No. 20-

IN THE
Supreme Court of the United States

IQVIA INC.,
Petitioner,

v.

FLORENCE MUSSAT, M.D. S.C., on behalf of itself and all others similarly situated,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a district court with jurisdiction coextensive with a state court in the district can exercise personal jurisdiction over absent class members' claims as part of a putative class action when the court concededly could not exercise personal jurisdiction over the absent class members' claims if they had been brought in individual suits.

PARTIES TO THE PROCEEDING

IQVIA Inc., petitioner on review, was the defendant-appellee below.

Florence Mussat, M.D., S.C., respondent on review, was the plaintiff-appellant below.

The complaint listed as additional defendants ten John Does, but they are not parties to this petition.

RULE 29.6 DISCLOSURE STATEMENT

IQVIA Inc.'s parent corporation is IQVIA Holdings Inc., and IQVIA Holdings Inc. owns 10% or more of IQVIA Inc.'s stock.

RELATED PROCEEDINGS

United States Court of Appeals for the Seventh Circuit:

Mussat v. *IQVIA Inc.*, No. 19-1204 (7th Cir. Mar. 11, 2020) (reported at 953 F.3d 441), *reh'g denied* (May 14, 2020).

United States District Court for the Northern District of Illinois:

Mussat v. *IQVIA Inc.*, No. 17-cv-8841, 2018 WL 5311903 (N.D. Ill. Oct. 26, 2018).

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING ii

RULE 29.6 DISCLOSURE STATEMENT iii

RELATED PROCEEDINGS iv

TABLE OF AUTHORITIES vii

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

INTRODUCTION 2

STATEMENT 4

REASONS FOR GRANTING THE PETITION 8

I. THE DECISION BELOW CANNOT BE SQUARED WITH *BRISTOL-MYERS* OR THE PRINCIPLES UNDERLYING PERSONAL JURISDICTION 8

A. The decision below conflicts with *Bristol-Myers* and this Court's other personal-jurisdiction cases 8

B. The decision below also conflicts with the principles underpinning personal jurisdiction 19

II. WHETHER *BRISTOL-MYERS* APPLIES TO CLASS ACTIONS IS AN IMPORTANT, RECURRING QUESTION THIS COURT SHOULD RESOLVE GIVEN THE CONFLICT IN LOWER COURTS, AND THIS CASE IS AN IDEAL VEHICLE TO DO SO 24

TABLE OF CONTENTS—Continued

Page

CONCLUSION 32

APPENDIX

APPENDIX A—Seventh Circuit's Opinion (Mar. 11, 2020) 1a

APPENDIX B—District Court's Memorandum Opinion and Order (Oct. 26, 2018) 15a

APPENDIX C—Seventh Circuit's Order Denying Rehearing (May 14, 2020) 30a

TABLE OF AUTHORITIES

Page

CASES:

Amchem Prods., Inc. v. *Windsor*,
521 U.S. 591 (1997) 21

Amgen Inc. v. *Connecticut Ret. Plans & Tr. Funds*,
568 U.S. 455 (2013) 26

Appleton Elec. Co. v. *Advance-United Expressways*,
494 F.2d 126 (7th Cir. 1974) 11

AT&T Mobility LLC v. *Concepcion*,
563 U.S. 333 (2011) 20, 21

BNSF Ry. Co. v. *Tyrrell*,
137 S. Ct. 1549 (2017) 14

Braver v. *Northstar Alarm Servs., LLC*,
329 F.R.D. 320 (W.D. Okla. 2018) 29

Bristol-Myers Squibb Co. v. *Superior Court of California*,
137 S. Ct. 1773 (2017) .... *passim*

Carpenter v. *PetSmart, Inc.*,
441 F. Supp. 3d 1028 (S.D. Cal. 2020) 25

Cruson v. *Jackson Nat'l Life Ins. Co.*,
954 F.3d 240 (5th Cir. 2020) 31

Cyan, Inc. v. *Beaver Cty. Emps. Ret. Fund*,
137 S. Ct. 2325 (2017) 26

Daimler AG v. *Bauman*,
571 U.S. 117 (2014) 14, 30, 31

DeBernardis v. *NBTY, Inc.*,
No. 17 C 6125, 2018 WL 461228 (N.D. Ill. Jan. 18, 2018) 27

TABLE OF AUTHORITIES—Continued

Page

Devlin v. *Scardelletti*,
536 U.S. 1 (2002) 11, 19, 22

Fitzhenry-Russell v. *Dr. Pepper Snapple Grp., Inc.*,
No. 17-cv-00564 NC, 2017 WL 4224723 (N.D. Cal. Sept. 22, 2017) 29

Gadomski v. *Equifax Info. Servs., LLC*,
No. 2:17-cv-00670-TLN-AC, 2020 WL 3841041 (E.D. Cal. July 8, 2020) 25, 26

General Tel. Co. of Sw. v. *Falcon*,
457 U.S. 147 (1982) 12

Goodyear Dunlop Tires Operations, S.A. v. *Brown*,
564 U.S. 915 (2011) 9, 13, 19, 23

Guaranty Tr. Co. of New York v. *York*,
326 U.S. 99 (1945) 28

Hanson v. *Denckla*,
357 U.S. 235 (1958) 23

Helicopteros Nacionales de Colombia, S.A. v. *Hall*,
466 U.S. 408 (1984) 9, 10

Hertz Corp. v. *Friend*,
559 U.S. 77 (2010) 22

Insurance Corp. of Ireland v. *Compagnie des Bauxites de Guinee*,
456 U.S. 694 (1982) 18, 19

International Shoe Co. v. *Washington*,
326 U.S. 310 (1945) 9

TABLE OF AUTHORITIES—Continued

Page

J. McIntyre Mach., Ltd. v. *Nicastro*, 564 U.S. 873 (2011) 11, 19

Jones v. *Depuy Synthes Prods., Inc.*, 330 F.R.D. 298 (N.D. Ala. 2018) 25

Knotts v. *Nissan N. Am., Inc.*, 346 F. Supp. 3d 1310 (D. Minn. 2018) 25

Maclin v. *Reliable Reps. of Tex., Inc.*, 314 F. Supp. 3d 845 (N.D. Ohio 2018) 29

Microsoft Corp. v. *Baker*, 137 S. Ct. 1702 (2017) 26

Mississippi Pub. Corp. v. *Murphree*, 326 U.S. 438 (1946) 17

Molock v. *Whole Foods Mkt. Grp., Inc.*, 952 F.3d 293 (D.C. Cir. 2020) .... *passim*

Omni Cap. Int'l, Ltd. v. *Rudolf Wolff & Co.*, 484 U.S. 97 (1987) 16

Ortiz v. *Fibreboard Corp.*, 527 U.S. 815 (1999) 12, 21

Osborne v. *Subaru of Am., Inc.*, 243 Cal. Rptr. 815 (Ct. App. 1988) 26

Phillips Petroleum Co. v. *Shutts*, 472 U.S. 797 (1985) 10, 12

Ponzio v. *Mercedes-Benz USA, LLC*, 447 F. Supp. 3d 194 (D.N.J. 2020) 29

Ruhrgas AG v. *Marathon Oil Co.*, 526 U.S. 574 (1999) 8

TABLE OF AUTHORITIES—Continued

Page

Shady Grove Orthopedic Assocs., P.A. v. *Allstate Ins. Co.*, 559 U.S. 393 (2010) 14

