No. 08-326

IN THE

Supreme Court of the United States

JEFFREY BEARD,

Petitioner,

v.

FRANCIS HANNON,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF OF THE STATES OF INDIANA, ALABAMA, COLORADO, DELAWARE, FLORIDA, HAWAII, IDAHO, IOWA, MAINE, MARYLAND, MASSACHUSETTS, NEBRASKA, NEVADA, NEW HAMPSHIRE, NORTH DAKOTA, OKLAHOMA, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, UTAH, WEST VIRGINIA, WISCONSIN, AND WYOMING AS *AMICI CURIAE* IN SUPPORT OF THE PETITION

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QUESTION PRESENTED

May a state official be sued in another state, consistent with principles of due process and state sovereignty, for a single decision made in the official's home state and pursuant to the official's duties?

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INTEREST OF THE *AMICI* STATES

The *amici* states have an obvious and profound interest in protecting their officials from having to defend, in their personal or official capacities, lawsuits challenging official actions filed in courts located in other states. The unfettered exercise of longarm personal jurisdiction when claims are predicated on the conduct of official state duties not only increases the expense of litigation for states and officials, but also threatens core structural protections of the states as sovereigns. Even if sovereign immunity does not categorically block foreign-state lawsuits against unconsenting states or their officials, *see Nevada v. Hall*, 440 U.S. 410 (1979), principles of sovereignty and federalism ought nonetheless to limit longarm personal jurisdiction in personal and official capacity suits arising from affairs of state.

The circumstances of this case arise from the cooperation of two states pursuant to an interstate compact and underscore why defendant-state sovereignty ought to matter to personal jurisdiction, or at least why the Court needs to clarify its relevance. In the decision below, the First Circuit presumed that exercising personal jurisdiction would vindicate the interests of the forum state—Massachusetts—in adjudicating disputes involving its residents. Yet the transfer giving rise to the case occurred only because Massachusetts agreed to accept respondent Francis Hannon as a prisoner, so it is hard to see how its interests are served by an in-state lawsuit challenging the legitimacy of the transfer. Indeed, by joining this brief the Attorney

General of Massachusetts wishes to convey that it is the smooth functioning of the Interstate Corrections Compact, not in-state adjudication of lawsuits by transferred prisoners, that best vindicates the interests of the citizens of Massachusetts.

Regardless, the Court should take this case to clarify whether, how, and to what extent courts should consider sovereignty and federalism when evaluating longarm personal jurisdiction over foreign-state officials.[1]

REASONS FOR GRANTING THE PETITION

I. Lawsuits Against Officials of One State in Courts of Other States Constitute an Important and Growing Phenomenon

A. Prisoner transfer lawsuits are a significant part of this increasingly important trend

Interstate prisoner transfers are common. A 2005 U.S. Department of Justice study of 43 states that engage in state-to-state inmate transfers found at least 4,900 transferees, nearly 75% of whom had been transferred pursuant to interstate compacts. U.S. Dep't of Justice, Nat'l Inst. of Corrections,

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[1] Pursuant to Supreme Court Rule 37.2(a), counsel of record for all parties have received notice of the *amici* states' intention to file this brief. Counsel for the Petitioner received notice more than 10 days prior to the due date of this brief and counsel for the Respondent received notice on October 6, 2008. On October 7, 2008, Respondent filed and this Court granted a request for a 30-day extension of time, up to and including November 7, 2008, in which to file a brief in opposition to the Petition for Certiorari.

Interstate Transfer of Prison Inmates in the United States: Special Issues in Corrections 2, 12 (Feb. 2006). Relatedly, in recent years there has been a remarkable rise in longarm actions against state officials arising out of inmate transfers. The amici states have been able to document twenty-three such cases going back 19 years with over 80 percent arising since 2000. *See* Table A.

