No. 12-574

IN THE

Supreme Court of the United States

ANTHONY WALDEN,

Petitioner,

v.

GINA FIORE AND KEITH GIPSON,

Respondents.

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

BRIEF FOR THE RESPONDENTS

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QUESTIONS PRESENTED

1. Whether the Due Process Clause forbids Nevada courts from exercising personal jurisdiction over a defendant who intentionally targets Nevada residents for injury in that state?

2. Whether the general federal venue provision, 28 U.S.C. § 1391(b)(2), categorically limits venue to the district of the defendant's acts or omissions, or otherwise categorically forbids venue in the district in which the plaintiffs suffered the injury giving rise to their claim.

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STATEMENT OF THE CASE

I. Factual Background

Respondents Gina Fiore and Keith Gipson are lawful professional gamblers who live and work in Las Vegas, Nevada. Pet. App. 2a; J.A. 13, 18. On occasion, they also travel to other locations as part of their profession to engage in legal gambling. In August 2006, respondents made such a trip to San Juan, Puerto Rico. They took with them a "traveling bank" of approximately $30,000. The trip was a success, as they won around $67,000. Pet. App. 3a.

On August 8, 2006, respondents arrived at the San Juan airport to fly home to Las Vegas, connecting through Atlanta. They carried with them the roughly $97,000 in cash. Pet. App. 3a. There is no legal restriction on traveling with that amount of cash on such a domestic flight.

Respondents' baggage was x-rayed and respondents themselves were screened through a machine that tests for even minute traces of drugs. Nothing was found. Respondents' carry-on baggage was also searched, revealing the significant quantities of cash but no evidence of drugs or any other unlawful activity. J.A. 16-17.

Respondents' possession of the cash triggered an inquiry by agents of the Drug Enforcement Administration (DEA), who questioned respondents about it. Respondents explained that they were professional gamblers, that the cash represented the proceeds of lawful gambling in a San Juan casino plus the "bank" they had brought with them, and that they were returning to their homes in Las Vegas. When asked for identification, respondents

produced California driver's licenses, but explained that they also had residences in Las Vegas. Pet. App. 4a; J.A. 18. They also provided the agents additional information concerning their Las Vegas residences. J.A. 18.

Having no basis to believe that respondents were engaged in any unlawful activity, the officials allowed respondents to board their flight. However, they told respondents that they might be subject to further questioning when they arrived in Las Vegas. Pet. App. 3a-4a. In response, respondents arranged to have their attorney meet them at the Las Vegas airport to be present during any further DEA questioning. *Id*. 4a.

However, rather than questioning petitioners at their home destination in the presence of their attorney, DEA agents intercepted respondents during their layover in Atlanta, where they would predictably lack access to counsel and where it would be costly and difficult for them to subsequently challenge the agents' conduct in a local court. One of those agents was petitioner Anthony Walden. At the time of the events in this case, he was working as both an officer in the Covington Police Department and as a deputized DEA agent in a joint state-federal drug task force assigned to the Atlanta Hartsfield-Jackson International Airport. *See* J.A. 39-40. Under such arrangements, local police departments are entitled to receive a share of money seized by their officers. 21 U.S.C. § 881(e)(1)(A); United States Drug Enforcement Administration, DEA Programs: State and Local Task Forces, http://www.justice.gov/dea/ops/taskforces.shtml (last visited July 23, 2013).

When respondents arrived in Atlanta for their connecting flight to Las Vegas, they spent some time in the terminal after disembarking from their flight from San Juan. Upon entering the gate line for boarding their Las Vegas flight, they were approached by petitioner and another DEA agent, who had been contacted by their San Juan counterparts. Pet. App 4a; J.A. 41. Petitioner and his partner questioned respondents separately. Fiore explained that she and Gipson were professional gamblers and that the cash was their bank and winnings. To demonstrate that respondents had acquired the funds lawfully, she produced a trip log (kept for tax purposes) itemizing her winnings in various casinos. Gipson likewise described the legitimate source of his cash, explaining that his documentation was in his checked luggage. Pet. App. 4a-5a.

After about ten minutes of questioning, another DEA agent arrived with a drug sniffing dog. It examined Fiore's bag without reaction. Pet. App. 5a. Petitioner and the dog handler indicated that this showed that the dog had not detected any contraband. J.A. 21. The dog pawed at Gipson's bag once but otherwise did not react to his luggage. *Id.*; Pet. App. 5a.

Petitioner nonetheless informed both Fiore and Gipson that the dog had alerted to their bags (even though the opposite was true at the very least with respect to Fiore's luggage). Moreover, the luggage had passed through screening in San Juan, and Fiore had provided petitioner with a log itemizing her casino winnings. Petitioner nonetheless asserted that there was probable cause to believe that all of

the cash was the proceeds of drug trafficking. On that purported basis alone, he seized all of their money. Respondents asked that they at least be left with cab fare to get home from the Las Vegas airport, but petitioner refused. Pet. App. 5a; J.A. 21.

Although he was seizing the money on the alleged premise that it was the result of drug trafficking, petitioner did not arrest respondents or even question them further. Indeed, no federal or state law enforcement agent *ever* questioned respondents again about any alleged illegal conduct, much less instituted criminal charges. Instead, having seized nearly $100,000 of respondents' money on the supposed ground that they had engaged in drug crimes, petitioner allowed respondents to board their flight, representing that their money would be returned if, after returning home, they could prove that it had been lawfully obtained. Pet. App. 5a. The case was then transferred to DEA headquarters in Virginia. Pet. App. 6a.

The events that followed are the basis for respondents' assertion that jurisdiction and venue are proper in federal district court in Nevada. Upon their return to Las Vegas, in accordance with petitioner's instructions, respondents and their counsel promptly assembled the requested documentation authenticating the legitimacy of the seized funds. On August 30, 2006, respondents forwarded to petitioner from Las Vegas copies of their federal tax returns showing that they made their living through gaming; receipts from their trip; travel itineraries; and hotel records from the casino in Puerto Rico. Shortly thereafter, on September 15, 2006, respondents' Las Vegas counsel sent petitioner

still more documents, including a report from a San Juan casino showing that Gipson won $30,000 shortly before boarding his flight from San Juan to Las Vegas. Pet. App. 5a-6a; J.A. 23-24.

In possession of these exculpatory materials, petitioner prepared and submitted a false probable cause affidavit to justify the seizure of the funds, with the goal of prompting the federal government to institute a forfeiture action. J.A. 25-27. In addition to falsely describing the events in the Atlanta airport, the affidavit concealed much, if not all, of the exculpatory evidence respondents had provided petitioner from Las Vegas. J.A. 26-27.

The review by the DEA Headquarters disclosed no evidence that the cash was connected to drug transactions. J.A. 25. Likewise, an investigation into respondents' backgrounds produced no evidence in support of the seizure. *Id*. Nonetheless, on the basis of petitioner's false probable cause affidavit, the DEA continued to retain the funds, denying respondents' request for it to be returned.

An Assistant United States Attorney eventually reviewed the case. She discovered, after speaking with respondents' counsel, that petitioner had concealed exculpatory information and submitted a misleading probable cause affidavit. Pet. App. 7a. After reviewing the evidence, she determined that there was no probable cause for the seizure or forfeiture of the funds. *Id*.; J.A. 35. The government then relented and returned the funds to respondents at their residences in Las Vegas, approximately six months after the initial seizure and petitioner's receipt of documentation showing the legitimacy of the funds. Pet. App. 7a.

During the period that the government refused to return the funds, respondents sought to continue their lawful gambling occupation in Las Vegas. But gambling requires cash, and the fact that respondents had no access to the money wrongly held by the government materially limited their ability to do so. J.A. 35; Pet. App. 27a.

II. Procedural History

A. District Court Proceedings

Respondents brought this *Bivens*[1] action against petitioner in the U.S. District Court for the District of Nevada. Respondents alleged that petitioner violated their Fourth Amendment rights by knowingly compiling a false and misleading probable cause affidavit after having received the exclupatory materials sent by respondents from Las Vegas. Pet. App. 7a-8a; J.A. 33, 35 (Complaint ¶¶ 102(iii), 110). The complaint alleges that as a result of these actions, respondents were deprived of access to their funds for approximately six months, causing them damage. J.A. 33-35.[2]

Petitioner was represented in the proceedings by the United States Department of Justice. He moved to dismiss the suit for lack of personal jurisdiction and improper venue. Pet. App. 8a. In support of his motion, he submitted an affidavit, J.A. 39-43, but he did not request an evidentiary hearing to resolve any

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[1] *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

[2] Respondents also challenged the initial seizure of the funds. Pet. App. 7a; J.A. 33, 35 (Complaint ¶¶ 102(i), 110).

purported factual disputes, *see id*. 37-38; Pet. App. 11a & n.12. Petitioner stated that he was a resident of Georgia and had no material contacts with Nevada aside from the events giving rise to the litigation. J.A. 41-42. He acknowledged that at the time he seized respondents' cash he knew they were on their way to Las Vegas. *Id.* He did not deny that he was aware, based on communications from the San Juan DEA agents, that petitioners had explained that they were residents of both California and Nevada. *Id*. And he acknowledged having received the exculpatory documents from Las Vegas, without disputing the complaint's allegation that he failed to include that exculpatory information in his affidavit. *Id*. 43. Petitioner further did not deny preparing a knowingly false probable cause affidavit for the purpose of delaying or preventing the return of the seized cash to respondents in Las Vegas. *Id*. 39-43.[3]

The district court granted the motion, holding that it lacked personal jurisdiction over petitioner. Pet. App. 66a, 73a. The court did not reach petitioner's argument that venue was improper.

