No. 14-

IN THE
Supreme Court of the United States

AEP ENERGY SERVICES,
Petitioner,
v.
HEARTLAND REGIONAL MEDICAL CENTER, *et al.,*
Respondents.

AEP ENERGY SERVICES, *et al.*,
Petitioners,
v.
ARANDELL CORP., *et al.,*
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether due process permits a court to exercise specific personal jurisdiction over non-consenting, out-of-state defendants based on the plaintiffs' bare allegation that the defendants engaged in a nationwide conspiracy outside the forum that had an intended effect inside the forum (as well as presumably in every other state).

2. Whether due process permits a court to exercise specific personal jurisdiction over non-consenting, out-of-state defendants when the defendants' limited forum conduct bears no causal relationship to the plaintiffs' claim.

PARTIES TO THE PROCEEDINGS

The following were parties to the proceedings in the U.S. Court of Appeals for the Ninth Circuit:

1. AEP Energy Services and American Electric Power Company, Inc., Petitioners on review, were defendants-appellees below.

2. Arandell Corporation; Merrick's, Inc.; Sargento Foods Inc.; Ladish Co., Inc.; Carthage College; Briggs & Stratton Corporation; Heartland Regional Medical Center; Prime Tanning Corp; and Northwest Missouri State University, Respondents on review, were plaintiffs-appellants below.

3. CMS Energy Corporation; CMS Field Services; CMS Marketing Services & Trading Company; Coral Energy Resources, L.P.; Duke Energy Corporation; Duke Energy Trading and Marketing, LLC; Dynegy Marketing and Trade; DMT G.P. LLC; Dynegy Illinois, Inc.; Dynegy GP, Inc.; El Paso Merchant Energy, L.P.; El Paso Corporation; ONEOK Energy Marketing & Trading Co., L.P.; ONEOK, Inc.; Reliant Energy, Inc.; Reliant Energy Services, Inc.; The Williams Companies, Inc.; Williams Energy Marketing & Trading Company; Williams Merchant Services Company, Inc.; Williams Power Company, Inc.; Xcel Energy, Inc.; Northern States Power Company; and e prime, Inc., were defendants below and are respondents under this Court's Rule 12.6.

RULE 29.6 DISCLOSURE STATEMENT

AEP Energy Services, Inc. is an indirect, wholly owned subsidiary of American Electric Power Company, Inc., which is a publicly owned corporation.

American Electric Power Company, Inc. is a publicly owned corporation. American Electric Power Company, Inc. has no parent corporation, and no publicly held corporation owns 10 percent or more of American Electric Power Company, Inc.'s stock.

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Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Ninth Circuit's opinion is reported at 715 F.3d 716. Pet. App. 1a-66a. The District Court's orders granting Petitioners' motions to dismiss for lack of personal jurisdiction are unreported. Pet. App. 67a-81a, 82a-96a. The District Court's orders denying

Respondents' motions to reconsider are unreported but available at 2010 WL 4386950 and 2010 WL 4386951. Pet. App. 97a-103a, 104a-115a.

JURISDICTION

The Ninth Circuit entered judgment on April 10, 2013. On June 26, 2013, the court deferred action on a timely petition for panel rehearing and rehearing en banc pending this Court's decision in *Walden* v. *Fiore*, No. 12-574. Pet. App. 116a-117a. On March 31, 2014, the Ninth Circuit denied the petition for rehearing. Pet. App. 118a-119a. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the U.S. Constitution provides in relevant part: "No State shall * * * deprive any person of life, liberty, or property, without due process of law."

INTRODUCTION

This case lies at the intersection of two deep and entrenched circuit splits regarding the due process limitations on when a court can exercise specific personal jurisdiction over an out-of-state defendant.

Under the "effects" test of specific jurisdiction that courts have drawn from this Court's decision in *Calder* v. *Jones*, 465 U.S. 783 (1984), a forum state may have jurisdiction over a defendant who "expressly aims" conduct there—but the lower courts have sharply divided on the contours of this requirement. The vast majority of courts hold that jurisdiction exists only when the forum qualifies as the focal point of the conduct, with the brunt of the harm felt there. The Ninth Circuit departed from this consensus in the decision below, requiring no

showing that the forum was specially targeted or that any injury was centered there. Instead, the Ninth Circuit held that so long as a plaintiff has alleged a nationwide conspiracy, personal jurisdiction exists over the defendant in *any* forum in which the plaintiff alleges the conspiracy had an intended effect—even if that rule sweeps in *every* state. That expansive view of jurisdiction conflicts not only with the express-aiming test adopted by other courts, but also with principles announced by this Court—including just last Term in *Walden* v. *Fiore*, 134 S. Ct. 1115 (2014). The Court had no trouble reversing the Ninth Circuit's flawed understanding of personal jurisdiction in *Walden*, and it should grant the writ and do so again here.

Indeed, the Ninth Circuit's jurisdictional analysis was so misguided that even Respondents did not embrace it; instead, Respondents argued that jurisdiction was proper based on Petitioners' alleged limited contacts with other entities in the forum who are not parties to this dispute. That claim runs headlong into a second, longstanding circuit split regarding the proper test to determine whether a defendant's forum contacts are sufficiently connected to a plaintiff's claim to support an exercise of specific, or "case-linked," jurisdiction. Most circuits and state high courts require that a defendant's forum conduct be causally connected to the plaintiff's claim, although they disagree on whether the appropriate standard is but-for causation, proximate cause, or something between the two. Other circuits and state supreme courts have taken a contrary view, holding that causation principles have no place in the nexus analysis. In these tribunals, it is enough if the defendant's forum contacts are related in any way to

the facts of the dispute. A third group of courts employs a sliding scale, wherein the degree of relatedness necessary to establish jurisdiction goes down as the extent of the defendant's forum contacts goes up—and vice versa.

This Court granted review of this issue once before, in another case from the Ninth Circuit, but decided that case on non-constitutional grounds and so had no opportunity to resolve the split. *See Carnival Cruise Lines, Inc.* v. *Shute*, 499 U.S. 585, 589-590 (1991). The lower courts have only become more intractably divided on the nexus standard in the intervening decades. This Court should seize the opportunity to clarify that personal jurisdiction is lacking where, as here, a defendant's forum contacts bore no causal relation to a plaintiff's alleged injury.

The writ should be granted.

STATEMENT

A. Personal Jurisdiction Framework.

1. The Due Process Clause shields non-resident defendants from "being subject to the binding judgments of a forum with which [they] ha[ve] established no meaningful 'contacts, ties, or relations.'" *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 471-472 (1985) (quoting *International Shoe Co.* v. *Washington*, 326 U.S. 310, 319 (1945)). The "defendant's conduct and connection with the forum State" must be "such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297 (1980). This limitation "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where

that conduct will and will not render them liable to suit." *Id.*

2. To determine whether a defendant is subject "to the State's coercive power," this Court has distinguished between "general or all-purpose jurisdiction, and specific or case-linked jurisdiction." *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 131 S. Ct. 2846, 2850-51 (2011). General jurisdiction exists when the defendant has "continuous and systematic" contacts with the State "render[ing] [it] essentially at home in the forum"; in this situation, the State can "hear any and all claims" against the defendant. *Id.* at 2851. Specific jurisdiction, in contrast, is premised on discrete rather than systematic forum contacts, but the suit must "aris[e] out of or relate[] to the defendant's contacts with the forum." *Helicopteros Nacionales de Columbia, S.A.* v. *Hall*, 466 U.S. 408, 414 n.8 (1984).