As a result, in recent years personal jurisdiction issues in prisoner transfer cases have maintained a steady presence in courts across the country. *See Kinslow v. Pullara*, 538 F.3d 687 (7th Cir. 2008) (inmate sued New Mexico officials in Illinois over transfer resulting in medical complications; personal jurisdiction denied); *Trujillo v. Williams*, 465 F.3d 1210 (10th Cir. 2006) (inmate transferred from New Mexico to Virginia sued Virginia prison officials in New Mexico; personal jurisdiction denied); *Jones v. Rowley*, No. 08-3207-SAC, 2008 WL 4329984 (D. Kan. Sept. 16, 2008) (inmate transferred from Maryland to Kansas sued Maryland prison officials in Kansas; personal jurisdiction denied); *Howell v. Winchester*, No. CIV-07-1443-M, 2008 WL 700954 (W.D. Okla. Mar. 13, 2008) (inmate transferred from Illinois to Oklahoma sued Illinois prison officials in Oklahoma; personal jurisdiction denied); *Bowcut v. Idaho State Bd. of Correction*, No. CV-06-208-S-BLW, 2007 WL 1674028 (D. Idaho Jun. 5, 2007) (inmate transferred from Idaho to Texas sued Texas warden in Idaho; personal jurisdiction denied); *Rivera v. Armstrong*, No. 3:03CV1314(DJS)(TPS), 2007 WL 683948 (D. Conn. Mar. 2, 2007) (inmate transferred from Connecticut to Virginia and back sued Virginia prison officials in Connecticut; personal jurisdiction denied); *Sadler v. Rowland*, No.

3:01CV1786(CFD)(WIG), 2004 WL 2061127 (D. Conn. Sept. 13, 2004) (inmate transferred from Connecticut to Virginia then back to Connecticut sued Virginia prison officials in Connecticut; personal jurisdiction denied).

This trend, combined with the reasoning and holding of the decision below, has significant implications for prison management. As prison officials encounter greater potential for facing longarm jurisdiction lawsuits, they may be less likely to transfer prisoners to ease overcrowding or otherwise promote prisoner and institutional safety. The Court should step in now to clarify whether and to what extent principles of sovereignty and federalism limit the ability of prisoners to hale officials into court for actions taken in another state that have an impact in the forum state.

B. The decision below could encourage longarm lawsuits based on cooperative activity under several interstate compacts and uniform acts

If a court in one state may establish personal jurisdiction over an official of another state based on actions taken pursuant to an interstate compact, the effects could be far-reaching. Officials frequently take action pursuant to a variety of interstate compacts and uniform acts that have impacts in other states. Under the First Circuit's rule, such officials would subject themselves to the longarm jurisdiction of other states on a routine basis. The uniform acts and compacts discussed below offer the most easily imaginable scenarios for longarm lawsuits against state officials.

Acts and Compacts Concerning Extradition and Rendition

Nearly all States have entered into or enacted multiple agreements and uniform statues designed to facilitate extradition of individuals wanted for criminal prosecution or needed as witnesses. These include not only the Uniform Criminal Extradition Act, but also the Interstate Agreement on Detainers (used for interstate transfer of prisoners to be tried on charges in other jurisdictions), the Uniform Act for the Rendition of Prisoners as Witnesses in Criminal Proceedings, the Uniform Act to Secure Attendance of Witnesses from Without the State in Criminal Cases, and the Uniform Interstate Family Support Act and its predecessor, the Uniform Reciprocal Enforcement of Support Act (providing for extradition of individuals accused of failing to pay child support).

Actions by state officials pursuant to these acts and agreements sometimes give rise to civil rights actions by prisoners and other affected individuals. *See, e.g.*, *Ricks v. Sumner*, 647 F.2d 76 (9th Cir. 1981) (civil rights case arising from extradition); *Chapman* v. *Guessford*, 924 F. Supp. 30 (D. Del. 1996) (civil rights case arising from detainer); *Crenshaw v. Checchia* 668 F. Supp. 443 (E.D. Pa. 1987) (civil rights case arising from extradition). Such lawsuits, in turn, can precipitate personal jurisdiction issues. *See Steelman v. Carper*, 124 F. Supp. 2d 219 (D. Del. 2000) (arrestee extradited from New Mexico to Delaware sued New Mexico officials in Delaware; personal jurisdiction rejected); *see also Crenshaw*, 668 F. Supp. at 445 (declining permissive

joinder of transferring-state officials because of doubts about personal jurisdiction). The reasoning of the decision below would likely permit the exercise of personal jurisdiction in such longarm cases, rendering untold numbers of routine state government actions arising from extradition and rendition subject to lawsuits in other states.