B. Court Of Appeals Decision

On respondents' appeal, petitioner was again represented by the federal government. The Ninth Circuit reversed, finding that the district court had personal jurisdiction over petitioner and that venue

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[3] Petitioner says in his brief to this Court that he "disputes drafting any affidavit at all." Petr. Br. 35. But he made no such claim in his affidavit. *See* J.A. 39-43. Nor did he make that claim in his briefs below or in his petition for certiorari.

was appropriate in the District of Nevada. Because petitioner did not ask for an evidentiary hearing, *see* Pet. App. 11a n.12, the court asked only whether respondents made a "prima facie showing of jurisdictional facts," taking as true the uncontroverted allegations and reasonable inferences drawn from the complaint while also resolving "all disputed facts in favor of the plaintiff." *Id*. 12a (citation and internal quotation marks omitted), 14a. Petitioner does not challenge that framework in this Court.

1. The court of appeals explained that although respondents brought federal claims in federal court, under Federal Rule of Civil Procedure 4(k)(1)(A), personal jurisdiction was governed by the forum state's long-arm statute. Pet. App. 9a. Because Nevada's statute permits personal jurisdiction to the full scope permitted by the Due Process Clause of the Fourteenth Amendment, the court's analysis "focuse[d] exclusively on due process considerations." *Id*.

The court applied the circuit's settled three-part test:

> (1) The non-resident defendant must *purposefully direct his activities* or consummate some transaction *with the forum or resident thereof*; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;

> (2) the claim must be one which arises out of or relates to the defendant's *forum-related activities*; and
>
> (3) the *exercise of jurisdiction* must comport with fair play and substantial justice, i.e. it *must be reasonable*.

Pet. App. 10a (quoting *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004)) (emphasis in original).

Purposeful Direction. The first prong of the inquiry, the court explained, can take two forms based on the type of case: "purposeful direction, which most often applies in tort cases, and purposeful availment, which most often applies in contract cases." Pet. App. 15a. Because respondents alleged intentional torts, the court applied a "purposeful direction analysis," derived from this Court's decision in *Calder v. Jones*, 465 U.S. 783 (1984) . Pet. App. 15a-16a. Under that test, "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." *Id*. 16a (citation and internal quotation marks omitted).

In this case, the first requirement was satisfied because the complaint alleged intentional torts. Pet. App. 17a. Moreover, the court easily concluded that the third prong was satisfied as well: petitioner knew that "delay in returning the funds to Fiore and Gipson in Las Vegas caused them foreseeable harm in Nevada," because he was aware that the funds constituted working capital for their professional gaming activities there. *Id.* 28a.

Accordingly, the key question was whether petitioner had expressly aimed his conduct at Nevada within the meaning of *Calder*. Pet. App. 17a. The court of appeals accepted, for purposes of its decision, the district court's conclusion that the *initial* seizure of the funds did not meet this test. But the court of appeals recognized that respondents' complaint is not so limited. Instead, respondents separately allege that petitioner attempted to prevent the return of the funds to respondents in Nevada through his false affidavit. The court concluded that the express aiming prong was satisfied with respect to that allegation. *Id*.

The court explained that "[i]n general, where there was 'individual targeting' of forum residents – actions taken outside the forum state for the purpose of affecting a particular forum resident or a person with strong forum connections — we have held the express aiming requirement satisfied." *Id*. 17a-18a (citations omitted). For example, "if a defendant is alleged to have defrauded or similarly schemed against someone with substantial ties to a forum, the 'expressly aimed' factor is met, even if all the defrauding activities occur outside the forum." Pet. App. 25a. This case was similar to such a fraud case, the court explained, in that petitioner "fraudulently executed a false and misleading probable cause affidavit, used it to encourage the U.S. Attorney in Georgia to prosecute a forfeiture action, and thereby sought to obtain the funds for the Atlanta DEA." Pet. App. 26a.

The court of appeals further concluded that respondents' claims arose from petitioner's forum-related conduct and that exercise of jurisdiction was

reasonable in this case, as required by the second and third prongs of the circuit's *Schwarzenegger* test. Pet. App. 29a-36a. In assessing reasonableness, the court considered, among other things, petitioner's role as a law enforcement officer in a busy international airport. *Id*. 31a-33a. The court acknowledged that by virtue of his job, petitioner was potentially subject to accusations of illegal conduct by individuals from throughout the country. "Were Walden a local small business person or an airport employee," the court concluded, "his argument might well have force." *Id*. 32a. But the litigation burden on a federal agent like petitioner, the court noted, is substantially diminished because when "federal employees are sued under *Bivens*, the government, as a rule, provides for their defense, and, ultimately, indemnifies them." Pet. App. 32a (citing 28 C.F.R. § 50.15). And in this case, petitioner was "represented by the appellate staff of the Civil Division of the Department of Justice in Washington, D.C." *Id*. 33a. Conversely, the burden of having to litigate their claim in Georgia would be significant for respondents. *Id*.

The court ended its due process analysis by emphasizing the limits of its decision. "[W]e are not holding," the court explained, "that intentional tortious conduct aimed at a person where he or she is in transit at an airport is sufficient, standing alone, to confer personal jurisdiction over an airport-connected official or employee." Pet. App. 37a. In this case, petitioner "did much more" because "his actions amounted to an attempt to defraud Nevada residents." *Id*.

Having concluded that the district court had personal jurisdiction over petitioner with respect to the false affidavit claim, the court left open for the district court to decide on remand whether to exercise pendent personal jurisdiction over respondents' remaining claims, including their distinct claim that petitioner's initial seizure of the cash was unconstitutional. Pet. App. 38a-39a.

2. The court also rejected petitioner's alternative claim that venue in the District of Nevada was improper. Pet. App. 40a-42a.

The court explained that venue lies in any district in which "a substantial part of the events or omissions giving rise to the claim occurred." Pet. App. 40a (quoting 28 U.S.C. § 1391(b)(2)). "In a tort action," the court continued, "the locus of the injury is a relevant factor in making this determination." *Id*. 41a (citation and internal punctuation omitted). And in this case, "[a]ll the economic injuries suffered by [respondents] were realized in Nevada." *Id.*

The court considered other factors as well. It noted that respondents' $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.

"Taking all these events together," the court held that "'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)).

The court emphasized that it was not holding that "law enforcement officers who work at transportation hubs are subject to nationwide venue because of their status." *Id*. 41a. "For venue to lie, the terms of § 1391(b)(2) must be met, as they are in this case." *Id*.

3. Judge Ikuta dissented, principally on the factual ground that she did not read respondents' complaint to allege a distinct false affidavit claim. *See* Pet. App. 54a-59a. She did not, however, question the majority's venue analysis.

4. Petitioner sought rehearing and rehearing en banc. The federal government declined to have its attorneys participate in further appellate review, but presumably agreed to pay fees for his private counsel. *See* 28 C.F.R. § 50.15.

The full court denied the petition. Pet. App. 765a. The Judges O'Scannlain and McKeown wrote dissents, again limited to the panel's personal jurisdiction ruling. Pet. App. 77a-95a.

In response, the members of the original panel majority added a postscript to their opinion, setting forth in greater detail the basis for their reading of the complaint to include a separate false affidavit claim. Pet. App. 43a-47a. They further emphasized that "where a defendant's actions have only an indirect or unintended impact on forum-resident plaintiffs, even where a defendant knows of a plaintiff's forum-residence and could foresee such an impact, the express-aiming requirement is not satisfied." *Id*. 46a. But in this case, the "complaint alleges not that Walden inadvertently filed a false affidavit, but rather that he intentionally filed an

affidavit he *knew* was false – allegations analogous to fraud." *Id*. And "caselaw firmly establishes that fraud directed at harming a *particular* person in a forum meets the express aiming standard." *Id*. 47a.

5. The United States declined to file a petition for certiorari on petitioner's behalf. However, petitioner's private counsel did, and this Court granted certiorari on March 4, 2013. 133 S. Ct. 1493.

SUMMARY OF THE ARGUMENT

I. The court of appeals correctly held that petitioner established constitutionally sufficient minimum contacts with Nevada by intentionally targeting respondents to suffer an injury in that state.

In *Calder v. Jones*, 465 U.S. 783 (1984), this Court unanimously upheld California's exercise of personal jurisdiction over Florida defendants whose only contact with the forum was their authorship of an article that defamed a California resident. "We hold," the Court announced, "that jurisdiction over petitioners in California is proper because of their intentional conduct in Florida calculated to cause injury to respondent in California." *Id*. at 791.

Calder establishes that a defendant creates sufficient minimum contacts with a forum when he (1) intentionally targets (2) a known resident of the forum (3) for imposition of an injury (4) to be suffered by the plaintiff while she is residing in the forum state. Thus, a police officer who subjects a Nevada resident to an unlawful search in the Atlanta airport is not subject to suit in Nevada even if he knows the victim's home state. The defendant's conduct must be "calculated to cause injury to [the plaintiff] *in*" the

forum state. 465 U.S. at 791 (emphasis added). And the invasion of privacy that constitutes the constitutional injury in an unlawful search case is experienced at the time and place of the search.

In some cases, however, a defendant's actions and the resulting injury take place in different states. *Calder* is one example, but modern technology has given rise to many others. A defendant passing through the Atlanta airport can order items online using stolen credit card information from a victim in Vermont. A defendant in Florida can fraudulently access the bank account of a victim in California. Or a defendant might file a false change of address form with the Social Security Administration, redirecting a Connecticut resident's disability payments to himself in New Jersey.

