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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Under respondents' vision of personal jurisdiction, all it takes to hale someone into a distant forum is to allege that he committed an intentional tort aimed at a plaintiff who has connections to the forum. That view has no support in this Court's precedent, which requires that the defendant have meaningful contacts with the forum. The Ninth Circuit's approach—equating conduct aimed at a plaintiff who has forum-state contacts with conduct aimed at the forum state itself—merely defines away the required inquiry. Alleging that petitioner knew that respondents would feel in Nevada the effects of his conduct in Georgia—the loss of the use of their seized cash—cannot transform petitioner's conduct into conduct aimed at Nevada.

As to venue, respondents have no answer to the statutory text, which requires that substantial "events or omissions giving rise to the[ir] claim[s]" have "occurred" in Nevada. 28 U.S.C. § 1391(b)(2). Feeling in Nevada (and wherever else they happened to be) the inability to use their cash while it was in government custody cannot be described as an "event[]" that "occurred" in Nevada.

Respondents' arguments cannot obscure the simple truth that petitioner has no contacts with Nevada and no event or omission giving rise to respondents' claims occurred there.

I. DUE PROCESS REQUIRES CONDUCT AIMED AT THE FORUM STATE, NOT MERELY AT A PERSON WITH KNOWN CONNECTIONS TO THE FORUM STATE

A. Conduct Aimed At An Individual With Known Connections To The Forum State Is Insufficient

Respondents argue that intentional conduct directed toward someone with known connections to the eventual forum state suffices. That argument finds no support in *Calder v. Jones*, 465 U.S. 783 (1984), or this Court's other personal-jurisdiction decisions.

1. A defendant must have contacts with the forum state itself before he may be subject to its jurisdiction. Although the Court has expressed this foundational principle in different ways in different kinds of cases, precedent forecloses the notion that conduct directed toward an individual with known connections to a forum is sufficient by itself.

The Court has stressed that personal jurisdiction depends on the "defendant's contacts with the forum State." *Calder*, 465 U.S. at 790; *Kulko v. Super. Ct. of Cal.*, 436 U.S. 84, 91 (1978). It has emphasized that the jurisdictional "inquiry focuses on the relations among the defendant, the forum, and the litigation." *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 780 (1984). And it has consistently made clear that out-of-state defendants must have "purposefully directed" conduct at the forum state. See *id.* at 774; *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985); see also *Asahi Metal Indus. Co., Ltd. v. Super. Ct. of Cal.*, 480 U.S. 102, 112 (1987) (plurality op.); *J.*

McIntyre Mach., Ltd. v. Nicastro, 131 S. Ct. 2870, 2788 (2011) (plurality op.); *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

Moreover, this Court has decisively rejected the notion that the "*plaintiff's* contacts with the forum are decisive in determining whether the *defendant's* due process rights are violated." *Rush v. Savchuk*, 444 U.S. 320, 332 (1980) (emphases added); see also *Kulko*, 436 U.S. at 93–94. This is not to say that a plaintiff's residence in a forum is always irrelevant. But it matters only to the extent it "enhance[s] the defendant's contacts with the forum." *Keeton*, 465 U.S. at 780; see also *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 131 S. Ct. 2846, 2857 n.5 (2011). In short, the Court's cases invariably affirm that conduct by the defendant purposefully directed at the forum state itself is required.

2. Respondents grudgingly acknowledge this overwhelming weight of precedent, Resp. Br. 23–24, but argue for a special exception for intentional torts. An intentional-tort defendant, respondents argue, need only have aimed his conduct at an individual with known forum connections. *Id.* at 24–25.

a. Respondents acknowledge that the requirement of forum-directed conduct is normally necessary to provide a defendant a "measure of predictability and control over its own amenability to suit." *Id.* at 24. But intentional-tort defendants have no need for such protections, respondents contend, because "the scope of [their] 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 . . . ." *Id.* at 25.

