

No. 22-641

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**In The  
Supreme Court of the United States**

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DAIMLER TRUCKS NORTH AMERICA LLC,

*Petitioner,*

v.

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

*Respondents.*

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**On Petition For Writ Of Certiorari  
To The Court Of Appeal Of California,  
Second Appellate District**

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**BRIEF OF AMICI CURIAE ASSOCIATION OF  
SOUTHERN CALIFORNIA DEFENSE COUNSEL  
AND CIVIL JUSTICE ASSOCIATION OF  
CALIFORNIA IN SUPPORT OF  
PETITION FOR A WRIT OF CERTIORARI**

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**INTEREST OF AMICI CURIAE<sup>1</sup>**

Association of Southern California Defense Counsel (“ASCDC”) is the nation’s largest regional organization of lawyers devoted to defending civil actions, comprised of approximately 1,100 member-attorneys in Southern and Central California. ASCDC is actively involved in assisting the courts and organized bar in addressing legal issues of interest to its members and the public.

In addition to representation in appellate matters, ASCDC provides attorneys with specialized continuing legal education, representation in legislative matters, and multifaceted support, including a forum for the exchange of information and ideas focusing on the improvement of the administration of justice and litigation practice.

Founded in 1979, the Civil Justice Association of California (“CJAC”) is a nonprofit organization representing businesses, professional associations and financial institutions. Its principal purpose is to educate the public about ways to make our civil liability laws more fair, certain, economical and efficient.

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae, its members, or its counsel made a monetary contribution to its preparation or submission. The parties’ counsel of record received timely notice of the intent to file the brief.

CJAC and ASCDC (“amici”) and their constituent members are substantially interested in the development of clear and consistent procedural rules governing the exercise of personal jurisdiction by California courts under the Due Process Clause of the Fourteenth Amendment of the United States Constitution, and in regard to this case, the proper application of this Court’s established body of constitutional law articulating the doctrine of “specific jurisdiction,” including its recent decisions in *Ford Motor Co. v. Montana Eighth Judicial District Court*, \_\_\_ U.S. \_\_\_, 141 S.Ct. 1017, 1024-1025 (2021) (*Ford*) and *Bristol-Myers Squibb Co. v. Superior Court*, \_\_\_ U.S. \_\_\_, 137 S.Ct. 1773 (2017) (*Bristol Myers*).



## SUMMARY OF THE ARGUMENT

The *Daimler Trucks* opinion is inconsistent with the specific jurisdiction test set forth in *Ford* and *Bristol-Myers*, among this Court’s other settled due process precedent. In particular, the California court misconstrues the “relatedness” and “reasonableness-fair play” prongs of that constitutional test. Moreover, as the petition aptly points out, the highest courts of numerous other states interpreting the same test have reached diametrically opposed conclusions under circumstances where the injury-causing accident did not occur in the forum. (*See* pet. at 24-32.) This stark contradiction poses a conflict regarding the proper exercise of personal jurisdiction by California and the several states.

Certiorari is therefore necessary to address important questions of constitutional law. This Court should conclusively define the limits on the exercise of “specific jurisdiction” over nonresident defendants under California’s long-arm statute consistent with the mandates of the Fourteenth Amendment.

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**REASONS WHY THE  
PETITION SHOULD BE GRANTED**

**A. Issue Presented**

Consistent with the Fourteenth Amendment of the United States Constitution, may a nonresident-defendant truck manufacturer be sued in California under the doctrine of “specific jurisdiction” for an accident occurring in another state because it manufactured, designed or sold a vehicle that may be used “across state lines?”

**B. Factual and Procedural Background**

Petitioner Daimler Trucks North America, LLC (hereafter Daimler) is a Delaware limited liability company with its principal place of business in Portland, Oregon. Daimler owns the Freightliner brand. Although Daimler does not manufacture or assemble vehicles in California, according to the Court of Appeal, “it does conduct considerable business in the state.” App. 3a.