In such cases, where there is no obvious physical location at which the illegal conduct and injury simultaneously occur, the injury is properly seen as occurring in the state where the victim resides, just as this Court concluded that the emotional and reputational injuries in *Calder* occurred in California because that was where the victim lived and worked. And under *Calder*, a defendant who intentionally targets a victim to suffer such an injury thereby establishes constitutionally sufficient minimum contacts with the state in which the injury occurs.

Petitioner's contrary reading of *Calder* cannot be squared with the text or rationale of that opinion. Although the Court mentions in one place that the defendant's actions were "aimed at California," 465 U.S. at 789, the Court made clear that all this meant was that the defendants wrote "an article that they knew would have a potentially devastating impact

upon respondent" and "knew that the brunt of that injury would be felt by respondent in the State in which she lives and works." *Id*.

The court of appeals' reading of *Calder* fully comports with "traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). There is nothing remotely unfair in a state allowing its courts to remedy an injury a defendant intentionally inflicted in the forum.

The decision of the court of appeals also is consistent with principles of state sovereignty and federalism. Protecting state residents from intentional harm is a core sovereign obligation. Providing a judicial forum for injuries intentionally imposed within the state does not offend the sovereignty of the state in which the defendant acted, particularly when, as here, the forum state acts to enforce *federal* law.

Petitioner complains that such a rule creates practical problems for law enforcement. But the court of appeals properly considered those objections as part of the second-stage reasonableness analysis that follows a finding of minimum contacts, a portion of the decision petitioner has chosen not to challenge in this Court. In any event, law enforcement officials are already provided significant special protection by the doctrine of qualified immunity and by the general provision of representation and indemnification by their employers. At the same time, there are powerful countervailing interests in affording victims of police abuses access to convenient fora for the redress of constitutional violations.

II. Nor is there any basis in the language, history, or purposes of 28 U.S.C. § 1391(b)(2) for petitioner's claim that venue was limited in this case to the district in which the defendant's actions occurred, thereby precluding venue in the place of injury.

In amending Section 1391(b)(2) to its present form, Congress specifically rejected the model of prior provisions that allowed venue in "the judicial district wherein the act or omission complained of occurred." 28 U.S.C. § 1391(f) (1963). Instead, Congress allowed venue in any district in which a substantial portion of the "events" or "omissions" that "give rise" to the claim transpired. That language is broad enough to encompass the district in which the plaintiff experiences the injury (an "event") that forms a necessary element of her claim (*i.e.*, "gives rise to the claim").

That reading is confirmed by the history of the statute, which has been repeatedly amended to expand venue and allow courts to weigh a wider range of practical considerations. The Court has emphasized that even under an earlier, narrower version of the provision, courts could consider the availability of evidence and the convenience of witnesses, not just the location of the defendant's acts or omissions. In many cases, those considerations point away from the place of the defendant's conduct and toward the district in which the injury occurred. For example, the defendant's home forum may have almost nothing to do with a case in which a life insurance company denies a claim on the ground that the decedent committed suicide.

Nor is there any reason to believe that Congress intended the venue provision to render federal courts substantially less open to victims of targeted intentional torts than are the state courts. Yet on petitioner's theory, the plaintiff in *Calder* could not have filed her suit in federal court because all of the defendant's acts took place in Florida; indeed, the defendants could have removed the case to federal court in California and then demanded transfer to Florida as the only district in which federal venue would lie.

ARGUMENT

Petitioner is charged with submitting a false probable cause affidavit for the purpose of preventing the federal government from returning to respondents money that was rightfully theirs. At the time he wrote the affidavit, petitioner knew respondents were living and working in Las Vegas, Nevada. And he knew that the financial injury from his unlawful conduct would be visited upon them there. There appears to be no dispute that if petitioner had written his affidavit from a hotel room in Las Vegas, jurisdiction and venue in the District of Nevada would be proper in this case. The question is whether it makes a determinative difference that he instead submitted the affidavit from his home state of Georgia.

One hundred and fifty years ago, the answer would have been clear. At that time, it was commonly accepted that a court had no jurisdiction over persons outside its territorial jurisdiction. *See, e.g.*, *Pennoyer v. Neff*, 95 U.S. 714, 720 (1878). But the "limits imposed on state jurisdiction by the Due

Process Clause . . . have been substantially relaxed over the years" in light of "a fundamental transformation in the American economy." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980) (citations omitted). "As technological progress has increased the flow of commerce between the States, the need for jurisdiction over nonresidents has undergone a similar increase." *Id.* at 294 (quoting *Hanson v. Denckla*, 357 U.S. 235, 250-51 (1958)).

Nowhere is that need clearer than in cases of intentional torts. Increasingly, modern technology allows defendants to impose grave harm on a state's residents without ever setting foot in the state. A defendant sitting in an airport in Illinois with nothing more than a laptop and an Internet connection can use the stolen identity information of a victim in Vermont to make online purchases from a company in California using a debit card issued to the victim by a bank in Delaware. If states are to fulfill their most basic sovereign function of protecting their residents from such intentional harm, their legislatures must be afforded leeway to bestow upon their courts long-arm jurisdiction sufficient to meet the modern threat.

That said, this case may be resolved within the confines of this Court's existing precedents. The court of appeals properly concluded that nothing in the Due Process Clause precludes Nevada from providing a forum for its residents when they are intentionally targeted by an out-of-state defendant for injury within the forum. Nor does the federal venue provision strip the district court in Nevada of

the authority to hear such a claim simply because the defendant acted in another state.

I. Petitioner Established "Minimum Contacts" With Nevada By Intentionally Targeting Respondents For Injury In Las Vegas.

Petitioner's objections to the court of appeals' personal jurisdiction ruling are quite narrow and easily resolved.

Petitioner does not challenge the Ninth Circuit's basic three-part framework for determining personal jurisdiction, which asks (1) whether the defendant has sufficient "minimum contacts" with the forum; (2) whether the suit arises out of those contacts; and (3) whether the exercise of jurisdiction is reasonable on the facts of this case. Pet. App. 10a.[4]

Petitioner furthermore challenges the court of appeals' resolution of only the first step of the test, addressing "minimum contacts." He does not seek review of (indeed he barely acknowledges) the court's reasonableness ruling. *See* Petr. Br. 7 (stating only that the "court of appeals then found the other requirements of due process satisfied").

Petitioner further does not seek review of the Ninth Circuit's decision to base its personal jurisdiction ruling solely on respondents' false affidavit claim, leaving it to the district court to decide on remand whether to exercise pendant

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[4] That test is firmly founded in this Court's precedents. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 475 (1985).

personal jurisdiction over their separate unlawful seizure claim. *See* Pet. App. 38a-39a.[5]

And in contesting personal jurisdiction over the false affidavit claim, petitioner does not ask this Court to resolve any of the various factual disputes between the parties. *See* Pet. Cert. Reply 11 (asserting that "the dispute here is purely legal and could not be more cleanly presented"). Thus, although he asserts in a footnote that he "did not know that respondents were Nevada *residents*," petitioner disavows any reliance on that alleged fact. Petr. Br. 23 n.5.[6] Nor does he dispute the court of appeals' reading of the record as establishing that he knew that respondents would suffer the financial injury caused by his conduct where they were residing and working, in Nevada. *See* Pet. App. 28a, 31a-32a.

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[5] Thus, petitioner does not contest the court's reading of respondents' complaint as containing separate unlawful seizure and false affidavit claims. *See* Petr. Br. 4 n.3. Nor does he ask this Court to decide whether those allegations state a claim.

[6] There is no basis for that claim in the record. In his affidavit in support of his motion to dismiss, petitioner carefully stated only that at the time of the initial encounter, when asked for identification, respondents "provided state issued driver's licenses, which were not issued by the State of Nevada." J.A. 42. He said nothing about what his colleagues in San Juan told him about respondents' residence, and does not dispute that respondents told those officers they were Nevada residents. *See id.* 41-42. Nor does his affidavit say anything about what petitioner learned about respondents' place of residence later on, through subsequent investigation into their backgrounds or communications with their Las Vegas counsel. *See id*. 23-25, 43.

Accordingly, as presented to this Court, the question presented boils down to this: does a defendant establish constitutionally sufficient minimum contacts with a forum when he intentionally targets known forum residents to inflict an injury that he knows will be suffered in that forum?

Importantly, the question for this Court is not whether such a rule is wise or even fair. The Constitution gives the power and responsibility for crafting personal jurisdiction rules first and foremost to Congress and state legislatures. Instead, the question for the Court is whether permitting an exercise of personal jurisdiction in such circumstances would so far exceed "traditional notions of fair play and substantial justice" that it is beyond the power of the people's elected representatives to permit. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (citation omitted).

A. Petitioner's Actions Established Minimum Contacts With Nevada Under *Calder v. Jones*.

The court of appeals correctly applied this Court's precedents to find that petitioner's intentional targeting of respondents for financial injury in Nevada established the minimum contacts required by the Due Process Clause.

1. *This Court's Due Process Cases Draw A Fundamental Distinction Between Intentional Torts Against Targeted Victims And "Mere Untargeted Negligence."*

"[T]he 'minimum contacts' test of *International Shoe* is not susceptible of mechanical application." *Kulko v. Superior Court of California*, 436 U.S. 84, 92 (1978). It depends, instead, "upon the quality and nature of the activity" undertaken by the defendant. *International Shoe*, 326 U.S. at 319. Of particular importance to this case, the Court has carefully distinguished intentional torts that target known victims, like the ones alleged here, from other negligent acts that are typical of, for example, product liability claims.