Not every intentional-tort defendant is an intentional tortfeasor, however. On respondents' approach, a person's amenability to suit in a particular forum is based on what a plaintiff is willing to allege, which no prospective defendant can "limit[], predict[], [or] control." *Ibid.*; see Pet. Br. 35–36.[1]

Making matters worse, many intentional-tort claims turn on the defendant's mental state. With plaintiffs' allegations taken as true, blameless defendants would rarely be able to vindicate their personal-jurisdiction defense on this basis before being subjected to extensive factual proceedings in a distant forum. See, *e.g.*, Pet. App. 14a ("We will draw reasonable inferences from the complaint in favor of the plaintiff where personal jurisdiction is at stake, and will assume credibility."). This concern is precisely why the Court recognized that a qualified-immunity standard focused on the defendant's mental state could not vindicate the important interest in early resolution. See *Harlow v. Fitzgerald*, 457 U.S. 800, 815–16 (1982). Accordingly, there is no reason to think that intentional-tort defendants do not need the protections the Due Process Clause provides for other defendants.

b. Respondents' argument also finds no support in this Court's cases. Respondents' strained reading

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[1] Respondents err in stating that "petitioner has not denied the allegations in the complaint . . . ." Resp. Br. 36. Petitioner *has* denied respondents' allegations. See, *e.g.*, Cert. Reply 12 ("respondents' allegations of misconduct by petitioner are false"). Petitioner has not done so formally in the district court, but that is only because this case is at the motion-to-dismiss stage.

of *Calder* proves the point. They argue that jurisdiction was proper there "'based on the effects of [the defendants'] Florida conduct in California,' not based on the subject matter or sources of the story that caused those effects," and that the connections between California and the defendants' conduct were merely "subsidiary facts" that "explain[ed] why the effects of the defendants' conduct were felt in California." Resp. Br. 31 (citation omitted).

But the Court immediately preceded the statement that "jurisdiction over [the defendants] is *therefore* proper in California based on the effects of their Florida conduct in California" with the observation that the article's subject matter and sources established California as the "focal point" of the defendants' conduct. *Calder*, 465 U.S. at 788–89. Far from explaining that the holding was "not based on the subject matter or sources of the story," Resp. Br. 31, the opinion shows that California's status as the "focal point" of the defendants' conduct was essential. See *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1074 (10th Cir. 2008) ("[*Calder*] also stressed that the defendants' conduct was 'expressly aimed at California.' In the sentences immediately following its introduction to this concept, the Court emphasized that California was the 'focal point' of the allegedly tortious story." (citations omitted)).

Nor, indeed, would the connections between California and the defendants' conduct noted by the Court have "explain[ed] why the effects of the defendants' conduct were felt in California," Resp. Br. 31. Jones would have suffered the effects of defamation—such as emotional distress and reputational harm—wherever she happened to be. That the arti-

cle's sources were drawn from California and its subject matter was focused on California, see *Calder*, 465 U.S. at 788–89, were separate points that had no bearing on where she would have felt the effects of the alleged tort. Instead, such facts were significant precisely because they established that California was the "focal point" of the *defendants' conduct*—not merely of the plaintiff's injury.

Calder was thus not the jurisdictional revolution that respondents claim. Rather than establishing a new and unique exception to previously recognized due-process rules, the Court merely applied existing principles—including the requirement that a defendant have contacts with the forum state itself—to the claim before it. See U.S. Br. 14–15. Respondents' reading of *Calder* is also implausible at a deeper level. *Calder* was a short unanimous opinion that reaffirmed, not repudiated, traditional personal-jurisdiction principles. No court—not even the decision below—has read *Calder* as eliminating the requirement that the defendant have contacts with the forum state itself and not merely with the plaintiff. Instead, lower courts have consistently interpreted *Calder*'s express-aiming requirement as an application of, not an exception to, the purposeful-direction rule, see Pet. Br. 21–25, and even the Ninth Circuit paid lip service to the notion that the defendant's conduct must be expressly aimed at the forum state in addition to causing injury in the state, see Pet. App. 16a.

