

FORD MOTOR COMPANY V. MONTANA EIGHTH JUDICIAL DISTRICT COURT: REDEFINING THE NEXUS REQUIREMENT FOR SPECIFIC JURISDICTION

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INTRODUCTION

In *Ford Motor Co. v. Montana Eighth Judicial District Court*, the Supreme Court will have the opportunity to redefine the nexus requirement for exercising personal jurisdiction over non-resident defendants. The Court will decide whether a national company with an extensive in-state market for a product is amenable to suit in a forum state under personal jurisdiction, even if the defendant's contacts within that state were not the cause of injury. Since *International Shoe Co. v. Washington*,¹ what "minimum contacts" are required to find jurisdiction has continuously evolved, especially because of the ever-growing national economy.² Under one type of personal jurisdiction, specific jurisdiction, a plaintiff's claims must "aris[e] out of or relate[] to the defendant's contacts with the forum."³ However, the Court has never had the opportunity to clarify the outer bounds of that phrase. *Ford Motor Co. v. Montana Eighth Judicial District Court*, consolidated with *Ford Motor*

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¹ 326 U.S. 310 (1945).

² See *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 222–23 (1957) (noting the expanding national economy and increased ability to travel and communicate allowed for an expanded scope for personal jurisdiction); see also *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980) (stating the "historical developments noted in *McGee* . . . have only accelerated" since the case was decided).

³ *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984).

Co. v. Bandemer, presents an opportunity for the Court to determine whether a finding of specific jurisdiction requires a causal connection between the defendant's contacts and the plaintiff's injury. The Court should adopt a broader relatedness test for specific jurisdiction, which would best align with previous Court precedent and the constitutional underpinnings of the jurisdictional analysis.

I. FACTS

Ford Motor Co. v. Montana Eighth Judicial District Court

Markkaya Jean Gullett died in a rollover crash on a Montana highway in 2015 while driving a 1996 Ford Explorer.⁴ The vehicle was assembled in Louisville, Kentucky and originally sold in Spokane, Washington.⁵ The car then changed hands multiple times and eventually arrived in Montana.⁶ Ford had no hand in any of the subsequent sales,⁷ but Ford has been selling vehicles in Montana since 1917.⁸ Thirty-six licensed dealerships across the state sell new and used Ford vehicles.⁹ Further, Ford advertises, sells, and services other vehicles in the state.¹⁰

Ford Motor Co. v. Bandemer

In January 2015, Adam Bandemer suffered a brain injury as a passenger in a 1994 Crown Victoria.¹¹ The airbags did not deploy when the vehicle rear-ended a snowplow, and the car crashed into a ditch.¹² The accident occurred in Minnesota,¹³ and both Bandemer and the vehicle's driver were Minnesota residents.¹⁴ The vehicle was designed in Michigan, assembled in Ontario, and sold to an independent Ford dealership in North Dakota in 1993.¹⁵ Ownership changed hands multiple

⁴ Brief for Petitioner at 5, *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court* (U.S. argued Oct. 7, 2020) (No. 19-368) [hereinafter Brief for Petitioner].

⁵ Brief of Respondents at 8, *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court* (U.S. argued Oct. 7, 2020) (No. 19-368) [hereinafter Brief of Respondents].

⁶ Brief for Petitioner, *supra* note 4, at 5.

⁷ *Id.*

⁸ Brief of Respondents, *supra* note 5, at 6.

⁹ *Id.*

¹⁰ *Id.* at 6–7.

¹¹ *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 748 (Minn. 2019).

¹² *Id.*

¹³ *Id.*

¹⁴ Brief of Respondents, *supra* note 5, at 5.

