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

RESPONDENTS' SUPPLEMENTAL BRIEF

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RESPONDENTS' SUPPLEMENTAL BRIEF

This case has been held in abeyance pending the Court's recent decision in *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, No. 16-466, 2017 WL 215687 (U.S. Jan. 19, 2017). Although the Court frequently remands cases for reconsideration in such circumstances, no remand is warranted here.

This Court's rejection of California's "sliding scale" approach to specific personal jurisdiction in *Bristol-Myers* does nothing to undermine the Texas Supreme Court's decision in this case. Texas rejected the California test a decade ago. *See Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 583 (Tex. 2007). Unlike the California Supreme Court in *Bristol-Myers*, the Texas Supreme Court found jurisdiction here precisely because petitioners' in-state conduct (broadcasts of defamatory stories into Texas) was the cause of the injuries for which in-state respondents seek compensation. *See* BIO 5-10, 12-13. This reality makes a GVR in this case pointless and renders the case an exceptionally poor vehicle for considering any lingering questions over the nexus required between a defendant's forum contacts and a plaintiff's causes of action.[1]

1. In *Bristol-Myers*, this Court rejected California's "sliding scale" approach to personal

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[1] As petitioners rightly predicted, "the Court's judgment in *Bristol-Myers* [did] not involve the second Question Presented in the instant petition." Reply 2. The second question remains uncertworthy, *see* BIO 15-22, which is perhaps why the Court did not grant the petition at the outset (as petitioners urged, *see* Reply 1-2) but rather held it for *Bristol-Myers*.

jurisdiction without deciding the precise nexus required between a defendant's contacts and the plaintiff's claims. *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, No. 16-466, slip op. at 7-8 (U.S. June 19, 2017). Due process is not satisfied, the Court held, absent an "adequate link," *id*. at 8, or "affiliation between the forum and the underlying controversy," *id.* at 5-6 (internal quotation marks omitted). California's rule failed that test because, under the sliding scale approach, "the strength of the requisite connection between the forum and the specific claims at issue is relaxed if the defendant has extensive forum contacts that are unrelated to those claims." *Id*. at 7.

Turning to the facts of the case before it, the Court concluded that "[w]hat is needed – and what is missing here – is a connection between the forum and the specific claims at issue." *Id*. at 8. "The relevant plaintiffs are not California residents and do not claim to have suffered harm in that State." *Id*. at 9. Moreover, "the conduct giving rise to the nonresidents' claims occurred elsewhere." *Id*. "It follows," the Court summed up, "that the California courts cannot claim specific jurisdiction." *Id*.

2. This Court's limited decision in *Bristol-Myers* says nothing that would cause the Texas Supreme Court to reverse its prior determination. Petitioners do not claim that Texas applied the rejected "sliding scale approach," which is the only test this Court rejected. Indeed, Texas rejected the California test years ago. *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 583 (Tex. 2007). Instead, Texas requires "a substantial connection between" a defendant's in-state contacts "and the operative facts of the

litigation." Pet. App. 38a (internal quotation marks omitted). That is entirely consistent with *Bristol-Myers*, which held that there must be "*a connection* between the forum and the specific claims at issue." *Id.* at 8 (emphasis added); *see also id*. at 6 (asking whether the adjudication will be over "issues deriving from, or connected with, the very controversy that establishes jurisdiction," (internal quotation marks omitted)). Moreover, unlike *Bristol-Myers*, the plaintiffs here are Texas residents who indisputably suffered harm in Texas. And those injuries arose out of conduct – defamatory broadcasts – that occurred in Texas. Pet. App. 40a.

Petitioners say that more is required, that the defendant's contacts must be the proximate cause of the plaintiff's cause of action. Pet. 2. But *Bristol-Myers* did not adopt that standard. If anything, the Court's studious avoidance of words like "causal" and "proximate cause" undermines petitioners' claim that a causal relationship is required.

3. Nor does this case present the Court any vehicle for addressing any nexus questions that may linger after *Bristol-Myers*. As the opposition explained, the connection in this case would satisfy any standard, including the proximate cause test petitioners advance. BIO 11-12. The Texas Supreme Court found that "the actionable conduct is the allegedly defamatory broadcasts." Pet. App. 40a. And "[a]lthough the broadcasts originated in Mexico, they were received and viewed—and allegedly caused harm—in Texas." *Id*. Accordingly, "the actionable conduct at issue here occurred in Texas." *Id*. So did the injury giving rise to the suit. *Id*. Respondents heard defamatory broadcasts in Texas, suffered

reputational damage in Texas, had sponsorships withdrawn in Texas, were denied membership in Texas local club, and were forced to endure their children being ridiculed in a Texas school. Pet. App. 62a-68a.