Among those California business activities, “Daimler advertises Freightliner trucks, including the Cascadia [model] specifically, across multiple national and regional media that is also directed to California. Daimler contracts with 32 authorized dealerships in California that sell Freightliners. Customers can order the vehicles at these dealerships; Daimler then assembles the specified vehicles and delivers them to the dealership. Between 4,000 to 5,000 trucks were sold in California each year from 2014 to 2020.” App. 3a. Customers have access to local shops that offer maintenance, crash repair and other repair services for Daimler’s Freightliner products. *Id.* Daimler does not own or operate the dealerships, maintenance or repair facilities located in California. Pet. at 17.

Daimler sold a Freightliner Cascadia to a Nebraska company, Werner Enterprises, and shipped that truck to Werner in Georgia. The Nebraska purchaser thereafter sold the truck “used” to another company based in California, where it was driven by Yongquan Hu and Ran Gao, both of whom are California residents and long-distance tractor-trailer drivers. Hu and Gao operated the Freightliner in the process of making a delivery for their employer to the east coast. On March 21, 2020, they were on the return trip to California, transporting goods from New Jersey. While Gao was driving on Interstate 40 in Oklahoma City, Oklahoma, the tractor-trailer was involved in a single vehicle accident. Mr. Hu was seriously injured. The Freightliner Cascadia involved in Mr. Hu’s Oklahoma accident was designed in Oregon; built in Mexico. Mr.



Hu and his wife Jinghua Ren (collectively, Hu) are plaintiffs and in real parties in interest. App. 2a-3a.

**C. The California Court of Appeal misconstrues and misapplies the “specific jurisdiction” test governing personal jurisdiction under California’s long-arm statute in a manner that does not comport with Fourteenth Amendment due process principles**

By virtue of its long-arm statute, “California courts may exercise personal jurisdiction on any basis consistent with the Constitution of California and the United States. Cal. Code Civ. Proc. § 410.10. The exercise of jurisdiction over a nonresident defendant comports with these Constitutions ‘if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate “traditional notions of fair play and substantial justice.’”” *Pavlovich v. Superior Court*, 29 Cal.4th 262, 268, 58 P.3d 2, 127 Cal.Rptr.2d 329 (2002). “[T]he minimum contacts test asks ‘whether the “quality and nature” of the defendant’s activity is such that it is “reasonable” and “fair” to require him to conduct his defense in that State.’ The test ‘is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite “affiliating circumstances” are present.’” *Snowney v. Harrah’s Entertainment, Inc.*, 35 Cal.4th 1054, 1061, 112 P.3d 28, 29 Cal.Rptr.3d 33 (2005) (citations omitted).

According to the California Supreme Court, when applying that state’s long-arm statute to the broadest extent possible: “Personal jurisdiction may be either general or specific. A nonresident defendant may be subject to the general jurisdiction of the forum if his or her contacts in the forum state are ‘substantial . . . continuous and systematic.’” *Vons Companies, Inc. v. Seabest Foods, Inc.*, 14 Cal.4th 434, 445, 926 P.2d 1085, 58 Cal.Rptr.2d 899 (1996). “If the nonresident defendant does not have substantial and systematic contacts in the forum sufficient to establish general jurisdiction, he or she still may be subject to the specific jurisdiction of the forum. . . .” 14 Cal.4th at 446.

“When determining whether specific jurisdiction exists, courts consider the “relationship among the defendant, the forum, and the litigation.” . . . A court may exercise specific jurisdiction over a nonresident defendant only if: (1) ‘the defendant has purposefully availed himself or herself of forum benefits’ . . . ; (2) ‘the “controversy is related to or ‘arises out of’ [the] defendant’s contacts with the forum”’; and (3) “the assertion of personal jurisdiction would comport with ‘fair play and substantial justice’ . . . .” *Pavlovich*, 29 Cal.4th at 269 (internal citations omitted).