¹⁵ Brief for Petitioner, *supra* note 4, at 8.

times without Ford's involvement until it was eventually registered in Minnesota in 2013.¹⁶

Ford's activities in the state of Minnesota trace back to 1903, when the company first sold "Fordmobiles" in a bicycle shop.¹⁷ To date, Ford markets its cars on television, in print, and online in Minnesota, and sponsors Minnesota sports teams.¹⁸ Multiple authorized car dealers throughout the state offer servicing for Ford cars,¹⁹ and Ford sold more than two thousand 1994 Crown Victoria vehicles in the state through the dealerships.²⁰ Between 2013 and 2015, Ford sold two-hundred thousand vehicles through dealerships in Minnesota.²¹

II. HOLDING

Ford Motor Co. v. Montana Eighth Judicial District Court

Charles Lucero, administrator of the Gullett estate, sued Ford in Montana state district court alleging design defect, failure to warn, and negligence.²² Ford filed a motion to dismiss for lack of personal jurisdiction, which the trial court denied.²³ Under a petition for writ of supervisory control, the Montana Supreme Court affirmed the lower court's holding.²⁴ First, the court found jurisdiction was authorized under Montana's long-arm statute.²⁵ Then, the court articulated a three-part test for determining the constitutionality of exercising personal jurisdiction over Ford: "whether (1) the nonresident defendant purposefully availed itself of the privilege of conducting activities in Montana, thereby invoking Montana's laws; (2) the plaintiff's claim arises out of or relates to the defendant's forum-related activities; and (3) the exercise of personal jurisdiction is reasonable."²⁶ The most important issue on appeal was the second requirement, that the plaintiff's claims must "arise out of or relate to" the defendant's activities.²⁷ The court held that if a defendant satisfied the purposeful availment requirement for

¹⁶ *Id.* at 9.

¹⁷ Brief of Respondents, *supra* note 5, at 4.

¹⁸ *Id.*

¹⁹ *Id.* at 5.

²⁰ *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 748 (Minn. 2019).

²¹ *Id.*

²² *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 443 P.3d 407, 411 (Mont. 2019).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 412.

²⁶ *Id.* at 413 (citing *Simmons v. State*, 670 P.2d 1372, 1378 (Mont. 1983)).

²⁷ Brief for Petitioner, *supra* note 4, at 6–7.

specific jurisdiction through the stream of commerce theory, then the claims at issue relate to the defendant's contacts 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."²⁸ The court found that Ford satisfied the nexus requirement here because they advertised, made sales, and provided services in the state.²⁹ Further, because of the nature of vehicles, which are built to travel, Ford could have reasonably foreseen its products being used in the state.³⁰

Ford Motor Co. v. Bandemer

Bandemer sued Ford under theories of products liability, negligence, and breach of warranty in Minnesota.³¹ The trial court denied Ford's motion to dismiss for lack of personal jurisdiction, finding exercising jurisdiction was proper.³² Ford appealed to the Minnesota Court of Appeals.³³ The Court of Appeals affirmed, concluding that Ford's contacts within the state were sufficiently related the claims to support specific jurisdiction.³⁴ On appeal, the Minnesota Supreme Court affirmed, holding that Ford's contacts were sufficient to support personal jurisdiction.³⁵ The court used a five-factor test to determine whether the exercise of personal jurisdiction was proper: "(1) the quantity of contacts with the forum state; (2) the nature and quality of those contacts; (3) the connection of the cause of action with these contacts; (4) the interest of the state providing a forum; and (5) the convenience of the parties."³⁶ In conducting its analysis, the court declined to adopt a causal test for the third factor and held the factor could be satisfied under a "relating to" standard.³⁷ Ford's contacts within Minnesota satisfied this standard because Ford had sold thousands of the same model of vehicle involved in the crash, had operated dealerships throughout the state, and also had gathered data on vehicle performance within the state.³⁸

²⁸ *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 443 P.3d 407, 416 (Mont. 2019).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 748 (Minn. 2019).

³² *Id.*

³³ *Id.*

³⁴ *Id.* (citing *Bandemer v. Ford Motor Co.*, 913 N.W.2d 710, 715 (Minn. App. 2018)).

³⁵ *Id.* at 755.

³⁶ *Id.* at 749 (quoting *Riley v. MoneyMutual, LLC*, 884 N.W.2d 321, 328 (Minn. 2016)).

