No. 22-641

IN THE

Supreme Court of the United States

DAIMLER TRUCKS NORTH AMERICA LLC,

Petitioner,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL FOR THE SECOND APPELLATE DISTRICT, DIVISION FIVE

REPLY BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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RULE 29.6 DISCLOSURE STATEMENT

THE RULE 29.6 disclosure statement in the petition for a writ of certiorari remains accurate.

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REPLY BRIEF IN SUPPORT OF CERTIORARI

INTRODUCTION

In many ways, the BIO confirms why certiorari should be granted. First, it does not deny that courts around the country have directly asked for guidance and clarification on the "real limits" they must apply on the "related to" requirement for exercising specific jurisdiction. As predicted by the concurring opinions of Justices Gorsuch, Thomas and Alito in *Ford,* many lower courts have acknowledged the confusion and conflict that only this Court can resolve. (Petition at 21-23.) This includes a recent Ninth Circuit case Respondents overlook, which is discussed *infra*.

Second, the BIO's argument to justify using plaintiff's residence as an independent factor supporting jurisdiction against nonresidents like DTNA is a serious red-flag. It illustrates the conflict and confusion that has arisen on this issue by courts wrongly deviating from *Walden, Helicopteros,* and the fundamental rule prohibiting jurisdiction based on *others'* contacts—including independent third-parties who service products.

Third, the BIO does not deny there is a circuit-split on whether a website anyone can access from anywhere supports specific jurisdiction and, if so, the guardrails that must be put in place to ensure due process rights are not violated. Because almost every business today has a website, this is undeniably an important, recurring issue.

Fourth, the BIO does not deny this case presents an ideal vehicle to address the issues in the Petition, which

are supported by respected amici. It involves a robust evidentiary record, impacts countless mobile products, and the decision unfairly eradicates any territorial limit to specific jurisdiction by subjecting DTNA to suit in California for an Oklahoma accident involving a product designed, manufactured, and sold in other states.

The BIO stunningly does not deny the opinion here supports subjecting manufacturers to lawsuits in California and *every* state they market products, regardless of where an accident occurs. This fifty-state reach violates the due process and federalism concerns at the core of specific jurisdiction; effectively swallows-up general jurisdiction; and extends far beyond the consent jurisdiction advocated for in *Mallory*. Respectfully, review is needed.

ARGUMENT

I. RESPONDENTS DO NOT ADDRESS THAT COURTS AROUND THE COUNTRY ARE ASKING FOR GUIDANCE

The BIO does not address nor deny that courts across the country are grappling with the specific jurisdiction issues raised in the Petition and asking for guidance from this Court. These courts include the state supreme court in Connecticut, state appellate court in North Carolina, and federal district courts in California, Florida, Pennsylvania, and Michigan. (Petition at 22-23.) The respected jurists and appellate justices are well-versed in constitutional analysis. They would not have issued published decisions directly stating there is confusion and uncertainty if the law was clear. These courts, like Petitioner, are not critical

of this Court's decisions in *Ford* and *Bristol-Myers*. Far from it. Instead, each respectfully asks for clarification because it is this Court's function to resolve conflicts and set forth guidance. After considering the sage comments of the concurring Justices in *Ford,* the courts have urged for clarity because: "Where this leads us is far from clear." (*Bartlett v. Estate of Burke*, 877 S.E.2d 432, 440 (N.C.App. 2022).)

What is the BIO's response to the courts' requests for guidance? Nothing. Respondents ignore them because they support review by demonstrating there is confusion, uncertainty, and the issues presented are of widespread importance. Courts at all levels—including the appellate court here (Pet.App. 15a)—are plainly asking for this Court's help.

Two weeks before the BIO was filed, the Ninth Circuit reaffirmed the conflict, confusion, and uncertainty that unfortunately exists in *Yamashita v. LG Chem, Ltd.*, 62 F.4th 496 (9th Cir. 2023), 2023 WL 2374776. The Court held specific jurisdiction could not be exercised in Hawaii against LG Chem., Inc. (a Delaware company headquartered in Georgia) for an allegedly defective product resold in the forum by a "third party" (*Id.* at *2)—just like here when Werner Enterprises purchased the Cascadia truck from DTNA in Nebraska and resold it to Mr. Hu's employer. (Pet.App. 3a.) In footnote 1, the Ninth Circuit stated: ***"We note considerable confusion among district courts about how to apply Ford*** in cases highly similar to those at issue here," citing four other reported cases where ***different holdings were reached against the same defendant by courts in Illinois, Texas, Missouri, and California.*** (2023 WL 2374776 at *7, fn.1; emphasis added.)

