiff's injuries. Pet. 12–16. According to Ford, either one of those requirements is inconsistent with the Montana Supreme Court's application of *World–Wide Volkswagen* below. *Id.* at 20.

But not one of the cases that Ford identifies as having adopted a causation requirement involved a company that—like Ford—targeted the forum state for sale of its products through the stream of commerce. As the same courts have repeatedly emphasized, "due process is a flexible concept that varies with the particular circumstances of each case." *Reams v. Irvin*, 561 F.3d 1258, 1263 (11th Cir. 2009); *see also O'Connor*, 496 F.3d at 323 ("[T]here is no 'specific rule' susceptible to mechanical application in every case."); *Pennzoil Prod. Co. v. Colelli & Assocs., Inc.*, 149 F.3d 197, 203 (3d Cir. 1998) ("The issue of minimum contacts is rather fact-sensitive … ."); *Insurance Co. of N. Am. v. Marina Salina Cruz*, 649 F.2d 1266, 1273 (9th Cir. 1981) ("Determining reasonableness is not an abstract exercise but must be approached with flexibility and must focus on the circumstances of a given case."). Ford's speculation that courts requiring causation under wildly different facts would also require it under the facts here is just that—speculation.

Indeed, the same courts that Ford says have adopted a causation requirement have also found the personal-jurisdiction test satisfied when confronted with facts comparable to those here. Ford, for example, identifies the Eleventh Circuit as a court that imposes a but-for causation requirement. But that court in *Vermeulen v. Renault* held that personal jurisdiction in Georgia was proper over a

European car manufacturer for injuries caused by a car that the company originally distributed in Europe. 985 F.2d 1534, 1550 (11th Cir. 1993). Although the company did not directly sell cars in the United States, the court held it sufficient that it designed the car for the American market, advertised the car in that market, maintained a distribution network for bringing cars to the United States, and franchised dealerships for American consumers to seek help with the cars—the same sorts of factors, in other words, that the Montana Supreme Court relied on here. *See id.* And like the Montana Supreme Court, the Eleventh Circuit concluded that—because the company "directly targeted its [cars] toward" the forum—it "fairly could expect to defend … a personal injury action challenging the car's design and safety." *Id.* at 1550.

Likewise, the Ninth Circuit has "asserted jurisdiction over a defendant who introduces a defective product into the flow of commerce knowing that it may reach the forum state." *Reyes v. Riggs*, 1989 WL 71456, at *3 (9th Cir. 1989). In fact, the Ninth Circuit cited one such decision with approval in *Shute v. Carnival Cruise Lines*—the same decision that Ford cites as having adopted the but-for test. 897 F.2d at 385 (citing *Hedrick v. Daiko Shoji Co.*, 715 F.2d 1355, 1358 (9th Cir. 1983)). And the First Circuit—a court that Ford identifies as requiring proximate causation—held in *Benitez-Allende v. Alcan Aluminio do Brasil* that personal jurisdiction in Puerto Rico was proper over a manufacturer of allegedly defective pressure cookers that were originally sold in Brazil. 857 F.2d 26, 29 (1st Cir. 1988). The court concluded that the company's "knowledge and intent of the sale of its cookers in Puerto Rico, and the number of cookers actually sold,

provide[d] a sufficient basis for the assertion of jurisdiction" there. *Id.*[4]

There is nothing inconsistent about a court that requires causation in other contexts also finding personal jurisdiction under a stream-of-commerce theory. Establishing jurisdiction through the stream of commerce "does not amend the general rule of personal jurisdiction," but "merely observes" the "unexceptional proposition" that manufacturers and distributors may "be subject to jurisdiction without entering the forum" when they "seek to serve a given State's market." *Nicastro*, 564 U.S. at 881–82 (plurality opinion). As *World-Wide Volkswagen* recognized, the defendant's relevant forum-related contacts in such a case are indirect—that is, the defendant has targeted the forum state indirectly through the stream of commerce. 444 U.S. at 298. And a claim that the defendant's product injured a consumer in that forum necessarily arises out of or relates to—or, some courts might say, is caused by—those indirect contacts. Ford is thus wrong to assert that the claims here "would have been dismissed by any court that requires some causal link." Pet. 19.

