No. 12-574

IN THE

Supreme Court of the United States

ANTHONY WALDEN,

Petitioner,

v.

GINA FIORE AND KEITH GIPSON,

Respondents.

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

BRIEF IN OPPOSITION

Robert A. Nersesian
(Counsel of Record)
NERSESIAN & SANKIEWICZ
528 South Eighth St.
Las Vegas, NV 89101
(702) 385-5454
vegaslegal@aol.com

QUESTIONS PRESENTED

1. Whether the court of appeals correctly held that a state may exercise personal jurisdiction over a defendant who (1) engages in intentional conduct (2) targeting victims he knows to be residents of that state while (3) knowing that the injuries he inflicts will be felt in that state.

2. Whether the court of appeals correctly considered the place where respondents experienced economic suffering as one relevant factor in its broader, multifactor determination that the District of Nevada is a proper venue for respondents' lawsuit under 28 U.S.C. § 1391(b)(2) because it is "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred."

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

STATEMENT OF THE CASE

Respondents are Nevada residents. From Nevada, they sought the return of money that petitioner had wrongfully seized from them in Georgia. Petitioner then filed a false forfeiture affidavit to block respondents from recovering their money expeditiously. The Ninth Circuit held that respondents could sue petitioner in federal district court in Nevada. It held that Nevada had personal jurisdiction because petitioner knew and intended that his actions would injure respondents in Nevada. The court found venue proper because a substantial portion of the events giving rise to the claim occurred in Nevada.

1. On August 8, 2006, respondents were heading home to Las Vegas, Nevada after a business trip. Their business was professional gambling; their trip succeeded. They carried $97,000 in cash, composed of $67,000 in profit and $30,000 in "seed money" (also known as a "bank") that they had brought on the trip. Pet. App. 3a.

Respondents traveled from San Juan, Puerto Rico to Las Vegas, connecting in Atlanta. *Id.* 2a–3a. Apparently because they were carrying so much cash, agents in San Juan tested respondents' cash and bags for contraband; the tests came back negative. *Id.* 3a. Respondents were also questioned; all their answers proved truthful, and they properly disclosed the source of their funds. *Id.* 3a–4a; First Amended Compl. ¶ 37, *Fiore v. Walden*, No. 07-1674, Dkt. No. 11 (D. Nev. July 18, 2008) ("Compl.").

During their layover in Atlanta, petitioner approached respondents at the gate for their flight to

Las Vegas. Petitioner is a local police officer, deputized as a Drug Enforcement Administration (DEA) agent.[1] *Id.* 4a. Petitioner asked respondent Fiore several questions while respondent Gipson was sequestered and questioned separately. *Id.* 4a–5a. Fiore told petitioner that she did not have any contraband and that she was a professional gambler. *Id.* To demonstrate that her funds were acquired legitimately, she produced a trip log itemizing her winnings in various casinos. *Id.* Gipson explained that documents showing the legitimacy of his funds were in his checked luggage. *Id.* 5a.

Despite these explanations and documentary proof, petitioner ordered a sniff of respondents' bags by a drug-detecting dog. The dog did not react to Fiore's bag, indicating a negative result. *Id.* 5a; Compl., *supra*, ¶ 57. The dog then pawed at Gipson's bag once. On that basis, petitioner asserted probable cause to seize Gipson's cash as well as all the cash in Fiore's possession – notwithstanding that both respondents had passed screenings in San Juan, and that Fiore had provided petitioner with a log itemizing her casino wins. Pet. App. 5a.

Petitioner informed respondents that their funds would be returned only if they could provide documentation to show that the cash was legitimate. *Id.* Fiore asked petitioner to allow her to keep

---

[1] Local agencies may receive a share of forfeited drug proceeds when their officers are deputized by the DEA. 21 U.S.C. § 881(e)(1)(A); U.S. DEA, *State and Local Task Forces*, http://www.justice.gov/dea/ops/taskforces.shtml (last visited Jan. 24, 2013).

enough money for a cab ride upon her return to Las Vegas. Petitioner refused. *Id.* Respondents then boarded the flight to Las Vegas. *Id.*

The next day, respondents' Nevada attorney contacted petitioner from Las Vegas to request the return of respondents' funds and to offer to provide the documentation needed to facilitate that return. Petitioner did not respond. Decl. of Anthony Walden ¶¶ 18–19, *Fiore v. Walden*, No. 07-1674, Dkt. No. 14-2 (D. Nev. Aug. 1, 2008). Subsequently, respondents, through their attorney, contacted petitioner from Las Vegas to provide additional documentation (such as win records, tax returns, and trip receipts) and reiterate their request for the return of their money. Pet. App. 5a–6a.

In response to the seizure, the DEA began an investigation. Petitioner provided the U.S. Attorney for the Northern District of Georgia with a false affidavit "to assist in bringing a forfeiture action." *Id.* 6a. Among other things, petitioner falsely swore in his affidavit that Gipson had been uncooperative, that respondents' separate answers were inconsistent, and that there was sufficient evidence to establish probable cause to forfeit the funds as drug proceeds. *Id.* Petitioner's affidavit also omitted exculpatory evidence of which he was aware, including the fact that both respondents had provided him with receipts that confirmed the legitimacy of a substantial portion of the funds. *Id.* 6a–7a.

Upon investigation, the U.S. Attorney's Office concluded that petitioner's probable cause affidavit was misleading because petitioner had purposefully omitted information favorable to respondents. *Id.* 7a. The DEA conducted its own background checks of

respondents, which came back "squeaky clean." *Id.* 6a.

Because petitioner filed the false affidavit, the return of respondents' money to Las Vegas was delayed for months as the U.S. Attorney's Office considered potential forfeiture proceedings. *Id.* 7a. That delay caused additional damages in Las Vegas, including the disruption of respondents' business activities. *Id.* 26a–27a.

With the intervention of respondents' attorney, and recognizing that respondents had done nothing unlawful, the U.S. Attorney's Office contacted respondents and offered to return their funds in exchange for a release of legal claims. After respondents refused, the government nonetheless returned the funds to respondents in Las Vegas, more than six months after the seizure. *Id.* 7a.

2. Respondents subsequently brought this lawsuit in federal district court in Nevada. As relevant here, respondents asserted a claim against petitioner under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). The complaint alleges that petitioner violated respondents' Fourth Amendment rights in four separate ways: seizing the funds without probable cause, filing a probable cause affidavit known to be false, referring the matter for prosecution based on falsified and incomplete information, and continuing to hold the funds for six months after receiving proof that the funds were legal. Pet. App. 7a–8a.