When a defendant has not targeted anyone for injury, but instead has simply created a product with the potential to injure unknown individuals wherever the product is eventually used, the "general rule" is that a defendant may be sued in the victim's home forum only if it has "'purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.'" *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780, 2785 (2011) (plurality) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). That requirement is driven by the economic reality that once placed into the stream of commerce, a product may eventually find its way to far-flung places, and by the Court's determination that subjecting defendants to suit anywhere their products cause injury would create intolerable uncertainty and

burdens. *See, e.g.*, *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 296 (1980).

Consequently, in such cases, the mere fact that an injury occurred in a forum is not enough; the court must look to other contacts with the state, such as the defendant's choice to regularly market or sell its products there. *World-Wide Volkswagen*, 444 U.S. at 297-98. When a defendant's contacts with the state are the result of its own purposeful decisions, rather than solely the choices of the plaintiff or random events, jurisdiction is appropriate because the defendant is assured a measure of predictability and control over its own amenability to suit in that forum. *Id.* at 297.

Cases like this one, alleging an intentional tort against a targeted victim, are quite different. *See, e.g.*, *Calder v. Jones*, 465 U.S. 783, 789 (1984) (distinguishing intentional torts from "mere untargeted negligence"); *see also Nicastro*, 131 S. Ct. at 2785 (plurality) (noting that "there may be exceptions" to the "general rule" requiring purposeful availment, "say, for instance, in cases involving an intentional tort.") (citation omitted).

In cases involving intentional torts against targeted victims, the Court has held that "a forum legitimately may exercise personal jurisdiction over a nonresident who 'purposefully directs' his activities toward forum residents." *Burger King*, 471 U.S. at 473. The Court has recognized that states have "a significant interest in redressing injuries that actually occur within the State," *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 776 (1984), even when the defendants have not physically entered the jurisdiction. *See, e.g.*, *McGee v. International Life*

Ins. Co., 355 U.S. 220, 223-24 (1957). At the same time, in the intentional tort context, the scope of defendants' exposure to suit in other states is limited, predictable, and largely within their own control – they are subject to suit only in those states in which they target a forum resident, not every jurisdiction into which their products may eventually flow.

Accordingly, in the products liability context, the analysis focuses on whether a defendant "can be said to have targeted *the forum*," in the sense of "'seek[ing] to serve' a given State's market." *Nicastro*, 131 S.Ct. at 2788 (plurality) (emphasis added) (citation omitted). By contrast, in an intentional tort case like this one, the question is whether the defendant has targeted "*residents* of the forum" for injury in that state. *Burger King*, 471 U.S. at 472 (emphasis added).

2. Under Calder v. Jones*, A Defendant Establishes Sufficient Minimum Contacts With A Forum When He Intentionally Targets The Plaintiff For Injury In That Forum.*

a. This Court's principal intentional targeting case is *Calder v. Jones*, 465 U.S. 783 (1984). In *Calder*, actress Shirley Jones filed suit in California against a writer and editor of the *National Enquirer*, both of whom lived and worked in Florida. She alleged that the two defendants had collaborated in producing an article that defamed the actress, causing her reputational injury and emotional distress. *Id.* at 784, 789.

This Court accepted that the defendants had no meaningful contacts with California other than the

article. Further, the Court agreed that the tabloid's general contacts with California, through the distribution of the *Enquirer* in the state, could not be attributed to the defendant-employees for purposes of asserting personal jurisdiction against them individually. 465 U.S. at 790.

The Court nonetheless unanimously upheld the exercise of personal jurisdiction over the individual defendants in California. In an intentional tort case, the Court explained, a defendant may establish the requisite minimum contacts with a forum by making a forum resident "the focus of the activities of the defendants out of which the suit arises." 465 U.S. at 789. Thus, in *Calder*, the defendants' "intentional, allegedly tortious, actions were expressly aimed at California," in the particular sense that the defendants knew that their article "would have a potentially devastating impact upon" Jones and "knew that the brunt of the injury would be felt by [Jones] in the state where she lives and works and in which the *National Enquirer* has its largest circulation." *Id*. at 789-90. "An individual injured in California," the Court held, "need not go to Florida to seek redress from persons who, though remaining in Florida, knowingly cause the injury in California." *Id*. at 790.

The Court concluded by stating its holding: "We hold that jurisdiction over petitioners in California is proper because of their intentional conduct in Florida calculated to cause injury to respondent in California." 465 U.S. at 791.

b. *Calder* thus establishes that a defendant creates sufficient minimum contacts with a forum when he (1) intentionally targets (2) a known

resident of the forum (3) for imposition of an injury (4) to be suffered by the plaintiff while she is residing in the forum state.

Under this standard, it is not enough that the defendant injured a person who turns out to be a resident of another state. The defendant must specifically target the victim, knowing that his victim is a resident of the forum. In addition, the defendant's conduct must be "calculated to cause injury to [the plaintiff] *in*" the forum state. *Calder*, 465 U.S. at 791 (emphasis added). Injuries that occur elsewhere are not the basis for jurisdiction in the victim's home state under *Calder*.

A hypothetical illustrates the rule's operation. A Nevada resident who asserts that officers in the Atlanta airport violated the Fourth Amendment by subjecting him to heightened security screening cannot, without more, file suit in his home state. That is so even if the officers knew from his driver's license that he was a Nevadan. *Contra* Petr. Br. 36. Similarly, a Nevada resident unlawfully beaten by officers in the Atlanta airport cannot return home to file suit. In both cases, the injury – the privacy intrusion and the physical harm – occurred in Georgia, not Nevada. *Calder* permits suit to be filed in Nevada only if the *injury itself* occurs in that forum. The fact that the injury has collateral consequences that may be felt later and in other places does not suffice. *Cf. Delaware State College v. Ricks*, 449 U.S. 250, 258 (1980) (distinguishing, for statute of limitations purposes, between time when unlawful act occurs and subsequent times when "the *effects* of the" violation are felt) (emphasis in original).

In contrast, when a defendant inflicts injuries remotely – for example, by using a stolen credit card in another state, publishing a defamatory story in a national tabloid, or submitting a false affidavit designed to prevent the victim from receiving a payment from the government – the place of the unlawful conduct and the place of injury are necessarily distinct. As in *Calder*, the defendant may act in Florida, intending that the victim experience the "brunt of that injury . . . in the State in which she lives and works." 465 U.S. at 789-90. And in such circumstances, by that voluntary, intentional act, he establishes constitutionally sufficient minimum contacts with that forum.

c. Petitioner reads *Calder* differently. He insists that "plaintiff may not hale an out-of-state defendant into court based on an intentional tort unless the defendant's alleged conduct was *expressly aimed at the forum state*—a requirement that is separate from and in addition to the requirement that the defendant know he will cause harm in the forum state." Petr. Br. 22 (emphasis added).

Preliminarily, petitioner never provides a satisfactory explanation of what it means to target a state, as opposed to its residents, for an intentional tort (other than to suggest, unhelpfully, that shooting a gun into the state's territory would count, Petr. Br. 33). But whatever it means, his proposed rule cannot be squared with this Court's precedents.

The Court in *Calder* repeatedly made clear that due process is satisfied by targeting a known state *resident* for injury in the forum. The Court expressly stated that "[w]e hold that jurisdiction over petitioners in California is proper *because* of their

intentional conduct in Florida calculated to cause injury *to respondent* in California." 465 U.S. at 790 (emphasis added). The Court explained that "[i]n this case, petitioners are primary participants in an alleged wrongdoing intentionally directed at a California *resident*, and jurisdiction over them is proper on *that basis*." 465 U.S. at 791 (emphasis added). The Court thus affirmed the lower court's holding that "a valid basis for jurisdiction existed on the theory that petitioners intended to, and did, cause tortious *injury to respondent* in California." *Id*. at 787 (emphasis added).

Likewise, in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), the Court cited *Calder* as establishing the principle that "[w]here a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, [the due process] 'fair warning' requirement is satisfied if the defendant has 'purposefully directed' his activities at *residents of the forum*." 471 U.S. at 472-73 (emphasis added). The Court explained that so long as the defendant's "efforts are 'purposefully directed' *toward residents* of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there." *Id.* at 476 (citing *Calder*, 465 U.S. at 778-790) (emphasis added). In this context, the Court explained, considerations of "fair play and substantial justice" serve to "establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required." *Burger King*, 471 U.S. at 477 (citing, among other cases, *Calder*, 465 U.S. at 788-89).

Petitioner nonetheless points to a sentence in *Calder* that observes that the defendants' "intentional, and allegedly tortious, actions were expressly aimed *at California*." 465 U.S. at 789 (emphasis added). But in the very next sentences, the Court made clear that it was making no distinction between targeting a California resident for injury in that state (by far the predominant articulation of the rule throughout the opinion) and targeting California. The Court explained that the defendants targeted California by writing and editing "an article that they knew would have a potentially devastating impact *upon respondent*. And they knew that the brunt of that injury would be *felt by respondent* in the State in which she lives and works and in which the *National Enquirer* has its largest circulation." *Id.* at 789-90 (emphasis added). In the next sentence, the Court makes clear that it was "th[ose] circumstances" that made it reasonable for the defendants to "anticipate being haled into court" in the jurisdiction in which the harm was intentionally imposed. *Id*. at 790.

Petitioner also relies on sentences in the opinion describing how "the defamatory article was 'drawn from California sources' and concerned the plaintiff's 'California activities'; and that the plaintiff's 'career was centered in California.'" Petr. Br. 23 (quoting *Calder*, 465 U.S. at 789). He further points out that the Court noted that "California [was] the focal point *both of the story and of the harm suffered*," Petr. Br. 24 (quoting *Calder*, 465 U.S. at 789) (emphasis added by petitioner). "If targeting of a known forum resident were all that due process required," he

reasons, "most of these facts would have been irrelevant." *Id*.