³⁷ *Id.* at 753.

³⁸ *Id.* at 753–54.

III. LEGAL HISTORY

A court must have personal jurisdiction over the parties to a suit in order to render judgment in a case. Because a “state court’s assertion of jurisdiction exposes defendants to the State’s coercive power,”³⁹ it is limited by the Fourteenth Amendment’s Due Process Clause.⁴⁰ These limitations serve two interrelated functions: first, “[i]t protects the defendant against the burdens of litigating in a distant or inconvenient forum,” and second, “it acts to ensure that the States . . . do not reach beyond the limits imposed on them by their status as coequal sovereigns in a federal system.”⁴¹ To do so, due process requires that the focus of any jurisdictional inquiry rests on the defendant’s contacts with the forum state.⁴²

The Supreme Court first acknowledged an expanding view of jurisdiction over non-resident defendants in *International Shoe Co. v. Washington*.⁴³ The Court determined that due process required a defendant have “certain minimum contacts” in a forum state to comply with “traditional notions of fair play and substantial justice.”⁴⁴ In *McGee v. International Life Insurance Co.*, the Court noted that an expanded scope for personal jurisdiction was required to accommodate the ever-growing and changing national economy.⁴⁵ Interstate transportation and communication made it easier to respond to litigation in a state where a corporation engages in activity, and so a more expansive view of personal jurisdiction under due process was allowed.⁴⁶ In *Hanson v. Denckla*, the Court stated that despite this expanding view there still must be some “act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protection of its laws.”⁴⁷ The Court cautioned against eliminating all jurisdictional requirements, maintaining that minimum contacts with a forum state are still required to find jurisdiction over the defendant.⁴⁸

³⁹ *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 918 (2011).

⁴⁰ *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1779 (2017).

⁴¹ *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291–92 (1980).

⁴² *Bristol-Myers Squibb*, 137 S. Ct. at 1779.

⁴³ See 326 U.S. 310, 320 (1945) (holding a non-resident corporation which has sufficient activities within a state can satisfy personal jurisdiction requirements).

⁴⁴ *Id.* at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

⁴⁵ 355 U.S. 220, 222–23 (1957).

⁴⁶ *Id.* at 223.

⁴⁷ 357 U.S. 235, 253 (1958).

⁴⁸ See *id.* (noting that “[t]he unilateral activity of those who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum State”).

The Court eventually recognized two types of personal jurisdiction: general and specific jurisdiction. Under general jurisdiction, the inquiry into personal jurisdiction is satisfied even when the suit does not arise out of or relate to the defendant's contacts with a forum state if a corporation can be "fairly regarded as at home" in the forum.⁴⁹ In contrast, specific jurisdiction captures a narrower category of cases. Under specific jurisdiction, the defendant must have "purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."⁵⁰ And the plaintiff's claims must "aris[e] out of or relate[] to the defendant's contacts with the forum."⁵¹ Finally, jurisdiction over the defendant must be reasonable, in accord with "fair play and substantial justice."⁵²

First, a defendant must have contacts with a forum state which show that the defendant "purposefully avail[ed]" itself of a state's laws and received the "benefits and protections of its laws."⁵³ A defendant purposefully avails himself of a forum when the defendant through his actions creates a "'substantial connection' with the forum State,"⁵⁴ or places goods into the stream of commerce along with conduct which shows the defendant intended to target a forum state.⁵⁵ This requirement ensures a defendant "will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts."⁵⁶

Second, specific jurisdiction requires a nexus between the defendant's contacts with the forum and the plaintiff's claims. While the exact scope of this nexus is unclear, the Court has articulated that the suit must "aris[e] out of or relate[] to the defendant's contacts within the forum."⁵⁷ The Court has alternatively phrased the nexus requirement as a connection between the forum state and the suit, "principally, activity or an occurrence that takes place in the forum State and is

⁴⁹ *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011).

⁵⁰ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474–75 (1985) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

⁵¹ *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984).

⁵² *Burger King*, 471 U.S. at 476–78 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945)).