This case concerns only specific jurisdiction. Pet. App. 53a. Courts apply a three-prong test to assess whether specific jurisdiction exists: (1) the defendant must purposefully avail itself of the privilege of conducting activities in the forum or purposefully direct activities toward the forum; (2) a nexus must exist between the defendant's forum contacts and the plaintiff's claim; and (3) the exercise of jurisdiction must be reasonable. *See* Pet. App. 53a-54a.

3. With regard to the purposeful-direction prong of this analysis, courts apply the so-called "effects" test drawn from *Calder* when a plaintiff asserts specific jurisdiction over a non-resident defendant based on out-of-state actions that have an impact in the forum. In *Calder*, a California actress filed a libel suit in California state court against a reporter and

editor working for the National Enquirer in Florida. *Calder*, 465 U.S. at 784-785. Although the defendants had not physically entered California, the Court held that they had created sufficient contacts with the state to support personal jurisdiction. The Court emphasized that defendants' "intentional, and allegedly tortious, actions were expressly aimed at California." *Id.* at 789. "The allegedly libelous story concerned the California activities of a California resident" whose "television career was centered in California," and "the brunt of the harm * * * was suffered in California," where the National Enquirer "has its largest circulation." *Id.* at 788-789. "In sum, California [wa]s the focal point both of the story and of the harm suffered." *Id.* at 789.

Courts have held that *Calder*'s effects test is satisfied when the defendant commits an intentional act that is expressly aimed at the forum and causes harm that the defendant knows is likely to be suffered there. *See* Pet. App. 57a.

B. Procedural History.

1. These consolidated cases are two of several filed around the country alleging that Petitioners American Electric Power Company, Inc. ("AEP") and AEP Energy Services, Inc. ("AEPES") conspired with more than twenty other gas companies to manipulate natural gas prices. Specifically, Respondents contend that Petitioners and other defendants reported fictional transactions to trade publications and engaged in "wash sales," selling gas back and forth to create an illusion of higher demand. Pet. App. 12a. Respondents allege that these practices inflated "index" rates for natural gas—that is, published rate compilations that natural gas buyers

and sellers around the country often use to set the price term for gas contracts. Pet. App. 14a-15a.

The *Heartland* action was brought on behalf of a proposed class of consumers who allegedly purchased gas at artificially high prices in Missouri. It was filed in Missouri state court and removed to the U.S. District Court for the Western District of Missouri. The *Arandell* action was brought on behalf of a proposed class of Wisconsin consumers. It was filed in Wisconsin state court and removed to the U.S. District Court for the Western District of Wisconsin. The Panel on Multidistrict Litigation consolidated both suits in the District of Nevada with cases that had been filed in various other states based on similar alleged price manipulation.

2. Because Petitioners had no contacts in Missouri or Wisconsin that would support the exercise of personal jurisdiction in those forums, they sought dismissal from the *Heartland* and *Arandell* actions on jurisdictional grounds. Most of the facts concerning Petitioners' forum contacts and corporate structure were undisputed. AEPES is an Ohio corporation with its principal place of business in Ohio. Pet. App. 49a. It is an indirect wholly owned subsidiary of AEP, a New York corporation with its principal place of business in Ohio. *Id.* Petitioners "have no office, bank accounts, property, or employees in either Wisconsin or Missouri; [they] have not qualified to do business in either Wisconsin or Missouri and have not appointed a registered agent for service of process in either of those states; [they] have not paid taxes, manufactured products, or performed services in either Wisconsin or Missouri; and [they] have not directed advertising specifically at Wisconsin or Missouri residents." *Id.*

Although the District Court found that AEPES sold gas to some Missouri- and Wisconsin-based entities, there was no dispute that AEPES never entered into a contract with any of the named plaintiffs in the *Arandell* and *Heartland* suits. Pet. App. 50a-51a. AEP, which acted as guarantor for AEPES during the relevant time period, likewise had no relationship with any of the named plaintiffs. *Id.*

Measuring these facts against federal due process standards, the District Court held that Missouri and Wisconsin lacked personal jurisdiction over Petitioners. Respondents contended that jurisdiction was proper based on Petitioners' sales to unrelated third-party entities in the forums, but the District Court held that even assuming these contacts could satisfy the purposeful-availment prong of the analysis, they did not satisfy the nexus requirement. Pet. App. 77a-78a, 93a-95a. That was so because Petitioners' forum-related contacts with unrelated third-parties were not a but-for cause of Respondents' injury. Pet. App. 77a, 93a. Regardless of whether AEPES sold gas to those third parties, Respondents still would have allegedly suffered injury based on "their own transactions for natural gas purchases from other Defendants." Pet. App. 77a-78a, 93a-94a. In other words, specific personal jurisdiction was lacking because Respondents did not show that Petitioners' "*forum-related contacts*, rather than the conspiracy generally, caused these named Plaintiffs harm." Pet. App. 78a, 94a (emphasis added).

Respondents subsequently asked the District Court to reconsider, contending that the but-for causation standard is inappropriate when multiple defendants contribute to a plaintiff's injury. In response, the

court clarified that a defendant need not be the *sole* cause of the injury—but the flaw with Respondents' theory was that Petitioners' conduct in the forum was not even a *partial* cause of Respondents' claims. Pet. App. 100a-101a, 109a-111sa. As the court explained, "irrespective of whether AEPES made a hundred sales to unrelated third parties in [the forum] or no sales to unrelated third parties in [the forum], [Respondents'] claims in this action would be precisely the same in both character and scope." Pet. App. 102a, 111a. Because "the forum-related sales were the *only* evidence [Respondents] presented that possibly could subject AEPES to personal jurisdiction" and those sales had nothing to do with Respondents' claims that they paid inflated amounts for gas in contracts with *other* companies, the District Court declined to reconsider its ruling on personal jurisdiction. Pet. App. 111a n.3 (emphasis added).