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[4] Ford claims that the Fifth Circuit "has in practice required a causal connection between a plaintiff's claims and a defendant's forum contacts." Pet. 17 n.4. But the Fifth Circuit too has had no problem applying a stream-of-commerce theory to find personal jurisdiction over claims related to products originally sold outside the forum. *See Ainsworth v. Moffett-Engineering, Ltd.*, 716 F.3d 174, 177 (5th Cir. 2013) (finding personal jurisdiction for claims based on a forklift originally sold by an Irish company in another state and holding that "the minimum contacts requirement is met so long as the court finds that the defendant delivered the product into the stream of commerce with the expectation that it would be purchased by or used by consumers in the forum state"); *see also Irving v. Owens-Corning Fiberglas Corp.*, 864 F.2d 383, 384–88 (5th Cir. 1989).

C. Because courts in the stream-of-commerce context have never imposed a causation requirement, the additional split that Ford claims to have identified on the required *degree* of causation—between courts that require only but-for causation and those that require a stricter showing of proximate cause—is not implicated in this case. And the extent of that alleged split is, in any event, seriously overblown.

To begin with, the courts that Ford says require a showing of proximate causation do not, in fact, require any such showing. The First Circuit has expressly disclaimed such a rule, holding that "strict adherence to a proximate cause standard … is unnecessarily restrictive." *Nowak v. Tak How Invs., Ltd.*, 94 F.3d 708, 715 (1st Cir. 1996). The court actually follows a "flexible, relaxed standard," requiring only that "the nexus between the contacts and the cause of action is sufficiently strong to survive the due process inquiry … at the relatedness stage." *Id.* at 715–16. Its use of the words "proximate cause," it has explained, is meant only to "correlate[] to foreseeability, a significant component of the jurisdictional inquiry." *Id.*

Likewise, the Sixth Circuit's holding that "more than mere but-for causation is required to support a finding of personal jurisdiction" just recognizes that "litigation in the forum" must be "reasonably foreseeable." *Beydoun v. Wataniya Rests. Holding, Q.S.C.*, 768 F.3d 499, 507–508 (6th Cir. 2014). Rather than imposing a strict proximate-causation requirement, the court holds that the personal-jurisdiction test is satisfied as long as "the operative facts of the controversy are ... related to [the defendant's] contact with the state" or the cause of action has a "substantial connection to" the defendant's activities there. *Id.*

On the other side of the alleged split, the decisions on which Ford relies do not hold that but-for causation—standing alone—is enough to satisfy the personal-jurisdiction test. The Eleventh Circuit in *Waite v. All Acquisition Corp.*, for example, held it insufficient that the plaintiff's claims were caused by the defendant's failure to warn him in the forum state after the plaintiff had unilaterally moved there. The proper analysis, the court held, "must focus on those contacts the defendant itself creates with the forum." *Waite*, 901 F.3d 1307, 1316 (11th Cir. 2018). "[W]hen viewed through the proper lens," it concluded, the defendant had "no jurisdictionally relevant contacts" with the forum despite having caused the plaintiff's injury there. *Id.*

The Ninth Circuit reached the same conclusion via a slightly different route, relying instead on the final prong of the specific-jurisdiction test—the requirement that jurisdiction must be "reasonable." *See Shute*, 897 F.2d at 386; *see also Int'l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945). Even if but-for causation is satisfied, the Ninth Circuit held, "the exercise of jurisdiction would be unreasonable, and therefore in violation of due process," if "the connection between the defendant's forum related activities is too attenuated." *Shute*, 897 F.2d at 385. A more "restrictive reading of the 'arising out of' requirement" than that provided by but-for causation is thus "not necessary in order to protect potential defendants from unreasonable assertions of jurisdiction" in the Ninth Circuit. *Id.* The "reasonableness" prong of the test "provides that protection." *Id.*; *see Nowak*, 94 F.3d at 715 (acknowledging that "courts can use the reasonableness prong to keep Pandora's jar from opening too wide").