⁵³ *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

⁵⁴ *Burger King*, 471 U.S. at 475 (quoting *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957)).

⁵⁵ *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102, 112 (1987); *see also* *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 886 (2011) (stating the stream-of-commerce inquiry must still fall within limits of the Due Process Clause).

⁵⁶ *Burger King*, 471 U.S. at 475 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984)).

⁵⁷ *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984).

therefore subject to the State's regulation."⁵⁸

While the requirement for a connection between a defendant's activities and the harm in a claim is clear, the exact scope of what types of activities satisfy this nexus is unclear. In *Helicopteros Nacionales de Colombia v. Hall*, the Court refused to answer

(1) whether the terms "arising out of" and "related to" describe different connections between a cause of action and a defendant's contacts with a forum, and (2) what sort of tie between a cause of action and a defendant's contacts with a forum is necessary to a determination that either connection exists.⁵⁹

However, in dissent, Justice Brennan urged the Court to distinguish between those contacts which "give rise" to a cause of action and those which "relate to" it.⁶⁰ Since then, the Court has not had the opportunity to distinguish between "arise out of" and "relate to."

The final requirement for specific jurisdiction is the reasonableness of finding jurisdiction in a forum state. Courts look to a number of factors, including the "burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies."⁶¹ The Court noted in *Burger King Corp. v. Rudzewicz* that when the reasonableness factors are met, jurisdiction may be found upon lesser minimum contacts, although some minimum amount of contacts by the defendant in a forum state is always required.⁶² On the other hand, even when jurisdiction would otherwise be appropriate in a matter, "fair play and substantial justice" for the defendant may defeat the reasonableness inquiry, especially if litigation would gravely inconvenience the defendant and put them at a "severe disadvantage."⁶³

⁵⁸ *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (citing Arthur von Mehren & Donald Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966)).

⁵⁹ 466 U.S. at 415 n.10.

⁶⁰ *Id.* at 425 (Brennan, J., dissenting).

⁶¹ *Burger King*, 471 U.S. at 477 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)) (internal quotations marks omitted).

⁶² *Id.*

⁶³ *Id.* at 478 (quoting *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 18 (1972)).

IV. SUMMARY OF PETITIONER'S ARGUMENT

Petitioner Ford Motor Company argues that the Court should adopt a causation requirement for specific jurisdiction, which would require defendant's contacts with the forum state to have caused plaintiff's claims. First, Ford urges that the inquiry for specific jurisdiction should focus only on the defendant's contacts, not to any activity by the plaintiff.⁶⁴ Ford argues that the Court's precedent shows that specific jurisdiction requires that the defendant's contacts with the forum create the plaintiff's claims there,⁶⁵ and further that specific jurisdiction "must arise out of the contacts that the defendant himself creates with the forum State."⁶⁶ Ford observes that the Court has rejected the notion that any unilateral activity by the plaintiff creates personal jurisdiction for a defendant within the forum.⁶⁷ Ford asserts that, in accordance with *Bristol-Myers Squibb Co. v. Superior Court*, the defendant's actions within the forum must have caused the injuries.⁶⁸ There, the Court noted that specific jurisdiction requires "a connection between the forum and the specific claims at issue."⁶⁹ Further, the facts that the defendant sold to other potential plaintiffs in the same forum or that the same product caused similar injuries in the forum are insufficient to establish specific jurisdiction.⁷⁰

Next, Ford urges that a causal requirement for specific jurisdiction would be most consistent with the principles of federalism and fairness mandated by due process.⁷¹ Ford argues that the Fourteenth Amendment's Due Process Clause protects the balance of power among states and ensures states do not exercise jurisdiction in violation of their positions as coequal sovereigns.⁷² Without a causal requirement for jurisdiction, a forum state could use in-state activity without a connection to a claim as the basis for jurisdiction, which would "authorize a State to enforce 'obligations' that arose entirely outside its boundaries."⁷³ Ford argues that a non-causal standard would not properly allocate jurisdiction over a national company across the states because

⁶⁴ Brief for Petitioner, *supra* note 4, at 13.