Interstate Compact on Juveniles

The Interstate Compact on Juveniles—signed by all fifty states, the District of Columbia, the Virgin Islands, and Guam—regulates the movement across state lines of juveniles who are under court supervision.[2] Christopher Holloway, U.S. Dep't of Justice, Office of Juvenile Justice and Delinquency Prevention, *OJJDP Fact Sheet: Interstate Compact on Juveniles* 1 (Sept. 2000). This compact provides for the monitoring or return of any juvenile who: (1) has run away from home; (2) is placed on probation or parole and wants to reside in another state; (3) has absconded from probation or parole or escaped from an institution and is located in another state; (4) requires institutional care or specialized services in another state; or (5) has a pending court proceeding and runs away to another state. *Id.*

The rule set forth by the decision below could give juveniles the same ability to file "retaliatory transfer" and other suits against officials responsible

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[2] A newer version of the compact, called the Interstate Compact *for* Juveniles, has been adopted in 35 states. Council of State Governments, *Interstate Compact for Juveniles*, http://www.csg.org/programs/ncic/InterstateCompactforJuveniles.aspx (last visited Oct. 7, 2008).

for transferring them in the courts of the transferee state. This could apply to juveniles who are convicted of crimes as well as juveniles who have run away from home. The compact is used in an estimated 20,000 to 30,000 cases each year. John Mountjoy, *The Interstate Compact for Juveniles: Promoting Positive Outcomes for Youth* 11 (Apr. 2006). Accordingly, a vast number of official actions may be affected by whatever personal jurisdiction rule prevails.

Mentally Disordered Offenders Compact

Eight states have endorsed the Mentally Disordered Offenders Compact, which authorizes interstate agreements to provide services and facilities for the care and treatment of mentally disordered offenders. Council of State Governments, *Public Safety & Justice: Interstate Compacts*, http://www.csg.org/policy/pubsafety/compacts.aspx (last visited Oct. 7, 2008). The Compact allows each party state to make contracts with any other party state for the care and treatment of mentally disordered offenders in state institutions. *See* N.M. Stat. § 31-5-10 (Interstate Compact on Mentally Disordered Offenders, as codified by New Mexico, one of the participating states). It also provides for agreements concerning the participation of mentally disordered offenders in aftercare or conditional release programs administered by the receiving state. *See id*. Offenders have no say in whether or not they are transferred; judicial or administrative authorities determine whether the care and treatment of offenders would be more appropriate in the facilities of another state. *See id*.

Transfers and other actions under this interstate compact could conceivably give rise to longarm lawsuits comparable to this case. Under the reasoning of the decision below, mentally disturbed offenders or their guardians would be in a position to sue (for alleged retaliation or other theories) the government officials who transferred them in the courts of a transferee state.

Interstate Compact For Adult Offender Supervision

All fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands have signed the Interstate Compact For Adult Offender Supervision, which regulates the movement between states of freed offenders who remain under correctional supervision. Interstate Comm'n for Adult Offender Supervision, *Directory: Regions/States*, http://www.Interstatecompact.org/Directory/RegionsStates/tabid/77/Default.aspx (last visited Oct. 7, 2008). It is designed to protect public safety and to create a more effective and efficient means of transferring and tracking offenders between states. Interstate Comm'n for Adult Offender Supervision, *2008 ICAOS Rules* 1 (2007).

To be eligible for an interstate travel permit under the compact, offenders must meet specific criteria, including having "a valid plan of supervision" and being "in substantial compliance with the terms of supervision in the sending state[.]" *Id.* at 22. The sending state investigates the offender's criminal background, the reasons why the offender seeks transfer, whether the offender is subject to sex offender registry requirements, and

generally whether the offender meets the requirements of the compact, and then relays that information to the receiving state. *Id*. at 33-34. If the parolee is eligible for transfer, the degree of interaction between officials in a receiving state and a sending state is similar to that of the Interstate Corrections Compact. The sending state determines the duration of supervision in the receiving state, and may apply certain conditions on the parolee. *Id*. at 39-40. In addition, a sending state retains the power to retake a parolee and bring him or her back to the sending state. *Id*. at 52.