“When no conflict in the evidence exists . . . [California courts agree that] the question of jurisdiction is purely one of law and the reviewing court engages in an independent review of the record.” *Vons*, 14 Cal.4th at 449; *Jayone Foods, Inc. v. Aekyung Indus. Co.*, 31 Cal.App.5th 543, 553, 242 Cal.Rptr.3d 705 (2019). A forum court has “general” or all-purpose jurisdiction over

defendants who are “at home in the court’s forum” – being domiciled or having their principal base of operations where the lawsuit is filed. *Farina v. SAVWCL III, LLC*, 50 Cal.App.5th 286, 294, 263 Cal.Rptr.3d 756 (2020). General jurisdiction allows a court to hear any claim against a defendant, no matter where the underlying events happened. By contrast, in a forum where a defendant is “not at home,” a court may not exercise all-purpose jurisdiction, but may still exercise “specific” or case-linked jurisdiction using the factors discussed above. Case-linked jurisdiction allows a court to adjudicate only those disputes relating to a defendant’s contact with the forum and the event that allegedly harmed the plaintiff there. *Id.*, citing *Bristol-Myers*, 137 S.Ct. at 1780; *Jayone Foods*, 31 Cal.App.5th at 553.

Daimler’s operations within California do not remotely warrant the exercise of “general jurisdiction.” This Court so held in *Daimler AG v. Bauman*, 571 U.S. 117 (2014) (*Bauman*), after the Ninth Circuit Court of Appeals suggested that “agency” principles would suffice to invoke general jurisdiction. The plaintiffs in *Bauman* were Argentinian nationals whose relatives were injured (often “disappeared”) during Argentina’s Dirty War between 1976 and 1983. The *Bauman* plaintiffs alleged that Daimler AG’s subsidiary was complicit in the Argentinian government’s conduct. California was chosen as the forum because the subsidiary’s extensive U.S. operations were “continuous and systematic”; in particular, sales and service of its vehicles within California accounting for 2.4 percent

and billions of dollars of its total worldwide revenues. *Id.* at 757, 767.

*Bauman* reversed the exercise of jurisdiction in California: “Continuous and systematic” by itself is not enough. The defendant must be “at home” in the forum to be amenable to general personal jurisdiction in the sense of being domiciled or having a primary base of operations there: “Specific jurisdiction has been cut loose from *Pennoyer*’s sway, but we have declined to stretch general jurisdiction beyond limits traditionally recognized.” *Id.* at 757-758, discussing the rule in *Pennoyer v. Neff*, 95 U.S. 714 (1878), as restricting exercise of personal jurisdiction to “the geographic bounds of the forum.”<sup>2</sup> This Court reasoned that although “special jurisdiction” is not strictly tied to *Pennoyer*’s boundary test, for general jurisdiction purposes, the Ninth Circuit’s over-emphasis on “agency” violated due process:

[T]he inquiry into importance [of agency services provided to the parent or its customers] stacks the deck, for it will always yield a pro-jurisdiction answer. . . . The Ninth Circuit’s agency theory thus appears to subject foreign corporations to general jurisdiction whenever they have an in-state subsidiary or affiliate, an outcome that would sweep beyond even the “sprawling view of general jurisdiction”

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<sup>2</sup> “In what we have called the ‘paradigm’ case, an individual is subject to general jurisdiction in her place of domicile. . . . And the ‘equivalent’ forums for a corporation are its place of incorporation and principal place of business.” *Ford*, 141 S.Ct. at 1024, internal citations omitted.

we rejected in *Goodyear [Dunlop Tires Operations, S.A. v. Brown]*, 131 S.Ct. 2846 (2011)].

*Bauman*, 134 S.Ct. at 759-760, brackets added.