⁶⁵ *Id.* at 18.

⁶⁶ *Id.* (quoting *Walden v. Fiore*, 571 U.S. 277, 284 (2014)).

⁶⁷ *Id.*

⁶⁸ *Id.* at 19.

⁶⁹ *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1781 (2017).

⁷⁰ *Id.*

⁷¹ Brief for Petitioner, *supra* note 4, at 23.

⁷² *Id.* at 24 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)).

⁷³ *Id.* at 25 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

Ford could be brought into lawsuits in states where Ford's contacts did not directly cause injury.⁷⁴ On the other hand, a causation standard would ensure Ford has fair warning of where its activities are opening the company to liability, limited only to situations where Ford's contacts in the state caused the injury.⁷⁵ A relatedness test would be too uncertain for this purpose, and Ford could not structure its conduct according to its liability for suit.⁷⁶ Finally, Ford argues that adopting a non-causal test would be a departure from precedent, and would be akin to the "sliding-scale" approach which was rejected in *Bristol-Myers Squibb*.⁷⁷ There, the Court rejected a sliding-scale approach which allowed for relaxed contacts for specific jurisdiction if there were other contacts which resembled the suit's subject matter.⁷⁸

V. SUMMARY OF RESPONDENTS' ARGUMENT

Respondents argue that the Court's precedent supports finding specific jurisdiction where a plaintiff has been injured in a forum and where the defendant has systematically marketed and sold goods in the forum. Where a defendant has directed its activities at a forum, and "litigation results from alleged injuries that arise out of or relate to those activities," Respondents urge that jurisdiction is permissible under the Due Process Clause.⁷⁹ Further, Respondents note that none of the previous case law uses a causal test where the defendant's product injures a plaintiff in the state the defendant sells that same product.⁸⁰ Rather, the Court has consistently found when a company has created a "market for a product in a forum state," and "that product causes an injury in the forum state," personal jurisdiction is satisfied.⁸¹ In *World-Wide Volkswagen Corp. v. Woodson*, the Court stated that if the sale of a product "is not simply an isolated occurrence, but arises from the efforts of the manufacturer . . . to serve . . . the market for its product," then "it is not unreasonable to subject it to suit" in the state if the suit arises from a defective product.⁸² Although this passage is dicta, the

⁷⁴ *Id.*

⁷⁵ *Id.* at 27.

⁷⁶ *Id.* at 29.

⁷⁷ *Id.* at 30.

⁷⁸ *Id.* (citing *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1781 (2017)).

⁷⁹ Brief of Respondents, *supra* note 5, at 12 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472–73 (1985)).

⁸⁰ *Id.* at 13.

⁸¹ *Id.* at 16.

⁸² 444 U.S. 286, 297 (1980).

Court has relied on this reasoning in multiple cases.⁸³

Further, the principles underlying due process “weigh strongly” in favor of finding jurisdiction here.⁸⁴ Respondents argue that finding jurisdiction when a defendant’s contacts are related to a suit satisfies the requirement for fair warning that a defendant would be subject to jurisdiction in a particular state, especially when the defendant has “cultivated a market” in a state by selling its products there.⁸⁵ Here, Ford has an expectation of being sued in both Montana and Minnesota for injuries caused by its products it sells in those states.⁸⁶ Further, ever since *International Shoe*, the Court has stated that when a defendant “exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state.”⁸⁷ Those contacts then “give rise to obligations” where it can “hardly be said to be undue” for the defendant to respond to a suit within the state.⁸⁸ Here, Ford has created a market for its products, including advertisement, service, re-sale, and dealerships in the forum states.⁸⁹ By doing those things, Ford availed itself of the benefits offered by Minnesota and Montana. Accordingly, Ford created obligations within the states not to injure residents through its products.⁹⁰

Further, a causation test would “undermine the values of federalism, fairness, and predictability” which due process protects.⁹¹ The specific jurisdiction requirement that the suit “arises out of or relates to” the defendant’s contacts does not limit the rule only to those cases with a causation requirement.⁹² The Court’s language on its face is much broader than that. Respondents note that nothing in the Court’s precedent suggests that the test for jurisdiction would be so inflexible as to require causation, especially given the phrase is framed as disjunctive, meaning jurisdiction could be found for a suit which either “arises out of” or “relates to” defendant’s contacts.⁹³

Requiring causation would preclude the states with the strongest

⁸³ Brief of Respondents, *supra* note 5, at 17.