The BIO is also silent regarding other indicators of the importance of the issues presented—the grant of review by the high courts in eight states after *Ford* and *Bristol-Myers* (Rhode Island, Oregon, Texas, New York, Ohio, Connecticut, Mississippi, and Oklahoma); and the discussion of the issues by the First, Fourth, and Ninth Circuits in *Vapotherm, Inc. v. Santiago,* 38 F.4th 252, 261 (1st Cir. 2022); *Wallace v. Yamaha Motors Corp.,* 2022 WL 61430 at *4-5 (4th Cir. 2022); and *LNS Enterprises LLC v. Cont'l Motors, Inc.,* 22 F.4th 852, 863-64 (9th Cir. 2022).

Respondents characterize the *Hu* opinion as a mere application of (settled) law to facts or, alternatively, seek to punt so the law is left to develop on its own. (BIO at 1.) They ignore the salient issue, which is that guidance must come from this Court so that all lower courts in all fifty states and the federal circuits can properly and uniformly address the fundamental due process issues. Guidance and clarity are needed on whether there is a territorial limit to every state's exercise of specific jurisdiction.

II. RESPONDENTS DO NOT ADDRESS THE CONFLICTS ON THE JURISDICTIONAL ISSUES THAT ARE PRESENTED IN THE PETITION

While this Court repeatedly emphasized that the personal jurisdiction analysis in *Ford* was based on the fact the accidents and injuries occurred in the forum, the Court of Appeal here and other courts are in conflict on this issue. As discussed in the Petition (at 32-35), the Rhode Island Supreme Court in *Martins* and the Fourth Circuit in *Wallace* faithfully apply *Ford* to hold it is improper to subject manufacturers like DTNA to specific jurisdiction for accidents occurring in other

states. The appellate court here reached a completely opposite decision, and others have adopted an ad-hoc, fluid approach that creates even more conflict and uncertainty. For example, in *Luciano v. SprayFoamPolymers.com, LLC* (Tex. 2021) 625 S.W.3d 1, the Texas Supreme Court held the location of where an injury occurred "is a relevant part of the relatedness prong of the analysis," treating that as more of a factor to consider instead of being dispositive. (*Id.* at 16-17.) Similarly, in *Chavez v. Bridgestone Americas Tire Operations, LLC* (N.M. Ct.App. 2022), 2022 WL 18356470, the Court of Appeal held: "The *Ford* Court never stated that its conclusion regarding specific personal jurisdiction was based on where the accidents occurred." (*Id.* at *4.) And as to *Bristol-Myers*, the New Mexico court held the fact "harm did not occur in the forum state was not, itself, determinative of whether the defendant could be subject to specific personal jurisdiction in the forum state," but rather "one of many facts" to analyze in determining whether it is proper to exercise specific personal jurisdiction. (*Id.*) Respectfully, this approach does not provide guidance or clarity. It is standardless, a recipe for confusion and conflict, and allows for an expansive view of specific personal jurisdiction without any territorial limit.

An uncertain, sliding-scale framework similar to what was struck down in *Bristol-Myers* has developed on how a website factors into the personal jurisdiction calculus. Some courts distinguish passive websites from interactive ones, and further distinguish those from websites targeted towards the state. (See Petition at 31; *Toys 'R' Us, Inc. v. Step Two, S.A.,* 318 F.3d 446, 451–52 (3d Cir. 2003) and cases cited therein.) The Ninth Circuit takes a more expansive view, holding even passive websites can

form the basis of personal jurisdiction. *Mavrix Photo, Inc. v. Brand Technologies, Inc.* (9th Cir. 2011) 647 F.3d 1218, 1229. And other courts preclude basing jurisdiction on a website. (Petition at 30.)

Plaintiffs do not deny a circuit-split has developed on whether maintenance of a website, which can be accessed by anyone anywhere, supports specific jurisdiction or not. (Petition at 29-31.) They instead attempt to divert this Court's attention away from the jurisdictional split and importance of this recurring issue that affects every business in the nation with a website, by arguing the opinion here purportedly did not "turn" on DTNA's website. Yet they concede the opinion repeatedly referred to DTNA's website, and it was used as evidence of the market allegedly created and supported in the forum. (BIO at 22.)