The remaining cases that Ford identifies as having adopted an "unspecified" causation requirement have not, as Ford admits, "'pick[ed] sides' between the 'but-for and proximate causation tests,'" and thus do not implicate the "split" that Ford identifies. Pet. 16–17 (quoting *Dudnikov*, 514 F.3d at 1079). Those cases instead "emphasize[] 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." *Myers* v. *Casino Queen, Inc.*, 689 F.3d 904, 912–913 (8th Cir. 2012); *see also SPV Osus Ltd. v. UBS AG*, 882 F.3d 333, 344 (2d Cir. 2018) (applying a flexible standard that looks generally to "the relationship among the defendant, the forum, and the litigation"); *Hinrichs*, 222 So. 3d at 1140 (requiring only "a suit-related nexus with the forum state").[5]

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[5] Many decisions that Ford claims adopted some sort of causation standard did not do any such thing. Ford says, for example, that the Fourth Circuit adopted but-for causation in *Consulting Engineers Corp. v. Geometric Ltd.*, 561 F.3d 273 (4th Cir. 2009). Pet. 13. But the Fourth Circuit there actually held that the defendant had not "purposefully availed itself of the privilege of doing business in Virginia," *Consulting Engineers*, 561 F.3d at 279–81, and never reached the question of whether the plaintiffs' claims were "related to" the defendant's forum contacts. Other decisions on which Ford relies, the company admits, "declined to adopt a 'mechanical' formula," opting instead for "a flexible, relaxed standard" that is dependent on the facts of the case and that is perfectly consistent with the Montana Supreme Court's decision below. Pet. 15; *see*, *e.g.*, *uBID, Inc.* v. *GoDaddy Grp., Inc.*, 623 F.3d 421 (7th Cir. 2010); *O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 323 (3d Cir. 2007). And still others held that causation was required under state long-arm statutes, not under due process. *See Prejean v. Sonatrach, Inc.*, 652 F.2d 1260 (5th Cir. 1981); *Tatro v. Manor Care, Inc.*, 625 N.E.2d 549 (Mass. 1994); *Shute v. Carnival Cruise Lines*, 783 P.2d 78, 82 (Wash. 1989).

In sum, although there is some divergence on the proper methodology for conducting the specific-jurisdiction test, the difference is not "as stark as it may at first appear." *Chew v. Dietrich*, 143 F.3d 24, 29 (2d Cir. 1998). All courts are ultimately engaged in the same "general inquiry"—determining "whether the exercise of personal jurisdiction in a particular case does or does not offend traditional notions of fair play and substantial justice." *Id.* And all agree that, to comport with that standard, a defendant's forum contacts must be purposeful and the consequences foreseeable. The personal-jurisdiction test is not designed to be "simply mechanical," and the fact that courts use different terminology and rely on different prongs of the personal-jurisdiction test to reach the same conclusion is of little consequence. *Int'l Shoe*, 326 U.S. at 319; *see also Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 485 (1985) (rejecting "talismanic jurisdictional formulas"); *Hanson v. Denckla*, 357 U.S. 235, 251 (1958) (describing the standard as "flexible").

More importantly, those requirements of purposeful targeting and foreseeability—however framed—are consistent with the Montana Supreme Court's decision here. The Court recognized that "a defendant does not purposefully avail itself of the forum's laws when its only contacts with the forum are random, fortuitous, attenuated, or due to the unilateral activity of a third party." App. 9a. It thus relied not on the unilateral act of bringing the Explorer into the state, but on Ford's "voluntary action designed to have an effect in the forum." *Id.* And the Court also stressed the foreseeability that Ford would be sued in Montana, noting that "Ford could have reasonably foreseen the Explorer—a product specifically built to travel—being used in" the state. *Id.* at 17a.