Taylor v. *Sturgell*, 553 U.S. 880 (2008) 24

TC Heartland LLC v. *Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514 (2017) 18

Tyson Foods, Inc. v. *Bouaphakeo*, 136 S. Ct. 1036 (2016) 21, 28

United States v. *L. A. Tucker Truck Lines, Inc.*, 344 U.S. 33 (1952) 18

Walden v. *Fiore*, 571 U.S. 277 (2014) .... *passim*

Wal-Mart Stores, Inc. v. *Dukes*, 564 U.S. 338 (2011) 21

Wenokur v. *AXA Equitable Life Ins. Co.*, No. CV-17-00165-PHX-DLR, 2017 WL 4357916 (D. Ariz. Oct. 2, 2017) 25

World-Wide Volkswagen Corp. v. *Woodson*, 444 U.S. 286 (1980) .... *passim*

CONSTITUTIONAL PROVISION:

U.S. Const. amend. XIV, § 1 2

STATUTES:

28 U.S.C. § 1254(1) 2

28 U.S.C. § 1332 11

28 U.S.C. § 1332(d)(2) 30

TABLE OF AUTHORITIES—Continued

Page

Rules Enabling Act, 28 U.S.C. § 2072(b) 21

Telephone Consumer Protection Act, 42 U.S.C. § 227 4

RULES:

Fed. R. Civ. P. 4 16

Fed. R. Civ. P. 4(c)-(j) 16

Fed. R. Civ. P. 4(e) 16

Fed. R. Civ. P. 4(k) .... *passim*

Fed. R. Civ. P. 4(k)(1) 2, 15, 17, 28

Fed. R. Civ. P. 4(k)(1)(A) 15, 16, 28

Fed. R. Civ. P. 4(k)(1)(B) 17

Fed. R. Civ. P. 4(k)(2) 17

Fed. R. Civ. P. 12(f) 32

Fed. R. Civ. P. 14 17

Fed. R. Civ. P. 18(a) 13

Fed. R. Civ. P. 19 17

Fed. R. Civ. P. 20 13

Fed. R. Civ. P. 23 .... *passim*

Fed. R. Civ. P. 23(a) 12

Fed. R. Civ. P. 23(b)(3) 13

Fed. R. Civ. P. 23(f) 6, 26, 30

Fed. R. Civ. P. 23 committee's notes to 1998 amendment, subd. (f) 26, 30

Fed. R. Civ. P. 24 13

Fed. R. Civ. P. 82 .... 7, 17, 18

TABLE OF AUTHORITIES—Continued

Page

LEGISLATIVE MATERIAL:

S. Rep. No. 109-14 (2005), *as reprinted in* 2005 U.S.C.C.A.N. 3 21

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TABLE OF AUTHORITIES—Continued

Page

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4 Charles Alan Wright, Arthur R. Miller & Adam N. Steinman, Federal Practice and Procedure: Civil § 1067.2 (4th ed. 2020 update) 25

6A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure: Civil § 1588 (3d ed. 2020 update) 13

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PETITION FOR A WRIT OF CERTIORARI

IQVIA Inc. respectfully petitions for a writ of certiorari to review the judgment of the Seventh Circuit in this case.

OPINIONS BELOW

The Seventh Circuit's opinion is reported at 953 F.3d 441. Pet. App. 1a-14a. The District Court's opinion is unreported, but available at 2018 WL 5311903. *Id.* at 15a-29a. The Seventh Circuit's opinion denying rehearing and rehearing en banc is unreported. *Id.* at 30a-31a.

JURISDICTION

The Seventh Circuit entered judgment on March 11, 2020. IQVIA's timely petition for rehearing and

rehearing en banc was denied on May 14, 2020. On March 19, 2020, the Court extended the time within which to file a petition for a writ of certiorari to 150 days from the date of an order denying a timely petition for rehearing. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1, provides:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law.

Rule 4(k)(1) of the Federal Rules of Civil Procedure provides, in relevant part:

> Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant * * * who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located * * * .

INTRODUCTION

Respondent has asked a district court to certify a nationwide class to adjudicate putative class members' claims that the court would have no jurisdiction to hear if the claims were brought in separate actions. It is the most settled of law that a court must have personal jurisdiction over a defendant as to each claim it decides. And in *Bristol-Myers Squibb Co.* v. *Superior Court of California*, 137 S. Ct. 1773 (2017), this Court made clear that the fact that one would-be plaintiff's claims are similar to another's cannot create personal jurisdiction where there

otherwise would be none. There is, in other words, no aggregate-litigation exception to personal jurisdiction's requirements.

Those principles should have decided this case. Yet the Seventh Circuit reached the opposite conclusion by reading *Bristol-Myers* to "not apply to the case of a nationwide class action filed in federal court under a federal statute." Pet. App. 3a. In doing so, the court below ignored *Bristol-Myers*' teachings, including that the personal-jurisdiction inquiry is defendant and claim focused. It also misapprehended the relationship, under Federal Rule of Civil Procedure Rule 4(k), between the personal jurisdiction exercised by federal and state courts. And it disregarded the federalism and liberty interests that animate personal jurisdiction.

This case squarely presents the important question that the Court reserved in *Bristol-Myers*: whether a federal court can exercise personal jurisdiction over the federal-law claims of putative class members that the court would not have personal jurisdiction to hear if the claims were brought separately. *See Bristol-Myers*, 137 S. Ct. at 1783-84; *see also id.* at 1789 n.4 (Sotomayor, J. dissenting). That question has significant consequences for businesses and federalism alike. If the Seventh Circuit's rule is allowed to stand, plaintiffs will be able to manufacture jurisdiction in a favorable forum by tacking on otherwise improper claims to a single properly brought one. That, in turn, will prompt forum shopping and erase the distinction between general and specific jurisdiction. It will also enhance the power of certain States to regulate conduct outside of their

borders, while diminishing the power of other States to regulate conduct within their own.

The Court should grant the petition.

STATEMENT

1. Respondent Florence Mussat, an Illinois doctor, alleges that she received two unsolicited faxes inviting her to participate in a market-research study that did not contain an opt-out notice required by federal law. Pet. App. 2a. Mussat brought a putative class action against IQVIA under the Telephone Consumer Protection Act (TCPA), 42 U.S.C. § 227, on behalf of anyone in the United States who had received a similar fax from IQVIA in the last four years. Pet. App. 2a. IQVIA moved to strike the class allegations in part, explaining that the district court would lack personal jurisdiction over the claims of putative class members who did not receive faxes in Illinois and thus could not certify a class including non-Illinois residents. *Id.*

2. The district court explained that this Court's recent guidance in *Bristol-Myers* framed the parties' dispute. *See* Pet. App. 21a-28a. There, 86 California residents and 592 plaintiffs from other States sued Bristol-Myers in California, alleging that they were injured when they took Bristol-Myers's drug, Plavix. *Bristol-Myers*, 137 S. Ct. at 1778. All agreed that the out-of-state plaintiffs' claims had no connection with California: They "were not prescribed Plavix" there; they "did not purchase Plavix" there; and their claims had no causal connection to anything Bristol-Myers did in California. *Id.* at 1778, 1781. Even so, the California Supreme Court upheld the lower court's assertion of specific jurisdiction over the nonresidents' claims because they were "similar in

several ways" to the California residents' claims. *Id.* at 1778-79.