The holding here that Plaintiff's residence is an independent factor supporting specific jurisdiction (Pet. App. 17a) directly conflicts with authority from this Court and even other courts within California. *See Walden v. Fiore,* 571 U.S. 277, 284 (2014) ["We have consistently rejected attempts to satisfy the defendant-focused… inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State"]; *Helicopteros Nacionales de Colombia, S.A. v. Hall,* 466 U.S. 408, 417 (1984) [The "unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction."]; *In re Automobile Antitrust Cases I & II* (2005) 135 Cal.App.4th 100, 108 ["As a matter of fairness, federal constitutional principles prohibit a nonresident defendant

from being brought before a California court as the result of random, fortuitous or attenuated contacts or because of the unilateral activity of a third party."])

Other cases illustrating the conflict on this issue include: *Far West Capital, Inc. v. Towne,* 46 F.3d 1071, 1079 (10th Cir. 1995) ["the choice of a residence is a unilateral one that will not allow a plaintiff to establish jurisdiction over a non-forum defendant"]; *Reynolds v. Int'l Amateur Athletic Fed'n*, 23 F.3d 1110, 1118–19 (6th Cir. 1994) [plaintiff's residence "is merely fortuitous" and "not an appropriate consideration"]; and *Scalin v. Societe Nationale SNCF SA*, 8 F.4th 509, 512 (7th Cir. 2021) ["The proper location of a suit depends on the original acts, not on the plaintiff's current residence."]

In attempting to argue there is no significant conflict, Respondents rely on *unpublished* California appellate decisions (BIO at 11-12), even though those are not binding on any court, and they are prohibited from citing such (to this Court or to any court) under *California Rule of Court* 8.1115 ["an opinion of a California Court of Appeal … that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action."]

Like this case, *Burnham v. Superior Court*, 495 U.S. 604, 608 (1990), involved a petition for writ of certiorari from a California appellate court decision. As in *Burnham*, the opinion here has wide-ranging impact because the denial of review leaves it published and therefore the controlling rule of law in the state for all lower courts. Every single trial court in each of the 58 counties—from Alameda to Yuba—are compelled under the *stare decisis*

rules in California to follow *Hu*. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

Respondents expressly concede the existence of a split of authority on the issue of a territorial limit for exercising specific jurisdiction. (Petition at 16-21, 23-25.) They argue that both the opinion here and the Connecticut decision in *Adams v. Aircraft Spruce & Specialty Co.*, 284 A.3d 600 (Conn. 2022) "reject the rule of law that Daimler advocates, under which the place of the accident is decisive." (BIO at 15.)

III. ASSERTING SPECIFIC PERSONAL JURISDICTION FOR AN INJURY SUFFERED OUTSIDE THE FORUM IS UNFAITHFUL TO *FORD* AND ERADICATES A FUNDAMENTAL AND ESSENTIAL LIMIT

Respondents wrongly argue *Ford* does not require the accident to occur in the forum. (BIO at 2, 16.) They contend *Ford* merely relied on plaintiffs' "use of the vehicles in the forum." (BIO at 8.) But their opposition and the appellate court's opinion completely ignore all the many references in *Ford* to an accident and injury "in the forum," which show that is indispensable. *See, e.g.* (emphasis added): "the resident-plaintiffs allege that Ford cars ***malfunctioned in the forum States***" (141 S.Ct. at 1026); "they suffered injuries when those products ***malfunctioned in the forum States***" (*Id.* at 1031); "That is why this Court has used this exact fact pattern (a resident-plaintiff sues a global car company, extensively serving the state market in a vehicle, for an ***in-state accident***) as an illustration" (*Id.* at 1028); "When that driving causes ***in-state injury***…" (*Id.* at 1023); "a defective Crown Victoria caused ***in-state injury***" (*Id.* at 1024); "systematic contacts in Oklahoma rendered

Audi accountable there for an ***in-state accident"*** (*Id.* at 1029); "Here, resident-plaintiffs allege that they suffered ***in-state injury"*** (*Id.* at 1032.)