Based on such agency arguments, plaintiffs' counsel in *Bauman* confirmed that "under the proffered jurisdictional theory, if a Daimler-manufactured vehicle overturned in Poland, injuring a Polish driver and passenger, the injured parties could maintain a design defect suit in California. . . . Exercises of personal jurisdiction so exorbitant, we hold, are barred by due process constraints on the assertion of adjudicatory authority." *Bauman*, 571 U.S. at 121-122.

Understandably, the lower courts in the present case limited their analysis to the factors governing specific jurisdiction as opposed to general jurisdiction. App. 21a. However, both the nature of Hu's arguments below and the reasons given by the California courts echo the "exorbitant" "sweeping" exercise of personal jurisdiction precluded by *Bauman*. This Court's more recent teachings in *Ford* and *Bristol-Myers* instruct that specific jurisdiction over a nonresident is supposed to apply to a far "narrower class of claims" than general jurisdiction. *Ford*, 141 S.Ct. at 1024; *Bristol-Myers*, 137 S.Ct. at 1779.

But much like the circumstances of *Bauman*, Daimler's sales and service of trucks within California were erroneously taken as proxy for the first prong of specific jurisdiction (purposeful availment). App. 8a. The California courts' treatment of the remaining factors – i.e., whether the defendant's contacts with the

forum are specifically “related to” Hu’s accident or injury – do not pass constitutional muster.

*Bristol-Myers* is instructive regarding the focus on plaintiff’s “residence” as a factor when determining specific jurisdiction. There, defendant pharmaceutical company was “incorporated in Delaware and headquartered in New York, and it maintain[ed] substantial operations in both New York and New Jersey.” *Bristol-Myers*, 137 S.Ct. at 1777-1778. The company also maintained five laboratory and research facilities within California with around 160 employees, a legislative lobbyist in Sacramento and received approximately 1 percent of its national sales revenues by selling over 187 million pills of the drug, Plavix in this State. *Id.* at 1778. A group of plaintiffs – consisting of 86 California residents and 592 residents from 33 other States – filed eight separate complaints in California Superior Court, alleging that Plavix had damaged their health. This Court reversed the Superior Court’s finding of general jurisdiction over those complaints, but ultimately by majority opinion, concluded that by using a “sliding scale” the defendant’s contacts in the State were sufficient to uphold jurisdiction over the actions by both resident and nonresident plaintiffs alike. *Id.*

This Court reversed the finding of jurisdiction over the claims of all the nonresident plaintiffs whose injuries did not occur in California, holding that “specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the State.” *Bristol-Myers*, 137 S.Ct. at 1781 (internal citations

omitted). This Court’s “sliding scale” approach was rejected. The proper test for the exercise of “case-linked” or specific jurisdiction is that “the suit must arise out of or relate to the defendant’s contacts with the forum.” *Id.* at 1780. The nonresidents’ claims thus “involve[d] no harm in California and no harm to California residents.” *Id.* at 1782.

The “related to” test spelled out by *Bristol-Myers*, and embraced by *Ford*, illustrates the point. Ford Motor Company, a worldwide auto manufacturer was sued by residents of Montana and Minnesota involving accidents that occurred within those States while using Ford’s products. The *Ford* Court called this a “paradigm case of specific jurisdiction” – an auto manufacturer that deliberately served a market for its vehicles in a forum state being sued for a claim alleging that one of those vehicles was defective, that it injured a forum resident, and that the injury occurred in the forum state. *Ford*, 141 S.Ct. at 1027-1028 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291-292 (1980)); *Bauman*, 34 S.Ct. at 754 n.5 (“if a California plaintiff, injured in a California accident involving a Daimler-manufactured vehicle, sued Daimler in California court alleging that the vehicle was defectively designed, that court’s adjudicatory authority would be premised on specific jurisdiction.”).

To invoke specific jurisdiction in a personal injury action, this means that the plaintiff’s injury must in some concrete fashion be related to defendant’s “connected activities” within the forum state where both the plaintiff’s injury occurred and the lawsuit is filed.