That argument fails at multiple levels. As an initial matter, there is no need to scour the opinion for clues about which facts were ultimately essential to the result or what legal rule the Court adopted: Justice Rehnquist made both clear through the unambiguous articulation of the holding, which turned on the state in which the victim was targeted for injury, rather than the content of the defamatory story or the location of its sources. 465 U.S. at 791 ("We hold that jurisdiction over petitioners in California is proper *because of their intentional conduct in Florida calculated to cause injury to respondent in California*.") (emphasis added).

The Court made the same point at the end of the paragraph petitioner quotes. After noting that the story concerned California activities and was drawn from California sources, the Court explained that "[j]urisdiction over petitioners is therefore proper in California based on the '*effects*' of their Florida conduct in California," 465 U.S. at 789 (citations omitted) (emphasis added), not based on the subject matter or sources of the story that caused those effects. Those subsidiary facts simply explain why the effects of the defendants' conduct were felt in California, where Jones worked and her reputation mattered the most. For example, the fact that the *Enquirer* was circulated in California and discussed Jones's acting in Hollywood explains why the

defamatory article caused injury to her reputation in that state.[7]

Moreover, petitioner identifies no reason founded in the concerns of the Due Process Clause why the facts he cites should be sufficient to turn an otherwise unconstitutional exercise of jurisdiction into a lawful one. If it is fundamentally unfair to hale a Florida defendant into a California court solely because he targeted a California resident for defamation, how does that same exercise of power suddenly become consistent with traditional notions of justice and fair play when the story happens to involve events in California or is based in part on California sources? How could the fact that an article mentions California activities, or was based on phone calls to that state, tip the scales in giving California "the power to subject the defendant to judgment" for their defamatory conduct? *Nicastro*, 131 S. Ct. at 2789 (plurality). Petitioner offers no answers.

In fact, it is respondents' interpretation of *Calder*, not petitioner's, that best reflects the underlying principles of fairness and federalism that have guided this Court's due process decisions.

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[7] Notably, the Court accepted the defendants' argument that the circulation of copies of the tabloid in California could not count as a contact between the defendants (who, as mere employees of the paper, did not control its circulation) and the forum. 465 U.S. at 790. Had the Court concluded otherwise, personal jurisdiction would have been established without further analysis. *See Keeton*, 465 U.S. at 773-74 ("[R]egular circulation of magazines in the forum State is sufficient to support an assertion of jurisdiction" against the publisher in a libel action).

3. There Is Nothing Unfair About A State Exercising Jurisdiction Over A Defendant Who Intentionally Targets State Residents For Injury In The Forum.

When a defendant intentionally targets a particular individual to suffer injury in a specific state, there is nothing inconsistent with "traditional notions of fair play and substantial justice," *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (citation omitted), in allowing that state to provide a forum for the injured victim. Unlike a company whose product causes an unintended injury to an unknown victim, a defendant who "'purposefully directs' his activities toward forum residents," *Burger King*, 471 U.S. at 473, to inflict an injury upon them in that state can claim no unfair surprise that he may be held to account in that forum. *See Calder*, 465 U.S. at 190.

This is so even if the defendant inflicts the injury without physically entering the state. Modern technology is increasingly empowering out-of-state defendants to target a state's residents for injury without ever having to set foot in the state. A defendant can fraudulently access the retirement account of a victim in California over the Internet without ever leaving his home in Florida. A defendant in Rhode Island can stalk or harass a victim in South Carolina through text messages or Facebook postings without ever crossing the Mason-Dixon Line.

While the Internet and electronic communications have greatly enhanced defendants' power to act from afar, the problem for states is not

limited to that context. For example, an Alabama resident can mail a claim to a New York insurance company, causing it to send her a payment that was actually due to a California resident. A defendant can file a false change-of-address form for a Social Security recipient in Connecticut, redirecting the monthly benefits to himself in New Jersey. Or a debt collector in Kansas might submit fraudulent garnishment papers to an employer's main offices in Wisconsin, causing a reduction in wages a worker otherwise would receive in Iowa.

In all of these examples, the location of the defendant's conduct is ultimately less important to considerations of fundamental fairness than is the voluntariness of his decision to inflict an injury in the forum and his knowledge that the injury will be suffered there. Thus, the defendant who steals the retirement savings of a couple he knows to reside in California is fairly called to account in the courts of that state, whether he physically breaks into their bank in Sacramento or hacks into the bank's computers from Tallahassee. Likewise, a defendant like petitioner may fairly be sued in Nevada when he unlawfully attempts to prevent the return of funds to known Nevada residents whether he accomplishes that objective by writing a false affidavit in Atlanta, by writing the same affidavit from a hotel in Reno, or by stealing the refund check from petitioners' mailboxes in Las Vegas.

Acknowledging that reality does not make "*the plaintiff's* contacts with the forum . . . decisive in determining whether the defendant's due process rights are violated." Petr. Br. 25 (quoting *Rush v. Savchuk*, 444 U.S. 320, 332 (1980) (emphasis added

by petitioner)). The plaintiff's connection with the forum is insufficient unless the defendant voluntarily and intentionally targets the plaintiff to suffer an injury there.

Nor does the decision below contravene any constitutional principle that foreseeability alone is an insufficient basis for jurisdiction. *Contra* Petr. Br. 26-27. The line of cases upon which petitioner relies involves the kind of untargeted negligence that has the potential to give rise to claims nearly anywhere. *See id.* That risk, however, does not arise in cases of intentional torts targeted at known forum residents. Here, the effect in Nevada was not simply a foreseeable possibility; it was an *intended* effect of petitioner's conduct. That distinction was determinative in *Calder*, in which the Court rejected a similar argument that it was violating due process by holding the writer of the defamatory article subject to jurisdiction in California only because it was foreseeable that the article would be circulated, and cause injury, there. *See* 465 U.S. at 789-90. It was enough, the Court held, that the defendant engaged in "intentional conduct" that was "calculated to cause injury to [the plaintiff] in California." *Id*. at 791.

To be sure, as petitioner notes, permitting jurisdiction in such cases will sometimes impose litigation burdens on defendants who ultimately prevail on the merits. Petr. Br. 35. But *all* personal jurisdiction rules have that potential. Petitioner asserts that jurisdictional facts are more likely to be contested in intentional tort cases because they may overlap with the merits. Petr. Br. 34-35. But it is not self-evident that this is so. In *Calder*, for example,

the material jurisdictional facts were undisputed. *See* 465 U.S. at 785 n.3. Likewise in the context of this case, an officer might well concede that he wrote an affidavit in an attempt to prevent the return of funds to the plaintiff known to reside in the forum state, while still arguing (like the defendants in *Calder*) that what he wrote was true. At the same time, factual disputes can arise under the rule proposed by petitioner (*e.g.*, over the existence, nature, or extent of the defendant's other contacts with the forum).

The unfairness of subjecting potentially innocent defendants to litigation in out-of-state fora cannot be avoided, but it is mitigated by requiring courts to decide jurisdictional questions early in the case and by allowing defendants to request an evidentiary hearing to resolve any relevant factual issues, even if they overlap with the merits. In this case, however, petitioner never asked for a hearing. Pet. App. 11a n.12. Indeed, thus far, petitioner has not denied the allegations in the complaint and does not contest that the United States Attorney's office, on an independent review of the evidence, determined that there was no basis for the seizure or forfeiture of respondents' funds. *See* Pet. App. 7a; J.A. 35, 42; Petr. Br. 3-4.

At the same time, finding that a defendant has sufficient minimum contacts with a forum does not end the due process fairness analysis; the court must go on to consider whether the exercise of jurisdiction is reasonable in light of the specific circumstances of the case before it. *See, e.g.*, Pet. App. 30a; *Burger King*, 471 U.S. at 477. But again, petitioner has not

asked this Court to review the court of appeals' reasonableness determination in this case.

4. Respect For State Sovereignty Requires That Each State Be Allowed To Exercise Jurisdiction Over Those Who Target Its Residents For Injury Within The State.

Nor is respondents' position "irreconcil[able] with the basic notions of the territorial limits on state judicial power." Petr. Br. 31-32 (citing *Nicastro* plurality decision).

Petitioner's conduct directly implicated Nevada's most basic sovereign responsibility to protect those within its borders. *See, e.g.*, *Manigault v. Spring*, 199 U.S. 473, 480 (1905) (noting the "sovereign right of the government to protect the lives, health, morals, comfort, and general welfare of the people"); RESTATEMENT (SECOND) OF CONFLICTS OF LAW § 37 cmt. a ("A state has a natural interest in the effects of an act within its territory even though the act itself was done elsewhere"); *McGee*, 355 U.S. at 223 (same). Tortious conduct causing an injury within a state also affects that state's broader interests in protecting its economy and other institutions from the adverse effects of the tort. In this case, for example, petitioner's actions substantially diminished respondents' ability to actively participate in their profession in Las Vegas while the return of their money was delayed.

Accordingly, a defendant who targets a state resident, intending to cause that person to suffer an injury in the state, unquestionably engages in a "course of conduct directed at the society or economy existing within the jurisdiction . . . so that the

sovereign has the power to subject the defendant to judgment concerning that conduct." *Nicastro*, 131 S. Ct. at 2789 (plurality).

Nor does Nevada's exercise of jurisdiction in a case like this "reach out beyond the limits imposed on [it] by [its] status as [a] coequal sovereign[] in a federal system." *World-Wide Volkswagen*, 444 U.S. at 292. When a defendant intentionally causes an injury in another state, the state of injury has at least as great a claim to remedy the harm as the state in which the defendant acted. *See Calder*, 465 U.S. at 790; *McGee*, 355 U.S. at 223.