To the extent, however, that there is any tension in the approaches courts have taken to personal jurisdiction, this Court should decline to resolve it here. This Court has always approached personal-jurisdiction questions in a deliberate "common-law fashion." *Nicastro,* 564 U.S. at 885 (plurality). "Like any standard that requires a determination of 'reasonableness,'" the personal-jurisdiction test "is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite affiliating circumstances are present." *Kulko v. Superior Court*, 436 U.S. 84, 92 (1978). "[F]ew answers will be written in black and white. The greys are dominant and even among them the shades are innumerable." *Id.* To resolve the far-flung "split" that Ford identifies would require throwing out that careful case-by-case approach and revolutionizing the personal-jurisdiction test, in diverse contexts, in one stroke.

The disagreement that Ford identifies has already existed for decades without apparent ill effect. Rather than accepting the unpredictable unintended consequences that would inevitably follow from Ford's sweeping approach, this Court can afford to await a case that presents a clean split on a particular element of the personal-jurisdiction test under comparable facts.

II. The decision below is a straightforward application of this Court's personal-jurisdiction precedents.

A. This Court in *World-Wide Volkswagen* established that, when a company places a defective product into the stream of commerce with the purpose of serving a particular forum, the company is subject to personal jurisdiction for the resulting injuries in that forum. 444 U.S. at 298. As the Court held there, when "the sale of a product … arises

from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other states, it is not unreasonable to subject it to suit in one of those states." *Id.* at 297; *see also Daimler AG v. Bauman*, 571 U.S. 117, 127 n.5 (2014) ("[I]f a California plaintiff, injured in a California accident involving a Daimler-manufactured vehicle, sued Daimler in California court alleging that the vehicle was defectively designed, that court's adjudicatory authority would be premised on specific jurisdiction."); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 927 (2011) (reaffirming that "[f]low of a manufacturer's products into the forum … may bolster an affiliation germane to specific jurisdiction").

The plurality opinions in *Asahi Metal Industry* and *Nicastro* would clarify that test to some degree by establishing that mere "placement of a product into the stream of commerce" is not enough. *Asahi*, 480 U.S. at 112; *see also Nicastro*, 564 U.S. at 881–82. But even under that standard, personal jurisdiction is satisfied when a defendant's conduct "indicate[s] an intent or purpose to serve the market in the forum State." *Asahi*, 480 U.S. at 112.

The Montana Supreme Court's decision below was a straightforward application of that precedent. Following the stricter "stream-of-commerce-plus" test from *Asahi*, the Court held that Ford's purposeful targeting of Montana through the advertising, sale, service, and repair of Explorers established a "nexus" with the injuries alleged in the complaint. *Id.* at 17a. The Court did not hold, as Ford claims, that personal jurisdiction is proper even though the company's "forum contacts have no link to the plaintiff's case." Pet. 21. Nor did it conflate general and specific jurisdiction. Pet. 24–25. Rather, the Court

correctly held that specific jurisdiction "does not require a *direct* connection" between the defendant's actions and the cause of action—that is, it does not require that Ford design, manufactured, or originally sold the Explorer at issue within the state. App. 14a–15a. Rather, it is enough that the claims arose from Ford's efforts "to serve … indirectly" the "market for its product" in Montana. *World-Wide Volkswagen*, 444 U.S. at 297. Here, it concluded that the claims in the complaint are 'tied to Ford's activities" in the state, which "make[] it convenient for Montana residents to drive Ford vehicles" and show Ford's "willingness to sell to and serve Montana customers." App. 17a, 19a. That conclusion was correct: It would be absurd to suggest that Ford—one of the largest car sellers worldwide—did not intend for its cars to be purchased and driven in Montana.

Ford argues that *World-Wide Volkswagen* and *Asahi* dealt only with the "purposeful availment" part of the personal-jurisdiction test and did not address the "distinct requirement" that the plaintiff's injuries "arise[] out of" the defendant's forum contacts. Pet. 24. But *World-Wide Volkswagen*—like this Court's other personal-jurisdiction cases—did not apply the test in such a rigid manner. The Court held simply that a "forum State *does not exceed its powers under the Due Process Clause* if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." 444 U.S. at 297–98 (emphasis added); *see also Nicastro*, 564 U.S. at 882 (plurality opinion) (noting the "unexceptional proposition" that a defendant may be "subject to jurisdiction without entering the forum" where it "seek[s] to serve" the state's market).