⁸⁴ *Id.* at 18.

⁸⁵ *Id.* at 19.

⁸⁶ *Id.*

⁸⁷ *Id.* (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

⁸⁸ *Id.* (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

⁸⁹ *Id.* at 19–20.

⁹⁰ *Id.* at 20–21.

⁹¹ *Id.* at 22.

⁹² *Id.* at 23.

⁹³ *Id.* at 25.

interest to protect their injured residents from exercising jurisdiction.⁹⁴ While due process ensures that states do not “reach beyond the limits imposed on them . . . as coequal sovereigns,” Respondents argue that no state has a more important interest in these cases than the state whose residents were injured.⁹⁵ If the Court were to require a causation test, then the only states with jurisdiction over plaintiff’s claims would arguably be those states with little or no real interest in the matter, such as those states where the vehicles were originally sold or assembled.⁹⁶

VI. ANALYSIS

First and foremost, the Court should clarify the distinction between “arise out of or relate to” and define a more general relatedness test for specific jurisdiction. Such a rule would deem specific jurisdiction over Ford proper. The purpose of the Due Process Clause is to ensure both fairness and the “orderly administration of laws,”⁹⁷ not to be a procedural hurdle to preclude suit. Ever since *International Shoe*, the focus of the inquiry into personal jurisdiction has been finding minimum contacts between the defendant and the forum state.⁹⁸ In recent years, the Court has narrowed those contacts for specific jurisdiction to only those that “arise out of or relate to” a plaintiff’s claims, but a general notion of “fair play and substantial justice” is still the focus of any jurisdiction inquiry.⁹⁹ When a company such as Ford has sold thousands of identical products in a forum state and cultivated a local marketplace for its brand, “fair play and substantial justice” can be satisfied so long as the company’s activity is related enough to plaintiffs’ claims. Under a relatedness standard, which would find specific jurisdiction when defendant’s contacts sufficiently “relate to” the suit, Ford’s conduct in Minnesota and Montana would satisfy the minimum contacts inquiry because Ford manufactured and sold the same model of vehicles involved in the accidents in the forum states and continuously advertised and serviced Ford vehicles in those states.

In the past, the Court has adjusted the personal jurisdiction inquiry in response to new developments in the national economy. Just as the

⁹⁴ *Id.* at 27.

⁹⁵ *Id.* at 29 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)).

⁹⁶ *Id.* at 30.

⁹⁷ *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293–94 (1980) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

⁹⁸ *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

⁹⁹ *Id.* (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

growing national economy justified an expanded personal jurisdiction inquiry in *McGee v. International Life Insurance Co.*,¹⁰⁰ the current national economy, which supports corporations with well-developed local marketplaces in all fifty states, should motivate the Court to expand specific jurisdiction to include those corporations and the products they sell. Adopting such a regime would acknowledge the modern reality of corporations which sell identical products, often from the same assembly line nationwide, with no difference between products other than the site of first sale.

In light of the already existing requirement that plaintiff's claims "aris[e] out of or relate[] to" defendant's contacts in a forum state, the Court can adopt a relatedness test to encompass companies similarly situated to Ford here.¹⁰¹ In doing so, the Court can avoid subjecting the jurisdiction analysis to the "vagaries of the substantive law or pleading requirements of each State" which would follow under a causation test, where the jurisdiction analysis could vary wildly depending on the types and definition of those claims brought in a suit.¹⁰² Further, under a causation test, the cause of plaintiff's injuries would need to be clear before jurisdiction could be found—which seems awfully close to a merits decision. A relatedness test would simply look to defendant's contacts within the forum, taking a wider view of defendant's contacts and plaintiff's claims than under the previous specific jurisdiction precedent.