Thus, according to *Bristol-Myers* and *Ford*, “the phrase ‘relate to’ incorporates real limits” and “does not mean anything goes.” *Ford*, 141 S.Ct. at 1026 (citing *Bristol-Myers*, 137 S.Ct. at 1779-1781).

On this record, the published decision of the California Court of Appeal misapplied the “relatedness to the controversy” portion of the test in a manner that recognizes no real limits. The California Court of Appeal’s opinion concluded that specific jurisdiction existed because Daimler advertised its Freightliner trucks nationwide, contracting with 32 affiliated dealers in California that sold thousands of trucks in this State. App. 12a. The defendant also sold truck parts to multiple California dealers, some of which provide truck repair services performed by mechanics who were trained by Daimler. *Id.* Those and other facts (such as, nationwide telephone and online internet support provided to its customers) demonstrated that Daimler “does substantial business in California” which is generally related to its trucks. *Id.*

If that rationale continues to be the “test” followed in California, and is adopted by other states, simply labeling the defendant’s nationwide operations as a basis for “special jurisdiction” based upon activities that are unconnected with the forum state is all that would be required to routinely “yield a pro-jurisdiction answer” – contrary to the established limits of due process. *See Bauman*, 134 S.Ct. at 759-760.



As in *Bauman*, *Bristol-Myers*, and *Ford*, unless the defendant’s specific and “substantial business” activity within California is “connected activity” which specifically “relates to” the injury that is the subject of the plaintiff’s claim, no personal jurisdiction is vested in here. *See generally* (*In re del Valle Ruiz*, 939 F.3d 520, 530 (2d Cir. 2019) (citing *Bristol-Myers*, 137 S.Ct. at 1781 [“holding that unrelated contacts cannot diminish the required showing of an affiliation between the forum and the underlying controversy”; i.e., the accident or resulting injury caused by defendant’s operations in the forum]).

“[T]here must be an ‘affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation.’” *Bristol-Myers*, 137 S.Ct. at 1780; *see also Ford*, 141 S.Ct. at 1031 (*Bristol-Myers* plaintiffs who were allegedly injured in other states “were engaged in forum-shopping – suing in California because it was thought plaintiff-friendly, even though their cases had no tie to the State.”).

The California Court of Appeal principally focuses on the residency of Hu and his wife who incurred medical expenses in California. E.g., App. 20a. But as illustrated by *Ford* and *Bristol-Myers*, it is both the place of the plaintiff’s injury as well as his residence that are “relevant in assessing the link between defendant’s forum contacts and the plaintiff’s suit.” *Ford*, 141 S.Ct. at 1031; *Bristol-Myers*, 137 S.Ct. at 1780.

Regarding Daimler’s nationwide advertising and sales: “[E]ven regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim [involving accidents or injuries] unrelated to those sales. . . .” *Bristol-Myers*, 137 S.Ct. at 1781. Daimler’s “other” activities, including telephone and online internet support, must bear some direct relationship to the specific injury being claimed by the plaintiff that occurred within the forum State.

The dissenting justices of the California Supreme Court appropriately cautioned against this approach in *Bristol-Myers* before certiorari was granted; regrettably, the California Court of Appeal’s decision here now “expands specific jurisdiction to the point that, for a large category of defendants [who are haled into the forum to defend claims, including Daimler], it becomes indistinguishable from general jurisdiction.” *Bristol-Myers*, 377 P.3d at 896 (bracketed text added).

Exercising “case-specific” personal jurisdiction for the reasons stated by the California Court of Appeal cannot be reconciled with *Ford* and *Bristol-Myers*.

