No. 16-481

IN THE
Supreme Court of the United States

TV AZTECA, S.A.B. DE C.V., PATRICIA CHAPOY, AND PUBLIMAX, S.A. DE C.V.,
Petitioners,

v.

GLORIA DE LOS ANGELES TREVINO RUIZ, INDIVIDUALLY AND ON BEHALF OF A MINOR CHILD, A.G.J.T., AND ARMANDO ISMAEL GOMEZ MARTINEZ,
Respondents.

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

REPLY BRIEF FOR PETITIONERS

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CORPORATE DISCLOSURE STATEMENTS

Petitioners' Statements pursuant to Rule 29.6 were set forth at page ii of the petition for a writ of certiorari, and there are no amendments to those Statements.

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INTRODUCTION

This case raises two important questions warranting this Court's review. On January 19, 2017, this Court granted certiorari in *Bristol-Myers Squibb Co. v. Superior Court of California*, No. 16-466, to resolve a nearly identical question to the first question presented in this petition:

> "Whether a plaintiff's claims arise out of or relate to a defendant's forum activities when there is no causal link between the defendant's forum contacts and the plaintiff's claims—that is, where the plaintiff's claims would be exactly the same even if the defendant had no forum contacts."[1]

The second question in the petition is independently cert-worthy as well: whether, under the "effects test" of *Calder v. Jones*, 465 U.S. 783 (1984), a forum state can exercise specific jurisdiction in a defamation case even when it was not the "focal point" of the story or the harm suffered.

Although the Court's normal practice would be to hold this petition pending resolution in *Bristol-Myers Squibb*, which is set for argument on April 25, 2017, the Court should grant this petition on the second question regardless of its disposition of the *Bristol-Myers Squibb* case. As the petition demonstrates, a square conflict exists between the Texas Supreme Court in the decision below and the Fifth Circuit, which only this Court can resolve. Because the Court's normal practice of granting, vacating, and remanding for the Texas Supreme Court to consider

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[1] The first question presented by this petition asks: "Can a defendant's general business contacts or sporadic and involuntary contacts in the forum state that have no causal connection to the plaintiff's cause of action establish specific personal jurisdiction consistent with the Due Process Clause?"

the Court's judgment in *Bristol-Myers Squibb* will not involve the second question presented in the instant petition, the parties will engage in lengthy and needless litigation before being able to return to this Court to resolve the second question.

If the Court decides not to grant the second question before it resolves the *Bristol-Myers Squibb* case, it should hold this petition for further consideration in light of its disposition of that case.

ARGUMENT

I. THE COURT SHOULD GRANT CERTIORARI TO RESOLVE WHETHER THE "FOCAL POINT" TEST LIMITS SPECIFIC JURISDICTION IN DEFAMATION SUITS

A. The Decision Below Deepens An Existing And Acknowledged Circuit Split

1. As the petition demonstrates (at 28-32), lower courts are divided as to whether *Calder*'s "effects test" requires that the forum state be the "focal point" of the allegedly defamatory news story or the harm suffered. The Texas Supreme Court joined the Ninth Circuit in disavowing the "focal point" test as a limit on personal jurisdiction under *Calder*. By contrast, the majority of circuits, including the Fifth Circuit, and the majority of other state courts have held to the contrary. *See Griffis v. Luban*, 646 N.W.2d 527, 533-34 (Minn. 2002) (citing and discussing cases); *Clemens v. McNamee*, 615 F.3d 374, 380 (5th Cir. 2010) ("We read *Calder* as requiring the plaintiff seeking to assert specific personal jurisdiction over a defendant in a defamation case to show '(1) the subject matter of and (2) the sources relied upon for the article were in the forum state.'").

Respondents do not deny that a conflict exists. *See* Opp. 16 (not disputing that the Ninth Circuit has

rejected the focal-point limitation, while a majority of other circuits have adopted it). Rather, they erroneously contend that this case does not implicate that conflict because the Texas Supreme Court did not reject the "focal point" requirement. The decision below held that personal jurisdiction can be found notwithstanding *Calder* even where the "offending article[] did not address events related to" the forum state, as long as the defendant otherwise evidenced "an intent or purpose to serve the market" in the forum state. App. 31a. The court squarely refused to confine jurisdiction over out-of-state defamation defendants to cases where the forum state is the focal point of the subject matter and sources of the news story (or statements) at issue. The Texas Supreme Court thus joined the Ninth Circuit in rejecting the focal-point limitation.