The receiving state, however, determines the manner and degree of supervision. The rules of the compact provide that "[a] receiving state shall supervise an offender transferred under the interstate compact in a manner determined by the receiving state and consistent with the supervision of other similar offenders sentenced in the receiving state." *Id*. at 38.

Under the logic of the decision below, these contacts may be enough for longarm personal jurisdiction against state officials who approve transfers of parolees who then harm citizens of the receiving state. In fact, the predecessor of this compact, known as the Uniform Act for Out-of-State Parolee Supervision, has given rise to longarm lawsuits by plaintiffs harmed by transferred offenders against foreign-state officials who approved the transfer. *Cf. Hansen v. Scott*, 645 N.W.2d 223, 236 (N.D. 2002) (accepting personal jurisdiction over Texas officials in a wrongful death and survivorship lawsuit where a parolee killed two people because "the Texas defendants unequivocally

directed activity regarding [the parolee] to North Dakota"); *Hodgson v. Mississippi Dep't of Corrections*, 963 F. Supp. 776, 781-82, 795-96 (E.D. Wis. 1997) (rejecting personal jurisdiction over Mississippi officials in a lawsuit brought by a Wisconsin citizen for the wrongful death of his daughter who was murdered in Wisconsin by a parolee from Mississippi).

Interstate Compact on the Placement of Children

The Interstate Compact on the Placement of Children establishes procedures and assigns responsibilities for placing children in foster care or adoptive custody across state lines. American Pub. Human Servs. Ass'n, *Guide to the Interstate Compact on the Placement of Children* 3 (2002). All fifty states, the District of Columbia, and the U.S. Virgin Islands have joined this compact. *Id.*

Picture a situation where an official places a child with a family in another state and that family turns out to be abusive. If the child accuses the official of an improper background check of the family and then sues the official, then under the decision below the official would likely be subject to personal jurisdiction in the state of the foster residence. *Cf. Nicini v. Morra*, 212 F.3d 798, 808 (3rd Cir. 2000) (holding that "when the state places a child in state-regulated foster care, the state has entered into a special relationship with that child which imposes upon it certain affirmative duties," which, when not performed, "can give rise . . . to liability under section 1983"); *Taylor By and Through Walker v. Ledbetter*, 818 F.2d 791, 797 (11th Cir. 1987)

(acknowledging that a foster child may bring a Section 1983 action against government officials for injuries received while in foster care where "the proof shows that the state officials were deliberately indifferent to the welfare of the child" in the course of foster care placement).

Interstate Compact on Adoption and Medical Assistance

To encourage the adoption of children with special needs, Congress has enacted, and states administer, a program that provides medical and other types of adoption assistance. *See* Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. § 673. The Interstate Compact on Adoption and Medical Assistance, adopted by 49 states and the District of Columbia, provides uniform administrative procedures when a child with special needs is adopted by a family in another state, or when the adopting family later moves to another state. Ass'n of Adm'rs of the Interstate Compact on Adoption and Medical Assistance, *What is ICAMA?*, http://aaicama.org/cms/index.php/icamaaaicama/the-icama (last visited Oct. 7, 2008).

The compact is designed to eliminate geographic barriers that may impede available medical assistance and post-adoption services in such cases. *Id.* Under the compact, the obligation to provide adoption assistance remains where the child originates. *See* Interstate Compact on Adoption and Medical Assistance, Art. IV. Therefore, state officials have a continuing obligation as the child moves from one party state to another. The originating state also has a continuing obligation to

provide Medicaid benefits if a child moves to another party state that does not provide benefits specified by the adoption assistance agreement. *Id.* at Art. V. This obligation continues as the child relocates to other party states. *Id.* By 2010, approximately 600,000 children will be receiving Title IV-E adoption assistance, and this compact will apply to any that move to another party state. Elizabeth Oppenheim, *Why is a Compact Needed for Adoption and Medical Assistance?*, http://aaicama.org/cms/index.php/icamaaaicama/the-icama/why-a-compact (last visited Oct. 8, 2008).

Under the decision below, any such adopted children (or their guardians) may use the interstate contacts occasioned by the compact as a foothold for personal jurisdiction over foreign state officials in the courts of the destination state if assistance payments are not conducted properly.