**D. The California Court of Appeal’s opinion conflicts with better-reasoned authority by numerous courts in other state and federal jurisdictions applying the same “specific jurisdiction” standard**

The conflict resulting from the California Court of Appeal’s opinion is immediate and apparent. The significant majority of state and federal courts applying

due process standards after *Ford* and *Bristol-Myers* explicitly reject “specific jurisdiction” in similar cases where the injury or accident occurred outside of the forum. For example:

- **Rhode Island.** *Martins v. Bridgestone Americas Tire Operations, LLC*, 266 A.3d 753, 760-761 (R.I. 2022): Trucking accident resulted in death of Rhode Island resident in Connecticut while en route to Rhode Island. Wrongful death-products liability action will not lie in Rhode Island despite extensive business contacts.

- **Oregon.** *Cox v. HP Inc.*, 492 P.3d 1245, 1247, 1254-1255 (Or. 2021). Among the “real limits” imposed by *Ford* according to the Oregon Supreme Court when rejecting specific jurisdiction over a resident’s wrongful death claim: “Ford had systematically served a market in Montana and Minnesota for the very vehicles’ that, the plaintiffs alleged, had ‘malfunctioned and injured them in those States.’” Citing *Ford*, 141 S.Ct. at 1028.

- **New York.** *Aybar v. Aybar*, 37 N.Y.3d 274, 177 N.E.3d 1257 (2021). New York residents sued in New York alleging products liability claims against Ford and Goodyear arising from an injury-accident in Virginia. Held, no personal jurisdiction for the Virginia accident despite defendants’ business contacts in New York.

- **Fourth Circuit (South Carolina).** *Wallace v. Yamaha Motors Corp., U.S.A.*, 2022 WL 61430 at 4-8 (4th Cir. 2022): “The motorcycle from the accident was

designed elsewhere, manufactured elsewhere, distributed elsewhere, and sold elsewhere. The accident that resulted in Wallace’s injuries took place elsewhere [in Florida]. . . . In short, Wallace has not shown any connection between Yamaha’s business in South Carolina and the accident that gives rise to her claims.”

- **Ninth Circuit (Arizona).** *LNS Enters. v. Cont’l Motors, Inc.*, 22 F.4th 852, 862 (9th Cir. 2022). Action arising from a nonfatal airplane crash. Arizona plaintiffs failed to meet their burden that aviation defendants had sufficient minimum contacts with Arizona to subject them to claim-linked jurisdiction in the forum. Although the record shows that Textron had some contacts with Arizona, plaintiffs failed to establish that their specific claim arises out of or relates to that contact.

- **First Circuit (New Hampshire).** *Vapotherm, Inc. v. Santiago*, 38 F.4th 252, 261 (1st Cir. 2022). Business interference and employment claims: “[M]ere injury to a forum resident is not a sufficient connection to the forum” for specific jurisdiction. (Citing *Walden v. Fiore*, 571 U.S. 277, 289-290 (2014).)

- **Cf. Texas.** *Luciano v. SprayFoam Polymers.com LLC*, 625 S.W.3d 1 (Tex. 2021). A spray foam manufacturer’s contacts in Texas were specifically related to the resident-plaintiff’s “injury *in Texas* giving rise to the lawsuit.” *Id.* at 17 (italics added).



## CONCLUSION

None of Daimler's in-forum activities were sufficiently "related to" Hu's Oklahoma City accident to justify personal jurisdiction in the California courts. The Freightliner Cascadia was designed in Oregon and made in Mexico. The truck was sold to a company in Nebraska and shipped directly to a location in Georgia. Daimler does not own property, sales or repair operations in California. Neither Mr. Hu nor his employer relied upon any advertisement, telephone or internet communications that resulted in the Oklahoma accident. The fact that his employer's interstate delivery circuit begins or ends in California is too attenuated and remote.

Reliance on Daimler's unconnected California activities in relation to this Oklahoma single-vehicle accident amounts to an "exorbitant exercise" of personal jurisdiction without real limits, which a majority of courts following *Bristol-Myers* and *Ford* soundly rebuff. California misapplies the doctrine of specific jurisdiction in an overly broad manner that cannot be reconciled with the limitations imposed by substantial notions of due process.

Accordingly, Daimler's petition should be granted.

Respectfully submitted,

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