3. Respondents appealed to the Ninth Circuit, which reversed the District Court's ruling on personal jurisdiction.[1] Respondents contended, again, that Petitioners' sales to third-party entities in Missouri and Wisconsin sufficed to establish

[1] The Ninth Circuit also reversed the District Court's ruling that the Natural Gas Act preempted Respondents' state-law claims. Pet. App. 24a-40a. Petitioners, along with the other defendants in the multi-district litigation, filed a petition for certiorari challenging that ruling. *OneOK, Inc.* v. *Learjet, Inc.*, No. 13-271. The *OneOK* petition remains pending. If it is granted and the Ninth Circuit's preemption ruling is reversed, there will be no need to consider the personal jurisdiction issue raised in this petition. Thus, this petition should be held for appropriate disposition pending resolution of *OneOK*.

jurisdiction. The Ninth Circuit declined to consider that argument and instead focused on Petitioners' alleged participation in the index-manipulation conspiracy. Pet. App. 55a-56a. The court reasoned that the nexus requirement was satisfied because Respondents' claims arose out of alleged "collusive manipulation of the gas price indices." Pet. App. 56a. Thus, the "key issue," in the court's view, was whether Petitioners' alleged price manipulation—which would have indisputably occurred in Ohio—was "purposefully directed" at Missouri and Wisconsin as required to "satisf[y] the *first* prong of the specific personal jurisdiction inquiry." *Id.*

The Ninth Circuit concluded that it was. *Calder*'s effects test was satisfied, according to the court, because Petitioners' alleged index manipulation in Ohio was "expressly aimed" at Wisconsin and Missouri. Pet. App. 57a-58a. The Ninth Circuit appeared to recognize that Petitioners had not uniquely or specially targeted these states, but it emphasized that "the 'brunt' of the harm [need not] be suffered in the forum state." Pet. App. 60a. Instead, "as long as 'a jurisdictionally sufficient amount of harm is suffered in the forum state, it does not matter that even more harm might have been suffered in another state.'" *Id.* (quoting *Yahoo! Inc.* v. *La Ligue Contre Le Racisme et L'Antisemitisme*, 433 F.3d 1199, 1207 (9th Cir. 2006)).

With that standard in mind, the court emphasized Respondents' allegation that the manipulation was "intended to have, and did have, a direct, substantial and reasonably foreseeable effect on commerce in" the forums. Pet. App. 58a (internal quotation marks omitted); *see also* Pet. App. 58a-59a (noting

allegations that all twenty-plus defendants "worked together to fraudulently increase the retail price of natural gas paid by commercial entities in Wisconsin," and that "[t]he 'purpose and effect' of [the alleged manipulative behavior] was to 'collusively and artificially inflate the price of natural gas paid by commercial entities in Wisconsin'"). "By alleging acts 'intended to have' an effect in" the forums, the court explained, Respondents "went beyond alleging acts with a 'mere foreseeable effect' in the forum[s]." Pet. App. 58a. Taking "[t]hese alleged facts * * * as true," the Ninth Circuit held that Petitioners' purported "price manipulation was 'expressly aimed' at [Wisconsin and Missouri], because [Petitioners] knew and intended that the consequences of their price manipulation would be felt in" these forums. Pet. App. 59a-60a. The Ninth Circuit accordingly held that personal jurisdiction was proper in these states. Pet. App. 61a.[2]

4. Petitioners sought panel rehearing and rehearing en banc. The panel initially issued an order deferring consideration on the rehearing petition until this Court decided *Walden*, which similarly concerned the proper interpretation of the purposeful-direction requirement. Pet. App. 116a-117a. Shortly after *Walden* was handed down, and without permitting additional briefing on how

[2] The Ninth Circuit focused on the complaint in the Wisconsin *Arandell* case, but noted that its analysis applied "with equal force to the [Missouri] *Heartland* case," which included similar allegations of intent. Pet. App. 62a. However, because the *Heartland* Respondents declined to appeal the dismissal of AEP, the Ninth Circuit limited its reversal on personal jurisdiction in that case to AEPES. *Id.*

Walden's analysis impacted this case, the panel denied the rehearing petition. Pet. App. 118a-118a.

This petition followed.

REASONS FOR GRANTING THE PETITION

I. THE NINTH CIRCUIT'S EXPRESS-AIMING TEST CONFLICTS WITH OTHER CIRCUITS' DECISIONS AND THIS COURT'S PRECEDENTS.

The Ninth Circuit's decision in this case entrenches a circuit split on the contours of *Calder*'s express-aiming requirement. While the vast majority of lower courts find that a defendant can only be haled into court in a forum that constitutes a focal point of the defendant's challenged conduct, with the brunt of the harm felt there, the Ninth Circuit held below that specific jurisdiction exists in any and all forums where the defendant's conduct had an intended effect and produced a "jurisdictionally sufficient amount of harm," even if "more harm" was felt elsewhere. Pet. App. 60a. There is a reason the split is so lopsided: The Ninth Circuit's expansive approach to jurisdiction conflicts with this Court's precedents. This Court's intervention is warranted. *See* S. Ct. R. 10(a), (c).

A. The Ninth Circuit's Decision Conflicts With Decisions From Other Circuits And State High Courts.

1. Numerous courts and commentators have acknowledged the split regarding "how broadly the 'effects test' approved in *Calder* can be applied to find jurisdiction." *Griffis* v. *Luban*, 646 N.W.2d 527, 533 (Minn. 2002); *see also, e.g.*, *Pavlovich* v. *Superior Court*, 58 P.3d 2, 7 (Cal. 2002) (application of *Calder* has "been less than uniform"); *Imo Indus., Inc.* v. *Kiekert AG*, 155 F.3d 254, 261 (3d Cir. 1998) ("courts

have adopted varying versions of * * * the 'effects test,' yielding a mixture of broad and narrow interpretations"). Particularly when "wrongs hav[e] potentially widely dispersed effects," courts have exhibited "considerable confusion over what jurisdictional test" applies. C. Douglas Floyd & Shima Baradaran-Robison, *Toward a Unified Test of Personal Jurisdiction in an Era of Widely Diffused Wrongs: The Relevance of Purpose and Effects*, 81 Ind. L.J. 601, 602 (2006).

2. The Ninth Circuit stands alone in interpreting *Calder*'s express-aiming requirement expansively. According to the court of appeals, the critical fact in *Calder* was that "defendants' intentional conduct in Florida was calculated to cause injury to the plaintiff in California." Pet. App. 57a n.24. Thus, the Ninth Circuit held below that out-of-state conduct is "expressly aimed" at the forum any time a defendant "kn[ows] and intend[s] that the consequences of the[] [conduct] w[ill] be felt" there. Pet. App. 59a.

As applied to allegations of a nationwide conspiracy, the Ninth Circuit's rule permits each and every state to exercise jurisdiction without any requirement that a particular forum be singled out or specially targeted. The Ninth Circuit emphasized that it "does not require that the 'brunt' of the harm be suffered in the forum state." Pet. App. 60a. Instead, a "jurisdictionally sufficient amount of harm" suffices, "even [if] more harm might have been suffered in another state." *Id.* (internal quotation marks omitted). And this case proved the point: the court concluded that AEPES's alleged index manipulation in Ohio subjected it to personal jurisdiction in *both* Wisconsin and Missouri, even though Respondents could not and did not allege that

AEPES focused on these forums as particular targets of the alleged conspiracy. Pet. App. 61a. Respondents contended only that the alleged index manipulation was intended to have an effect in these forums, *see* Pet. App. 133a, 192a, just as it was presumably intended to have an effect everywhere natural gas purchasers are located. But that satisfied the Ninth Circuit's broad view of *Calder*: "By alleging acts 'intended to have' an effect in" the forums, the court held, Respondents had demonstrated that Petitioners' conduct in Ohio "was 'expressly aimed' at [Wisconsin and Missouri] because [Petitioner] knew and intended that the consequences of their price manipulation would be felt" there. Pet. App. 59a-60a.