Before discovery, the district court granted petitioner's motion to dismiss the complaint for lack of personal jurisdiction. *Id.* 8a. The court reasoned that because petitioner's *initial* seizure of the funds

occurred in and "was expressly aimed at Georgia," there was no personal jurisdiction in Nevada. *Id.* 71a. The court did not consider events, such as the filing of petitioner's false affidavit and the continued seizure of the funds, that occurred after respondents returned to Nevada. *Id.* 71a & n.1. The court found it unnecessary to address petitioner's claim that the District of Nevada was not a proper venue for the suit. *Id.* 66a.

3. The Ninth Circuit (Berzon, J.) reversed and remanded. *Id.* 2a. The court of appeals recognized that the case was controlled by this Court's holding in *Calder v. Jones*, 465 U.S. 783, 790 (1984), that personal jurisdiction over "primary participants in an alleged wrongdoing intentionally directed at a [forum state] resident" is proper "on that basis." The *Calder* Court held that California had personal jurisdiction over a suit by a California resident alleging that she had been libeled in a magazine article written and edited by two Florida residents with no other connections to California. The Court reasoned that the defendants wrote and "edited an article that they knew would have a potentially devastating impact" on the plaintiff, and "they knew that the brunt of that injury would be felt by [the plaintiff] in the State in which she lives and works and in which the [magazine] ha[d] its largest circulation." *Id.* at 789–90. The Court accordingly held that the defendants should "'reasonably anticipate being haled into court there' to answer for the truth of the statements made in their article." *Id.* at 790 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

In this case, the Ninth Circuit applied its settled standard interpreting *Calder*: to establish personal jurisdiction, "the defendant allegedly must have [(a)] committed an intentional act, [(b)] expressly aimed at the forum state, [(c)] causing harm that the defendant knows is likely to be suffered in the forum state." Pet. App. 16a (alterations in original) (quoting *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1128 (9th Cir. 2010)) (internal quotation marks omitted).

Drawing reasonable inferences from the complaint in respondents' favor, *id.* 16a, the Ninth Circuit found all three elements of the personal jurisdiction test satisfied, *id.* 28a–29a. First, petitioner's actions were obviously intentional. Second, there were several "strong" reasons to conclude that petitioner had expressly aimed his conduct at Nevada, especially because petitioner's preparation and submission of the false affidavit after respondents returned to Nevada "expressly target[ed] Fiore and Gipson in Nevada." *Id.* 20a. In particular:

- Petitioner knew that respondents were boarding a plane for Las Vegas, which he knew was their final destination. *Id.*; Decl. of Anthony Walden, *supra*, ¶ 13.
- Petitioner knew that respondents' funds had originated in Las Vegas and were returning there. Pet. App. 20a–21a.
- Petitioner received communications from respondents and their lawyer from Las Vegas. *Id.* 21a.
- Respondents' funds were ultimately returned to Las Vegas. *Id.* 22a.

- Petitioner knew that his actions would disrupt respondents' business activities in Las Vegas. *Id.* 27a.

Third, it followed that petitioner knew that the harms he caused were likely to be suffered in Nevada. *Id.* 27a–28a.

The Ninth Circuit also determined that the District of Nevada was an appropriate venue for respondents' lawsuit. *Id.* 42a. It emphasized that "[a]ll the economic injuries suffered by [respondents] were realized in Nevada," that their $30,000 "bank" had originated in Nevada, that petitioner's fraudulent probable cause affidavit was designed "to institute forfeiture proceedings against [respondents] after they had returned to their residences in Nevada," and that the case became ripe only when respondents' funds were returned to Nevada. *Id.* 41a–42a.

Judge Ikuta dissented in an opinion limited to the question of personal jurisdiction. She did not contest the court's holding that the district court had personal jurisdiction based on petitioner's filing of the false affidavit. Instead, she viewed respondents' complaint differently, as limited to petitioner's initial seizure of respondents' funds at the airport. *Id.* 54a–56a. Because respondents' complaint did not expressly allege that petitioner knew about respondents' significant ties to Nevada at the time of the seizure, she concluded, the court lacked personal jurisdiction. *Id.* 53a–54a.

4. Petitioner filed a petition for rehearing and rehearing en banc. The petition was denied over dissents by Judges O'Scannlain and McKeown, *id.* 77a, 91a, to which the panel majority responded. The

majority explained that Judge O'Scannlain, by failing to address its holding that the court had personal jurisdiction over the false affidavit claim, "criticizes an opinion we did not write." *Id.* 43a. And, the majority reiterated, the complaint's allegations demonstrated that Nevada was indeed the "focal point" of the events in the case: the funds had originated in Nevada and were intended to return there; they ultimately did return to Nevada; petitioner personally knew that the funds originated in and were returning to Nevada; and he knew that respondents "had substantial connections to that state." *Id.* 45a. Petitioner therefore "intentionally and directly – not just foreseeably or derivatively – target[ed] Nevada funds and persons." *Id.* 46a.

REASONS FOR DENYING THE WRIT

Petitioner asks this Court to consider whether "due process permits a court to exercise personal jurisdiction over a defendant whose sole 'contact' with the forum State is his knowledge that the plaintiff has connections to that State." Pet. i. Whatever the answer to that question, this case does not present it. As petitioner must concede, the ruling below rested on respondents' well-pleaded allegations that petitioner committed an intentional tort, aimed at respondents, knowing that it would harm them in Nevada. Pet. App. 20a; *see* Pet. 22–23 (acknowledging the Ninth Circuit's holding that the express aiming requirement is met when "a plaintiff alleges that a defendant committed an intentional act aimed at the plaintiff with the knowledge that it will harm the plaintiff in the forum state").

Contrary to petitioner's contention, that holding is consistent with the precedent of every other circuit,

all of which agree that a state may exercise personal jurisdiction over a defendant who purposefully causes harm that he knows will be felt in the forum. Moreover, the decision below is correct on the merits. This Court has recently denied at least four petitions involving the "express aiming" requirement. *See Roberts v. Kauffman Racing Equip., L.L.C.* (No. 10-617); *Dworkin v. Tamburo* (No. 10-61); *Marks v. Alfa Grp.* (No. 10-57); *McFadin v. Gerber* (No. 09-1067). There is no reason for a different result here.