None of this Court's other cases supports respondents' theory either. Respondents cite *Burger King* for the proposition that "[i]n 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,'" Resp. Br. 24, but *Burger King* held no such thing. Far from containing a novel holding applicable to intentional-tort claims, the *Burger King* opinion does not even contain the word "intentional." The language respondents quote was merely introductory: "We have noted several reasons why a forum legitimately may exercise personal jurisdiction over a nonresident who 'purposefully directs' his activities toward forum residents." 471 U.S. at 473. And after identifying the various interests and burdens at stake, the Court concluded: "*Notwithstanding these considerations*, the constitutional touchstone remains whether the defendant purposefully established 'minimum contacts' in the forum State." *Id.* at 474 (emphasis added). Despite respondents' creative license, *Burger King* thus reaffirms that the "constitutional touchstone" is whether the defendant has minimum contacts with the forum state and does not suggest, let alone hold, that contacts with a plaintiff who has forum-state connections suffice.

B. Respondents' Position Contravenes Basic Principles Of State Authority

"[J]urisdiction is in the first instance a question of authority." *J. McIntyre*, 131 S. Ct. at 2789 (plurality op.). Due process restrictions on personal jurisdiction "are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States." *Hanson*, 357 U.S. at 251; see also *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S.

286, 292 (1980). And because jurisdiction is a function of territorial authority, a state cannot exercise jurisdiction over a defendant unless he directed his conduct toward the forum state, such that he can be said to have at least figuratively entered the state. See Pet. Br. 33.

1. Respondents concede that our federal system limits state courts' territorial authority, see Resp. Br. 38, but misunderstand the scope and importance of those limits. Their discussion of *Calder* is illustrative. They ask rhetorically:

> 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 [sic] defamatory conduct?

Id. at 32 (quoting *J. McIntyre*, 131 S. Ct. at 2789 (plurality op.)). The answer is that, as *Calder* recognized, whether the state is the "focal point" of the alleged tort makes the difference, because a state can hale into court only persons who have meaningful connections with the state itself. Facts like those relied on by *Calder* can demonstrate that the defendant has reached into or targeted the state, rather

than merely targeting a person who happens to have forum-state connections that are incidental to the defendant's conduct.

Respondents pepper the Court with hypotheticals involving computer hacking, electronic banking, and other scenarios not presented by this case and argue that traditional limits on state authority are outmoded because of such modern technology. See, *e.g.*, Resp. Br. 40–41. But these limits are inherent to our federal system and cannot be so lightly discarded. See *Burnham v. Super. Ct. of Cal.*, 495 U.S. 604, 610–16 (1990) (plurality op.). Nor is there any reason to think that new technologies will require this Court to abandon traditional personal-jurisdiction principles. To the contrary, courts have managed to apply those principles without apparent difficulty to cases involving new technologies. Consider, for example, *Dudnikov*, 514 F.3d at 1063, which respondents tout as showing the doctrinal problems presented by modern technology. See Resp. Br. 39–40. There, the Tenth Circuit held that a British corporation aimed its conduct at Colorado where it contacted an internet auction site in California to prevent an online auction of goods located in Colorado. 514 F.3d at 1075–76. Although *Dudnikov* involved the internet, the court's holding fit comfortably within the traditional framework because the defendant reached into Colorado by preventing a "Colorado-based sale" of goods located there. *Ibid.*

Here, by contrast, petitioner's alleged conduct merely delayed the return of respondents' cash to them after its seizure in Georgia. That the cash was eventually returned to them in Nevada may have reflected either their connections to Nevada or their

attorney's. But it is happenstance from petitioner's perspective that respondents asked that the cash be sent to them in Nevada rather than in California (where they also allegedly maintain a residence) or somewhere else. Petitioner never reached into Nevada, literally or figuratively.