3. In contrast to the Ninth Circuit's approach, seven courts of appeals—the First, Third, Fourth, Fifth, Sixth, Eighth, and Tenth Circuits—and numerous state high courts have read *Calder* more narrowly to require that the forum serve as the focal point of the defendant's conduct. The Third Circuit, for example, has held that the defendant must "manifest behavior intentionally targeted at and focused on the forum," with "the 'brunt' of the harm * * * felt in the forum." *Imo Indus.*, 155 F.3d at 263, 265 (internal quotation marks omitted). Similarly, the Tenth Circuit has emphasized its "restrictive approach" to *Calder*, requiring that "the forum state * * * be the focal point of the tort." *Dudnikov* v. *Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1074 n.9 (10th Cir. 2008). An alleged conspiracy occurring outside the forum can satisfy this standard if the conspirators "know[] that the forum w[ill] bear the brunt of the conspiracy's harmful effect." *Newsome* v. *Gallacher*, 722 F.3d 1257, 1265 (10th

Cir. 2013). But the forum must qualify as the "'focal point' of [the defendant's] purposive efforts." *Dudnikov*, 514 F.3d at 1075.

Decisions in other circuits are to the same effect. *See, e.g.*, *ESAB Group, Inc.* v. *Centricut, Inc.*, 126 F.3d 617, 625 (4th Cir. 1997) (defendant must engage in "behavior intentionally targeted at and focused on" the forum); *Revell* v. *Lidov*, 317 F.3d 467, 476 (5th Cir. 2002) (forum must "be the focal point of the tortious activity"); *The Scotts Co.* v. *Aventis S.A.*, 145 F. App'x 109, 113 n.1 (6th Cir. 2005) (forum must be "the focus of the activities of the defendant out of which the suit arises"); *Johnson* v. *Arden*, 614 F.3d 785, 796-797 (8th Cir. 2010) (defendant's conduct must "specifically target[]" the forum); *Steinbuch* v. *Cutler*, 518 F.3d 580, 586 (8th Cir. 2008) (*Calder* not satisfied absent showing that the defendant "intentionally targeted the forum state" and "knew that the brunt of the injury" would be felt there (internal quotation marks omitted)); *Noonan* v. *Winston Co.*, 135 F.3d 85, 91 (1st Cir. 1998) (rejecting jurisdiction under *Calder* because forum did not qualify as "the focal point of the events in question").[3]

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[3] The Seventh Circuit has noted the conflict between the Ninth Circuit's "broad[]" reading of the express-aiming requirement and decisions from courts that "read [*Calder*] more narrowly to require that the forum state be the focal point of the tort." *Tamburo* v. *Dworkin*, 601 F.3d 693, 704 (7th Cir. 2010) (internal quotation marks omitted). Although the Seventh Circuit had no occasion to choose between those approaches in *Tamburo*, it has recently indicated that it agrees with the majority view. *See Advanced Tactical Ordnance Sys., LLC* v. *Real Action Paintball, Inc.*, __ F.3d __, 2014 WL

State high courts, too, have adopted the "focal point" limitation on *Calder*'s effects test. The Minnesota Supreme Court, for example, criticized the Ninth Circuit's "[b]road application[]" of the express-aiming requirement because it "cast[s] too wide a net and incorrectly disregard[s] the factual underpinnings of the Court's holding in *Calder*." *Griffis*, 646 N.W.2d at 533-534 (forum must be "the focal point of the tortious activity"). The Ohio Supreme Court has likewise agreed that "[t]he effects analysis necessitates conduct 'calculated to cause injury' in a 'focal point' where the 'brunt' of the injury is experienced." *Kauffman Racing Equip., L.L.C.* v. *Roberts*, 930 N.E.2d 784, 796 (Ohio 2010). And the list goes on; many states have added their voice to the consensus view in just the past few years. *See, e.g.*, *Shams* v. *Hassan*, 829 N.W.2d 848, 856 (Iowa 2013) ("In determining whether the plaintiff has satisfied th[e *Calder*] test, we look at * * * the 'focal point' of the alleged tort."); *Abdouch* v. *Lopez*, 829 N.W.2d 662, 674 (Neb. 2013) (forum must be "the focal point of the tortious activity" and the location of "the brunt of the harm" (internal quotation marks omitted)); *Pohl, Inc. of America* v. *Webelhuth*, 201 P.3d 944, 955 (Utah 2008) (as applied to allegations of a conspiracy, plaintiff must establish that "the conspiracy caused harm, the brunt of which was suffered, and the defendants knew was likely to be suffered, in the forum state"); *Archangel Diamond Corp.* v. *Lukoil*, 123 P.3d 1187, 1200 (Colo. 2005) (adopting a "narrow reading" of

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1849269, at *5 (7th Cir. May 9, 2014) (ruling that defendant must "target" the forum).

Calder, including the focal-point limitation); *Pavlovich*, 58 P.3d at 7 (*Calder* "found jurisdiction proper because California was the focal point both of the story and of the harm suffered" (internal quotation marks and alteration omitted)).

In further contrast to the Ninth Circuit, courts assessing allegations that a defendant engaged in conduct with effects in several states have imposed a geographic-targeting requirement. Under this approach, it is not sufficient for the defendant to intend effects any place where the conduct may cause harm around the country; rather, the defendant must *specifically* aim its conduct at the forum. For instance, in *ESAB Group* the Fourth Circuit considered allegations that an out-of-state defendant had wrongly gained access to a South Carolina company's customer list and then tortiously interfered with the company's prospective contracts with customers around the country. 126 F.3d at 621. Because the defendant in that case had "focused its activities more generally on customers located throughout the United States and Canada without focusing on and targeting South Carolina," the Fourth Circuit held that the defendant was not subject to personal jurisdiction in South Carolina. *Id.* at 625.

Other courts have adopted the same type of geographic-targeting limitation. The Eighth Circuit in *Johnson*, for example, rejected personal jurisdiction in Missouri when a resident claimed that an out-of-state defendant defamed her online because "[t]here is no evidence that the * * * website specifically targets Missouri, or that the content of [the defendant's] alleged postings specifically targeted Missouri." 614 F.3d at 796. The Fifth

Circuit made the same point in *Revell*, holding that personal jurisdiction did not exist in Texas based on an allegedly defamatory Internet post about a Texas resident because the article "was not directed at Texas readers as distinguished from readers in other states." 317 F.3d at 473. And the Minnesota Supreme Court in *Griffis* similarly held that Alabama lacked personal jurisdiction over an out-of-state defendant who allegedly defamed a resident online because readers of the statement were likely "spread all around the country," not centered "in the Alabama forum." 646 N.W.2d at 536.