Nor is there any need for this Court to review the Ninth Circuit's holding that the District of Nevada is a proper venue for respondents' lawsuit. Once it is clear that personal jurisdiction is proper in Nevada, similar considerations establish that venue is appropriate as well.

I. Certiorari Is Not Warranted To Review The Ninth Circuit's Holding That Nevada Has Personal Jurisdiction Over This Suit.

A. There Is No Circuit Split Over *Calder*'s "Express Aiming" Requirement.

The Ninth Circuit held that Nevada could exercise personal jurisdiction over petitioner in this action principally because petitioner's tortious act of preparing a false forfeiture affidavit purposefully targeted people and funds that he knew had substantial connections to Nevada. Pet. App. 37a. When petitioner prepared the affidavit, he knew that respondents had returned to Nevada, that they were residents of Nevada, and that their Nevada counsel had contacted him and requested the return of the funds to that state. The purpose and effect of the false affidavit were that the government would

continue to hold the funds, preventing respondents from using them in Nevada. Thus, the court of appeals explained, petitioner's actions satisfied the requirement, recognized in *Calder v. Jones*, 465 U.S. 783, 789 (1984), that jurisdiction exists only if a defendant has "expressly aimed" his conduct at the forum state. Pet. App. 17a–27a.

Despite that straightforward and uncontroversial holding, petitioner attempts to conjure up a circuit split. Petitioner argues that the ruling below conflicts with the purported recognition by other circuits of a "difference between aiming conduct at a person who happens to be a resident of a given state and aiming conduct at the state itself." Pet. 21. But petitioner's alleged circuit conflict is illusory, constructed from a patchwork of question-begging quotations. In reality, no circuit requires a defendant to aim his conduct at the forum itself, as opposed to at its residents. Although different courts have unsurprisingly adopted slightly different formulations, they all apply the same basic rule as the Ninth Circuit, often while citing Ninth Circuit precedent: a state may exercise personal jurisdiction over a defendant who acts for the purpose of causing harm that he knows will be felt in that state. *See* Restatement (Second) of Conflict of Laws § 37 cmt. a (1971) (observing that personal jurisdiction exists when an act is performed "with the intention of causing effects in the state").

1. The Ninth Circuit applies *Calder*'s holding through a three-pronged test. An out-of-state defendant is subject to a state's personal jurisdiction if he has "[(a)] committed an intentional act, [(b)] expressly aimed at the forum state, [(c)] causing

harm that the defendant knows is likely to be suffered in the forum state." Pet. App. 16a (alterations in original) (quoting *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1128 (9th Cir. 2010)) (internal quotation mark omitted).

Petitioner principally criticizes the Ninth Circuit's holding that the express aiming requirement is satisfied when the defendant targets a plaintiff who he knows has substantial connections to the forum. Pet. 13, 15; *see* Pet. App. 17a–27a; *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1087–88 (9th Cir. 2000). In making that determination, "the critical factor is whether" the defendant "intended that the consequences of his actions would be felt by" someone in the forum. Pet. App. 24a. In this case, Nevada had jurisdiction over respondents' lawsuit because – by individually targeting respondents, who he knew had significant connections to Nevada – petitioner necessarily intended for harm to occur in Nevada.[2] *Id.* 25a–27a.

2. Petitioner contends that other circuits find personal jurisdiction only when the defendant "expressly aim[s] the conduct forming the basis of the claim *at the forum state* – not just at a known forum resident." Pet. 16 (quoting Pet. App. 84a (O'Scannlain, J., dissenting from denial of rehearing

---

[2] In addition to the harm that petitioner knowingly caused respondents in Nevada with his false affidavit, petitioner also knowingly harmed them there by refusing respondent Fiore's request – made in the gate area for their flight to Las Vegas – to keep enough money for cab fare when they arrived at the airport. Pet. App. 5a.

en banc)).[3] But that distinction is merely semantic: because states are composed of individuals, defendants must be able to satisfy *Calder*'s requirements by targeting individuals.

Even a cursory examination of the decisions of other circuits confirms that, despite slight variations in their formulations, each agrees that intentionally causing harm within a state by targeting a known state resident satisfies *Calder*.[4] In some cases, courts may infer the requisite intent from other acts "aimed" at the state – in *Calder*, for instance, from the fact that the defendants' defamatory publication had a large California audience. But in cases like this one, in which the tort does not require other acts, *see* Pet. App. 26a (analogizing petitioner's conduct to fraud), the circuits agree that intentionally targeting a known forum resident is sufficient.

---

[3] Judge O'Scannlain's dissent focused on the initial seizure of the funds, rather than on the false probable cause affidavit, which was the basis for the panel's opinion. *Compare* Pet. App. 83a (O'Scannlain, J., dissenting from denial of rehearing en banc) *with* Pet. 4 n.2 (conceding, for purposes of this Court's review, existence of separate false affidavit claim). Even if it is unclear from the record whether petitioner knew of respondents' Nevada connections when he seized their funds, he surely did when he filed the false affidavit, Pet. App. 44a, as he acknowledges in his Questions Presented, *see* Pet. i. Thus, whether there is a circuit split on the question identified by Judge O'Scannlain has no bearing on whether the decision below conflicts with those of other circuits.

[4] As petitioner concedes, the Eleventh Circuit follows the Ninth Circuit's test. Pet. 20–21 (citing *Licciardello v. Lovelady*, 544 F.3d 1280, 1287 (11th Cir. 2008)).

Petitioner's reliance on *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063 (10th Cir. 2008); Pet. 18, is misplaced, as that case confirms that a defendant's intent to injure someone with significant connections to the forum state satisfies the express aiming requirement. There, two Colorado residents brought a declaratory judgment action in Colorado against two individuals who lacked direct contacts with the state. The plaintiffs alleged that their eBay auction would not infringe the defendants' copyright. They asserted personal jurisdiction on the basis of a copyright notice that the defendants had filed with eBay, which prompted eBay to cancel the auction. The Tenth Circuit held that the notice was sufficient to meet the express aiming requirement, notwithstanding that the defendants had mailed it to California rather than Colorado. *See* 514 F.3d at 1072, 1074–78. The court explained that although the copyright notice

> formally traveled only to California, it can be fairly characterized as an intended means to the further intended end of cancelling plaintiffs' auction in Colorado. . . . [The defendants'] "express aim" thus can be said to have reached into Colorado in much the same way that a basketball player's express aim in shooting off of the backboard is not simply to hit the backboard, but to make a basket.