In short, respondents' suggestion that new technologies are incompatible with established principles of state authority is without support, and there are good reasons for caution in considering whether to extend personal-jurisdiction doctrine beyond traditional limits. See Chamber of Commerce Br. 8–15. This case, moreover, involves no vexing or novel technological complexity. The seized cash had a straightforward physical presence, and it was not in Nevada; it will be time enough to address respondents' hypotheticals about property with no traditional physical presence (such as money in an electronic account) in cases involving such property where the issue is not hypothetical. Perhaps in such a case the Court will deem the money to be located in the state where the account-holder opened the account, such that hacking into the account and stealing the money electronically could be viewed as reaching into the state where the account-holder opened the account. See Resp. Br. 40. Perhaps the Court will opt for a different approach. Perhaps Congress will step in and modify service-of-process requirements for such situations. In all events, respondents offer no reason why the Court should reach out here to revise basic principles of state authority and personal jurisdiction out of concern for hypothetical cases that have yet to arise.

2. Respondents also contend that providing redress for residents who feel the effects within their borders of tortious conduct occurring elsewhere is a state's "most basic sovereign responsibility." Resp. Br. 37. If that were true, one would expect at least some states to say so. Instead, 18 states (and the District of Columbia) have argued forcefully that the interests to which respondents point are "outweighed by their interest in protecting their residents from being haled, unfairly, into other States' courts as defendants," States Br. 1, and not a single state has chosen to support respondents.

While a state may want to provide its residents (or non-residents who have "connections" to the state, or even the public at large) with redress, that desire is not enough. To be consistent with due process, a state's exercise of jurisdiction over a person must be tied in some way to its legitimate sphere of sovereign power. And respondents have offered no support for the notion that a state has limitless authority to regulate conduct that occurs in another state and concerns property located in another state, simply because that conduct affects an individual with connections to the forum state. If that were correct, there would be no meaningful limits on a state's jurisdiction at all—which, tellingly, is the position that respondents' lone amicus candidly advances. See WILG Br. 10 ("There should be no territorial limits on the power of the states to exercise adjudicatory jurisdiction."). That is plainly not the law. See Pet. Br. 31–34; States' Br. 5–6.

3. Respondents also contend that 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," because the court is "vindicat[ing] the authority of the federal government, not the territorially more limited power of the state." Resp. Br. 38. But that respondents bring federal claims in federal court is irrelevant. Respondents effected service of process pursuant to Nevada's long-arm statute, which goes to the limits of due process. See Pet. App. 68a–69a; Nev. Rev. Stat. § 14.065(1). Therefore, the relevant question is whether a Nevada court could exercise jurisdiction over petitioner consistent with the Fourteenth Amendment. See Fed. R. Civ. P. 4(k)(1)(A); *Burger King*, 471 U.S. at 464, 468 n.10; *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987); see also U.S. Br. 10–11. Whether the underlying suit involves a state or federal claim has no bearing on Nevada's power to subject petitioner to its jurisdiction.

Indeed, respondents' argument proves far too much. If Fourteenth Amendment due-process principles were irrelevant to all federal claims brought in federal court, the Ninth Circuit's minimum-contacts analysis would have been entirely unnecessary, because the relevant sovereign for Fifth Amendment purposes is the United States as a whole, not the state which a federal court sits. See *J. McIntyre*, 131 S. Ct. at 2789 (plurality op.); see also U.S. Br. 11 n.6. Yet this Court has never suggested that federal courts can forgo the minimum-contacts inquiry simply because the plaintiff raises a federal claim. See, *e.g.*, *Burger King*, 471 U.S. at 468, 478–82 (analyzing defendant's contacts with Florida even though plaintiff brought a federal claim in federal court). Nor, in any event, did respondents ever make that

suggestion until their merits brief—meaning that any such contention is unpreserved in addition to being incorrect. S. Ct. R. 15.2.