In any of these other courts, Respondents' cases against Petitioners would have been dismissed for lack of personal jurisdiction. An unadorned allegation that the index manipulation was intended to have an effect in Wisconsin and Missouri goes nowhere toward demonstrating that either of these forums was a focal point of that conduct. To the contrary, Respondents contended that this manipulation occurred as part of a *nationwide* conspiracy, with no particular focus on Wisconsin and Missouri. Nor did Respondents maintain that the brunt of the harm from the alleged conspiracy was felt in these forums.

This circuit split would be troubling in any case, but it is particularly problematic here. If only these cases had not been consolidated in the multidistrict litigation, they would have proceeded in Wisconsin and Missouri—where the courts would have applied the Seventh and Eighth Circuits' more restrictive view of *Calder* and Petitioners would have been dismissed on jurisdictional grounds. Due process should not turn on the misfortune of having a case consolidated in the one circuit with the most

expansive—and misguided—view of personal jurisdiction in the nation. This Court should grant the writ and hold that the focal-point and brunt-of-the-harm limitations constitute essential elements of the *Calder* effects test.

4. The Ninth Circuit's decision also conflicts with opinions from other circuits regarding the *type* of allegation that suffices to establish express aiming. To find the requirement satisfied here, the Ninth Circuit relied on a bare allegation of intent, unaccompanied by any specific facts. For example, the court cited the Wisconsin Respondents' assertion that the index manipulation was "intended to have, and did have, a direct, substantial and reasonably foreseeable effect on commerce in Wisconsin." Pet. App. 58a. The court also noted Respondents' allegation that the members of the purported conspiracy "worked together to fraudulently increase the retail price of natural gas paid by commercial entities in Wisconsin." Pet. App. 59a. Finally, the court emphasized Respondents' claim that "[t]he 'purpose and effect'" of the alleged index manipulation "was to 'collusively and artificially inflate the price of natural gas paid by commercial entities in Wisconsin.'" *Id.* The Ninth Circuit concluded that "[t]hese alleged facts, taken as true, establish that [Petitioners'] price manipulation was 'expressly aimed' at Wisconsin, because [Petitioners] knew and intended that the consequences of their price manipulation would be felt in Wisconsin." Pet. App. 59a-60a.

Other lower courts, however, would not have treated these allegations as "facts" at all; instead, the claims would have been dismissed as bare legal conclusions. The Fifth Circuit, for example, has

refused to credit allegations that an out-of-state defendant "knew its actions would intentionally cause harm to [plaintiffs] in Texas," deeming the allegations "merely conclusory." *Panda Brandywine Corp.* v. *Potomac Elec. Power Co.*, 253 F.3d 865, 869 (5th Cir. 2001). The Third Circuit has likewise ignored a plaintiff's "conclusory allegations that defendants aimed their conduct at" at the forum, instead requiring the plaintiff to "allege *facts* that establish that defendants 'expressly aimed' their conduct" there. *Marks* v. *Alfa Group*, 369 F. App'x 368, 370 (3d Cir. 2010) (emphasis added). And the Arizona Supreme Court found a plaintiff had not sufficiently alleged express aiming even though, as a dissenting justice emphasized, his complaint included an allegation that the defendants engaged in tortious activity outside the forum "with the intent of causing him harm in Arizona." *Bils* v. *Bils*, 22 P.3d 38, 42 (Ariz. 2001) (Feldman, J., dissenting).

Decisions from other circuits are in accord. *See, e.g.*, *Massachusetts Sch. of Law at Andover, Inc.* v. *American Bar Ass'n*, 142 F.3d 26, 34 (1st Cir. 1998) (plaintiffs must allege "specific facts" to establish personal jurisdiction; "the law does not require us struthiously to credit conclusory allegations" (internal quotation marks omitted)); *Shrader* v. *Biddinger*, 633 F.3d 1235, 1248 (10th Cir. 2011) ("to be accepted for purposes of the jurisdictional analysis," a plaintiff's allegation must "qualif[y] as a plausible, non-conclusory, and non-speculative fact" (internal quotation marks omitted)). This conflict provides an additional reason to grant the petition.

B. The Ninth Circuit's Decision Conflicts With This Court's Precedents.

Certiorari is also warranted because the Ninth Circuit's expansive view of *Calder*'s express-aiming requirement conflicts with this Court's personal jurisdiction jurisprudence.

1. To begin with, the Ninth Circuit's decision contravenes *Calder* itself. As the Court explained there: "California [wa]s the focal point both of the [allegedly libelous] story and of the harm suffered. Jurisdiction * * * is therefore proper in California based on the 'effects' of [defendants'] Florida conduct in California." 465 U.S. at 789. That phrasing leaves no doubt that the focal-point limitation is a critical element of the effects test, not just a one-off fact about the case that lower courts can wish away. And this Court confirmed that reading last Term in *Walden*, explaining that the connection between the defendants' conduct and the California forum "combined with *the various facts that gave the article a California focus*, sufficed to authorize the California court's exercise of jurisdiction" in *Calder*. 134 S. Ct. at 1124 (emphasis added). The Ninth Circuit ignored this Court's teachings when it held that Petitioners expressly aimed their alleged index manipulation at Wisconsin and Missouri without considering whether either of these forums qualified as a focal point of that conduct.

2. The Ninth Circuit's opinion is also at odds with *Walden*. The Court emphasized there that it is "the *defendant's conduct*"—and not simply the plaintiff's injury—"that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." *Id.* at 1122, 1125 (emphasis added). *Walden* further clarified that a defendant's

knowledge regarding the plaintiff's "strong forum connections" and ability to foresee that out-of-state conduct will cause the plaintiff harm in the forum does not, standing alone, suffice to support jurisdiction. *Id.* at 1124 (internal quotation marks omitted).

These observations conflict with the Ninth Circuit's analysis in this case. The court of appeals believed that allegations of a nationwide conspiracy with an intended effect across the country suffice to create specific jurisdiction in every single state. But *Walden* demonstrates that the knowledge and foreseeability that alleged index manipulation could harm natural gas customers wherever they reside does not suffice to establish personal jurisdiction. As in *Walden*, Respondents were allegedly injured in Missouri and Wisconsin "not because anything independently occurred there" but "because [these forums are] where [they] chose to be at a time when they" bought natural gas. *Id.* at 1125. In other words, it is *Respondents* who created the connection to the forum by allegedly purchasing gas there—and Respondents "would have experienced this same [injury] in California, Mississippi, or wherever else they might have traveled and found themselves wanting" to buy gas. *Id.* Thus, the alleged "effects of [Petitioners'] conduct on respondents are not connected to the forum State[s] in a way that makes those effects a proper basis for jurisdiction." *Id.*

The Ninth Circuit anticipated that *Walden* might undermine its jurisdictional analysis; that is presumably why it deferred action on Petitioners' request for rehearing pending the outcome in that case. Pet. App. 116a-117a. But then, after this Court decided *Walden*, the Ninth Circuit abruptly

denied the rehearing petition without permitting additional briefing or modifying its decision to take account of *Walden*'s analysis. Pet. App. 118-119a. Just as it did last Term, the Court should grant the writ and reverse the Ninth Circuit's flawed understanding of personal jurisdiction.