Id. at 1075. Notably, the Tenth Circuit found "support" for its holding in two Ninth Circuit decisions, both cited by the panel in this case:

Bancroft & Masters and *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797 (9th Cir. 2004).[5]

The Seventh Circuit would also reach the same result as the Ninth Circuit in this case. In *Tamburo v. Dworkin*, 601 F.3d 693 (7th Cir.), *cert. denied*, 131 S. Ct. 567 (2010), the Seventh Circuit made clear that "[t]ortious acts aimed at a target in the forum state and undertaken for the express purpose of causing injury there are sufficient to satisfy *Calder*'s express-aiming requirement." 601 F.3d at 707 (citing *Dudnikov*, 514 F.3d at 1078). Applying that rule, the court held that Illinois could exercise jurisdiction over out-of-state defendants who had "specifically aimed their tortious conduct at [the plaintiff] and his business in Illinois with the knowledge that he lived, worked, and would suffer the 'brunt of the injury' there," even though "their alleged defamatory and

---

[5] In a footnote, the Tenth Circuit characterized its standard as "somewhat more restrictive" than the Ninth Circuit's, noting that "the forum state itself must be 'the focal point of the tort,'" so that "individually target[ing] a known forum resident" is insufficient. *Dudnikov*, 514 F.3d at 1063 n.9 (quoting *Far W. Capital, Inc. v. Towne*, 46 F.3d 1071, 1080 (10th Cir. 1995)). In fact, the Ninth Circuit imposes the same requirement through *Calder*'s third prong, which requires the defendant to know that the harm will be felt in the forum. *See, e.g.*, *Bancroft & Masters*, 223 F.3d at 1087. But even generously assuming that the courts apply a slightly different standard, and that that standard could change the outcome in a hypothetical case, it clearly makes no difference here, given this case's similarities to *Dudnikov*.

otherwise tortious statements were circulated more diffusely across the Internet."[6] *Id.* at 706.

Mobile Anesthesiologists Chicago, LLC v. Anesthesia Associates of Houston Metroplex, P.A., 623 F.3d 440 (7th Cir. 2010); Pet. 18, is not to the contrary. In that case, the court found that Illinois lacked jurisdiction over a Texas-based defendant whose website's domain name allegedly infringed the Illinois plaintiff's trademark. But the defendant did not even know of the plaintiff's *existence*, much less that it was located in Illinois, when it registered the domain name. 623 F.3d at 440. Therefore, unlike in this case, the defendant's tortious actions in no way "targeted" a known forum resident. *See id.* at 446 (citing, inter alia, *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1322 (9th Cir. 1998)). The relevant distinction in both the Seventh and Ninth Circuits is not, as petitioner contends, whether the defendant somehow targets the forum state itself, as opposed to its residents. It is whether the harm felt in the forum state is intentional, rather than merely accidental or foreseeable.

---

[6] The Seventh Circuit has implemented *Calder* in divergent ways over the years, with some cases arguably taking a broader approach than the one that prevails today. *See Tamburo*, 601 F.3d at 704; *compare Janmark, Inc. v. Reidy*, 132 F.3d 1200 (7th Cir. 1997) (effects in forum state alone sufficient to support jurisdiction) *with Wallace v. Herron*, 778 F.2d 391 (7th Cir. 1985) (requiring express aiming in addition to in-forum effects). But as *Tamburo* makes clear, there is no conflict between the decision below and the test that the Seventh Circuit currently uses.

That distinction also explains the Third Circuit's decision in *Remick v. Manfredy*, 238 F.3d 248 (3d Cir. 2001); Pet. 17. Like the Tenth Circuit in *Dudnikov*, the Seventh Circuit in *Tamburo*, and the Ninth Circuit below, the *Remick* court found the express aiming requirement satisfied based solely on the defendants' intention to injure the plaintiff in the forum state. *See* 238 F.3d at 260 (holding that Pennsylvania had jurisdiction over defendants because "the effects of any intentional conduct by the defendants designed to interfere with [the plaintiff's] contractual relations with [his client] necessarily would have been felt in Pennsylvania").

Remick's treatment of another Third Circuit case on which petitioner relies, *IMO Industries, Inc. v. Kiekert AG*, 155 F.3d 254 (3d Cir. 1998); Pet. 17, further illustrates that the ruling below comports with the Third Circuit's precedent. Unlike in *IMO Industries*, the Third Circuit clarified, "where the German defendant's alleged tortious conduct appeared to have been expressly aimed at injuring a French company and not the in-forum plaintiff," in *Remick* the defendants' "alleged tortious conduct was expressly aimed at injuring [the plaintiff] in Pennsylvania."[7] 238 F.3d at 260.

Consistent with that rule, the Fourth Circuit has made clear that purposely harming a plaintiff in the

---

[7] *IMO Industries* itself relied on two Ninth Circuit cases dealing with jurisdiction over intentional torts on the Internet. *See* 155 F.3d at 264 & n.7 (citing *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 415, 420 (9th Cir. 1997); *Panavision*, 141 F.3d at 1516).

forum state is sufficient to meet *Calder*'s express aiming requirement. *See First Am. First, Inc. v. Nat'l Ass'n of Bank Women*, 802 F.2d 1511, 1517 (4th Cir. 1986) (finding jurisdiction where the defendant "knew or should have known that its allegedly defamatory letters would inflict the greatest injury upon [the plaintiff] in the state in which he resided and conducted his business"); *see also Szulik v. TAG V.I., Inc.*, 858 F. Supp. 2d 532, 544 (E.D.N.C. 2012) (approvingly citing the Ninth Circuit's decision in this case in discussing express aiming). *ESAB Group, Inc. v. Centricut Inc.*, 126 F.3d 617 (4th Cir. 1997); Pet. 19, reflects that uniform approach. The *ESAB* court held that North Carolina could not exercise jurisdiction over a defendant who had allegedly stolen sales leads distributed across North America from a North Carolina company. The court reasoned that the defendant's North Carolina connections were too "attenuated and insubstantial" for its actions to have been expressly aimed there. 126 F.3d at 625–26.