This is particularly true in a case, like this one, that raises only *federal* claims. As the plurality in *Nicastro* explained, "personal jurisdiction requires a forum-by-forum, or sovereign-by-sovereign, analysis." 131 S. Ct. at 2789. When a federal claim is heard in state court – and even more so, when it is heard in federal court, albeit pursuant to the personal jurisdiction rules of the courts of the state in which it sits, *see* Fed. R. Civ. P. 4(k)(1) – the court acts to vindicate the authority of the federal government, not the territorially more limited power of the state. The adjudication of a *federal* claim in a *federal* court in Nevada poses no threat to the federal structure or any offense to the sovereignty of the state of Georgia. Accordingly, petitioner rightly conceded below that "there is no state sovereignty conflict at issue" in this case. Petr. C.A. Br. 24.[8]

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[8] Petitioner's position furthermore disregards states' "substantial interest in cooperating with other states . . . to provide a forum for efficiently litigating all issues and damages

b. Petitioner ultimately acknowledges that "States certainly have authority to punish some intentional torts committed by out-of-state defendants." Petr. Br. 32. He even admits that this authority extends to harmful conduct initiated outside the state's territorial boarders. *Id.* 33. He posits, however, that a state may protect its residents only when the defendant acts in a way that can be seen as "figuratively enter[ing] the state in some way." *Id*.

This Court long ago rejected reliance on figurative "presence" to implement due process limits on personal jurisdiction, *see McGee*, 355 U.S. at 222, and for good reason. To start, the metaphor does little to provide guidance to the courts, particularly in the age of modern telecommunications and transportation. Today many intentional torts involve distinctly non-physical events, the location of which may be difficult (sometimes impossible) to pinpoint. For example, petitioner cites approvingly a decision finding personal jurisdiction in Colorado over a defendant who took out-of-state action (sending an email from the United Kingdom to eBay in California) to prevent an event (an on-line auction) from occurring in the forum (Colorado). Petr. Br. 28

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claims arising" out of a single incident "in a unitary proceeding." *Keeton*, 465 U.S. at 777. When multiple defendants act from different jurisdictions – as happened in this case, *see* J.A. 14 (naming unidentified official in Virginia as co-defendant for role in helping prepare false affidavit), or might happen in an anti-trust conspiracy – petitioner's rule would preclude any single court from adjudicating the claims against all of the defendants in a single proceeding.

(citing *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063 (10th Cir. 2008)). If that amounts to being figuratively present in the forum, it is difficult to see why petitioner's conduct does not also qualify: he took out-of-state action (submitting a false affidavit in Georgia) with the intended effect of preventing an event (delivery of respondents' funds) from occurring in the forum (Nevada).

Indeed, petitioner offers that jurisdiction might have been proper in this case if "petitioner tried to forfeit . . . a bank account located" in Nevada. *Id*. 29. But this concession only serves to emphasize the ill-defined and manipulable nature of petitioner's figurative presence rule. Petitioner does not explain what it means, in these days of electronic banking, for a bank account to be located in a particular state. It is entirely possible, for example, that an account opened in Reno is maintained electronically on servers in Los Angeles, backed by currency or other deposits at the bank's headquarters in Charlotte, and accessible by computers and ATMs throughout the country. Is a defendant who uses a counterfeit debit card at an ATM in Montana "figuratively present" in the victim's home state of Idaho? Nothing in the presence metaphor provides the answer.

Moreover, petitioner makes no effort to explain why what he did in this case is any different from trying to forfeit respondents' Nevada bank accounts from the standpoint of Nevada's sovereign interests or fairness to him. A state protects property in the state (be it cash or bank accounts) not as an end in itself, but as a means of fulfilling its more fundamental commitment to protecting its *residents*. That is why, for example, Nevada has a legitimate

sovereign interest in preventing a defendant from conning its elderly out of their Social Security checks, whether the defendant commits the fraud in person in the state, over the phone from Connecticut, or over the Internet from Canada. In the end, when an act is "done with the intention of causing effects in the state," the particular mechanism for effecting the in-state harm is immaterial – principles of state sovereignty demand that the state "may exercise the same judicial jurisdiction over the actor, or over the one who caused the act to be done, as to causes of action arising from these effects as it could have exercised if these effects had resulted from an act done within its territory." RESTATEMENT (SECOND) OF CONFLICTS OF LAW § 37 cmt. a (1971) (cited approvingly in *Calder*, 465 U.S. at 789).

c. Thus, in the end, petitioner has to admit that a "state 'has a significant interest in redressing injuries that actually occur within the State,'" even when the injurious conduct occurs elsewhere. Petr. Br. 33 (quoting *Keeton*, 465 U.S. at 776). Having backed himself into that corner, petitioner is forced to rest his entire case on the assertion that respondents' injury "did not occur within the state in any meaningful sense." Petr. Br. 33. But that claim cannot bear the weight he must put on it.

Petitioner argues that a victim of a financial fraud experiences that injury "wherever he happen[s] to be." Petr. Br. 33. From this he somehow concludes that because the injury could be felt *anywhere* it must be considered as occurring *nowhere* for purposes of *Calder*, leaving *no* state with a sufficient interest in protecting the victim to warrant exercise of

jurisdiction over an out-of-state defendant. *Id*. That remarkable claim has no basis in precedent or logic.

In *Calder* itself, the plaintiff alleged emotional and reputational injuries that likewise could be described as being felt "wherever [the plaintiff] happened to be present." Petr. Br. 33; *see Calder*, 465 U.S. at 785. Yet, this Court did not hesitate in finding that "the brunt of the harm, in terms of both respondent's emotional distress and the injury to her professional reputation, was suffered in California," *id*. at 789, because that is where she "lives and works," *id*. at 790.

That reasoning applies equally to financial injuries in cases like this one. If, for example, a defendant hacks into a victim's bank account or uses a stolen credit card, the injury is sensibly understood to be experienced where the victim was residing at the time of the loss.

That understanding does not provide the unlimited jurisdiction petitioner hypothesizes. When the unlawful act and the loss occur simultaneously at a physical location – for example, when the victim's purse is snatched on a street corner – the injury is properly understood to occur where the physical events took place. This is true even if the plaintiff also lacks access to the funds when she returns home. For Due Process purposes, the injury occurs when the deprivation takes place; it does not continuously re-occur for jurisdictional purposes whenever and wherever the victim feels the collateral consequences of the financial loss. Thus, the Ninth Circuit rightly perceived that a more significant Due Process question would arise if respondents had merely

alleged that petitioner unlawfully seized the funds in the Atlanta airport without more.

But this is a quite different case. Jurisdiction arises from the fact that petitioner, knowing that respondents were Nevada residents and having received exculpatory evidence from them in Nevada, submitted a false affidavit that prevented the return of funds money to them in Nevada. There is no question that this conduct caused injury, which obviously was suffered somewhere. That place certainly was not Georgia; by the time petitioner wrote his affidavit, respondents had long since departed Atlanta and were, instead, back at home in Nevada. The only sensible place to locate the occurrence of the injury is where respondents were living and working during the time in which they were deprived of their funds. That rule is easy enough to administer and avoids the prospect of giving plaintiffs an unlimited choice of fora.[9]

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[9] The United States asserts in passing that the harm respondents suffered in Nevada was "not any new economic loss, but simply the continuing effect of the prior seizure." U.S. Br. 17. Petitioner does not embrace that assertion, and rightly so. No one disputes that if petitioner had not filed his false affidavit, the money would have been returned to respondents months earlier than it was. The injury suffered during that period (the loss of the use of the money as working capital for respondents' business) is a distinct harm proximately caused by a distinct tort (the filing of the false affidavit) rather than some "continuing effect" of the initial seizure.

5. Petitioner Has Sufficient Minimum Contacts With Nevada To Support Personal Jurisdiction Over Respondents' False Affidavit Claim.

The requirements of *Calder* were plainly met in this case.

For purposes of this Court's decision, it is undisputed that petitioner intentionally targeted respondents in an attempt to prevent the government from returning their property. *See, e.g.*, Petr. Br. 23. It is further uncontested here that by the time he submitted the false affidavit, petitioner knew that respondents were Nevada residents. *See supra* p. 21 & n.6.[10] Finally, petitioner does not challenge the court of appeals' reading of the complaint as alleging that he knew that respondents would experience the injury resulting from his conduct in Las Vegas, where they were living and working. Pet. App. 27a-28a. That is all *Calder* requires.

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[10] Even if petitioner only knew that respondents were professional gamblers who practiced their trade in substantial part in Las Vegas – and therefore had "a significant connection to the forum," Pet. App. 23a – the result would be the same. The critical consideration is that petitioner knew that the injury inflicted upon respondents would be experienced in that jurisdiction. *See Calder*, 465 U.S. at 789-90.

B. Any Special Concerns Regarding Law Enforcement Defendants Are Appropriately Considered As Part Of The Reasonableness Inquiry, Which Petitioner Does Not Raise In This Court.

Petitioner and various *amici* voice concern that allowing *Calder* jurisdiction in the circumstances of this case could create special problems for law enforcement officials. Petr. Br. 36-37; U.S. Br. 18-22. They reason from this that the Court should sharply curtail *Calder* jurisdiction across the board, even in cases having no imaginable consequences of the concerns they raise. The Court should reject that invitation in favor of a more tailored approach.

1. Initially, it bears keeping in mind that the intentional targeting theory the court of appeals adopted has no application to most encounters between the police and citizens. Ordinarily, any tortious conduct by an officer – *e.g.*, an unlawful search, seizure, arrest, or use of excessive force, etc. – will result in an injury that is experienced at the place of the encounter, thereby limiting personal jurisdiction to the state in which the encounter occurred. *See supra* p. 27.