C. Business regulation yields longarm lawsuits against state officials

Issues related to longarm personal jurisdiction over state officials crop up in the context of state consumer protection enforcement as well. *See, e.g., Stroman Realty, Inc. v. Antt*, 528 F.3d 382 (5th Cir. 2008) (suit in Texas against Florida and California officials; personal jurisdiction rejected); *Stroman Realty, Inc. v. Wercinski*, 513 F.3d 476 (5th Cir. 2008), *cert. denied*, ---S.Ct.--- (2008) (suit in Texas against Arizona officials; personal jurisdiction rejected).

A particularly noteworthy business regulation context relates to enforcement of cooperative multi-

jurisdictional settlements, such as the National Tobacco Master Settlement Agreement ("MSA"). In *Grand River Enterprises Six Nations, Ltd. v. Pryor*, 425 F.3d 158, 166 (2d Cir. 2005), *cert. denied*, 127 S.Ct. 379 (2006), the court approved the exercise of personal jurisdiction over 30 foreign-state attorneys general based on MSA negotiations that occurred in New York. The court concluded that the MSA was a mere "ordinary commercial contract" and largely ignored palpable state sovereignty issues—including consequent state-by-state regulation of cigarette manufacturers—that underlay that settlement. *Id.* at 167.

Beyond the MSA, multi-state, multi-defendant regulatory enforcement settlements are common. Attorneys General and other state officials routinely enter into regulatory compliance agreements with businesses located in other states, including in recent years such multi-state businesses as State Farm, Moneygram, AON Corporation, UNUM Life Insurance Company of America, and Zurich Holding Company of America, Inc. These agreements often function as alternative forms of ongoing regulation, with implications not only for the signatories but also (as with the MSA) for new market entrants. Such agreements may well be reached as a result of multiple contacts between state regulators and the target company's own state. The reasoning of the decision below—and of the Second Circuit in *Grand River*—would enable regulated companies to file actions for breach (including declaratory claims relating to allegations of their own breach) against state officials in distant courts. Consequently, related issues of personal jurisdiction are of

significant importance in the business regulation context as well.

* * * *

As demonstrated, state officials on a daily basis engage in a wide variety—and seemingly infinite number—of official, regulatory acts that at some level are directed at other states. Under the reasoning of the decision below, each such act that causes injury in another state is sufficient to confer longarm personal jurisdiction in the courts of that state. Whether that is the proper way to analyze longarm jurisdiction over state officials for carrying out sovereign acts is an issue with far-reaching implications that demands attention from the Court.

II. Lower Courts and State Officials Need Guidance Concerning the Relevance of State Sovereignty to Personal Jurisdiction

It is axiomatic that haling a state official into an out-of-state forum to defend official actions in his home state implicates fundamental principles of federalism and state sovereignty. Yet these principles are neither routinely nor consistently applied by courts charged with determining whether personal jurisdiction exists over an out-of-state official. While sovereignty and federalism considerations have factored heavily in some lower court decisions, *see, e.g., Stroman Realty, Inc. v. Wercinski*, 513 F.3d 476, 488 (5th Cir. 2008), *cert. denied*, ---S.Ct.--- (2008), other courts—including the First Circuit in the decision below—have chosen not to consider these principles at all. *Hannon v. Beard*, 524 F.3d 275 (1st Cir. 2008); *see also Grand River*

Enterprises Six Nations, Ltd. v. Pryor, 425 F.3d 158 (2d Cir. 2005).

As this Court has long held, "the reasonableness of asserting jurisdiction over the defendant must be assessed 'in the context of our federal system of government[.]'" *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293-94 (1980) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945)). However, inconsistent application of federalism and sovereignty principles by lower courts indicates judicial confusion as to how exactly the "context of our federal system" factors into the jurisdictional equation. Further, state officials would benefit from guidance putting them on notice as to when their official acts may legitimately subject them to personal jurisdiction in out-of-state forums.

A. Decisions of the First and Fifth Circuits are irreconcilable, and decisions from other courts further demonstrate lack of uniform understanding

1. Inter-circuit confusion regarding the relevance of state sovereignty to personal jurisdiction is strikingly illustrated by comparing the decision below, where sovereignty and federalism principles played no role, to the plainly irreconcilable decision in *Stroman Realty, Inc. v. Wercinski*, 513 F.3d 476 (5th Cir. 2008).