Petitioners cannot deny that if the Texas court's fact-bound premises are correct – *i.e.*, that the broadcast of defamatory signals into a jurisdiction constitutes in-state conduct by the defendant – then petitioner's forum contact is the proximate cause of respondents' defamation claims. It may be that the court did not use the magic words "proximate cause," *see* Reply 7-8, but there is no avoiding that reality.

So respondents are forced to try something else. They suggest that the in-state broadcasts cannot count as a forum contact causing petitioners' injuries because the broadcasts were "involuntary." Reply 4 n.2. But, as we have explained, it is not worth this Court's time to decide any fact-bound question about the proper jurisdictional treatment of signal bleed. BIO 14.[2] And if the Court ultimately agreed that the broadcasts counted as a cognizable forum contact, the

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[2] Petitioners say that the Texas Supreme Court has already resolved, as a matter of fact, that the signal bleed was "involuntary." Reply 4 n.2. But the real issue here is not one of fact, but one of legal characterization – what to make of the fact that although petitioners could not stop their signals from continuing into Texas, they also actively marketed their coverage maps to include South Texas and solicited advertising from Texas businesses on the basis of that signal.

nexus question petitioners say is certworthy would become irrelevant.[3]

Petitioners also claim that the Texas Supreme Court based specific jurisdiction on "an amalgamation of petitioners' non-suit-related business trips and sales ties to Texas." Reply 8. But, as we have explained, the court's discussion of these additional contacts was addressing a separate part of the personal jurisdiction test. BIO 13. In the relevant passages, the court reviewed petitioners' other contacts to ensure that the "actionable conduct within Texas [*i.e.*, the defamatory broadcasting] was conduct through which Petitioners purposefully had contact with Texas and sought some benefit, advantage, or profit by availing itself of the jurisdiction." Pet. App. 41a (citation and internal quotation marks omitted); *see also* BIO 13. In other words, the court asked whether the forum contacts causing respondents' injuries were part of petitioners' purposeful availment of the Texas market. *See* Pet. App. 41a-42a.

Nothing in *Bristol-Myers* calls that use of a defendants' contacts into question, nor do petitioners claim that there is any circuit conflict on the topic.

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[3] The same is true of the second Question Presented: petitioners' only ground for distinguishing *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984), is to deny it applies when a plaintiff is defamed in the forum by a story broadcast "involuntarily" into the state through signal bleed. *See* Reply 3-4. If the Court concluded that *Keeton* applied to this circumstance, it would never reach the *Calder* question. *Cf. Bristol Myers*, at 9-10 (reaffirming continuing validity of *Keeton* as font of personal jurisdiction).

Indeed, as we have shown (and petitioners simply ignore), even the circuits adopting petitioners' proposed standard hold only that there must be a causal relationship between the cause of action and *one* (not all) of the defendant's forum contacts. *See* BIO 13-14.

Accordingly, the decision below was more protective of defendants than a simple proximate cause rule would have been. Even though the "actionable conduct" occurred in Texas and gave rise to plaintiffs' injuries in that forum, the Texas court held that this was not enough. Pet. App. 41a. It required as well that "additional conduct establish[] that Petitioners purposefully availed themselves of Texas through their actionable conduct in Texas (the broadcasts)." Pet. App. 41a. Petitioners claim that this means 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." Reply 8. But even a casual reading of the opinion belies that assertion. The court couldn't have been more clear that the "relevance of the additional conduct . . . is not to establish that those contacts constitute Petitioners' minimum contacts with Texas, but to establish that the actionable conduct in Texas itself constitutes minimum contacts" because it was part of petitioner's purposeful availment of the forum. Pet. App. 41a. And, again, nothing about this portion of

the analysis implicates any circuit conflict or the Court's decision in *Bristol Myers*.[4]

CONCLUSION

For the foregoing reasons and those set forth in the Brief in Opposition, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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[4] The same is true of petitioners' miscellaneous complaints about other portions of the Texas Supreme Court's analysis, s*ee* Reply 6-7, all of which fall outside the scope of the Questions Presented in any event.