In any event, any special concerns relating to law enforcement can be accommodated in the subsequent reasonableness step of the due process inquiry. Even after concluding that a defendant has established minimum contacts under *Calder*, a court must still assess whether the exercise of jurisdiction in the particular case is reasonable. *See* Pet. App. 30a; *Burger King*, 471 U.S. at 477. In doing so, courts

may consider a wide range of factors, including "'the burden on the defendant,' 'the forum State's interest in adjudicating the dispute,' 'the plaintiff's interest in obtaining convenient and effective relief,' 'the interstate judicial system's interest in obtaining the most efficient resolution of controversies,' and the 'shared interest of the several States in furthering fundamental substantive social policies.'" *Burger King*, 471 U.S. at 477 (quoting *World-Wide Volkswagen*, 444 U.S. at 292).

This case-specific reasonableness analysis is the appropriate stage at which to attend to concerns about special problems that might arise in particular contexts. For example, in assessing the reasonableness of exercising jurisdiction in a defamation case, a court might well consider dispositive the differences between a claim against a national tabloid like the *National Enquirer* and suit against a part-time blogger. *See* Petr. Br. 39; *Burger King*, 471 U.S. at 485-86 (suggesting the Due Process Clause may permit a distinction between contract actions between signatories to franchise agreements, on the one hand, and consumer contracts, on the other).

In this case, the court of appeals considered the special concerns of law enforcement officers as part of its reasonableness analysis, which petitioner does not challenge in this Court. *See* Pet. App. 31a-33a. The Court therefore can reserve for another day whether special law enforcement-related concerns render unreasonable otherwise permissible exercises of jurisdiction over defendants for whom minimum contacts are established under *Calder*.

2. Even if petitioner's policy objections were properly before the Court, they would provide no basis for reversal.

In *Calder*, this Court rejected a similar request by media defendants for especially stringent limits on personal jurisdiction in light of the risk that the prospect of out-of-state litigation would deter the exercise of First Amendment rights. The Court explained that the "potential chill on protected First Amendment activity stemming from libel and defamation actions is already taken into account in the constitutional limitations on the substantive law governing such suits. To reintroduce those concerns at the jurisdictional stage would be a form of double counting." 465 U.S. at 790 (citations omitted). So, too, in this case, the law already protects against the deterrent effect of litigation on public officials by affording them the special protection of qualified immunity, which must be decided early in the case and may be subject to immediate interlocutory appeal when denied. *See, e.g.*, *Richardson v. McKnight*, 521 U.S. 399, 407-08 (1997); *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985). At the same time, in this case, as in most cases involving federal officials, the litigation burden on the defendant was minimized by government representation. *See* Pet. App. 32a; 28 C.F.R. § 50.15. To be sure, as petitioner notes, such assistance is not guaranteed. But that is simply another reason to consider the burden on law enforcement through a case-by-case reasonableness determination.

At the same time, the reasonableness analysis must take into account the public interest in effective enforcement of the federal law (especially the

Constitution) and "the plaintiff's interest in obtaining convenient and effective relief." *World-Wide Volkswagen*, 444 U.S. at 292; *see also Burger King*, 471 U.S. at 477. Denying jurisdiction in cases such as this will predictably preclude many ordinary citizens of limited means from vindicating important constitutional rights when they are injured by official misconduct taking place far from home. And knowing that fact may embolden some law enforcement officers, who may come to expect that their actions are unlikely to be subject to effective legal challenge. That prospect is particularly troubling in the civil forfeiture context (especially when agencies are entitled to retain a portion of the funds forfeited), where the police may target individuals simply passing through a jurisdiction, knowing the difficulty they would face if forced to return to the state to bring any legal challenge.[11]

Finally, the reasonableness analysis should take into account the nature of the claim. As the United States argues, the adjudication of claims under *federal law* should require only that the defendant have sufficient contacts "with the Nation as a whole." U.S. Br. 11 n.5 (citation omitted); *see Nicastro*, 131 S. Ct. at 2789 (plurality) (because "jurisdiction requires a forum-by-forum, or sovereign-by-sovereign, analysis," jurisdiction over federal question claims

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[11] *See, e.g.,* Marian R. Williams et al., *Policing for Profit: The Abuse of Civil Asset Forfeiture*, (Institute of Justice, 2010), *available at* http://www.ij.org/policing-for-profit-the-abuse-of-civil-asset-forfeiture-4; Eric Moores, *Reforming the Civil Asset Forfeiture Reform Act*, 51 ARIZ. L. REV. 777 (2009).

depends on whether the defendant has "the requisite relationship with the United States Government"); 4 WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE § 1068.1 (3d ed. 2007). There likewise should be no due process objection to a state court exercising that same jurisdiction when it executes its duty to enforce federal law. Whether the federal claim is adjudicated in federal district court or the state court across the street makes no difference to the litigation convenience of the defendant or the sovereignty interests of other states.

* * * * *

In the end, the Constitution gives authority for weighing considerations of fairness and public policy in the first instance, and principally, to Congress and the states. There is no reason to think that the nation's legislators will fail to take seriously the needs of law enforcement in crafting, or amending, personal jurisdiction rules. At the same time, however, the Due Process Clause surely provides those legislators leeway to permit suit in a victim's home state when a government official intentionally targets the plaintiff for injury in that forum, especially when the defendant is represented and indemnified by the government. *Cf.* 28 U.S.C. § 1391(e) (authorizing official capacity suits against federal officials in plaintiff's home district).

II. The Court Of Appeals Correctly Rejected Petitioner's Venue Objections.

Petitioner challenges the Ninth Circuit's venue ruling on three grounds, only two of which warrant this Court's review. First, he argues that "in cases like this where the only injury alleged is economic,

venue is proper only in the district or districts where the defendant's alleged conduct occurred." Petr. Br. 42; *see id.* 51-54. Second, he argues that in any event, the Court should at least declare that the rule supposedly applied by the Ninth Circuit (*i.e.*, that "venue is proper in a district if the plaintiff 'suffered harm' there or was otherwise 'affected' there by an alleged tort," *id*. 42) is wrong. *Id*. 43-48, 54-58. Third, even if the Ninth Circuit was correct to hold that venue may sometimes be appropriate in the district of injury, petitioner argues that it erred in concluding that venue was appropriate in Nevada on the facts of this particular case. *Id*. 49-51.

The Court should reject the first two arguments as inconsistent with the text, history, and purposes of the federal venue provision, as well as the decisions of this Court. The third, fact-bound challenge to the court of appeals' weighing of the relevant considerations in the context of this one particular case does not warrant this Court's review and is meritless besides.

A. Section 1391(b)(2) Does Not Limit Venue To The Place Of The Defendant's Wrongful Conduct.

The venue statute provides in relevant part that "[a] civil action may be brought in . . . a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated." 28 U.S.C. § 1391(b)(2). Nothing in the text, history, or purposes of this provision, or any decision of this Court, supports categorically

limiting venue to the district in which the defendant acted or failed to act.

1. Congress knows how to specify venue in the place in which a defendant's unlawful acts occurred. For example, in 28 U.S.C. § 1402(b), Congress provided for venue in Federal Tort Claims Act cases in any judicial district "wherein the act or omission complained of occurred." *See also* 28 U.S.C. § 1391(f) (1963) (allowing venue for automobile accident cases in the "the judicial district wherein the act or omission complained of occurred").[12]

By contrast, in Section 1391(b)(2), Congress used language that is plainly broader, permitting venue wherever a substantial portion of the "events" or "omissions" that "give rise" to the claim occurred. The words "events" and "omissions" naturally refer to the entire course of events relevant to the litigation. For example, when an insurance company denies a life insurance claim on the grounds that the decedent committed suicide, the alleged suicide is plainly part the "events" giving rise to the claim of breach of contract, even though it is not an element of the claim and does not involve conduct by the defendant. *Cf. McGee v. International Life Insurance Co.*, 355 U.S. 220, 223-24 (1957) (case arising from that factual scenario). Likewise, the policy holder's failure to make payments can be an "omission" that gives rise to the lawsuit that ensues when the insurer denies a claim.

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[12] As discussed below, this provision was subsequently repealed by Pub. L. 89-714, § 2, 80 Stat. 1111, 1111 (1966).

Thus, in *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.*, 529 U.S. 193 (2000), this Court found that venue to challenge an arbitral award was "clearly proper" in the district in which the contract at issue in the arbitration was to be performed, even though the arbitration occurred elsewhere. *Id.* at 198. Although the cause of action in the case was an alleged violation of the terms of the Federal Arbitration Act, which necessarily occurred at the place of the arbitration, the Court did not even pause to consider the possibility that the place of the arbitration was the *only* permissible venue under Section 1391(b)(2).

2. The breadth of Section 1391(b)(2) is confirmed by the history of the statute, which has been repeatedly amended to expand venue and allow courts to weigh a wider range of practical considerations in resolving venue objections.

As originally enacted in 1789, the venue provision permitted suit only in the district in which the defendant was "an inhabitant, or in which he shall be found at the time of serving the writ." 1 Stat. 79. It stayed that way until the middle of the last century, when Congress began to enlarge venue to account for the same kinds of modern realities that led this Court to expand personal jurisdiction in *International Shoe*.

The impetus for the change was a 1953 decision of this Court, holding that the location of an auto accident was not a proper venue when none of the parties was a resident of the district. *See Olberding v. Ill. Cent. R. Co.*, 346 U.S. 338, 340 (1953). That decision made litigating many such claims inconvenient for all the parties, given that the most

significant events in the case, as well as the likely witnesses, would often be located outside the parties' home states. In 1963, Congress reacted by enacting a provision allowing venue in auto-related cases in "the judicial district wherein the act or omission complained of occurred." 28 U.S.C. § 1391(f) (1963).