2. Respondents' argument (at 21) that the Texas Supreme Court was addressing a separate font of jurisdiction under *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984), misreads the decision below. Indeed, *Keeton* does not and could not support the Texas Supreme Court's rejection of the "focal point" principle. As explained in the petition (at 30 n.14), *Keeton* is limited to circumstances where the defendant deliberately circulated the allegedly defamatory material in the forum state. *See* 465 U.S. at 772 (defendant delivered 10,000 to 15,000 copies of Hustler magazine in New Hampshire). Here, however, the Texas Supreme Court found that petitioners' broadcasts only bled into Texas as a result of "*involuntar[y]*" "signal 'spill over'" inherent in any

broadcast signal, App. 31a, not any voluntary act by petitioners.[2]

Moreover, the Texas Supreme Court's decision cannot be read as "a straightforward application of this Court's decision in *Keeton*" – contrary to respondents' suggestion (at 15) – because it rested its finding of intentional targeting on "additional conduct" by petitioners, apart from the news broadcasts, that purportedly evidenced "an intent or purpose to serve the market in the forum State.'" App. 25a. Nowhere does *Keeton* discuss "additional conduct" or an "intent or purpose to serve market," much less establish that as an alternative standard for jurisdiction in defamation cases.

B. The Court Should Grant Certiorari To Resolve The Circuit Split Given The Importance Of The Issue

1. Restoring *Calder*'s focal-point limitation on specific jurisdiction in defamation suits is a pressing question of national importance. As petitioners and their *amici* demonstrated, the focal-point test provides a critical limiting factor on what otherwise could be an open-ended, jurisdictional free-for-all for media entities and content distributors.

This Court's review is all the more appropriate in light of the decision to grant certiorari in *Bristol-*

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[2] Respondents incorrectly claim (at 14) that this Court would have to determine, in the first instance, whether the TV Azteca broadcasts involuntarily strayed into Texas. The Texas Supreme Court has already found that the signal spillover was involuntary, and the case would come to this Court on that basis. *See* App. 31a ("Petitioners' evidence tends to establish that the signals 'involuntarily strayed' into Texas as a result of 'signal "spill-over,"' which occurs naturally from the broadcasts in Mexico."). Respondents make no effort to rebut that factual determination.

Myers Squibb, because the lower courts in both cases made the same fundamental error by blurring principles of general and specific jurisdiction, and thereby undermining the core principles of predictability and fairness at the heart of the personal-jurisdiction inquiry under the Due Process Clause. Both decisions merit review by this Court, because they undermine the *sine qua non* of specific jurisdiction, which is that "the defendant's *suit-related conduct* must create a substantial connection with the forum State." *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (emphasis added).

2. Respondents' attempt (at 21-22) to trivialize the issue because this case involves TV broadcasting is misguided. Broadcast signals are inherent in many forms of popular media, and those signals commonly spill across jurisdictional lines, both international and domestic; the decision below therefore directly affects a broad swath of media and broadcasting entities including TV, satellite, and radio. *See* Texas Ass'n of Broadcasters et al. Amicus Br. 6-8 ("Nearly every state has media markets served by broadcasters from bordering states."). And, as explained above, *Calder* is not limited to TV broadcasts but rather applies across a broad spectrum of intentional torts.

3. This case presents an exceptionally suitable vehicle to address the focal-point limitation, because the Texas Supreme Court already has acknowledged – and respondents do not dispute – that the focal-point test cannot be met on these facts. The news reports that allegedly defamed Ms. Trevi originated and were broadcast in Mexico for Mexican viewers; relied on Mexican reporters and sources; and concerned activities that took place in Mexico and other foreign countries. App. 26a, 28a-29a, 31a. In short, the

news broadcasts at issue in this lawsuit were "completely unrelated to Texas." App. 28a. If petitioners' legal rule is adopted, reversal is clearly warranted.

II. IN THE ALTERNATIVE, THE COURT SHOULD HOLD THE PETITION FOR *BRISTOL-MYERS SQUIBB*

A. The Court Has Granted Certiorari On The First Question Presented, Which Addresses The Causation Requirement For Specific Jurisdiction

As the petition shows, the lower courts are intractably divided on the critical element in the specific-jurisdiction inquiry: the nexus test that requires the plaintiff to show her legal claim "arises out of or relates to" the defendant's forum-state conduct. The Court recognized this longstanding split in authority and the importance of the issue when it granted certiorari in *Bristol-Myers Squibb* to resolve whether a causal connection is required for a court to exercise specific jurisdiction over an out-of-state defendant.