The Eighth Circuit also would reach the same result as the Ninth Circuit in this case. That court has made clear that a state has jurisdiction over a nonresident defendant whose actions "are performed for the very purpose of having their consequences felt" in the forum state.[8] *Johnson v. Arden*, 614 F.3d

---

[8] The Eighth Circuit has suggested that this inquiry is the functional equivalent of the commonly used three-pronged test. *Compare Johnson*, 614 F.3d at 796, *with Viasystems, Inc. v. EBM-Papst St. Georgen GmbH & Co.*, 646 F.3d 589, 594 (8th Cir. 2011) (applying the prongs separately). That suggestion emphasizes the underlying consensus among the circuits. The

785, 796 (8th Cir. 2010) (quoting *Dakota Indus., Inc. v. Dakota Sportswear, Inc.*, 946 F.2d 1384, 1390–91 (8th Cir. 1991) (citing *Brainerd v. Governors of the Univ. of Alberta*, 873 F.3d 1257, 1260 (9th Cir. 1989); *Haisten v. Grass Valley Med. Reimbursement*, 784 F.2d 1392, 1397 (9th Cir. 1986))). Although the Eighth Circuit found personal jurisdiction lacking in *Johnson v. Arden*, Pet. 16, that decision rested on the application of the same test to different facts. *See* 614 F.3d at 796 (defendant's defamatory statements were not targeted at a Missouri audience, indicating that the defendant did not *intend* to injure plaintiffs there).

Finally, the Fifth Circuit's cases are also fully consistent with the Ninth Circuit's. Although that

---

first prong, an intentional act, should always be met because *Calder* applies only to intentional torts. And courts that apply the three-pronged test have noted the "overlap" between its second and third requirements – express aiming at the forum state and knowledge that the plaintiff will be injured in that state. *Dudnikov*, 514 F.3d at 1075 (explaining that the second prong focuses "on a defendant's intentions" while the third "concentrates on the consequences of the defendant's actions"); *accord Tamburo*, 601 F.3d at 704 ("consider[ing] the two requirements together" because of their similarities). Indeed, the Ninth Circuit has at times applied the exact same test as the Eighth Circuit. *See Ibrahim v. Dep't of Homeland Sec.*, 538 F.3d 1250, 1259 (9th Cir. 2008) (jurisdiction exists when defendant's actions are "performed for the very purpose of having their consequences felt in the forum state" (quoting *Brainerd*, 873 F.3d at 1260) (internal quotation marks omitted)). In short, when a defendant acts with the intent to cause harm in the forum state, he satisfies *Calder* because he expressly aims at that state and knows that harm will be felt there. *See Tamburo*, 601 F.3d at 706.

court, like the Eighth Circuit in *Johnson*, does not explicitly apply *Calder* through three prongs, its rule has the same effect: "an act done outside the state that has consequences or effects within the state will suffice as a basis for jurisdiction . . . if the effects are seriously harmful and were intended or highly likely to follow from the nonresident defendant's conduct." *McFadin v. Gerber*, 587 F.3d 753, 761 (5th Cir. 2009) (quoting *Guidry v. U.S. Tobacco Co.*, 188 F.3d 619, 628 (5th Cir. 1999)) (internal quotation mark omitted), *cert. denied*, 131 S. Ct. 68 (2010). Beyond an intention to cause harm within the state, no additional "aiming" is required.

The decision in *Central Freight Lines Inc. v. APA Transport Corp.*, 322 F.3d 376 (5th Cir. 2003), illustrates the Fifth Circuit's approach. In that case, the defendant knew about the plaintiff's contractual relationship with another Texas company; acting with that knowledge, the defendant "intentionally attempted to interfere with that relationship" by holding "freight hostage in New Jersey and by manipulating the price of freight delivery in the northeast." *Id.* at 383–84. The court held that the defendant's intent to harm the plaintiff, with knowledge that he would feel the harm in Texas, was sufficient to support jurisdiction there. *Id.* at 384. Although petitioner cites *Panda Brandywine Corp. v. Potomac Electric Power Co.*, 253 F.3d 865 (5th Cir. 2001), as evidence of a circuit split, Pet. 19, that case applied the same test to readily distinguishable facts. *See* 253 F.3d at 869 (finding jurisdiction lacking when conduct was not directed at anyone specific and the plaintiff's allegations "only relate[d] to the foreseeability of causing injury" in the forum).

3. Petitioner claims that, although the First and Sixth Circuits have not "addressed the issue as clearly as" the other circuits on which he relies, they have nonetheless rejected the Ninth Circuit's express aiming rule. Pet. 20 n.6. This too is incorrect: those circuits follow the same test as the Ninth Circuit. In *Noonan v. Winston Co.*, 135 F.3d 85 (1st Cir. 1998); Pet. 20 n.6, the First Circuit held that jurisdiction over French defendants was improper, but it did so because the plaintiff did not allege any "intentional behavior." *Id.* at 90. Unlike in *Calder*, in which "the defendants' intentional conduct was '*calculated* to cause injury to respondent in California,'" *id.* (quoting *Calder*, 465 U.S. at 791), the defendant in *Noonan* did not even know that its defamatory publication would reach the forum state, *id.* at 91. Thus, nothing in the First Circuit's opinion suggests that *Calder* requires anything beyond an intent to harm an in-forum resident.

And in *Air Products & Controls, Inc. v. Safetech International, Inc.*, 503 F.3d 544 (6th Cir. 2007), the Sixth Circuit held that Michigan could exercise jurisdiction over a defendant who had allegedly engaged in a fraudulent transfer that injured a Michigan corporation. Applying *Calder*, the Sixth Circuit made clear that the defendant "transferred the assets with the intent to hinder, delay, or defraud Air Products"; that it "knew that Air Products had its principal place of business in Michigan, and that the focal point of its actions and the brunt of the harm would be in Michigan"; and that the purpose to harm

the plaintiff was sufficient for its result.[9] *Id.* at 552–53. Targeting a forum resident was thus sufficient for the Sixth Circuit to find express aiming.