Three years later, Congress replaced the auto-specific provision with even broader language that applied to all manner of federal question and diversity claims, permitting venue in any judicial district "in which the claim arose." Pub. L. 89-714, § 1, 80 Stat. 1111, 1111 (1966). In so doing, Congress thus expressly rejected the prior language limiting venue to the district in which the defendant acted or failed to act.

This Court construed the 1966 amendment in *Leroy v. Great Western United Corp.*, 443 U.S. 173 (1979). There, although the Court made clear that the expansion was not intended to permit plaintiffs an unlimited choice of fora, it was nonetheless intended to expand venue considerations beyond the location of the defendant's allegedly unlawful conduct. The Court thus explained that important considerations included the "availability of witnesses, the accessibility of other relevant evidence," *id.* at 185, as well as "the nature of the action" and the law to be applied (which, although "[l]ess important" was "nonetheless relevant"), *id.* at 186.[13]

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[13] *See also* S. Rep. No. 89-1752, at 1-2 (1966) ("This enlargement of venue authority will facilitate the disposition of both contract and tort claims by providing, in appropriate cases,

In 1990, the venue provision was expanded yet further, to take its present form. The legislative history explains that the current statutory language had its origins in an American Law Institute (ALI) study published in 1968. *See* H.R. Rep. No. 101-734, at 23 (1990). Significantly, the ALI study specifically considered and rejected a proposal that venue should be limited to "any district where a defendant resides and . . . any district where the wrongful act, or a part thereof, occurred." ALI, STUDY OF THE DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS 217-18 (1969) ("ALI STUDY"). The ALI proposed instead the current language as an "improvement" to the previous "arose" formulation that had been a source of confusion and litigation. *Id.* at 137. It stated that the goal of the change was to ensure that a "case should be tried in the district that is the most convenient for the parties and witnesses, and best serves the interests of justice." *Id.* at 217. Thus, the proposed revision would permit suit in any "district having a *substantial connection* with the matters in suit." *Id.* at 137 (discussing identical language in diversity provision) (emphasis added).

Selecting a district conducive to the "convenience of litigants and witnesses," *Leroy*, 443 U.S. at 187 (citation omitted), requires taking into account not only the location of defendant's acts, but other events that may be relevant to the litigation. In some cases, the defendant's conduct may be relatively unimportant to those considerations. For example,

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a more convenient forum to the litigants and the witnesses involved.").

liability may be conceded, but damages contested. Even when liability is contested, it may not turn on the conduct of the defendant. For instance, the case may center on an affirmative defense that hinges on the plaintiff's actions (*e.g.*, the defenses of consent, waiver, contributory negligence, unclean hands, etc.). In such cases, holding the trial where the defendant acted could be inconvenient for everyone involved.

B. Section 1391(b)(2) Does Not Forbid Venue In The District In Which The Plaintiff Suffers The Injury Giving Rise To The Claims.

Petitioner additionally argues that even if Section 1391(b)(2) does not categorically limit venue to the places of the defendant's acts or omissions, the Ninth Circuit nonetheless erred in holding that "venue is proper in a district if the plaintiff 'suffered harm' there or was otherwise 'affected' there by an alleged tort." Petr. Br. 42. That argument misconstrues both the decision below and the scope of the federal venue statute.

1. The court of appeals did not purport to establish any categorical rule permitting venue in the plaintiff's home district so long as she "suffered harm" or was otherwise "affected" by the defendant's conduct there. *Contra* Petr. Br. 42.

To the contrary, the court simply held that "the locus of the injury [is] a *relevant factor*," in the venue analysis, not the only one. Pet. App. 41a (emphasis added). The court also considered a variety of other aspects of the case. For instance, the court explained that that issues regarding "the origin and legitimacy of the $97,000" seized by petitioner were focused on

Nevada, from which the $30,000 bank originated. *Id*. Moreover, "the documentation of the legitimacy of the money was sent from Nevada" and "the funds eventually were returned to Fiore and Gipson in Nevada, verifying the lack of probable cause for the forfeiture." *Id*. 42a. Finally, the court took into account that the "arrival of the funds in Nevada was the event that caused Fiore and Gipson's cause of action to mature, because their case was not ripe until the government abandoned the forfeiture case against them." *Id*. It was only by "[t]aking *all these events together*" that the court concluded that venue was "proper in the District of Nevada." *Id.* (emphasis added).

2. To the extent petitioner argues that the locus of the plaintiff's injury is not even a relevant factor in the venue analysis, he is clearly wrong. For most torts, the existence of injury is an element of the plaintiff's claim, often tied to the running of the statute of limitations. *See, e.g.*, *Rotella v. Wood*, 528 U.S. 549, 555 (2000). Accordingly, the suffering of that injury is one of the "events . . . giving rise to the claim." 28 U.S.C. § 1391(b)(2). And where that event occurs may determine the location of important evidence and witnesses in the case. For example, in this case, the evidence and witnesses concerning respondents' injuries was necessarily focused in Las Vegas, where they engaged in their profession.

Thus, in *Nicastro*, three members of this Court noted, without disagreement from any other Justice, that "the State in which the injury occurred would seem most suitable for litigation of a products liability tort claim" under Section 1391. *See* 131 S. Ct. at 2798 (Ginsburg, Sotomayor, and Kagan, JJ.,

dissenting). Citing this statement, petitioner himself ultimately acknowledges that the district in which the plaintiff suffers an injury *can be* a place where an "event . . . giv[es] rise to the claim" within the meaning of Section 1391(b)(2), at least in product liability cases. Petr. Br. 52.

But petitioner does not explain why a financial injury cannot also give rise to a claim. Like the physical injury in a products liability case, a financial injury is frequently a necessary element of the plaintiff's claim. In this case, for example, if respondents had not suffered any financial injury from petitioner's false affidavit (if, for example, it had never been received or was immediately ignored, and therefore did not delay the return of respondents' funds) there would be no claim.

Harkening back to his personal jurisdiction arguments, petitioner raises the specter of venue traveling with the plaintiff everywhere she "feels the 'impact' of the alleged tort." Petr. Br. 44. But again, petitioner elides the distinction between the event of suffering a tortious injury, and the continuing collateral consequences of that injury. *See supra* p. 27. Venue is permissible in Nevada because that is where petitioners experienced the financial injury giving rise to their claim; it would not follow them if they subsequently moved to Alaska. *Contra* Petr. Br. 47.

There is no reason to think that Congress intended to categorically preclude venue in the district of injury, rendering the federal courts substantially less open to victims of targeted intentional torts than the state courts. Indeed, on petitioner's theory, the plaintiff in *Calder* could not

have brought a diversity action in California, even though this Court held that the case was appropriately heard in California state court. Even worse, the defendants could have removed the suit to federal court, then had it transferred to Florida on the theory that venue would only lie in that state. *See* 28 U.S.C. §§ 1390(c), 1441. Thus, on petitioner's view, it turns out that an "individual injured in California" actually *does* need to "go to Florida to seek redress from persons who, though remaining in Florida, knowingly cause the injury in California." *Calder*, 465 U.S. at 790.

Likewise, under petitioner's interpretation, the victim of credit card fraud, the person whose online bank account was hacked, the teenager subjected to cyber-stalking, and countless other victims of targeted intentional torts by out-of-state defendants cannot seek relief in the federal district court in which their injuries were suffered, even if Congress has extended them the protection of federal law. There is no reason to believe Congress intended that perverse result.

C. Petitioner's Case-Specific Objections To The Court Of Appeals' Fact-Bound Venue Decision Provide No Basis For Reversal.

Petitioner is thus left to argue that the court of appeals erred in its evaluation and weighing of the relevant venue considerations in this one particular case. But that fact-bound question is not within the scope of the Question Presented (which asks a categorical question, *see* Pet. i), does not implicate

any circuit conflict, and does not otherwise warrant an expenditure of this Court's resources.

Nor, in any event, would such review change the outcome, as respondents' claim in this case arose in substantial part from events occurring in Nevada. As discussed, respondents' claims depend on their assertion that petitioner's false affidavit caused them injury in Nevada. Their claims thus arise in substantial part from the event of their injury, which occurred in Las Vegas.

That is also where a significant portion of the evidence and substantial number of the witnesses in the case are located. For example, respondents allege that petitioner failed to disclose material exculpatory information in an attempt to delay the return, and prompt permanent forfeiture, of respondents' funds. That exculpatory information was gathered and sent from Nevada, where the evidence supporting that claim will be found. Moreover, the evidence and witnesses needed to establish the existence and amount of damages suffered by respondents as a result of the delay in the return of their funds is in Nevada. And, of course, respondents' testimony will be central to almost every aspect of the case.

Thus, while Georgia also may have been a permissible venue, Section 1392(b)(2) does not preclude suit in Nevada.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.[14]

Respectfully submitted,

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[14] If the Court were to determine that the district court lacked personal jurisdiction over petitioner or that venue did not lie in the District of Nevada, it should remand to allow the lower courts to determine whether respondents should be allowed to request a transfer to the District of Georgia. *See* 28 U.S.C. §§ 1631, 1406. Although respondents told the district court in 2008 that they were in no position at that time to prosecute this action in Georgia, and would prefer a dismissal in order to take an appeal from any adverse personal jurisdiction ruling, *see* Pet. App. 73a, five years have passed since then. It would be in the interests of justice to permit the district court to revisit this issue in light of changed circumstances.