The Court's precedent hints at the outer bounds of what contacts could "relate to" a plaintiff's claims, which encompasses Ford's contacts at issue in the forum states. In dicta, the Court has noted that when a manufacturer of products has created a market for that product in a state, it would not be unreasonable to find jurisdiction in a case arising from that defective merchandise.¹⁰³ Further, Justice Brennan in dissent in *Helicopteros Nacionales de Colombia v. Hall* explored what a relatedness standard could look like if the Court were to clarify the difference between "arise out of" and "relate to."¹⁰⁴ There, he asserted that a

¹⁰⁰ 355 U.S. 220, 222–23 (1957).

¹⁰¹ *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984) (emphasis added).

¹⁰² See *id.* at 427 (Brennan, J., dissenting) (discussing how under a jurisdiction analysis which includes only those claims which arise out of defendant's contacts, the propriety of finding jurisdiction in a negligence case would depend on the forum state's definition of negligence and pilot error).

¹⁰³ *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

¹⁰⁴ *Helicopteros Nacionales de Colombia*, 466 U.S. at 420 (Brennan, J., dissenting).

company's contacts with the forum state, which included contract negotiation and formation as well as equipment purchases,¹⁰⁵ were "sufficiently related" and led to the cause of action, a negligence claim, to satisfy specific jurisdiction.¹⁰⁶

Further, parties in a substantially similar position as Ford in previous cases concerning jurisdiction issues have not challenged the Court's power to find specific jurisdiction.¹⁰⁷ Instead, past jurisdictional challenges focused on parties with weaker connections to the claims at issue, such as a regional distributor.¹⁰⁸ While the lack of challenges to jurisdiction in the past cannot by itself define the boundaries of "relate to," the previous hesitance of parties to challenge jurisdiction in situations such as Ford's shows a general understanding as to the bounds of relatedness.

Finally, allowing specific jurisdiction for a national manufacturer selling a product in a state when injury results in that state best complies with the principles of fairness and federalism under due process. The requirements surrounding specific jurisdiction are meant to serve as a "constitutional touchstone" to ensure compliance with due process,¹⁰⁹ not as a substantial obstacle to suit. The only difference between the plaintiffs in these cases and a plaintiff which would satisfy Ford's causal requirement to find jurisdiction is the location of first sale of the defective vehicle, which is far removed from the individual plaintiffs. By ignoring the outer bounds of relatedness for specific jurisdiction and requiring a specific causal link, Ford's proposed test would obfuscate plaintiffs' ability to access courts and seek redress for their injuries in their home state.

Here, Ford's contacts with the forum states are extensive and "relate to" the suits and should satisfy a relatedness test for specific jurisdiction. Ford's activities within the forum states, including the sale of thousands of identical products, advertising, and servicing of vehicles, show that Ford attempted "to serve . . . the market for its product."¹¹⁰ Accordingly, it would be reasonable for Ford to be sued in the forum

¹⁰⁵ *Id.* at 410–11 (majority opinion).

¹⁰⁶ *Id.* at 420 (Brennan, J., dissenting).

¹⁰⁷ See Brief for Civil Procedure Professors as Amici Curiae Supporting Respondents at 12–13, *Ford v. Montana Eighth Judicial District Court* (U.S. argued Oct. 7, 2020) (No. 19-368) (arguing *International Shoe* allows for personal jurisdiction for companies doing regular business in states because parties in that position in previous cases did not challenge jurisdiction).

¹⁰⁸ *World-Wide Volkswagen*, 444 U.S. at 288.

¹⁰⁹ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985).