C. The Ninth Circuit's Approach Imposes Unfair Burdens on Defendants

The Ninth Circuit's approach, if it became the law of the land, would have pernicious consequences for many types of defendants. As petitioner and several amici explained, federal and state law-enforcement officers, journalists and publishers, internet users, and businesses will all be victims. See Pet. Br. 36–40; U.S. Br. 18–22; FLEOA Br. 8–14; Chamber of Commerce Br. 2–3. According to respondents, however, the Court need not be concerned about these implications of their express-aiming position, because these concerns are more properly considered under the separate heading of the "case-specific reasonableness analysis." Resp. Br. 46. Respondents' contention is unpersuasive on multiple levels.

First, reasonableness is critical to the minimum-contacts requirement at issue here itself. See *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 807 (1985) ("The purpose of [the minimum contacts] test, of course, is to protect a defendant from the travail of defending in a distant forum, unless the defendant's contacts with the forum make it just to force him to defend there."); *World-Wide Volkswagen*, 444 U.S. at 291–92. As a result, the fact that respondents' approach to the express-aiming requirement would produce unreasonable results belongs front and center in this case. Even if it were true that those unreasonable results would be mitigated via a dis-

tinct "reasonableness" analysis, that would be no justification for adopting an unreasonable approach to the express-aiming requirement in the first place.

In any event, respondents drastically overstate the utility of the "case-specific reasonableness analysis" to which they ask the Court to defer. Respondents acknowledge that personal-jurisdiction rules are supposed to enable citizens to predict and even control where they may be haled into court, Resp. Br. 23–25, but the "reasonableness" analysis is a multifactor, judge-made balancing test that is far too indeterminate to fulfill that important purpose. Moreover, courts rarely decline to exercise jurisdiction based on this nebulous analysis. *E.g., McFadin v. Gerber*, 587 F.3d 753, 759–60 (5th Cir. 2009) ("[I]t is rare to say the assertion [of jurisdiction] is unfair after minimum contacts have been shown."). The decision below, for example, placed the burden on petitioner to show a "compelling case" why asserting jurisdiction would be unreasonable. Pet. App. 30a; see *Burger King*, 471 U.S. at 477–78.

Indeed, the Court need look no further than the decision below for proof that the "reasonableness" analysis is no substitute for a reasonable approach to the express-aiming requirement. The Ninth Circuit filled over four pages of the Federal Reporter with its balancing of several factors, some of which themselves were "fairly evenly balanced" or "not given much weight," Pet. App. 35a, before ultimately concluding that "[t]aken as a whole, the seven-factor reasonableness analysis disfavors Georgia as a forum and, overall, mildly favors Nevada," *id.* at 36a. The decision below belies respondents' suggestion that a expansive approach to express aiming is acceptable

because courts can be counted on to rein in the excesses at the "reasonableness" stage.

II. VENUE IS NOT PROPER IN A DISTRICT SIMPLY BECAUSE A PLAINTIFF FEELS THE EFFECTS OF A TORT THERE

A. The Proper Venue Is Where The "Events And Omissions Giving Rise To The Claim Occurred"

28 U.S.C. § 1391(b)(2) provides that venue lies in a judicial district where a "substantial part of the events or omissions giving rise to the claim occurred." Accordingly, the relevant inquiry is whether (1) events or omissions; (2) that gave rise to the claim; (3) occurred in the district. In a case like this one, where the only "events or omissions" that gave rise to the claim were actions by the defendant, the location of those actions is the only possible venue under the plain language of the statute. See Pet. Br. 52.