This Court reversed. It explained that there was no "adequate link between the State and the nonresidents' claims." *Id.* at 1781. "The mere fact that *other* plaintiffs" had allegedly been harmed in California by similar tortious conduct by the defendant "'d[id] not allow the State to assert specific jurisdiction over the nonresidents' claims," because "a defendant's relationship with a third party, standing alone, is an insufficient basis for jurisdiction." *Id.* at 1781 (alteration omitted) (quoting *Walden* v. *Fiore*, 571 U.S. 277, 286 (2014)). In dissent, Justice Sotomayor noted that the Court had not considered whether the principles it announced would "apply to a class action in which a plaintiff injured in the forum State seeks to represent a nationwide class of plaintiffs." *Id.* at 1789 n.4 (Sotomayor, J., dissenting).

3. Applying *Bristol-Myers*, the district court agreed with IQVIA and concluded that the court would lack personal jurisdiction over the non-residents' claims. Pet. App. 24a-25a. The court explained that it "d[id] not have general jurisdiction over IQVIA because it is a Delaware corporation and its principal place of business is in Pennsylvania." *Id.* at 24a. And as for specific jurisdiction, it explained that under *Bristol-Myers* the "focus of the personal jurisdiction inquiry * * * is the *defendant's* relationship to the forum state." *Id.* at 16a (emphasis added). Because the non-Illinois putative class members "did not receive the alleged faxes in Illinois, their claims do not relate to IQVIA's contacts with Illinois" and the district court would lack specific personal jurisdiction over

their claims. *Id.* The district court noted that it was joining a "litany of other courts" that had held "the Due Process Clause of the Fourteenth Amendment precludes the exercise of personal jurisdiction over a defendant in a putative class action where nonresident, absent members seek to aggregate their claims with an in-forum resident, even though the defendant allegedly injured the nonresidents outside of the forum." *Id.* at 21a-22a.

4. The Seventh Circuit granted Mussat's Federal Rule of Civil Procedure Rule 23(f) petition for interlocutory appeal and reversed. Pet. App. 2a-3a. The Seventh Circuit concluded that because *Bristol-Myers* "did *not* involve a certified class action," it "d[id] not govern." *Id.* at 7a. The court instead focused on the supposed "[d]ecades of case law" showing that the federal courts have not insisted on minimum contacts between all class members and the forum, and that reading *Bristol-Myers* to require such contacts would make it "far from the routine application of personal-jurisdiction rules that *Bristol-Myers* said it was performing." *Id.* at 7a, 9a.

The Seventh Circuit further observed that "absent class members are not full parties to the case for many purposes," including subject-matter jurisdiction and venue, and it could "see no reason why personal jurisdiction should be treated any differently." *Id.* at 10a-11a. The court therefore concluded that while "the named representatives must be able to demonstrate either general or specific personal jurisdiction," the "unnamed class members are not required to do so." *Id.* at 11a.

The court of appeals also rejected IQVIA's argument that Federal Rule of Civil Procedure 4(k)

prohibited the district court from exercising jurisdiction over the non-resident class members' claims because they could not sue IQVIA in Illinois separately. *Id.* at 11a-13a. The Seventh Circuit reasoned that Rule 4(k) "require[s] merely that a plaintiff comply with state-based rules on the service of process," and did not "establish[] an independent limitation on a federal court's exercise of personal jurisdiction." *Id.* at 12a. And it believed that construing Rule 4(k) otherwise would be "in tension with Federal Rule of Civil Procedure 82," and "mix[] up the concepts of service and jurisdiction." *Id.* In the court's view, Rule 4(k) addressed only "*how* and *where* to serve process," not "*on whom*" process could be served. *Id.*

The Seventh Circuit held that class actions were no different than other situations where the Federal Rules permit a representative to sue in their own names—including executors and trustees—and to have the court assess personal jurisdiction with respect to them, rather than those they represent. *Id.* at 12a-13a. To support this conclusion, the court pointed to Rule 23's consideration of the desirability of the forum as evidence "that a class action may extend beyond the boundaries of the state where the lead plaintiff brings the case." *Id.* at 13a. The Seventh Circuit therefore concluded that "if the court has personal jurisdiction over the defendant with respect to the class representative's claim, the case may proceed." *Id.* at 12a-13a.

5. IQVIA timely petitioned for rehearing and rehearing en banc, which the Seventh Circuit denied. *Id.* at 30a-31a. This petition followed.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW CANNOT BE SQUARED WITH *BRISTOL-MYERS* OR THE PRINCIPLES UNDERLYING PERSONAL JURISDICTION.

Bristol-Myers should have dictated the outcome here. Both the case's facts and the "settled principles" underlying it compel the conclusion that a district court cannot exercise personal jurisdiction over a defendant as to the claims of out-of-state unnamed class members.[1] 137 S. Ct. at 1781, 1783. The Seventh Circuit's contrary decision overlooked *Bristol-Myers*'s focus on claims, not parties, and its applicability to federal-court suits. The Seventh Circuit also disregarded the fairness-to-defendants and federalism principles that underlie the limits placed on courts' exercise of personal jurisdiction.

A. The decision below conflicts with *Bristol-Myers* and this Court's other personal-jurisdiction cases.

1. A court must have personal jurisdiction over a defendant before it can render a binding judgment. *Ruhrgas AG* v. *Marathon Oil Co.*, 526 U.S. 574, 584 (1999). And a court's exercise of personal jurisdiction must comport with "traditional notions of fair play

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[1] Like the court below, we use "out-of-state unnamed class member[s]" and similar formulations as shorthand for putative class members who did not receive IQVIA's allegedly unsolicited faxes in Illinois, and whose claims therefore do not arise out of or relate to IQVIA's Illinois contacts. *See* Pet. App. 6a. For personal jurisdiction, it is not the plaintiff's residence that matters, but "whether the defendant's conduct connects [it] to the forum in a meaningful way." *Walden*, 571 U.S. at 290.

and substantial justice," which means that the defendant must have "certain minimum contacts" with the forum State. *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted).