In *Wercinski*, a Texas-based company sought relief in a Texas federal court from attempts by the Commissioner of the Arizona Department of Real Estate to exercise regulatory authority over the

company's timeshare sales business, which had allegedly violated Arizona law by selling timeshares in Arizona without a license. *Wercinski*, 513 F.3d at 480. The Fifth Circuit held that exercising personal jurisdiction over the Arizona official in Texas would violate due process. *Id.* at 483. Of significant moment, the court considered sovereignty and federalism interests when analyzing whether asserting personal jurisdiction over the defendant would comport with the "reasonableness" requirement of the personal jurisdiction due process inquiry. *See id.* at 488 ("the shared interest of the several states is the most significant reasonableness consideration") (internal quotation omitted).

Indeed, recognizing that "[f]ederalism and state sovereignty are an essential part of the constraints that due process imposes upon personal jurisdiction," *id.*, the Fifth Circuit looked to this Court's opinion in *World-Wide Volkswagen* for the purpose served by those "constraints." *Id.* As this Court stated, federalism and state sovereignty do more than "protect[] the defendant against the burdens of litigating in a distant or inconvenient forum;" they also "ensure that the States through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen*, 444 U.S. at 292. With those purposes in mind, the Fifth Circuit held that asserting personal jurisdiction over an Arizona official in a Texas court "would create an avenue for challenging the validity of one state's laws in courts located in another state," a practice that would "greatly diminish the independence of the states." *Wercinski*, 513 F.3d at 488. *See also Stroman Realty, Inc. v. Antt*, 528 F.3d 382, 386 (5th Cir. 2008)

(relying on *Wercinski* and holding that the district court lacked personal jurisdiction over regulators from Florida and California).

In the decision below, by contrast, the court did not measure "reasonableness" by looking to the impact on sovereign independence, but instead merely weighed the states' relative interests in the specific social policy furthered by this particular case—*i.e.*, that transfers pursuant to the Interstate Corrections Compact should not be effected for illegal or retaliatory purposes. *Hannon*, 524 F.3d at 285. The First Circuit attempted to distinguish *Wercinski* as a challenge to a state statute rather than a state official's action. *Id.* at 281. But it offered no explanation why that distinction meant giving zero weight to sovereignty and federalism interests when considering whether the exercise of personal jurisdiction over an official of another state is "reasonable." The holding below is disharmonious with *Wercinski*.

2. Decisions from other courts further illustrate the inconsistent relevance of state sovereignty and federalism to personal jurisdiction analysis.

In *Grand River Enterprises Six Nations, Ltd. v. Pryor*, 425 F.3d 158 (2d Cir. 2005)—the lawsuit against state attorneys general challenging the MSA—the Second Circuit dismissed the notion that state sovereignty might bar the exercise of personal jurisdiction. It acknowledged that "New York would not ordinarily be the proper forum to challenge another state's legislative and executive actions," but nonetheless justified personal jurisdiction on the assumption that "[i]t is a rare event for the

representatives of various sovereign states to assemble purposefully in [one state] to attempt to jointly settle related lawsuits and to agree to then pass individual state statutes." *Grand River*, 425 F.3d at 167. The court did not explain how the relative rarity of such forum contacts made personal jurisdiction *more* reasonable rather than less. This enigmatic rationale amply demonstrates the need for clarity as to the significance of sovereignty to personal jurisdiction analysis.

The Sixth Circuit, on the other hand, takes a somewhat more systematic approach to the analysis of reasonableness and, by extension, sovereignty and federalism principles. The Sixth Circuit only considers the reasonableness of exercising personal jurisdiction when there is uncertainty as to whether the defendants purposefully availed themselves of the laws of the forum state or whether the claim arose out of the defendants' forum-related contacts. *See First Nat'l Bank v. J.W. Brewer Tire Co.*, 680 F.2d 1123, 1126 (6th Cir. 1992) (holding that when these two elements are met, "an inference arises" that the reasonableness element is also satisfied); *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 954 F.2d 1174, 1177 (6th Cir. 1992) (applying this rule in the context of a lawsuit against government officials and finding that those officials were not subject to personal jurisdiction in an out-of-state forum). Thus, when the court is satisfied that minimum contacts have been established, it sees no need to evaluate the reasonableness of asserting jurisdiction over the defendant, including any evaluation of sovereignty or federalism principles.