Rather than grapple with this textual analysis, respondents endorse a vague, multi-factor approach that would resolve venue questions with the sole purpose of ensuring the "convenience of litigants and witnesses." Resp. Br. 54. According to respondents, the Ninth Circuit properly considered not only the locus of injury, but also various Nevada-related facts about the case: respondents took some of the cash with them from Nevada when they embarked on their trip, respondents and their attorney sent documents from Nevada verifying the cash's legitimacy, and the government returned it to respondents (or their attorney) in Nevada. *Id.* at 55–56.

This approach has no basis in the statutory text. The statute requires focusing on "the events or omissions giving rise to" respondents' claim, and none of the allegedly "relevant factor[s]" to which respondents point, *id.* at 56, constitutes an "event[] or omission[] giving rise to [their] claim."

First, respondents rely on the location of their injury, but they never explain how the ongoing inability to use their cash could constitute an "event." An "event" is "something that occurs in a certain place during a particular interval of time." Random House Webster's Unabridged Dictionary 671 (2d ed. 1998); Pet. Br. 45. Respondents' lack of access to the seized cash for the six months it was in government custody cannot be described as an "event" that "occurred" in Nevada (or anywhere else); that injury was simply a lingering economic harm that followed respondents wherever they happened to be. See *Leroy v. Great W. United Corp.*, 443 U.S. 173, 186–87 (1979); Pet. Br. 44; U.S. Br. 27–28.

Indeed, respondents themselves argue that there is a "distinction between the event of suffering a tortious injury, and the continuing collateral consequences of that injury," such that once respondents felt the financial injury from the loss of the use of their cash, "it would not follow them." Resp. Br. 57. This concession further dooms respondents' case: "the event" of the seizure of the cash occurred in Atlanta, and respondents lost the use of the cash then and there. On respondents' own terms, "the continuing collateral consequences of that injury" do not count as an "event" that "occurred" in Nevada.

Nor do the other facts on which respondents rely—such as the origin of some of the cash, the sending of documents from Nevada, and the arrival of the cash in Nevada, see Resp. Br. 55–56—support the Ninth Circuit's venue ruling. Even assuming that some of these facts could be considered "events" that "occurred" in Nevada, none "g[ave] rise to the claim." These facts may be "relevant to the litigation" in some attenuated sense, *id.* at 51, but they did not "originate," "produce," "cause," or serve as the source of respondents' claims. See Random House Webster's Unabridged Dictionary 1660 (defining "give rise to"); Pet. Br. 50; U.S. Br. 30–31. They are thus irrelevant.

B. Respondents' Reading Ignores Congress's Intent

In addition to ignoring § 1391(b)(2)'s text, respondents disregard Congress's intent. "In most instances, the purpose of statutorily specified venue is to protect the *defendant* against the risk that a plaintiff will select an unfair or inconvenient place of trial." *Leroy*, 443 U.S. at 183–84. For that reason, the Court found it "absolutely clear" that Congress could not have intended "to provide for venue at the residence of the plaintiff or to give that party an unfettered choice among a host of different districts." *Id.* at 184–85.

When Congress amended § 1391(b)(2) in 1990, 11 years after *Leroy*, it gave no indication that it meant to deviate from the usual purpose of venue provisions. To the contrary, Congress eliminated a provision that had authorized venue in diversity actions "in the judicial district where all plaintiffs . . . reside." 28 U.S.C. § 1391(a) (1988). It is highly unlikely

that Congress nonetheless intended its amendment to § 1391(b)(2) to allow diversity and federal-question plaintiffs to sue in any venue where they felt the effects of an injury, which would often include their district of residency. See Pet. Br. 56; U.S. Br. 29–30. Respondents never acknowledge this evidence of Congress's intent.