B. The Ninth Circuit's Personal Jurisdiction Holding Is Correct On The Merits.

1. This Court's precedents establish two related propositions: causing foreseeable harm in a forum state, standing alone, is insufficient to support personal jurisdiction; but purposefully causing harm in the forum state *is* sufficient. Since *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), this Court has emphasized that whether a state may exercise personal jurisdiction over an out-of-state defendant depends on "traditional notions of fair play and substantial justice." *Id.* at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)) (internal quotation marks omitted). Basing jurisdiction on the defendant's intent to cause harm furthers this fundamental principle by ensuring that jurisdiction

---

[9] Petitioner cites *Reynolds v. International Amateur Athletic Federation*, 23 F.3d 1110 (6th Cir. 1994); Pet. 20 n.6, a defamation case. In *Reynolds*, however, the court (in contrast to *Calder*) inferred that the requisite purpose was missing because the defendant's allegedly defamatory press release was not intended to reach a forum-state audience. *See id.* at 1120 ("The fact that the [defendant] could foresee that the report would be circulated and have an effect in Ohio is not, in itself, enough to create personal jurisdiction. [A]lthough [the plaintiff] lost Ohio corporate endorsement contracts and appearance fees in Ohio, there is no evidence that the [defendant] knew of the contracts or of their Ohio origin." (citation omitted)). As in the Ninth Circuit, foreseeability was insufficient for jurisdiction.

derives from "actions by the defendant *himself*," *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985), such that he "should reasonably anticipate being haled into court" in the forum, *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). And just as it would be unfair to require a defendant to answer in a state based on the plaintiff's "unilateral activity," *Hanson v. Denckla*, 357 U.S. 235, 253 (1958), so too would it be unfair to force a plaintiff to seek redress in the defendant's home state for an intentional injury, *see Calder v. Jones*, 465 U.S. 783, 790 (1984). Moreover, a state itself has a "significant interest in redressing injuries that actually occur within" its borders, regardless of their source. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 776–77 (1984).

The defendants' intentions were at the heart of *Calder*, in which this Court held that California could exercise jurisdiction over a reporter and an editor who lived in Florida and contributed to an allegedly libelous magazine article about a California actress. *See* 465 U.S. at 791. This Court reasoned that the defendants were "not charged with mere untargeted negligence," but rather with "intentional, and allegedly tortious, actions" that were "expressly aimed at California," because "they knew" that their story "would have a potentially devastating impact" on the plaintiff "in the State in which she lives and works and in which the [magazine] has its largest circulation." *Id.* at 789–90.

Significantly, although petitioner attempts to focus on the ways in which the story in *Calder* was itself related to California, Pet. 23, this Court made clear that those facts were relevant only as evidence

indicating that the defendants knew that the story would harm the plaintiff there. *See Calder*, 465 U.S. at 790 ("An individual injured in California need not go to Florida to seek redress from persons who, though remaining in Florida, knowingly cause the injury in California."). This case is on all fours with *Calder*: by purposely depriving respondents of money that he knew they needed for their business in Nevada, petitioner intended to injure them in Nevada, and respondents can seek redress for their injuries there.

2. As petitioner concedes, the decision below employed a widely used three-pronged test that implements *Calder*'s fact-intensive holding. Pet. 14–15. Petitioner nonetheless complains that under the Ninth Circuit's test, "[w]henever a plaintiff alleges that a defendant committed an intentional act aimed *at the plaintiff* with the knowledge that it will harm the plaintiff in the forum state – *i.e.*, whenever the plaintiff can meet the first and third prongs of *Calder*'s three-prong test – the Ninth Circuit would necessarily conclude that the second part . . . was also satisfied." Pet. 22–23 (emphasis added).

Petitioner is correct that such conduct would satisfy the Ninth Circuit's (and indeed every circuit's) test, because it would reflect the defendant's intent to cause harm in the forum state. But he is incorrect that those courts would thereby "collapse" *Calder*'s three requirements into two. *Id.* 23. In describing *Calder*'s first prong, petitioner ignores the obvious difference between an "intentional act" (the first prong of the standard) and an "intentional act aimed at the plaintiff" (petitioner's recharacterization of that standard). The court of appeals explained that

Calder's first prong could be satisfied even if the intentional act *was not* "aimed at the plaintiff." Instead, that issue is properly addressed under the "express aiming" prong, which is satisfied when there is "individual targeting" of forum residents. Pet. App. 17a–18a.

Regardless, nothing in *Calder* requires the three-pronged inquiry undertaken by the Ninth Circuit. Indeed, the Seventh and Tenth Circuits – both of which, according to petitioner, apply the "correct" test, *see* Pet. 18 – have noted an "overlap" between the second and third prongs of their tests. *See Dudnikov*, 514 F.3d at 1075; *Tamburo*, 601 F.3d at 704. Petitioner's argument thus has no bearing on whether the decision below is consistent with this Court's precedents.

Notwithstanding his earlier concession that the Ninth Circuit focused on the defendant's "*intentional* act *aimed* at the plaintiff with *knowledge* that it will harm the plaintiff in the forum state," Pet. 23 (emphasis added), petitioner next complains that the decision below erroneously employed a jurisdictional analysis based on mere foreseeability. *Id.* 23–24. But that allegation cannot be reconciled with the Ninth Circuit's opinion. The panel majority emphasized that petitioner's intent to harm respondents was central to its analysis:

> [T]he difference between those cases in which harm is merely foreseeable in the forum and those in which conduct is "expressly aimed" at the forum is often the difference between an *intended* impact that is either local or undifferentiated, and an *intended* impact that

> is targeted at a known individual who has a substantial, ongoing connection to the forum.

Pet. App. 19a. The court correctly concluded from the numerous steps petitioner took to deprive respondents of their money that he intended to injure them, *id.* 24a–27a, 45a–47a, and it correctly found that petitioner knew the injury would be felt in Nevada, *id.* 27a–29a. As a result, jurisdiction in Nevada was based on petitioner's own actions and intentions, making it reasonable to require him to answer for them there. *See Burger King*, 471 U.S. at 475–76.

3. Petitioner makes much of a supposed "difference between aiming conduct at a person who happens to be a resident of a given state and aiming conduct at the state itself." Pet. 21. Tellingly, however, petitioner never explains what would be involved in "aiming conduct at the state itself." In any case, the distinction that he draws finds no support in this Court's decisions. As *Burger King* recognized, this Court has "consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction" if the defendant purposefully directs his activities at "residents of another state." 471 U.S. at 476; *see also J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2787 (2011) (plurality opinion) (describing "intentional tort[s]" as an exception to the general principle that defendants must conduct activities within the forum state for jurisdiction to lie there). The rule could not be otherwise. Under petitioner's theory, a Georgia resident who singled out a Nevada resident and illegally withdrew the entire contents of her California bank account could not be sued in Nevada.

As the circuits uniformly agree, *Calder* does not require this absurd result. As long as the defendant intends harm within the forum state, jurisdiction there is proper and does not offend the Constitution.