Nothing in *Volkswagen* suggests that its test depends on the location of the product's original design, manufacture, or sale. Indeed, although the Court held that personal jurisdiction in Oklahoma was lacking over a New York car distributor and retailer that had never advertised or done business in the forum market, it did not question that Volkswagen itself—a worldwide carmaker like Ford and a defendant in the case—was subject to personal jurisdiction there for injuries caused by a car it originally distributed in New York. *See World-Wide Volkswagen*, 444 U.S. at 289; *see also Nicastro*, 564 U.S. at 907 (Ginsburg, J., dissenting) (explaining that "an objection to jurisdiction" by Volkswagen "would have been unavailing").

B. Ford cites no decision by this Court that has adopted, or even considered, the strict causation requirement that it advances, and it is not even clear from where it derives that rule. The crux of Ford's argument appears to be that this Court's use of the words "arising out of," and similar language, itself suggests some sort of causation. Pet. 21. But *World-Wide Volkswagen* held that personal jurisdiction is proper if a plaintiff's claim "arises from the efforts of the manufacturer or distributor to serve, *directly or indirectly*," the forum market. 444 U.S. at 297 (emphasis added). Even though Ford originally sold the Explorer in the state of Washington, Gullett's injuries "arose from" Ford's indirect service of the Montana market through the stream of commerce. That is all the test requires.

In any event, this Court has never limited the personal-jurisdiction test to cases "arising out of" the defendant's forum contacts. Rather, it has repeatedly held that the test is satisfied when the plaintiff's claims "arise out of *or are connected with*" those contacts. *Int'l Shoe*, 326 U.S.

at 319 (emphasis added). For almost three-quarters of a century, the Court has consistently phrased the test using the disjunctive "or" in this way. *See Bristol-Myers*, 137 S. Ct. at 1780 ("arise out of or relate to"); *Goodyear Dunlop Tires*, 564 U.S. at 919 ("deriving from, or connected with"); *Burger King*, 471 U.S. at 472 ("arises out of or relates to"); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984) ("related to or arises out of"). Ford makes no effort to dispute the Montana Supreme Court's conclusion that the claims here, at the very least, "relate to" Ford's activities in the state. App. 20a. Instead, it seems to take issue with this Court's "relate to" test. *See* Pet. 29 (disputing that defendants should be subject to personal jurisdiction "as longa as their forum contacts relate to a plaintiff's claim in some unspecified way").

Ford suggests that this Court in *Bristol-Myers* somehow altered its longstanding formulation of the personal-jurisdiction test. Pet. 24–25. But although the petitioner there *asked* this Court to adopt a causation requirement, the Court declined that invitation. Rather, the Court applied "settled principles of personal jurisdiction" to the specific facts at issue there. *See Bristol-Myers*, 137 S. Ct. at 1783; *see also id.* at 1788 (Sotomayor, dissenting) (noting the lack of a "rigid requirement that a defendant's in-state conduct must actually cause a plaintiff's claim"). In doing so, the Court reiterated the "arise out of or relate to" test, alternately describing the required relationship as a "connection" or "affiliation." *Id.* at 1780, 1781. It also repeatedly cited *World-Wide Volkswagen* with approval and—despite the petitioner's argument that it did not develop or produce the drug giving rise to the plaintiffs' claims in California—never questioned that personal jurisdiction in California was proper on the claims of plaintiffs who lived, and were injured in, that state. *See id.*

at 1779–82; *see also id.* at 1783 (suggesting that other plaintiffs "who are residents of a particular State" could also "probably sue together in their home States"); Pet. in *Bristol-Myers* at 6.

C. Ford also fails to explain how a causation requirement would advance the purposes of the personal-jurisdiction test. The "traditional notions of fair play and substantial justice" that personal jurisdiction protects are served as long as the "defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen*, 444 U.S. at 292, 297. As the Montana Supreme Court observed, Ford can reasonably anticipate both that its cars will cross state lines and that it will face lawsuits in a state for injuries caused by a product that it actively advertises and sells there. App. 16a.