Specific jurisdiction requires "an affiliation between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915, 919 (2011) (internal quotation marks and alteration omitted).[2] A court can exercise specific jurisdiction only where the plaintiff's "cause of action * * * arise[s] out of or relate[s] to" the defendant's "activities in the forum State." *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 414 (1984); *see also id.* (the "essential foundation" of specific jurisdiction is the "relationship among the defendant, the forum, and the litigation"); *Goodyear*, 564 U.S. at 919 (specific jurisdiction "depends on an affiliation between the forum and the underlying controversy" such that a court asserting specific jurisdiction is "confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction" (internal quotation marks and alteration omitted)). In other words, "the plaintiff's claim must 'arise out of or relate to' the defendant's forum conduct." *Bristol-*

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[2] Because IQVIA is incorporated in Delaware and has its principal place of business in Pennsylvania, it is undisputed that the district court could not exercise general jurisdiction over the company. *See* Pet. App. 2a, 24a.

Myers, 137 S. Ct. at 1786 (quoting *Helicopteros*, 466 U.S. at 414).

2. The Seventh Circuit overlooked these foundational principles. Primarily, the Seventh Circuit focused on whether absent class members are "parties" to the action. Because they were not, the Seventh Circuit believed, they were irrelevant to the personal-jurisdiction calculus. Pet. App. 12a-14a.

This was a category error. Under *Bristol-Myers*, "[w]hat is needed" for a court to exercise personal jurisdiction "is a connection between the forum and the specific *claims* at issue." 137 S. Ct. at 1781 (emphasis added); *see also Molock* v. *Whole Foods Mkt. Grp., Inc.*, 952 F.3d 293, 306 (D.C. Cir. 2020) (Silberman, J., dissenting) ("[P]ersonal jurisdiction over claims asserted on behalf of absent class members must be analyzed on a claim-by-claim basis."). That is, a court exercises personal jurisdiction over a defendant as to *claims*, not *plaintiffs*. *Bristol-Myers*, 137 S. Ct. at 1781. Whether a putative class member is a "party" is therefore beside the point; the putative class members' *claims* are being adjudicated as part of the class action. *See Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797, 811 (1985) (explaining that the court in a class action "seeks to adjudicate the[] claims" of the absent class members). And the court must have personal jurisdiction over the defendant on those claims. *See Molock*, 952 F.3d at 307 (Silberman, J., dissenting) ("the party status of absent class members" is "irrelevant" to the personal-jurisdiction inquiry).

Accordingly, the district court here could not exercise personal jurisdiction over the out-of-state absent class members' claims because there is no "adequate

link between [Illinois] and the nonresidents' claims." *Bristol-Myers*, 137 S. Ct. at 1781. Just as the non-residents in *Bristol-Myers* had neither been prescribed nor purchased Plavix in California, *id.,* none of the putative out-of-state class members received IQVIA's faxes in Illinois. Therefore, as in *Bristol-Myers*, "[t]he mere fact that *other* plaintiffs" did "does not allow the State to assert specific jurisdiction over the non-residents' claims." *Id.*

The Seventh Circuit pointed to instances where courts have disregarded absent class members, such as complete diversity and venue. Pet. App. 10a-11a. But whether absent class members are "parties" is—again—irrelevant. In any event, complete diversity and venue are *statutory* constructs. *See Devlin* v. *Scardelletti*, 536 U.S. 1, 9-10 (2002) (complete diversity under 28 U.S.C. § 1332); *Appleton Elec. Co.* v. *Advance-United Expressways*, 494 F.2d 126, 139-140 (7th Cir. 1974) (venue under Section 16(4) of the Interstate Commerce Act). Personal jurisdiction, by contrast, is a *constitutional* requirement, *see World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 291 (1980), and is not amenable to the same policy-driven analysis that the Court employed in its statutory cases.

The Seventh Circuit relied on the fact that, unlike mass actions such as *Bristol-Myers*, the lead plaintiffs in a class action "earn the right to represent the interests of absent class members by satisfying" Rule 23. Pet. App. 10a. But courts cannot dispense with personal jurisdiction even when "carefully crafted * * * procedures could otherwise protect the defendant's interests." *J. McIntyre Mach., Ltd.* v. *Nicastro*, 564 U.S. 873, 883 (2011) (plurality op.). However

"careful" the "procedural protections outlined in Rule 23" are, Pet. App. 9a, they have no bearing on personal jurisdiction.

And they are not designed to. Rule 23's "procedural protections" exist to "protect the rights of absent class members," *Ortiz* v. *Fibreboard Corp.*, 527 U.S. 815, 847 (1999), while the "burden on the defendant," is personal jurisdiction's "primary concern." *World-Wide Volkswagen*, 444 U.S. at 292. Class claims burden defendants much more than unnamed plaintiffs who are "not haled anywhere to defend themselves upon pain of a default judgment." *Shutts*, 472 U.S. at 809. Moreover, Rule 23 focuses on the similarity of the claims asserted by the named and absent class members. It requires class representatives to demonstrate "that the individual's claim and the class claims will share common questions of law or fact and that the individual's claim will be typical of the class claims." *General Tel. Co. of Sw.* v. *Falcon*, 457 U.S. 147, 157 (1982); *see also* Fed. R. Civ. P. 23(a) (requiring commonality as well as typicality of "claims or defenses of the representative parties" and those of "the class"). And *Bristol-Myers* made clear that the similarity of the plaintiffs' asserted claims has nothing to do with personal jurisdiction. *See Bristol-Myers*, 137 S. Ct. at 1781. It held that even though the claims asserted by the California residents—over which the California courts indisputably had personal jurisdiction—were similar to the claims asserted by the non-California residents, the California courts still could not exercise personal jurisdiction over the non-residents' claims. *Id.* In short, "Rule 23's standards" are not "an adequate substitute for normal principles of

personal jurisdiction." *Molock*, 952 F.3d at 307 (Silberman, J., dissenting).

This is consistent with how other joinder rules treat personal jurisdiction. Personal-jurisdiction limitations apply when a new plaintiff is added under Rule 20; they apply when a party intervenes under Rule 24; and they apply when a claim is joined under Rule 18(a). 6A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure: Civil § 1588 (3d ed. 2020 update); A. Benjamin Spencer, *Out of the Quandary: Personal Jurisdiction over Absent Class Member Claims Explained*, 39 Rev. Litig. 31, 43-44 (2019). It follows that personal-jurisdiction limitations should also apply when a party attempts to join claims under Rule 23.

The Seventh Circuit further believed Rule 23(b)(3)'s command to consider "the desirability or undesirability of concentrating the litigation of the claims in the particular forum" was evidence that "a class action may extend beyond the boundaries of the state where the lead plaintiff brings the case." Pet. App. 13a. But there is no tension between *Bristol-Myers* and Rule 23(b)(3). A class action *can* extend beyond the boundaries of the State, and there can even be nationwide class actions. Under *Bristol-Myers*, a nationwide class action can be maintained any place a corporation is subject to general jurisdiction or any place the corporate defendant took an action relevant to all class members' claims. *See Bristol-Myers*, 137 S. Ct. at 1783; *see also Goodyear*, 564 U.S. at 924 (general jurisdiction may be maintained where a "corporation is fairly regarded as at home").