Instead, respondents argue that Congress's goal in enacting § 1391(b)(2) was to provide for venue in any district "conducive to the 'convenience of litigants and witnesses.'" Resp. Br. 54 (quoting *Leroy*, 443 U.S. at 187). Respondents ignore that *Leroy* was emphatic that "the convenience of the defendant (but *not* of the plaintiff)" was a permissible venue consideration. 443 U.S. at 185. Even more fundamentally, respondents ignore that § 1391(b)(2) does not say that venue is permissible wherever would be "convenien[t]" in a given case. Congress could have enacted a venue provision devoid of legal content that simply directed courts to seek convenience on a case-by-case basis. Cf. 28 U.S.C. § 1404(a) (permitting transfer for convenience only to districts in which venue would have been proper in the first instance). But instead Congress enacted § 1391(b)(2), which limits venue to districts where "events or omissions giving rise to the claim occurred."

Respondents have two arguments for why Congress would have intended § 1391(b)(2) to be as broad as they claim. First, they contend that § 1391 "has been repeatedly amended to expand venue." Resp. Br. 52. This argument is wrong on its own terms; in the very legislation that created § 1391(b)(2), Congress contracted venue by removing diversity plaintiffs' ability to sue in their district of residence. See

Pet. Br. 55–56. But even if respondents were correct that Congress had consistently expanded venue, that would not mean Congress had expanded venue so vastly that venue restrictions had ceased to restrict. The actual statutory language Congress used is far more probative of what Congress intended than a general trajectory over the decades. See *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2583 (2012) ("[T]he best evidence of Congress's intent is the statutory text."). As explained above, respondents never grapple with the statutory language.

Respondents' other support for their view of Congress's purpose is a 1969 American Law Institute study. Respondents reason that (1) Congress's 1990 amendments used language first suggested in the 1969 ALI study; (2) the study rejected limiting venue to "any district where a defendant resides and . . . any district where the wrongful act, or a part thereof, occurred"; (3) the study described its proposed language as "permit[ting] suit in any 'district having a substantial connection with the matters in suit'"; and (4) it thus intended to endorse the view that venue is proper wherever is convenient, taking into account whatever "may be relevant to the litigation." Resp. Br. 54.

To call this a thin reed would be unfair to thin reeds. This study was written more than two decades before § 1391(b)(2) was enacted, and not even by a congressional committee or even a lone Member. "[W]e are governed" by "the provisions of our laws," not "the principal concerns of [their drafters]"—and certainly not unenacted discussion in a private study written a generation earlier. *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998). Because

§ 1391(b)(2) is clear, the ALI study could not justify adopting a countertextual reading of that statute—ignoring the phrase "events or omissions giving rise to the claim occurred"—even if it were true that the ALI thought, 21 years earlier, that its proposed language would permit venue in any district that would be convenient.

But that is, in any event, not true. The "matters in suit" language seized upon by respondents is merely a loose paraphrase, and the "convenience" language is merely precatory. See ALI, Study of the Division of Jurisdiction Between State and Federal Courts 137, 217 (1969). The study never suggests that venue would be proper in a district that had "a substantial connection with the matters in suit" or that would be "convenient," Resp. Br. 54, if "the events or omissions giving rise to the claim" did *not* "occur[]" there. To the contrary, the study suggests that what later became the statutory language refers exclusively to the district in which the defendant's conduct occurred. See ALI Study 218 (where there are multiple defendants who reside in different districts, "the place of the wrong is . . . the only possible venue").[2]

C. Respondents Mischaracterize Petitioner's Position

Lacking a response to the statutory text, respondents attack straw men.

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[2] The 1990 Federal Courts Study Committee report, which respondents do not cite, likewise does not endorse respondents' countertextual interpretation. See H.R. Rep. 101-734 (1990), reprinted in 1990 U.S.C.C.A.N. 6860, 6869.

1. Respondents contend that "[n]othing in the text, history, or purposes of [§ 1391(b)(2)], or any decision of this Court, supports categorically limiting venue to the district in which the defendant acted or failed to act." Resp. Br. 50–51. But petitioner has not advanced such a "categorical[]" position.