3. The Court's opinions in *J. McIntyre Machinery, Ltd.* v. *Nicastro*, 131 S. Ct. 2780 (2011), further demonstrate the problems with the Ninth Circuit's approach to jurisdiction. *Nicastro* involved the same kind of cross-country contacts alleged here. In that case, a products manufacturer knew its machines were distributed by a third party through a nationwide distribution system with sales possible in all 50 states. *Id.* at 2785 (plurality opinion). A small number of the machines were located in New Jersey, and the plaintiff was injured using a machine there. *Id.* at 2786. Although the manufacturer had targeted the United States as a whole for sales anywhere would-be customers could be found, it had not specifically targeted New Jersey. *Id.* Reviewing these facts, the Court concluded that New Jersey did not have jurisdiction over the manufacturer. The Court clarified that jurisdiction is proper "only where the defendant can be said to have *targeted* the forum," *id.* at 2788 (emphasis added), or at least have made a "specific effort" directed at the forum, *id.* at 2792 (Breyer, J., joined by Alito, J., concurring in the judgment). As the plurality opinion explained, "[t]his Court's precedents make clear that it is the defendant's actions, not his expectations, that empower a State's courts to subject him to judgment." *Id.* at 2789 (plurality opinion).

The Ninth Circuit below required no targeting of—or specific effort directed at—Wisconsin and

Missouri. Instead, the court held that personal jurisdiction is proper anywhere a nationwide conspiracy is alleged to have an intended effect. In other words, the court focused on the *expectation* that a conspiracy to raise prices will have an effect on purchasers wherever they are located, rather than on specific *actions* directed at the forums. Because Petitioners' alleged index manipulation in no "relevant sense targeted" Missouri and Wisconsin, *id.* at 2785, Petitioners should not be forced to submit to these sovereigns' judicial processes.

4. Finally, the Ninth Circuit's decision to credit Respondents' conclusory allegations of intent conflict with this Court's opinions in *Bell Atlantic Corp.* v. *Twombley*, 550 U.S. 544 (2007), and *Ashcroft* v. *Iqbal*, 556 U.S. 662 (2009). Those decisions establish that a plaintiff must offer "more than labels and conclusions." *Twombley*, 550 U.S. at 555. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. Nor should courts "accept as true a legal conclusion couched as a factual allegation." *Id.* In short, "a plaintiff armed with nothing more than conclusions" cannot establish personal jurisdiction. *Id.* at 679; *see also* Br. for the United States, *Federal Ins. Co.* v. *Kingdom of Saudi Arabia*, No. 08-640, 2009 WL 1539068, at *19-*20 (2009) (citing *Iqbal* and observing that an attempt to premise jurisdiction on an intentional tortious act "demands more than a simple allegation. [Plaintiffs] would need to allege facts that could support the conclusion that the defendant acted with the requisite intention and knowledge").

Respondents pleaded no facts below to support their naked assertion that Petitioners intended the alleged index manipulation to have an effect in Wisconsin and Missouri. To be sure, Respondents' complaints include boilerplate language regarding intent. Pet. App. 133a (alleging that Petitioners "intended to have, and did have, a direct, substantial and reasonably foreseeable effect on * * * commerce in Missouri"); Pet. App. 192a (same for Wisconsin). But missing entirely were any *factual* allegations demonstrating that AEPES traders had these forums in mind at all when they were allegedly reporting false pricing information and engaging in wash trades in Ohio.

That makes Respondents' pleadings similar to the complaint in *Iqbal*, which alleged that defendants "knew of, condoned, and willfully and maliciously" engaged in misconduct "solely on account of [the plaintiff's] religion, race, and/or national origin." *Iqbal*, 556 U.S. at 680 (internal quotation marks omitted). This Court dismissed "[t]hese bare assertions" as "conclusory and not entitled to be assumed true" because they were "nothing more than a 'formulaic recitation of the elements' of a constitutional discrimination claim." *Id.* at 681 (quoting *Twombley*, 550 U.S. at 555). So too here, Respondents' formulaic recitation of elements supporting personal jurisdiction, unaccompanied by any specific factual allegations, do not suffice. The Ninth Circuit's contrary conclusion necessitates review—and reversal.

II. THE ALTERNATIVE FORUM CONTACTS ALLEGED IN THIS CASE IMPLICATE A CIRCUIT SPLIT REGARDING THE NEXUS PRONG OF SPECIFIC JURISDICTION.

Perhaps recognizing the flaws with characterizing the alleged index manipulation in Ohio as a relevant forum contact, Respondents below relied on different allegations to support jurisdiction. Although Respondents themselves never purchased gas from Petitioners, Pet. App. 50a-51a, they contended that Petitioners sold gas to *other* entities in Wisconsin and Missouri, and that those sales sufficed to trigger specific jurisdiction for Respondents' claims.

The District Court ruled that allegations of sales to unrelated third parties did not satisfy the nexus prong of the jurisdictional analysis because any such sales were not a but-for cause of Respondents' injury. Pet. App. 77a, 93a. Even if Petitioners had not made those sales, Respondents' claim that they paid inflated prices when buying gas from *other* gas companies "would be precisely the same in both character and scope." Pet. App. 102a, 111a. Thus, the District Court held that personal jurisdiction was lacking because Respondents' claims did not "arise[] out of or result[] from the defendant's forum-related activities." Pet. App. 76a, 92a.

Respondents' attempt to premise jurisdiction on Petitioners' sales to unrelated third parties in the forums implicates a deep and longstanding circuit split regarding the appropriate standard to determine whether a defendant's forum contacts are sufficiently related to the plaintiff's claims. This Court should grant review to resolve the widespread disagreement on the nexus requirement.

1. The confusion regarding the nexus prong traces back to *Helicopteros Nacionales de Columbia, S.A.* v. *Hall*, 466 U.S. 408 (1984). There, the Court emphasized that specific jurisdiction exists only "[w]hen a controversy is related to or 'arises out of' a defendant's contacts with the forum." *Id.* at 414. But because the parties had not briefed the issue, the Court "decline[d] to reach the questions (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." *Id.* at 415 n.10. And the Court further declined to decide "whether, if the two types of relationship differ, a forum's exercise of personal jurisdiction in a situation where the cause of action 'relates to,' but does not 'arise out of,' the defendant's contacts with the forum should be analyzed as an assertion of specific jurisdiction." *Id.* In the three decades since *Helicopteros* was decided, the Court has consistently repeated the "arising out of or related to" requirement without resolving how to determine if the standard is satisfied. *See, e.g.*, *J. McIntyre Mach.*, 131 S. Ct. at 2788 (plurality op.); *Burger King*, 471 U.S. at 472-473.