The Seventh Circuit likewise was incorrect to think there was a meaningful difference between class actions like this one and mass actions like *Bristol-Myers*. Pet. App. 7a, 10a. Both class actions and mass actions are procedural devices that allow plaintiffs to aggregate their claims. *Molock*, 952 F.3d at 306 (Silberman, J., dissenting) ("[L]ike the mass action in *Bristol-Myers*, a class action is just a species of joinder * * * .). As such, they "merely enable[] a federal court to adjudicate claims of multiple parties at once," while leaving "the parties' legal rights * * * intact." *Shady Grove Orthopedic Assocs., P.A.* v. *Allstate Ins. Co.*, 559 U.S. 393, 408 (2010). A court must have personal jurisdiction over the defendant on all of the claims asserted in a class action, just as much as in the mass action.

3. The Seventh Circuit also crucially misconstrued the relationship between Federal Rule of Civil Procedure 4(k) and the Fourteenth Amendment's limits on personal jurisdiction. The Seventh Circuit defended its decision on the ground that the Fifth Amendment's Due Process Clause applicable to the United States rather than the Fourteenth Amendment's Due Process Clause applicable to the States governed its personal-jurisdiction analysis. Pet. App. 9a. But Rule 4(k) makes that a distinction without a difference in this case; "[f]ederal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons." *Walden*, 571 U.S. at 283 (quoting *Daimler AG* v. *Bauman*, 571 U.S. 117, 125 (2014)). That is because "Congress' typical mode of providing for the exercise of personal jurisdiction has been to authorize service of process." *BNSF Ry. Co.* v. *Tyrrell*, 137 S. Ct. 1549, 1555 (2017). Rule 4(k) authorizes service of process—and thus personal

jurisdiction—(1) when the defendant "is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located," (2) when the defendant is joined as a third or indispensable party and served not more than 100 miles away from the district court issuing the summons, or (3) "when authorized by a federal statute." Fed. R. Civ. P. 4(k)(1).

Because "most cases"—like this one—do not involve joinder or a statute authorizing nationwide service of process, a "district court's authority to assert personal jurisdiction * * * is linked to service of process on a defendant 'who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located.'" *Walden*, 571 U.S. at 283 (quoting Fed. R. Civ. P. 4(k)(1)(A)). That means that the district court's exercise of personal jurisdiction in this case is subject to the same "federal due process" limits imposed by the Fourteenth Amendment on state courts. *Id*. And as a result, it is the Fourteenth, not the Fifth, Amendment's limitations on personal jurisdiction that apply here.[3]

The Seventh Circuit viewed Rule 4(k) as "requiring merely that a plaintiff comply with state-based rules on the service of process," but not "establishing an independent limitation on a federal court's exercise of personal jurisdiction." Pet. App. 11a-12a. In the Seventh Circuit's view, Rule 4(k) addresses only

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[3] This case accordingly does not present the question of whether "the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction" as the Fourteenth. *Bristol-Myers*, 137 S. Ct. at 1784.

"*how* and *where* to serve process; it does not specify *on whom* process must be served." *Id.*

That is not right. For starters, Rule 4(k) does not require a plaintiff to comply with state-based rules on service of process; Rules 4(c)-(j) address how to serve a complaint, and serving the complaint in accordance with applicable state law is only one among several options depending on the type of defendant to be served. *See*, *e.g.*, Fed. R. Civ. P. 4(e) (permitting a complaint to be served on an individual within a judicial district either by "following state law" or by other methods, including personal delivery or by delivery to someone at the defendant's dwelling of suitable age and discretion). And more fundamentally, this Court has distinguished between "the method of service"—that is *how* the defendant is served—and a defendant's "amenability to service"—that is, whether due-process limits on personal jurisdiction permit the defendant to be served in the first place. *Omni Cap. Int'l, Ltd.* v. *Rudolf Wolff & Co.*, 484 U.S. 97, 103 n.6 (1987).

Indeed, Rule 4(k)'s text makes this distinction when it talks about a defendant needing to be "*subject to* the jurisdiction of a court of general jurisdiction in the state" for "[s]erving a summons" to "establish[] personal jurisdiction over a defendant." Fed. R. Civ. P. 4(k)(1)(A) (emphasis added). To be "subject to" the jurisdiction of a court, a defendant must be "[u]nder the power of dominion of" the jurisdiction. *Subject*, Black's Law Dictionary (11th ed. 2019). Thus, under Rule 4, whether a defendant can be said to be "[u]nder the power of" a state's courts or amenable to their exercise of jurisdiction is wholly separate from the question of whether the defendant was

properly served. And that distinction accords with constitutional principles; "[d]ue process requires that the defendant be given adequate notice of the suit, *and* be subject to the personal jurisdiction of the court." *World-Wide Volkswagen*, 444 U.S. at 291 (emphasis added and citations omitted).

Rule 4(k)'s choice to make state-court, personal-jurisdiction limitations apply in most cases was no accident. In fact, Rule 4(k) allows expanded service of process under certain circumstances. *See* Fed. R. Civ. P. 4(k)(2) (allowing nationwide service of process where "the defendant is not subject to jurisdiction in any state's courts of general jurisdiction" and doing so is otherwise "consistent with the United States constitution and laws"); *id.* 4(k)(1)(B) (allowing service of process to establish personal jurisdiction when "a party is joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued"). In other words, Rule 4(k)'s drafters knew how to expand federal courts' exercise of personal jurisdiction beyond state boundaries. Yet they chose to do so only in narrow circumstances.

The Seventh Circuit also believed that construing Rule 4(k)(1) to limit a district court's personal jurisdiction over the claims of absent class members placed it "in tension with Federal Rule of Civil Procedure 82, which stipulates that the rules 'do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts.'" Pet. App. 12a. But Rule 82 refers to *subject-matter* jurisdiction, not personal jurisdiction. *Mississippi Pub. Corp.* v. *Murphree*, 326 U.S. 438, 444-445 (1946). There is accordingly no tension between Rule 4(k)

and Rule 82, and the court below was wrong to disregard Rule 4(k)'s command that state-court limits on personal jurisdiction generally apply to federal courts.

Finally, the Seventh Circuit justified its decision based on a purported "general consensus" before *Bristol-Myers* "that due process principles did not prohibit a plaintiff from seeking to represent a nationwide class in federal court, even if the federal court did not have general jurisdiction over the defendant." Pet. App. 6a. That was wrong on multiple fronts. To begin, it does not matter whether before *Bristol-Myers* courts and litigants may have assumed that personal jurisdiction was permissible in cases like these. A defendant waives a personal jurisdiction defense by not raising it. *See, e.g.*, *Insurance Corp. of Ireland* v. *Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703-704 (1982). And "this Court is not bound by a prior exercise of jurisdiction in a case where it was not questioned." *United States* v. *L. A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 38 (1952). That defendants had not previously fully apprehended "the implications of the Court's prior personal jurisdiction decisions" does not make their arguments invoking those implications wrong. *Molock*, 952 F.3d at 310 n.13 (Silberman, J., dissenting); *cf. TC Heartland LLC* v. *Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514, 1519-1520 (2017) (rejecting interpretation of patent venue that had prevailed for 27 years). After all, it was the *principles* underlying personal jurisdiction that *Bristol-Myers* called "settled," not how those principles will apply in every case. 137 S. Ct. at 1781.