¹¹⁰ *World-Wide Volkswagen*, 444 U.S. at 297.

states where its products injured residents.¹¹¹ Further, Ford's activities in the forum states support a finding that its contacts relate to plaintiffs' claims.¹¹² Specifically, Ford's sales of the same model of vehicles involved in the suits in the forum states and continued servicing of those vehicles show the company's willingness to support a localized market for its products. Therefore, a claim arising from the operation of the same model of vehicle which is sold and serviced in the forum states by a resident of the forum states is related to Ford's contacts within those states. Not all Ford vehicles operating within a state would fall under the relatedness test but would be limited only to those specific models of vehicles Ford sells in a forum state. Overall, Ford's contacts within the forum states here should form the basis of related contacts which can satisfy specific jurisdiction.

VII. ORAL ARGUMENT

During oral argument, several members of the Court questioned Ford about the potential consequences of a causation test. Chief Justice Roberts noted that under a causation test, the issue of litigation, such as negligence or product defect, may also become a jurisdictional issue under a proximate causation standard.¹¹³ Justice Sotomayor expressed a concern that a causation approach may split litigation between states depending on the type of claim alleged,¹¹⁴ where for example a plaintiff would only be able to sue for a manufacturing defect where the product was manufactured, and would also be required to bring a design defect suit in the state where it was designed. However, Ford assured her that the jurisdiction test would apply to all claims related to an issue—even under a causation test.¹¹⁵ Justice Kagan raised the concern that a causation standard would become a de facto first-sale rule, given the realities of determining proximate causation.¹¹⁶ Finally, Justices Gorsuch and Alito both focused on the original inquiry of due process and how

¹¹¹ See *id.* (stating “it is not unreasonable” to subject a manufacturer to suit in a state “if its allegedly defective merchandise has there been the source of injury”).

¹¹² See *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 420 (1984) (Brennan, J., dissenting) (stating defendant's contacts which were related to the underlying claim at issue could satisfy the jurisdiction inquiry).

¹¹³ Transcript of Oral Argument at 8–9, *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court* (U.S. argued Oct. 7, 2020) (No. 19-368).

¹¹⁴ *Id.* at 22.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 25–26.

a causation test can be justified when the focus of due process protection is fair play and substantial justice.¹¹⁷

During Respondents' time, the Court seemed interested in defining the outer contours of a relatedness test for companies with nationwide sales. Both Chief Justice Roberts and Justice Breyer posed similar questions about the possible jurisdiction over an isolated sale in a state,¹¹⁸ with Chief Justice Roberts envisioning a retired man who sells decoys on the Internet being roped into jurisdiction in far-away states.¹¹⁹ Justice Sotomayor presented a hypothetical involving an older car which may have had an airbag replaced at a dealer and asked whether jurisdiction could be found just on the basis of a defective airbag.¹²⁰ Justice Kagan asked about how to define which products would be similar enough to find specific jurisdiction over national companies which sell many different types of products.¹²¹ For both of those questions, Respondents urged that the test should be focused on specific models of the product, which would allow defendants to structure their conduct within a state based on the specific model of products they sell in a state.¹²²

CONCLUSION

Jurisdiction over non-resident defendants is limited by the Due Process Clause, to protect ideals of fairness and federalism. Finding specific jurisdiction is meant to serve as a "constitutional touchstone," rather than as a hurdle for the orderly administration of laws. When a company such as Ford creates an extensive in-state market for vehicles within a forum state, including advertisements, sales, and servicing, those actions should form the minimum contacts needed to find specific jurisdiction. In doing so, plaintiffs' interests will be protected, and no additional burden will be placed on defendants who may be subjected to suit in the state for its other contacts. Finding specific jurisdiction in these cases will not be a departure from the Court's precedent and will ensure the Due Process Clause does not become an obstacle for injured residents of a state. Given the focus of the Justices' questions

¹¹⁷ *Id.* at 19, 28–29.

¹¹⁸ *Id.* at 39, 43–44.

¹¹⁹ *Id.* at 39.

¹²⁰ *Id.* at 50–51.

¹²¹ *Id.* at 52–54.

¹²² *Id.* at 51–52.

during oral argument, the Court seems concerned with the consequences of a causation test and is likely to adopt some form of a relatedness test to exercise specific jurisdiction.