Review is needed to set straight whether there is a territorial limit to specific personal jurisdiction or not. Respondents argue the place of the accident or injury is merely another factor to consider, quoting the appellate court's opinion: "'the place of injury [is] something that 'may be relevant in assessing the link between the defendant's forum contacts and the plaintiff's suit.'" (BIO at 16.) Notably, the quoted portion pertains to this Court's discussion in *Ford,* which instructed that plaintiff's residence and the place of injury "cannot create a defendant's contact with the forum," but only "may be relevant in assessing the link between the defendant's forum contacts" and "***who was injured where***." (141 S.Ct. at 1031-32; emphasis added.) By misconstruing *Ford*, Respondent's arguments show why clarity and guidance is needed by granting certiorari.

Respondents do not deny the conduct of third parties and plaintiff's residence have never been a basis for exercising specific jurisdiction. The BIO has no response to the conflict between the opinion here and *Walden's* instruction: "We have consistently rejected attempts to satisfy the defendant-focused…inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State." (571 U.S. at 284.)

There is real danger in what Respondents propose. By eradicating territorial limits on a state's exercise of personal jurisdiction, it turns *Ford* and *Bristol-Myers* on their head, allowing specific jurisdiction to effectively swallow general jurisdiction. (*Yamashita*, 62 F.4th at 496

[giving "'relate to' too broad a scope would risk 'collapsing' the core distinction between general and specific personal jurisdiction"].)

Likewise, a product's mobility does not support the assertion of specific jurisdiction. As Respondents do not deny, there are thousands of products designed to be mobile and taken anywhere. (Petition at 31-32.) If mobility is a basis to assert personal jurisdiction in California even though an accident and injury occurred over 1500 miles away in Oklahoma, there is no discernable limit. Defendants will always be subject to jurisdiction in any forum where there are unrelated contacts based on a *plaintiff's* connection to that forum. That is fundamentally unfair and violates defendants' due process rights.

Respondents do not deny that, under the approach taken by the appellate court here, defendants are subject to specific jurisdiction in any state where the defendant markets its product even if the accident or injury occurs elsewhere, especially if plaintiff happens to reside in that state. This is a conundrum because, under that approach, every manufacturer will be subject to suit and will be liable under the law in every state where their vehicle is marketed. Unless certiorari is granted, the opinion and Respondents' approach here will be used to support jurisdiction in every state no matter where an accident happens. That is wrong, unfair, and violates due process.

IV. RESPONDENTS DO NOT DENY THIS IS AN IDEAL CASE FOR ALL THE REASONS THAT ARE IMPORTANT

There must be a territorial limit to the exercise of personal jurisdiction. As this Court held in *Daimler AG*

v. Bauman, 571 U.S. 117, 119 (2014) (emphasis added): "If Daimler's California activities sufficed to allow adjudication of this Argentina-rooted case in California, the same global reach would presumably be ***available in every other State*** in which MBUSA's sales are sizable. ***No decision of this Court sanctions a view of general jurisdiction so grasping***.") And specific jurisdiction is intended to apply to a "narrower class of claims." *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.,* 141 S.Ct. 1017, 1026 (2021).

Like *Ford*, where plaintiff's suit for an "in-state accident" was a "paradigm example" of "how specific jurisdiction works" (*Id.*) this case involving an "out-of-state accident" provides a paradigm example of the *limits* of that jurisdiction.

Although "[e]ven regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales" (*Bristol-Meyers Squibb Co. v. Superior Court,* 582 U.S. 255, 264 (2017)), it *is* wrongly enough under Respondents' approach.

This case also has a robust record in which plaintiffs obtained jurisdictional discovery, allowing this Court to delve deeper than it could in other cases to address the issues lower courts are grappling with. It also involves one of the most appropriate products because of a truck's utility, widespread use, and ubiquity. Like other personal jurisdiction decisions from this Court, including *World-Wide Volkswagen Corp v. Woodson*, 444 U.S. 286, 305-06 (1980) and *Ford,* 141 S.Ct. at 1026, automotive vehicles are well-suited to the jurisdictional analysis. Not only is the product here mobile, it transports objects and people, and potential plaintiffs include users and bystanders. A

product's mobility has never caused this Court to eradicate territorial limits to imposing personal jurisdiction, but that is what occurred here.

The opinion also raises other important recurring issues, including the significance of websites in purportedly creating or supporting a market in the forum; the conduct of third parties relating to those markets; and whether or how plaintiff's residence impacts the relatedness analysis. Contrary to Respondents' contention the existence of a market and any use of the product in the forum is sufficient to support a relatedness finding, relying on the conduct of third parties and plaintiff's residence devolves the relatedness inquiry into "anything goes" with no "real limits."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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