2. Left to their own devices to flesh out the nexus requirement, the lower courts have reached widely divergent results. *See, e.g.*, *Tamburo*, 601 F.3d at 708 (observing that "difficulty in applying [this requirement] has led to conflict among the circuits").

a. The majority of circuits require a causal connection between the defendant's forum conduct

and the plaintiff's claim—but they disagree on what standard of causation suffices.

But-For Standard. The Ninth Circuit has adopted the most lenient causation standard, requiring only that the defendant's forum conduct constitute a but-for cause of the plaintiff's injury. Pet. App. 54a-55a. That court thus considers whether, "[i]n the absence of [the defendant's] [forum-related] activity, the * * * [plaintiff's] injury would not have occurred." *Shute* v. *Carnival Cruise Lines*, 897 F.2d 377, 386 (9th Cir. 1990), *rev'd on other grounds*, 499 U.S. 585 (1991). In the Ninth Circuit's view, "[t]he but for' test is consistent with the basic function of the 'arising out of' requirement—it preserves the essential distinction between general and specific jurisdiction." *Id.* at 385. Several state courts considering the nexus requirement under state long-arm statutes that are coextensive with the Due Process Clause have likewise agreed that but-for causation is the appropriate standard. *See, e.g.*, *Tatro* v. *Manor Care, Inc.*, 625 N.E.2d 549, 552-554 (Mass. 1994); *Shute* v. *Carnival Cruise Lines*, 783 P.2d 78, 81-82 (Wash. 1989).

Proximate-Cause Standard. The First Circuit falls at the other end of the spectrum, adopting a restrictive causation standard akin to "a 'proximate cause' nexus." *Harlow* v. *Children's Hospital*, 432 F.3d 50, 61 (1st Cir. 2005). Under this test, "the defendant's in-state conduct must form an important, or at least material, element of proof in the plaintiff's case." *Id.* (quoting *United Elec., Radio & Mach. Workers of Am.* v. *163 Pleasant St. Corp.*, 960 F.2d 1080, 1089 (1st Cir. 1992)). As the First Circuit has explained, "the proximate cause standard better comports with the relatedness inquiry because

it so easily correlates to foreseeability, a significant component of the jurisdictional injury." *Nowak* v. *Tak How Invs., Ltd.*, 94 F.3d 708, 715 (1st Cir. 1996). "Adherence to a proximate cause standard," therefore, "is likely to enable defendants better to anticipate which conduct might subject them to a state's jurisdiction than a more tenuous link in the chain of causation." *Id.* Although the First Circuit has been willing "to allow a slight loosening of th[is] standard when circumstances dictate," it has rejected the Ninth Circuit's but-for test on grounds that it "has in itself no limiting principle; it literally embraces every event that hindsight can logically identify in the causative chain." *Id.* at 715-716.

Middle-Ground Standard. The Second, Third, Seventh, Eighth, Tenth, and Eleventh Circuits take a middle-ground approach. These courts require a causal connection between the defendant's forum activities and the plaintiff's cause of action, but they have declined to adopt either a loose or a restrictive causation standard to govern all cases. *See, e.g.*, *Oldfield* v. *Pueblo de Bahia Lora, S.A.*, 558 F.3d 1210, 1222, 1224 (11th Cir. 2009) (holding that there must be a "direct causal relationship," but declining to specify a particular causation standard because "flexibility is essential to the jurisdictional inquiry"); *Newsome*, 722 F.3d at 1271 (declining to choose between but-for and proximate causation, but emphasizing that "[t]he import of the 'arising out of' analysis is whether the plaintiff can establish that the claimed injury resulted from the defendant's forum-related activities"); *Myers* v. *Casino Queen, Inc.*, 689 F.3d 904, 912-913 (8th Cir. 2012) (adopting a "flexible approach" to determine whether "the litigation results from injuries relating to the

defendant's activities in the forum state" (internal quotation marks and alterations omitted)); *see also Williams* v. *Lakeview Co.*, 13 P.3d 280, 283-284 (Ariz. 2000) (declining to choose among different causation standards, but emphasizing that "[t]he failure to show any causal connection between [the defendant's] Arizona activity and [the plaintiffs'] claim is fatal" to jurisdiction).

The Third Circuit's decision in *O'Connor* v. *Sandy Lane Hotel Co.*, 496 F.3d 312 (3d Cir. 2007), exemplifies this approach. As the court explained there, "specific jurisdiction requires a closer and more direct causal connection than that provided by the but-for test," but "[t]he causal connection can be somewhat looser than the tort concept of proximate causation." *Id.* at 323. In the Third Circuit's estimation, "[t]he animating principle behind the relatedness requirement is the notion of a tacit quid pro quo that makes litigation in the forum reasonably foreseeable." *Id.* at 322. Thus, "the jurisdictional exposure that results from a contact" must be "closely tailored to that contact's accompanying substantive obligations," with an "intimate enough [connection] to keep the quid pro quo proportional and personal jurisdiction reasonably foreseeable." *Id.* at 323. The Seventh Circuit and Oregon Supreme Court have followed the Third Circuit's lead in adopting this quid-pro-quo causation standard. *See uBid, Inc.* v. *GoDaddy Group, Inc.*, 623 F.3d 421, 430 (7th Cir. 2010); *Robinson* v. *Harley-Davidson Motor Co.*, 316 P.3d 287, 296-300 (Or. 2013).

b. Still other courts—including the Sixth Circuit and the Federal Circuit—hold that the nexus requirement does not incorporate causation

principles at all; instead, these tribunals consider whether there is any relationship between the defendant's contacts and the plaintiff's claim. The Sixth Circuit, for example, has emphasized that it applies a "lenient standard" to implement the nexus requirement: so long as "a defendant's contacts with the forum state are related to the operative facts of the controversy, then an action will be deemed to have arisen from those contacts." *Bird* v. *Parsons*, 289 F.3d 865, 875 (6th Cir. 2002) (internal quotation marks omitted); *see also Third Nat'l Bank in Nashville* v. *Wedge Group Inc.*, 882 F.2d 1087, 1091 n.2 (6th Cir. 1989) ("The law of this circuit" is "that the 'arising from' requirement is satisfied if the cause of action is 'related to' or 'connected with' the defendant's forum contacts").