The Ninth Circuit and Tenth Circuits, on the other hand, explicitly *do* consider state sovereignty as one of several factors that inform whether exercising longarm personal jurisdiction would be reasonable. In *Ziegler v. Indian River County*, 64 F.3d 470 (9th Cir. 1995), where a California district court properly exercised personal jurisdiction over a sheriff from Florida, the court addressed "the extent of conflict with the sovereignty of the defendant's state." *Id.* at 475. It acknowledged that the "interference with Florida's sovereignty . . . is potentially greater here than in the ordinary tort action because defendants were following collection remedies provided under Florida law," *id.*, but concluded that "Florida's sovereign interests are outweighed by California's interest . . . in protecting its citizens from the [alleged] wrongful acts of nonresident defendants," *id.*, at least in that case. *See also, e.g., PTI, Inc. v. Philip Morris, Inc.*, 100 F.Supp.2d 1179, 1190 (C.D. Cal. 2000); *Dial Up Services, Inc. v. State of Oregon*, No. 07-00423, 2007 WL 4200756, at *5 (D. Ariz. Nov. 27, 2007) (both expressly weighing the impact of personal jurisdiction on sovereignty interests at stake).

Likewise, in *Trujillo v. Williams*, 465 F.3d 1210 (10th Cir. 2006), the Tenth Circuit considered state sovereignty interests in holding that a New Mexico district court did not have personal jurisdiction over Virginia correction officials. The Court had already found insufficient minimum contacts, but still evaluated several other factors—including weighing the relative state interests of New Mexico and Virginia—in order to determine whether the assertion of personal jurisdiction over the Virginia defendants would be reasonable. *Trujillo*, 465 F.3d

at 1221-22 ("Even assuming sufficient minimum contacts existed, we would still need to decide whether the assertion of personal jurisdiction over the Virginia defendants comports with fair play and substantial justice.") (citation omitted).

* * * *

This Court has "never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could [it] and remain faithful to the principles of interstate federalism embodied in the Constitution." *World-Wide Volkswagen*, 444 U.S. at 293. Yet inconsistent lower court opinions inherently cast doubt upon the relevance of state sovereignty to the jurisdictional analysis. The Court's guidance is necessary to eliminate this confusion and restore the relevance of sovereignty and federalism to personal jurisdiction analysis.

B. State officials, too, would benefit from the Court's guidance

Not only would lower courts benefit from the Court's guidance as to the proper role of state sovereignty and federalism principles, but state officials would also benefit by being better informed as to when their actions might legitimately subject them to personal jurisdiction in out-of-state forums. As discussed in Part I, *supra*, cooperative interstate activity is on the rise, resulting in the proliferation of multi-state settlements and interstate compacts, and routine interaction by state officials with individuals and businesses in other states.

In this environment, the risk of being subjected to personal jurisdiction in a distant forum—and the

accompanying burden that entails—could cause some state officials to shy away from cooperative interstate activity, such as using ICC channels to deal with prison security and overcrowding problems. Without knowing whether they may be subjected to personal jurisdiction in the recipient state, prison officials will not be able to weigh effectively the costs and benefits of prisoner transfers. Similar uncertainties arise for state officials enforcing multi-jurisdictional settlement agreements or consumer protection laws against interstate business activities. Rather than risk subjecting themselves to personal jurisdiction in a distant forum, state officials may curtail these kinds of actions that would otherwise benefit the citizens of their states.

It is one thing for states and their officials to make such calculations following a decision and comprehensive explanation of the matter from this Court. It is another thing entirely to do so—perhaps unnecessarily—based on uncertainty about the law. In short, States and their officials need the Court to step in and provide guidance concerning their susceptibility to longarm lawsuits so they will be able to predict with more confidence the consequences of engaging in interstate government activities.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: October 10, 2008

Table A

Cases Documenting Longarm Actions Filed By Prisoners Against State Government Officials

2008	*Jones v. Rowley,* No. 08-3207-SAC, 2008 WL 4329984 (D. Kan. Sept. 16, 2008) (complaint filed Aug. 15, 2008)
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