4. Finally, petitioner significantly overstates the importance of this issue. Contrary to his contention, Pet. 26–28, the Ninth Circuit's decision does not mean that an airport employee can be haled into court in any state around the country simply because he injures a plaintiff en route to her eventual destination. The Ninth Circuit addressed (and dismissed) that possibility head on, carefully explaining that petitioner "did much more" than engage in "intentional tortious conduct aimed at a person . . . in transit at an airport." Pet. App. 37a. Instead, the court reiterated, petitioner "individually targeted [respondents] in Nevada" when he intentionally deprived them of their funds by filing a false probable cause affidavit, knowing that they had substantial connections to Nevada and would be injured there. *Id.* Thus, he "intentionally and directly – not just foreseeably or derivatively – target[ed] Nevada funds and persons."[10] *Id.* 47a.

---

[10] Moreover, to the extent that petitioner complains about an alleged "burden" created by the express aiming test, any "burden" is properly considered under an entirely separate prong of the personal jurisdiction test, which focuses on whether the exercise of jurisdiction is reasonable. *See* Pet. App. 32a ("Burden of Defending in the Forum"). Perhaps wisely, petitioner does not seek review of the panel's conclusion that the "burden" factor "does not weigh in favor of [petitioner], although it would in all probability weigh in favor of many airport-connected defendants not associated with the federal government." *Id.* 33a.

II. The Ninth Circuit's Venue Holding Does Not Warrant This Court's Review.

The Ninth Circuit held that the District of Nevada was a proper venue for respondents' suit. Pet. App. 42a. In reaching that holding, the court explained that "[a]ll the economic injuries suffered by [respondents] were realized in Nevada, including their loss of use and interest on the funds for nearly seven months." *Id.* 41a. That injury was especially important to respondents because, as the court recognized, they rely on their "bank" as seed money for their business. *See id.* 27a.

But the place where respondents were injured was merely one factor that the court of appeals considered in its venue determination. The court also considered the sequence of events and omissions that gave rise to respondents' claim concerning petitioner's false affidavit, including the fact that respondents mailed documentation from Nevada showing the legitimacy of their money, that petitioner drafted his fraudulent affidavit after respondents had returned there, and that the arrival of respondents' money in Nevada was "the event that caused [their] cause of action to mature." *Id.* 41a–42a. Only after "[t]aking all these events together" did the Ninth Circuit conclude that a substantial part of the events or omissions giving rise to the claim occurred in Nevada. *Id.* 42a. Notably, Judge Ikuta's dissent did not dispute that conclusion. And although petitioner sought rehearing and rehearing en banc on this question, neither Judge O'Scannlain nor Judge McKeown saw fit to address it in their dissents from the denial of rehearing en banc.

A. There Is No Circuit Split That Affects The Result In This Case.

Petitioner contends that the Ninth Circuit's venue holding conflicts with the decisions of three other circuits. But here too the purported circuit split is overstated; petitioner conjures it up only by mischaracterizing both the holding of the court below and the holdings of the circuits on which he relies.

As an initial matter, petitioner mischaracterizes the Ninth Circuit's venue holding as resting solely on the fact that "respondents' claimed injury occurred in Nevada." Pet. 2. The petition omits that the locus of respondents' injury was just one "relevant factor" that the majority considered in determining that venue was proper in Nevada. Pet. App. 41a (quoting *Myers v. Bennett Law Offices*, 238 F.3d 1068, 1076 (9th Cir. 2001)) (internal quotation mark omitted). The majority also considered the actions by petitioner that gave rise to respondents' claims. *Id.* 41a–42a. Indeed, only by glossing over the full breadth of the Ninth Circuit's analysis can petitioner argue that this case presents a circuit split over whether "the district in which the plaintiff is injured is 'a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.'" Pet. 31 (quoting 28 U.S.C. § 1391(b)(2)).

To bolster his allegations of a circuit split, petitioner suggests that, in supposed contrast with the decision below, three other circuits make venue determinations based exclusively on where "the alleged acts or omissions *by the defendant* took place." *Id.* 31. But here too petitioner mischaracterizes what those courts actually held.

Petitioner correctly observes that the Eighth Circuit has declined to find venue based solely on the plaintiff's residency and that it has instead focused on the defendant's activities. *Id.* 31–32 (citing *Woodke v. Dahm*, 70 F.3d 983 (8th Cir. 1995)). But petitioner ignores that the Eighth Circuit in *Woodke* also emphasized that the plaintiff had not adduced "*any other evidence*" that the events "giving rise" to his claim "occurred in the forum that he chose." 70 F.3d at 985 (emphasis added). That reasoning comports with the Ninth Circuit's in this case; the distinction is one of fact, not law, deriving from the fact that respondents here offered substantial evidence of events in Nevada giving rise to their claim, Pet. App. 41a–42a, while the plaintiff in *Woodke* did not.

Petitioner next asserts that the Eleventh Circuit "followed the same course [as the Eighth] in *Jenkins Brick Co. v. Bremer*," 321 F.3d 1366 (11th Cir. 2003), by holding that "[o]nly the events that directly give rise to a claim are relevant." Pet. 32 (second alteration in original) (quoting *Jenkins*, 321 F.3d at 1371). Elaborating on this standard, the Eleventh Circuit expressly "approve[d] of cases such as *Woodke*," concluding that the Eighth Circuit's "analytical framework, which considered as relevant only those acts and omissions that have a close nexus to the wrong, is a good interpretation of a statute." 321 F.3d at 1371–72. There is no tension between the ruling below and *Jenkins*: here, the Ninth Circuit held that venue was proper because "'a substantial part of the events or omissions giving rise to the claim occurred' in Nevada." Pet. App. 42a (quoting 28 U.S.C. § 1391(b)(2)).