The focus of the § 1391(b)(2) inquiry ordinarily should be the defendant's alleged conduct. Pet. Br. 45. This makes sense given the statute's use of "omissions," which can refer only to the defendant's conduct, *Woodke v. Dahm*, 70 F.3d 983, 985 (8th Cir. 1995), as well as the defendant-protective purpose of venue provisions, *Leroy*, 443 U.S. at 183–84. In many intentional-tort cases, like this one, the only "events or omissions giving rise to the claim" will involve the defendant's conduct. In such cases, the defendant's conduct will be the exclusive focus of the inquiry by operation of the statutory text.

As petitioner has explained, however, the defendant's conduct need not be the exclusive focus in *every* case. Pet. Br. 52. There are circumstances in which something other than the defendant's conduct could be an "event . . . giving rise to a claim." *Id.* at 52–53. But the plaintiff must point to *some* event or omission giving rise to the claim that occurred in her chosen forum.

Respondents' hypothetical, based on *McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957), illustrates petitioner's point. Respondents state that "when an insurance company denies a life insurance claim on the grounds that the decedent committed suicide, the alleged suicide is plainly part of 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." Resp. Br. 51. This is entirely consistent with petitioner's position, because the alleged suicide would be an event giving rise to the claim. It is also irrelevant, because neither the Ninth Circuit nor respondents have identified any analogous "event" that occurred in Nevada and gave rise to *their* claims.

Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co., 529 U.S. 193 (2000), on which respondents rely, is similarly unhelpful. There, a plaintiff challenged an arbitration award arising out of a construction dispute. The Court observed that venue was proper where the contract was supposed to have been performed, because venue lies where "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." *Id.* at 198. The performance (or non-performance) of the construction contract was an "event[] or omission[] giving rise to the claim." Here, by contrast, no such event or omission occurred in Nevada.

2. Respondents similarly mischaracterize petitioner's position in contending that "[t]here is no reason to think that Congress intended to categorically preclude venue in the district of injury." Resp. Br. 57. Petitioner has not advanced this "categorical[]" rule either. In many cases, the defendant's conduct and the plaintiff's injury occur in the same place, and venue in the district of injury is of course not precluded. But even where the defendant's conduct and the plaintiff's injury occur in different districts, there are cases where the plaintiff's injury can be described as an "event[] or omission[] giving

rise to the claim [that] occurred" in the forum district. Petitioner explained that in a suit alleging that a product malfunctioned and caused physical injury, that incident could constitute an event occurring in that district that gave rise to the claim and thus justifies laying venue there. Pet. Br. 52. But if the plaintiff lived in a different district and felt the effects of that event there—long-lasting pain and suffering and reduced earning capacity, for example—venue would not be proper there. The plaintiff may have suffered a substantial part of her injury in her home district, but feeling the effects there of an event that occurred elsewhere would not constitute an event occurring in her home district that gave rise to the claim—just as respondents' ongoing inability to use their cash cannot be described as an event that occurred in Nevada. See U.S. Br. 28–30.[3]

3. Respondents finally argue that petitioner raises a "fact-bound challenge" that merely seeks review of the Ninth Circuit's "weighing of the relevant considerations in the context of this one particular case" and "does not warrant this Court's review." Resp. Br. 50. Not so. The Ninth Circuit erroneously found venue proper here because it applied the wrong *legal* standard. Under the correct standard, the location of the injury is not a "relevant consideration[]" to be weighed in a particular case unless the

[3] Respondents also gain nothing by invoking *Calder* in their venue argument. Resp. Br. 57–58. Contrary to respondents' suggestion, venue would have been proper in Jones's home district under the current version of § 1391(b)(2) because the distribution of the challenged article in that district was an event that occurred there and gave rise to her claim.

injury is an "event" that "occurred" in the forum district. In any case, however, respondents' assertion is a peculiar one to find in a merits brief. That a legal issue may require applying the law to the facts is not an argument why respondents should prevail.

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The judgment of the court of appeals should be reversed.

Respectfully submitted.

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