B. The decision below also conflicts with the principles underpinning personal jurisdiction.

To the extent "party" status matters—and it does not—this Court's cases weigh in favor of deeming unnamed class members parties for personal-jurisdiction purposes. When evaluating whether a particular limitation applies to unnamed class members, this Court considers "the goals of class action litigation." *Devlin*, 536 U.S. at 10. Those goals counsel in favor of applying personal-jurisdiction limitations to absent class members.

1. This Court has emphasized that "[d]ue process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties." *Walden*, 571 U.S. at 284. Indeed, this Court has said that a "primary concern" of specific jurisdiction is the "burden on the *defendant*." *World-Wide Volkswagen*, 444 U.S. at 292 (emphasis added).

These limitations make sense. Because "[a] state court's assertion of jurisdiction exposes defendants to the State's coercive power," *Goodyear*, 564 U.S. at 918, limits on a state's ability to exercise personal jurisdiction protect a defendant's "right to be subject only to lawful power." *Nicastro*, 564 U.S. at 884 (plurality op.). As such, "restrictions on personal jurisdiction are more than a guarantee of immunity from inconvenient or distant litigation"; they "divest the State of its power to render a valid judgment." *Bristol-Myers*, 137 S. Ct. at 1780-81 (internal quotation marks omitted); *see also Insurance Corp. of Ireland*, 456 U.S. at 702 (personal-jurisdiction re-

quirement "represents a restriction on judicial power * * * as a matter of individual liberty").

From the defendants' perspectives, the burdens in *Bristol-Myers* and this case are indistinguishable. Bristol-Myers was forced to litigate dozens of individual claims over which the California courts had jurisdiction plus hundreds of additional claims over which the California courts did not have jurisdiction. *See* 137 S. Ct. at 1778. IQVIA, meanwhile, is forced to litigate the named plaintiff's claims over which the district court has jurisdiction plus potentially the claims of hundreds or thousands of absent class members over which the court does not have jurisdiction. *See* Pet. App. 2a. The litigation burden and the potentially significant liability is the same in both cases, regardless of the procedural device used to aggregate the claims. *See Molock*, 952 F.3d at 307 (Silberman, J., dissenting) ("A court that adjudicates claims asserted on behalf of others in a class action exercises coercive power over a defendant just as much as when it adjudicates claims of named plaintiffs in a mass action."). And, as this Court has recognized, the threat of high-dollar damages can lead to " '*in terrorem*' settlements" that prompt companies to settle regardless of the merits of the plaintiffs' claims because the threat of being made to pay such a large judgment is simply too high. *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 350 (2011); *see also* Henry J. Friendly, *Federal Jurisdiction: A General View* 120 (1973) (discussing threat of "blackmail settlements"). "Faced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims," because the prospect of paying damages to "tens of thousands of potential claimants" makes the risk "unaccepta-

ble." *AT&T Mobility*, 563 U.S. at 350; *see also* S. Rep. No. 109-14, at 20 (2005), *as reprinted in* 2005 U.S.C.C.A.N. 3, 21 (describing use of class actions as "judicial blackmail" that "can give a class attorney unbounded leverage" and "force corporate defendants to pay ransom to class attorneys by settling").

An accurate, defendant-focused inquiry would therefore require the same substantive result as *Bristol-Myers*: Striking the non-Illinois residents' claims from the class definition. After all, a defendant's rights should not shrink or expand based on whether it is sued individually or by a class. *Cf. Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338, 366-367 (2011) (affirming class-action defendant's right to "individualized determinations" of defendant's affirmative defenses with regards to each plaintiff's claim). Nor can they consistent with the Rules Enabling Act. The federal class-action device is a creation of Rule 23. *See Amchem Prods., Inc.* v. *Windsor*, 521 U.S. 591 (1997). And the Rules Enabling Act makes clear that a federal rule of procedure "shall not abridge, enlarge or modify any substantive right." 28 U.S.C. § 2072(b). If a plaintiff—through the Rule 23 class-action device—were able to bring a claim against a defendant that the court would otherwise lack personal jurisdiction to hear, it would "violate[] the Rules Enabling Act by giving plaintiffs and defendants different rights in a class proceeding than they could have asserted in an individual action." *Tyson Foods, Inc.* v. *Bouaphakeo*, 136 S. Ct. 1036, 1048 (2016); *see also Ortiz*, 527 U.S. at 845 ("no reading of [Rule 23] can ignore the [Rules Enabling] Act's mandate that 'rules of procedure shall not abridge, enlarge or modify any substantive right'" (internal quotation marks omitted)). Put differently,

a class action should not expose a defendant to greater liability in a forum than if all of the putative class members had filed individual suits in the forum.

This is also consistent with how the Court has treated absent plaintiffs when other liberty interests were implicated. In *Devlin*, the Court concluded that that the unnamed class members being "bound by the settlement" was enough for them to be considered parties for purposes of appeal. *See* 536 U.S. at 10-11. "To hold otherwise," the Court explained, "would deprive" them "of the power to preserve their own interests." *Id.* at 10. If absent class members must be considered parties when it is necessary to allow them to "preserve *their own* interests" in not being bound by a judgment they object to, it follows that they should also be considered parties when doing so is necessary to protect the *defendant's* interest in not being bound by a judgment as to claims that the court had no power to impose. *Id.* (emphasis added).

The Seventh Circuit also disregarded that personal-jurisdiction limitations are meant to provide "a degree of predictability" to defendants, which allows them to "structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297. Such "[p]redictability is valuable to corporations making business and investment decisions." *Hertz Corp.* v. *Friend*, 559 U.S. 77, 94 (2010). Under the Seventh Circuit's rule, however, businesses will be forced to litigate a nationwide set of claims in whatever State plaintiffs' attorneys deem to be most claimant friendly, no

matter how "distant or inconvenient"—even if virtually all of the claims arose from the defendant's out-of-state conduct. *World-Wide Volkswagen*, 444 U.S. at 292.

That result deprives defendants of the ability to predict in advance where their conduct will potentially result in liability. And it deprives them of their ability to make risk-informed decisions about their operations, such as "by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State." *Id.* at 297.

2. The Seventh Circuit ignored the deep federalism interests that underlie personal-jurisdiction constraints on a court's authority. This Court has repeatedly made clear that personal jurisdiction not only protects defendants, it "acts to 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." *Id.* at 292; *see also Goodyear*, 564 U.S. at 919 (specific jurisdiction requires an "activity or an occurrence" that is "subject to the State's regulation"); *Hanson* v. *Denckla*, 357 U.S. 235, 251 (1958) (personal-jurisdiction restrictions "are a consequence of territorial limitations on the power of the respective States"). As such, "[e]ven if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of

its power to render a valid judgment." *World-Wide Volkswagen*, 444 U.S. at 294.