On the merits in *Bristol-Myers Squibb*, this Court should reverse. As explained in the petition (at 25-27), requiring a causal nexus between petitioners' contacts and respondents' lawsuit faithfully implements this Court's key distinction between general and specific personal jurisdiction. The Texas Supreme Court exacerbated its failure to require a causal nexus by violating several other well-settled tenets of this Court's personal-jurisdiction jurisprudence. First, in analyzing the personal-jurisdiction questions at issue, courts should not impute the contacts of affiliated corporate entities to the defendant corporation. *See Daimler AG v. Bauman*, 134 S. Ct. 746, 757 (2014). Second, American courts should tread lightly in exercising jurisdiction over foreign nationals

in the absence of the requisite contacts. In this case, the Texas Supreme Court inverted that principle – and found that courts should affirmatively extend jurisdiction over foreign nationals – based upon a misquotation of this Court's decision in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985). App. 45a-46a. Notably, respondents make no attempt to defend the Texas Supreme Court's disregard for this Court's precedent on either score.

B. Respondents' Contention That This Case Does Not Implicate The Causation Requirement Lacks Merit

Respondents' argument that the decision below does not implicate the first question presented is incorrect. The court below could not have put its holding any more clearly: "Th[e] 'substantial connection' standard does not require proof that the plaintiff would have no claim 'but for' the contacts, or that the contacts were a 'proximate cause' of the liability." App. 38a (quoting *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 584 (Tex. 2007)). The Texas Supreme Court further explained that its substantial-connection rule permitted jurisdiction to be predicated on "conduct beyond the *particular business transaction at issue*" in this case – or, in other words, conduct unrelated to the alleged defamatory broadcasts. App. 41a-42a (emphasis added).

Respondents contend (at 12) that the decision below found that petitioners' forum-related contacts were causally connected to respondents' injuries. But the court below did not conduct any causation analysis or explain why petitioners' Texas ties gave rise to respondents' defamation cause of action (as either the but-for or proximate cause). Indeed, the only time the decision below even mentions causation

is when it disavows that concept as a prerequisite to specific jurisdiction. App. 38a.

Respondents (at 12) also characterize the decision below as though it turned on the fact that the broadcasts themselves "occurred *in Texas*." But the court's opinion said just the opposite: the "mere fact that the signals through which they broadcast their programs in Mexico travel into Texas is *insufficient to support specific jurisdiction*." App. 23a (emphasis added). Nor was petitioners' knowledge of that signal spillover sufficient. *See* App. 26a ("a broadcaster's mere knowledge that its programs will be received in another jurisdiction is insufficient to establish" purposeful availment). The court below based specific jurisdiction not on the location where petitioners' signals were received, but rather on an amalgamation of petitioners' non-suit-related business trips and sales ties to Texas. *See* App. 32a-34a (listing general business ties). If a causal nexus is required, that reasoning cannot stand.

C. If The Court Decides Not To Grant The Second Question Presented Outright Regardless Of Its Pending *Bristol-Myers Squibb* Case, It Should Hold This Petition Pending Its Decision In That Case

For the reasons explained above, a holding by this Court that specific jurisdiction requires a causal link between Ms. Trevi's defamation claim and petitioners' Texas activities would, at the very least, call into doubt the decision below and thus warrant a vacatur and remand. *See Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam) (GVR appropriate where "intervening developments . . . reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the

opportunity"). Holding this case pending the outcome of a merits case presenting an identical question presented is consistent with this Court's settled practice. *See* Stephen M. Shapiro et al., *Supreme Court Practice* 340 (10th ed. 2013).

Respondents' suggestion (at 15) that the Court should deny certiorari due to the "interlocutory posture" of this case lacks merit. The core purpose of the Due Process Clause's limits on personal jurisdiction is to protect defendants from being "hale[d]" into court in a foreign forum. *See Burnham v. Superior Ct.*, 495 U.S. 604, 610 (1990) (plurality). Subjecting the defendant to continued proceedings through final judgment would deprive petitioners of the very constitutional protections that they seek to vindicate. *See J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 884 (2011) (plurality) ("Personal jurisdiction . . . restricts 'judicial power not as a matter of sovereignty, but as a matter of individual liberty,' for due process protects the individual's right to be subject only to lawful power.") (quoting *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982)).

Moreover, there is no question that the Court has jurisdiction over this case even at this interlocutory stage. Just as in *Calder v. Jones*, 465 U.S. 783 (1984), even though "there has not yet been a trial on the merits" in this case, the Texas Supreme Court's dismissal for lack of personal jurisdiction is "plainly final on the federal issue" under 28 U.S.C. § 1257. 465 U.S. at 788 n.8. This Court should therefore, at a minimum, hold the case pending the outcome of *Bristol-Myers Squibb*.

CONCLUSION

The petition for a writ of certiorari should be granted on the second question presented; in the alternative, the petition should be held for *Bristol-Myers Squibb*, No. 16-466.

Respectfully submitted,

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