The Federal Circuit, too, has emphasized that its "interpretation of the 'arise out of or related to' language is far more permissive than either the 'proximate cause' or the 'but for' analyses," requiring only that the forum activities "relate in some material way" to the plaintiff's suit. *Avocent Huntsville Corp.* v. *Aten Int'l Co.*, 552 F.3d 1324, 1336-37 (Fed. Cir. 2008). And a number of state high courts agree that the nexus prong does not require a causal connection. *See, e.g.*, *Foundation for Knowledge in Development* v. *Interactive Design Consultants, LLC*, 234 P.3d 673, 681 (Colo. 2010) (applying "substantial connection" test); *Moki Mac River Expeditions* v. *Drugg*, 221 S.W.3d 569, 585 (Tex. 2007) (to satisfy nexus requirement "there must be a substantial connection between th[e] [defendant's] contacts and the operative facts of the litigation"); *Shoppers Food Warehouse* v. *Moreno*, 746 A.2d 320, 336 (D.C. 2000) (requiring "only a

showing of a 'discernible relationship'"); *Kauffman Racing*, 930 N.E.2d at 796-797 (adopting "lenient" standard requiring only that forum contacts be "related to the operative facts of the controversy" (internal quotation marks omitted)).

c. A final approach endorsed by the Second Circuit and the California Supreme Court employs a sliding scale to determine the requisite nexus in each case. *See Chew* v. *Dietrich*, 143 F.3d 24, 29 (2d Cir. 1998); *Von Co.* v. *Seabest Foods, Inc.*, 926 P.2d 1085, 1096-97 (Cal. 1997). Under this test, "the intensity of forum contacts and the connection of the claim to those contacts are inversely related." *Von*, 926 P.2d at 1097. In other words, the greater the extent of the forum contacts, "the lesser the relationship required between the contact and the claim"—and vice versa. *Id.* Although this approach "avoids the extremes" of the other tests, it has been criticized for "blur[ring] the distinction between general and specific jurisdiction." *Moki Mac*, 221 S.W.3d at 583.

3. As applied to the forum contacts Respondents alleged in this case—namely, AEPES's sales to unrelated third parties in Missouri and Wisconsin—these divergent views would yield different outcomes. As the District Court observed, those sales bear no causal connection to Respondents' alleged injury. Because Respondents contended that they paid inflated prices for gas they purchased from gas companies *other than* Petitioners, they "would have suffered the same injury even if none of [AEPES's sales to third parties in the forums] had taken place." *Kuenzle* v. *HTM Sport-Und Freizeitgerate A.G.*, 102 F.3d 453, 456-457 (10th Cir. 1996) (internal quotation marks omitted). Under a but-for test—or any other causation standard—

AEPES's sales to unrelated entities lack the requisite nexus to Respondents' claims.

But courts eschewing a causation standard might not come to the same conclusion. The Sixth Circuit, for example, might believe "[t]he operative facts [of Respondents' claims] are at least marginally related" to AEPES's sales to Missouri- and Wisconsin-based entities. *Bird*, 289 F.3d at 875. The California Supreme Court, too, possibly could think that AEPES's sales to unrelated third parties constitute sufficiently extensive contacts to "lesse[n] the relationship required between the contact and [Respondents'] claim." *Von*, 926 P.2d at 1097.

Those views would be wrong, but they point up the need for this Court's intervention. Indeed, the Court granted review of this issue once before, but was unable to resolve the split because the case could be decided on non-constitutional grounds. *See Shute*, 499 U.S. 585, 589-590 (1991). In the intervening years, the chorus of views on the issue has only grown louder—and more divergent. The Court should grant the writ and clarify that a plaintiff's claim only "arises out of or relates to" the defendant's forum conduct when a causal connection exists.

III. THESE IMPORTANT AND RECURRING PERSONAL JURISDICTION QUESTIONS REQUIRE THIS COURT'S INTERVENTION.

1. As the case law cited above demonstrates, questions regarding the scope of *Calder*'s express-aiming requirement and the meaning of the nexus prong arise frequently in personal jurisdiction cases. Nearly all circuits have had a chance to weigh in on both issues, resulting in deep, intractable splits. The lower courts have noted the disagreement, but

remain committed to their divergent positions. Indeed, the Ninth Circuit below refused to reconsider its anomalous view of the express-aiming prong *even after* this Court reversed the court's similarly expansive theory of personal jurisdiction in *Walden*. Pet. App. 118a-119a. Until this Court provides guidance on the proper standards, different tests for jurisdiction will govern throughout the country.

2. That guidance should come sooner rather than later. The splits are particularly troubling because several federal and state courts with overlapping jurisdiction have come to different conclusions regarding which tests should apply. As to the express-aiming requirement, the Ninth Circuit's holding that a forum need not serve as the focal point or location of the brunt of the harm, Pet. App. 60a, contrasts with the California Supreme Court's ruling that *Calder* "found jurisdiction proper" specifically "*because* California was the focal point both of the story and of the harm suffered." *Pavlovich*, 58 P.3d at 7 (international quotation marks and alterations omitted; emphasis added).

The problem is even worse for the nexus prong. While the Ninth Circuit applies a but-for causation test, Pet. App. 54a-55a, the states sitting within its jurisdiction have disagreed both with the court of appeals and with each other: Oregon applies the more restrictive quid-pro-quo causation test, *see Robinson*, 316 P.3d at 296-300, while California has endorsed a sliding-scale approach, *see Von*, 926 P.2d at 1097). The situation is much the same in the Tenth Circuit, where the federal court has embraced a middle-ground causation standard, *see Newsome*, 722 F.3d at 1271, but the Colorado Supreme Court has held that causation is irrelevant so long as a

defendant's conduct and the plaintiff's claim are related or connected, *see Foundation for Knowledge*, 234 P.3d at 681. The First Circuit, meanwhile, applies a restrictive proximate-cause standard, *Harlow*, 432 F.3d at 61, but the Massachusetts high court has opted for the but-for causation test, *Tatro*, 625 N.E.2d at 552-554.

This Court frequently grants review when a state high court and its regional circuit disagree. *See, e.g.*, *Johnson* v. *California*, 545 U.S. 162, 164 (2005); *Florida* v. *White*, 526 U.S. 559, 562-563 (11th Cir. 1999); *Hagan* v. *Utah*, 510 U.S. 399, 409 (1994); *Baldwin* v. *Alabama*, 472 U.S. 372, 374 (1985). It should do so again here to prevent due process protections from hinging on the happenstance of whether a suit proceeds in state or federal court.

3. Finally, the Questions Presented are important. This Court has shaped specific personal jurisdiction doctrine to "give a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Burger King*, 471 U.S. at 472 (internal quotation marks omitted). But the widespread disagreement in the lower courts concerning the express-aiming and nexus requirements eviscerates that predictability. Because this multi-district litigation happened to be consolidated in a district sitting in the Ninth Circuit, Petitioners were subject to that court's expansive view of personal jurisdiction. As a result, they must now defend themselves in Wisconsin and Missouri when the cases are returned to those forums for trial, even though the result would have been different if there had been no transfer as there is no allegation

they specially aimed their conduct at those states and no doubt that Respondents would have suffered the same injury if Petitioners had no contacts with the forums at all.

That result cannot be squared with the Due Process Clause. This Court should grant review and restore predictability to its rightful place in the jurisdictional analysis.

CONCLUSION

The petition should be held pending this Court's disposition of *OneOK, Inc.* v. *Learjet, Inc.*, No. 13-271. Should the Court deny the *OneOK* petition or grant the petition but affirm the Ninth Circuit's preemption ruling, this petition should be granted.

Respectfully submitted,

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