Nor would a causation requirement ensure that defendants are not subjected to the authority of states with "little legitimate interest in the claims in question." *Bristol-Myers Squibb*, 137 S. Ct. at 1780. Montana has a compelling interest in protecting its residents from dangerous products that are marketed and sold there, and that interest is not diminished by the fact that a particular product was originally sold in another state.

To the contrary, basing a forum's jurisdiction on the location where a product was designed, manufactured, or originally sold would lead to arbitrary and irrational results. Under Ford's test, a Montana resident who bought an Explorer in Montana could hold Ford to account for injuries sustained in the state, but a neighbor who purchased an identical Explorer, and who suffered identical injuries in the state, could not bring the same claim if the car was originally purchased somewhere else. And that is

true even if the Montana resident, like Gullett here, did not personally bring the car into Montana and had no relevant contacts with any other state. Even injured passengers and bystanders who have never left Montana would be prohibited from bringing suit in the state where they live and where they suffered the injury. Yet Ford's test would presumably allow the same Montana residents to file suit in a distant forum with which they have no connection, and which has no interest in the controversy, based only on the coincidence that the car that injured them happened to have once been sold there. No legitimate interests are advanced by that result.

The only advantages that Ford claims from its test are that its application is simple and its results predictable. Pet. 26–27. But the opposite is actually true. Under this Court's existing standard, Ford can easily predict that it could be haled into a forum for injuries caused by a product that it advertises and sells there. Engrafting a tort-based causation requirement would turn that straightforward test into an unmanageable one. As then-Judge Gorsuch noted in examining personal jurisdiction in *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, "'[t]here is perhaps nothing in the entire field of law which has called forth more disagreement, or upon which the opinions are in such a welter of confusion,' as causation doctrine." 514 F.3d at 1078 (quoting *Prosser and Keeton on the Law of Torts* 263 (5th ed. 1984)).

A but-for causation requirement has "no limiting principle; it literally embraces every event that hindsight can logically identify in the causative chain." *Nowak*, 94 F.3d at 715. Application of that test would lead to jurisdiction based on chains of events that defendants could not reasonably be expected to foresee. *See id.* On the other hand,

"the principle of proximate cause" is "hardly a rigorous analytic tool." *Blue Shield of Virginia v. McCready,* 457 U.S. 465, 477 n.13 (1982). Indeed, the concept is famous for the thorny legal problems it creates. *See id.* at 478 (referring to the concept of proximate cause as "elusive"); *McBride v. CSX Transp., Inc.,* 598 F.3d 388, 393 n.3 (7th Cir. 2010) ("The term 'proximate cause' does not easily lend itself to definition."). Courts have thus wisely resisted importing either causation standard into the constitutional requirements of due process. *See Nowak*, 94 F.3d at 715–16.

Ford does not even explain how its proposed test would be applied on the facts of this case or a case like it. It argues that personal jurisdiction is improper in Montana because it designed the Explorer in Michigan, built it in Kentucky, and sold it in Washington to an Oregon resident. Pet. 5. But Ford never makes clear which of those activities would satisfy the causation requirement for Gullett's claims, or which of those states would be a proper forum. It is not clear, for example, whether a plaintiff with a claim based on a manufacturing defect under Ford's test could sue in the states where the defendant designed the product or originally sold it. Would the plaintiff's injury in such a case sufficiently "arise from" the defendant's contact with those states? Ford doesn't say. And even if the answer to that question were clear in theory, plaintiffs often do not know at the time of suit precisely where in the production process a defect may have occurred. Tying a court's jurisdiction to causation—often a complicated, factbound, and disputed merits question in such cases—is a recipe for disaster.

CONCLUSION

This Court should deny Ford's petition for a writ of certiorari.

Respectfully submitted,

DEEPAK GUPTA
Counsel of Record
GREGORY A. BECK
GUPTA WESSLER PLLC
1900 L Street, NW, Suite 312
Washington DC 20036
(202) 888-1741
deepak@guptawessler.com

Counsel for Respondent

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