It offends federalism for a district court with jurisdiction coextensive with a state court in the district, *see supra* pp. 14-15, to adjudicate the claims of out-of-state class members. It arrogates to the district court the power to decide claims based on conduct that took place in other States and that should be adjudicated by courts in those States. *See Bristol-Myers*, 137 S. Ct. at 1780-81. And preclusion doctrines may mean that a decision by a federal court with "little legitimate interest" in a case, *id.*, will nevertheless prevent jurisdictions that *do* have an interest in regulating the behavior from resolving those claims. *See, e.g.*, *Taylor* v. *Sturgell*, 553 U.S. 880, 894 (2008) (noting the "preclusive effect on nonparties" of "properly conducted class actions").

II. WHETHER *BRISTOL-MYERS* APPLIES TO CLASS ACTIONS IS AN IMPORTANT, RECURRING QUESTION THIS COURT SHOULD RESOLVE GIVEN THE CONFLICT IN LOWER COURTS, AND THIS CASE IS AN IDEAL VEHICLE TO DO SO.

Whether *Bristol-Myers* applies to absent class members' claims is an important issue that has divided federal and state courts alike. It is thus ripe for this Court's resolution, and this case is an ideal vehicle for the Court to do so.

1. This Court's review is warranted because the lower courts sharply disagree on the proper interpretation of *Bristol-Myers* and need guidance now. Some courts apply *Bristol-Myers* to class actions and refuse to certify classes that include claims over which the court would not have personal jurisdiction. *See, e.g.*,

Carpenter v. *PetSmart, Inc*., 441 F. Supp. 3d 1028, 1035 (S.D. Cal. 2020) (siding with "cases finding that *Bristol-Myers* applies in the nationwide class action context"); *Wenokur* v. *AXA Equitable Life Ins. Co.*, No. CV-17-00165-PHX-DLR, 2017 WL 4357916, at *4 n.4 (D. Ariz. Oct. 2, 2017) (noting that the court "would not be able to certify a nationwide class" because it "lack[ed] personal jurisdiction over the claims of putative class members with no connection to Arizona"). Other courts allow such classes to be certified. *Jones* v. *Depuy Synthes Prods., Inc.*, 330 F.R.D. 298, 311 (N.D. Ala. 2018) ("*Bristol-Myers* does not apply to the claims of unnamed putative class members."); *Knotts* v. *Nissan N. Am., Inc.*, 346 F. Supp. 3d 1310, 1332 (D. Minn. 2018) ("*BMS* is inapplicable to unnamed parties in a federal class action suit.").

The leading commentators recognize the deep division in the district courts. *See* 2 William B. Rubenstein, Newberg on Class Actions § 6:26 (5th ed. 2020 update) ("To date, district courts decisions have advanced divergent interpretations of *Bristol-Myers Squibb*'s effect on class action practice * * * ."); 4 Charles Alan Wright, Arthur R. Miller & Adam N. Steinman, Federal Practice and Procedure: Civil § 1067.2 (4th ed. 2020 update) ("Lower courts have divided over whether the *Bristol-Myers* decision applies with equal force to class actions."). All told, more than 40 district-court decisions have addressed the issue and reached divergent conclusions. *See* 2 Newberg on Class Actions § 6:26 & nn.46-51. And others have gone out of their way to avoid the issue given this Court's lack of guidance. *See, e.g.*, *Gadomski* v. *Equifax Info. Servs., LLC*, No. 2:17-cv-00670-TLN-AC, 2020 WL 3841041, at *6 (E.D. Cal.

July 8, 2020). The issue has arisen in state courts, as well. *See Osborne* v. *Subaru of Am., Inc.*, 243 Cal. Rptr. 815, 819 (Ct. App. 1988) (assuming but not deciding that "courts of this state have personal jurisdiction to adjudicate the claims of nonresident plaintiff[]" class members); *see also* Pet. at i, *Ally Fin. Inc.* v. *Haskins*, No. 20-177 (Aug. 14, 2020) (presenting question of *Bristol-Myers*' applicability to nationwide state-court class actions).

While this Court might ordinarily wait for further percolation, it is difficult for courts of appeals to do so in this area. Although Rule 23(f) interlocutory review is theoretically available—as it was below—leave to appeal is within a court of appeals' "unfettered discretion." *Microsoft Corp.* v. *Baker*, 137 S. Ct. 1702, 1709 (2017) (citation omitted). If a court of appeals is unwilling to grant leave to appeal, then "[s]ettlement pressure exerted by class certification may prevent judicial resolution of these issues." *Amgen Inc.* v. *Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 475 (2013); *see also* Fed. R. Civ. P. 23 committee's notes to 1998 amendment, subd. (f) ("An order granting certification * * * may force a defendant to settle rather than incur the costs of defending a class action and run the risk of potentially ruinous liability."). This Court has granted petitions in the past to resolve similar disagreements among district courts, especially where—as here—they involve orders that courts of appeals rarely have a chance to review. *Compare* Pet. at 13-15, *Cyan, Inc.* v. *Beaver Cty. Emps. Ret. Fund*, 138 S. Ct. 1061 (2018) (No. 15-1439) (presenting question regarding orders remanding cases to state court that had divided district courts), *with Cyan, Inc.* v. *Beaver Cty. Emps. Ret. Fund*, 137 S. Ct. 2325 (2017) (granting certiorari).

The decision below will also make further percolation less likely. The Seventh Circuit's rule will encourage plaintiffs' attorneys to file future nationwide class actions in the Seventh Circuit to take advantage of its plaintiff-friendly rule. *Cf. DeBernardis* v. *NBTY, Inc.*, No. 17 C 6125, 2018 WL 461228, at *2 (N.D. Ill. Jan. 18, 2018) ("[F]orum shopping is just as present in multi-state class actions" as it is in multi-state mass actions); *see also* Douglas S. Eakeley et al., Lowenstein Sandler PC, *Class Action Alert* 3 (Mar. 2005), https://tinyurl.com/y5zfew7l (discussing so called "magnet" jurisdictions "know[n] for their plaintiff-friendly jury pools and judges willing to certify large, nationwide class actions"). That, in turn, will make it less likely that another federal court of appeals will have the opportunity to weigh in on the issue, and—worse—may lead to national class actions heard in forums that "may have little legitimate interest in the claims." *Bristol-Myers*, 137 S. Ct. at 1780.

This Court's guidance is needed now, not after further percolation in the courts of appeals.

2. Allowing the decision below to stand will also have devastating consequences for defendants' due-process rights, this Court's personal-jurisdiction jurisprudence, and federalism—and all for few benefits.

Under the decision below, plaintiffs can side-step *Bristol-Myers*' rule limiting personal jurisdiction over aggregated claims through the class-action device. That will have the bizarre result of making it so parties have "different rights in a class proceeding than they could have asserted in an individual

action." *Tyson Foods*, 136 S. Ct. at 1046-48. It will also allow plaintiffs to manufacture personal jurisdiction over a large number of claims in one forum by appending to a handful of permissible claims hundreds of other claims that a federal court would not have jurisdiction to hear on their own—the same problem defendants faced before *Bristol-Myers*. *See* 137 S. Ct. at 1778, 1782 (rejecting attempt to append claims of 592 non-residents to the claims of 86 California residents). That result turns personal jurisdiction on its head—changing it from a claim-based, defendant-focused inquiry, into one where a plaintiff can unilaterally make a defendant subject to suit on claims that arose hundreds of miles away.