Petitioner concludes his search for a circuit split with *Daniel v. American Board of Emergency Medicine*, 428 F.3d 408 (2d Cir. 2005), which he characterizes as "adopt[ing] the Eighth and Eleventh Circuits' holdings that only the defendant's acts and omissions are relevant under § 1391(b)(2)." Pet. 33. But the *Daniel* opinion itself belies that characterization, clarifying that the actual inquiry is "whether 'significant events or omissions material to [the plaintiff's claims] have occurred in the district in question.'" 428 F.3d at 432 (quoting *Gulf Ins. Co. v. Glasbrenner*, 417 F.3d 353, 357 (2d Cir. 2005)). Indeed, the *Daniel* court observed that the *plaintiff's* receipt of something in the district could form "a substantial part of the events giving rise to a claim." 428 F.3d at 433 (citing *Bates v. C&S Adjusters, Inc.*, 980 F.2d 865, 868 (2d Cir. 1992)). Although the Second Circuit held that venue in the Western District of New York was improper, it did so *after* reviewing the lengthy list of actions giving rise to the plaintiffs' antitrust claims and concluding that the receipt of certain notices in that district by just six of the 176 plaintiffs was "only an insignificant . . . part of the events or omissions giving rise to" the claims. *Id.* at 434 (quoting 28 U.S.C. § 1391(b)(2)). In this case, by contrast, different facts evaluated under the same test led the Ninth Circuit to the opposite outcome – hardly the makings of a circuit split. Pet. App. 41a–42a.

B. The Ninth Circuit's Holding That The District Of Nevada Is A Proper Venue Is Correct.

This Court's review is not warranted for the further reason that the Ninth Circuit's venue holding

is correct on the merits. Venue is proper in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(b)(2). To make this determination, courts take into account the "entire progression of the underlying claim." *Emp'rs Mut. Cas. Co. v. Bartile Roofs, Inc.*, 618 F.3d 1153, 1166 (10th Cir. 2010) (quoting 17 James Wm. Moore et al., *Moore's Federal Practice* § 110.04[1] (3d ed. 2010)) (internal quotation mark omitted). And that is exactly what the Ninth Circuit did when it examined the series of actions leading to respondents' claim based on petitioner's filing of the false affidavit. Pet. App. 41a–42a.

Before the Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089, the venue statute provided that venue was proper in the judicial district "in which the claim arose." 28 U.S.C. § 1391(b) (1988). Courts had construed Section 1391(b)'s reference to the district where the claim arose as "demand[ing] that one place, and one place only, be pinpointed" as the proper venue. David D. Siegel, *Commentary on 1988 and 1990 Revision of Section 1391*, 28 U.S.C.A. § 1391; *see, e.g.*, *Leroy v. Great W. United Corp.*, 443 U.S. 173, 186 (1979) (comparing two venues and noting that the location of impact on the plaintiff in one "f[e]ll far short of [the contacts] connecting the claim" to the other). As a result, venue determinations were "hard if not impossible to do in many cases." Siegel, *supra*; *see also Jenkins*, 321 F.3d at 1371.

The 1990 amendments responded to these difficulties; indeed, Congress's purpose in enacting the changes was to "avoid[]" both "the litigation breeding phrase 'in which the claim arose'" and "the

problem created by the frequent cases in which substantial parts of the underlying events have occurred in several districts." *See* H.R. Rep. No. 101-734, at 23 (1990). Under the statute as amended, venue is now proper – as the Ninth Circuit held in this case – where significant events or omissions material to the plaintiff's claim have occurred, "even if other material events occurred elsewhere." *Gulf Ins. Co.*, 417 F.3d at 357; *see also Setco Enters. Corp. v. Robbins*, 19 F.3d 1278, 1281 (8th Cir. 1994) ("Under the amended statute, we no longer ask which district among two or more potential forums is the 'best' venue . . . .") (construing Section 1391(a)(2)).

Neither the current text of Section 1391(b)(2) nor the history of the statute suggests that judges ought to look exclusively at a defendant's actions while making substantiality analyses. Yet petitioner still argues that venue can be proper only in the Northern District of Georgia because that was where he seized respondents' funds. But the proper inquiry is where a substantial part of the events giving rise to respondents' continued-seizure claim occurred; thus, the Ninth Circuit was correct to consider facts such as the return of respondents' funds to Nevada because those facts constituted a substantial part of the events giving rise to respondents' claims. Pet. App. 41a–42a.

Finally, petitioner cites *Leroy* for the proposition that the venue statute protects defendants from "the risk that a plaintiff will select an unfair or inconvenient place of trial." 443 U.S. at 184; Pet. 34–35. But the ruling below was consistent with *Leroy*. In making its venue determination, the Ninth Circuit looked at whether a "substantial" part of the events

and omissions giving rise to respondents' claim occurred in Nevada. Pet. App. 42a. That substantiality requirement itself protects defendants by ensuring that they are "not haled into a remote district having no real relationship to the dispute." *Cottman Transmission Sys., Inc. v. Martino*, 36 F.3d 291, 294 (3d Cir. 1994). Moreover, other safeguards remain: defendants – including petitioner – may still argue that venue is improper under 28 U.S.C. § 1406(a) or proper but inconvenient under 28 U.S.C. § 1404(a). *See Action Embroidery Corp. v. Atl. Embroidery, Inc.*, 368 F.3d 1174, 1181 (9th Cir. 2004).

III. This Case Is A Poor Vehicle For Addressing The Questions Presented.

Even if the questions presented were appropriate for this Court's consideration, this case would be a poor vehicle for addressing them. With respect to personal jurisdiction, although petitioner purports to identify a circuit split regarding the legal standard governing "express aiming," his real complaint is that the Ninth Circuit misapplied the standard that it chose. *See* Pet. 22 (arguing that the Ninth Circuit "paid lip service" to the correct three-pronged test). As a general rule, this Court does not grant certiorari simply to review the application of law to fact. Sup. Ct. R. 10.

Further, this case is interlocutory. Because the district court granted petitioner's motion to dismiss before holding any evidentiary hearing, numerous facts regarding both personal jurisdiction and venue

remain disputed and could be further developed on remand, perhaps alleviating any need for this Court's review.[11] Moreover, if the lawsuit goes forward, petitioner will doubtless attempt to assert that he is entitled to qualified immunity, and the lower courts' resolution of that defense could also obviate the need for this Court's intervention.

---

[11] Among other things, the parties dispute whether the Ninth Circuit correctly inferred from respondents' allegations that petitioner intentionally targeted respondents while knowing about their Nevada connections. *See* Pet. App. 26a–27a. Because that conclusion is central to the analysis in this case, granting review might require this Court to decide whether the Ninth Circuit applied the correct legal standard regarding the kinds of inferences that may be drawn from a complaint – a question that was neither raised in the petition nor well-developed below.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

Robert A. Nersesian
(Counsel of Record)
NERSESIAN & SANKIEWICZ
528 South Eighth St.
Las Vegas, NV 89101
(702) 385-5454
vegaslegal@aol.com

January 24, 2013