The Seventh Circuit's rule will likewise lead to vertical forum shopping. If a plaintiff can assert jurisdiction in a federal court over a defendant in a district whose coordinate state trial court could not exercise jurisdiction, plaintiffs will opt to file in federal court. That will "lead to a substantially different result" than would have resulted had that suit been filed in "a State court a block away"—an outcome that this Court disfavors. *Guaranty Tr. Co. of New York* v. *York*, 326 U.S. 99, 109 (1945). And it is an outcome contrary to Rule 4(k)(1)'s purpose, which is to eliminate vertical forum shopping by generally limiting a federal court to the same personal jurisdiction of its coordinate state court. *See* William S. Dodge & Scott Dodson, *Personal Jurisdiction and Aliens*, 116 Mich. L. Rev. 1205, 1240 & n.221 (2018) ("It is for * * * reasons of vertical uniformity that portions of the federal-court-long-arm rule mirror state-court personal jurisdiction.") (citing Fed. R. Civ. P. 4(k)(1)(A)).

These fears are not academic. Plaintiffs frequently bring lawsuits that include in the proposed class definition plaintiffs in multiple States, and sometimes every State. *See, e.g.*, *Ponzio* v. *Mercedes-Benz USA, LLC*, 447 F. Supp. 3d 194, 210, 217-218 (D.N.J. 2020) (denying motion to dismiss for lack of personal jurisdiction over defendant as to non-resident unnamed plaintiffs' claims where a "sole Plaintiff" was a forum-state citizen); *Fitzhenry-Russell* v. *Dr. Pepper Snapple Grp., Inc.*, No. 17-cv-00564 NC, 2017 WL 4224723, at *5 (N.D. Cal. Sept. 22, 2017) (denying motion to dismiss for lack of personal jurisdiction even though "88% of the class members are not California residents," making the suit "decidedly lopsided"); *see also Braver* v. *Northstar Alarm Servs., LLC*, 329 F.R.D. 320, 326, 328 (W.D. Okla. 2018) (allowing sole Oklahoma named plaintiff to represent a class of 239,630 people from "across the country"); *Maclin* v. *Reliable Reps. of Tex., Inc.*, 314 F. Supp. 3d 845, 847, 849 (N.D. Ohio 2018) (involving purported opt-in collective action where only 14 of 438 total employees—about three percent—were alleged to have been injured in the forum State). One study estimated that between 1994 and 2001, 71 percent of federal-court class actions had members from more than two States; 34 percent had members from every State. *See* Thomas E. Willging & Shannon R. Wheatman, Fed. Jud. Ctr., *An Empirical Examination of Attorneys' Choice of Forum in Class Action Litigation* 6, 17 (2005), *available at* https://tinyurl.com/y457q27t. And since the Class Action Fairness Act of 2005 relaxed the federal statutory subject-matter jurisdiction requirements for class actions worth $5 million or more, the number of multistate class actions filed in federal court

has only grown. *See* Emery G. Lee III & Thomas E. Willging, *The Impact of the Class Action Fairness Act on the Federal Courts: An Empirical Analysis of Filings and Removals*, 156 U. Pa. L. Rev. 1723, 1750-51 (2008); *see also* 28 U.S.C. § 1332(d)(2).

Multistate class actions of this scale also unduly burden defendants. Defendants in class actions face enormous pressure to give in to so-called blackmail settlements. *See supra* pp. 20-21. The threat of nationwide class actions that lack a connection to the forum only grows in statutory-damages cases, like the TCPA case IQVIA faces here, where trebled or per-violation damages can mean that a defendant is exposed to potentially significant liability to plaintiffs whose damages are next to nothing. *See* Sheila B. Scheuerman, *Due Process Forgotten: The Problem of Statutory Damages and Class Actions*, 74 Mo. L. Rev. 103, 104 (2009).[4] Unfortunately, Rule 23(f) does little to help. Its litigate-first, petition-later approach means district court decisions are virtually un-reviewable until *after* defendants have had to shell out substantial sums in legal fees. *See* Fed. R. Civ. P. 23 committee's notes to 1998 amendment, subd. (f).

Moreover, the Seventh Circuit's decision threatens to erase the distinction between specific and general jurisdiction. *Daimler* put an end to plaintiffs' "unac-

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[4] In general, U.S. corporations spent $2.64 billion defending against class actions in 2019, which was the highest amount ever recorded and an increase in 7.3 percent over the previous year. Carlton Fields, P.A., *2020 Class Action Survey: Best Practices in Reducing Cost and Managing Risk in Class Action Litigation* 11 (2020).

ceptably grasping" attempts to make defendants subject to jurisdiction on all claims—regardless of their connection to the State—in every jurisdiction where the defendant "engages in a substantial, continuous, and systematic course of business." 571 U.S. at 138 (internal quotation marks omitted); *see also* U.S. Chamber Inst. for Legal Reform, BMS *Battlegrounds: Practical Advice for Litigating Personal Jurisdiction After* Bristol-Myers 3-5 (June 2018), https://tinyurl.com/y4ruxrpn (discussing abusive forum shopping before *Daimler*). The Seventh Circuit's decision would effectively "reintroduce general jurisdiction by another name" on a massive scale through the class-action device. Linda J. Silberman, *The End of Another Era: Reflections on* Daimler *and Its Implications for Judicial Jurisdiction in the United States*, 19 Lewis & Clark L. Rev. 675, 687 (2015).

3. This case is an ideal vehicle to resolve this important question. The personal-jurisdiction merits question was squarely presented in both the district court and the court of appeals. *Compare* Pet. App. 21a-22a, *and id.* at 2a-3a, *with Cruson* v. *Jackson Nat'l Life Ins. Co.*, 954 F.3d 240, 249 & n.7 (5th Cir. 2020) (addressing whether defendant preserved question but declining "to address the merits of its personal jurisdiction defense for the first time on appeal"). The Seventh Circuit also addressed both the due-process principles underlying *Bristol-Myers* as well as the Rule 4(k) issue, which means that all the key arguments are before the Court. *See* Pet. App. 5a-14a. And IQVIA raised the personal-jurisdiction issue in a way all agree is proper: by moving to strike the nationwide-class allegations. *See* Spencer, *supra*, at 50 (explaining that a motion

to strike under Rule 12(f) is the right mechanism for "excis[ing] allegations from a complaint that purport to include unnamed class members having non-forum-connected claims"); *cf. Molock*, 952 F.3d at 295 (dismissing as "premature" defendant's pre-certification motion to dismiss out-of-state putative class members for lack of personal jurisdiction).

There is accordingly no barrier to the Court deciding these important issues in this case. *Cf.* Pet. at 4 n.3, *Ally Fin.*, No. 20-177. The Court should do so.

CONCLUSION

The petition for a writ of certiorari should be granted.

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